# FEDERAL REGISTER


Vol. 78 Tuesday

No. 58 March 26, 2013

OFFICE OF THE FEDERAL REGISTER

UNITED STATES GOVERNMENT PRINTING OFFICE



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# FEDERAL REGISTER

Vol. 78 Tuesday,
No. 58 March 26, 2013

Pages 18221–18454

OFFICE OF THE FEDERAL REGISTER

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WHEN: Tuesday, April 9, 2013
9 a.m.-12:30 p.m.

WHERE: Office of the Federal Register
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Washington, DC 20002

RESERVATIONS: (202) 741-6008

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

**12 CFR Part 1005**

**[Docket No. CFPB–2013–0006]**

**RIN 3170–AA36**

## Disclosures at Automated Teller Machines (Regulation E)

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Consumer Financial Protection is amending Regulation E (Electronic Fund Transfers), which implements the Electronic Fund Transfer Act (EFTA), and the official interpretation to the regulation. In December 2012, Congress passed and the President signed legislation amending the EFTA to eliminate a requirement that a fee notice be posted on or at automated teller machines, leaving in place the requirement for a specific fee disclosure to appear on the screen of that machine or on paper issued from the machine. This final rule amends Regulation E to conform to the EFTA amendment.

**DATE:** This rule is effective on March 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** Joseph Devlin, Counsel, Office of Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*ATM Fees*

Consumers using automated teller machines [1] (ATMs) not provided by their financial institution (foreign ATMs) to withdraw money or check balances will typically pay two fees for a single transaction. First, the operator of the foreign ATM (which may or may not be a financial institution) will usually impose a charge. A recent survey indicates that the average ATM charge imposed by foreign ATMs is $2.40.[2] Second, the consumer's own financial institution also may impose a charge for using a foreign ATM. That charge averages $1.40, according to the same survey. Thus, the average total charge for using a foreign ATM, combining the foreign ATM fee and the fee charged by the consumer's own financial institution, is $3.80. The average foreign ATM charge has risen steadily since 2004, when the charge was less than $1.50.

*The Electronic Fund Transfer Act*

Congress amended the Electronic Fund Transfer Act (EFTA) in 1999 to require ATM fee disclosures to be both (1) posted "in a prominent and conspicuous location on or at the [ATM]," and (2) provided on the screen or on a paper notice issued from the ATM. As amended, section 904(d)(3) of the EFTA stated that the on-screen notice had to include the specific amount of the fee the consumer would be charged by the foreign ATM operator, but the notice posted "on or at" the machine only had to disclose "the fact that a fee is imposed by such operator for providing the service." Section 904(d)(3)(C) of the EFTA barred ATM operators from charging a fee if the disclosures did not occur. The "on or at" notice usually involved a sticker placed on the machine by the ATM operator. The on-screen or paper notice was required to be given "after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction." The statute allowed operators five years to implement the technology needed to disclose on the screen. The statute did not, however, provide that once the five years elapsed operators could cease providing the separate notice "on or at" the machine.

In a private cause of action brought by a consumer for failure to provide the required notices, an ATM operator could be liable for actual damages, statutory damages for individual or class actions, and costs and attorney's fees.[3] However, in EFTA section 910(d), Congress also established a broad liability protection for the ATM operator if the ATM notice "on or at" the machine were damaged or removed from the machine by someone else.[4] Thus, the statute provides that an operator is not liable if it posted the "on or at" notice and someone else removed or damaged it.[5]

*Implementation of the 1999 Amendment*

The Board of Governors of the Federal Reserve System (Board) issued regulations to implement the ATM disclosure requirements in 2001 as part of Regulation E, which implements EFTA. Those regulations, which the CFPB republished in 2011 after authority to implement Regulation E transferred to the Bureau, provide at 12 CFR 1005.16(c) that an ATM operator must "[p]ost in a prominent and conspicuous location on or at the automated teller machine a notice that" a fee will or may be imposed "for providing electronic fund transfer services or for a balance inquiry." The regulation further implemented the statute by requiring an on-screen or paper notice that includes the amount of the fee and is provided before the consumer is committed to paying a fee.

Consistent with the statute prior to the December 2012 amendment necessitating this rule change, the regulation does not require that the "on or at" notice disclose the amount of the fee. Also, operators are allowed to disclose on or at the machine that a fee "may" be imposed—rather than "will" be imposed—if there are circumstances

[1] The new statutory amendment in Public Law Number 112–216 uses the term "automatic teller machine" in the title of the legislation, though the Electronic Fund Transfer Act and Regulation E use the term "automated teller machine." The Bureau considers the two terms to be synonymous.

[2] Claes Bell, *ATM fees march upward in 2011*, Bankrate.com (Sept. 26, 2011), *http://www.bankrate.com/finance/checking/atm-fees-march-upward-in-2011.aspx*. Fee information updated in 2012 is also available from Bankrate.com, but it is presented by metropolitan area, not as a nationwide average. *See http://www.bankrate.com/finance/checking/checking-account-fees.aspx*.

[3] 15 U.S.C. 1693m(a); EFTA section 916.

[4] 15 U.S.C. 1693h(d), as adopted by section 705 of the Gramm-Leach Bliley Act, Public Law 106–102 (1999).

[5] The Conference Report reiterates this provision: "ATM operators are exempt from liability if properly placed notices on the machines are subsequently removed, damaged, or altered by anyone other than the ATM operator." H.R. Rep. No. 106–434, at 178 (1999) (Conf. Rep.).

in which an ATM fee may not be charged. The Bureau believes that "on or at" notices generally use the word "may."

The Official Interpretation to Regulation E, in supplement I to part 1005, includes Comment 16(b)–1, which explains the permissibility of the use of the word "may" in the "on or at" the machine disclosure, and makes clear that an ATM operator may specify the type of service for which a fee will or may apply.

In the Board's initial rulemaking implementing the 1999 amendments to the EFTA, some commenters requested that the Board eliminate the "on or at" notice requirement. The Board, however, responded that it lacked the authority to do so: "Several commenters requested action outside the scope of the Board's authority, such as deleting the statutory requirement to post a sign about fees at the ATM as unnecessary and burdensome or prohibiting ATM surcharges." 66 FR 13409, 13410 (March 6, 2001).

*The Bureau's Streamlining Request for Information*

In 2011, rule-writing authority over the EFTA was transferred to the Bureau of Consumer Financial Protection (Bureau) by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Public Law 111–203, sec. 1061(b)(1), 124 Stat. 1376 (2010). Shortly after the transfer, the Bureau was made aware of long-standing concerns that the "on or at" notice requirement provides little or no benefit to consumers and is the subject of costly litigation alleging that the "on or at" notice was not properly posted. Pursuant to those concerns, the Bureau sought public comment on the advisability of removing this requirement in its Streamlining Inherited Regulations Request for Information (Streamlining RFI).[6] Industry trade associations asked the Bureau to remove the requirement if it was within its authority to do so or, if not, to clarify publicly that it lacked such authority. Many individual banks and credit unions also asked the Bureau to remove the requirement. Many of the strongly negative comments about the requirement were from small entities, including many small ATM operators. An association of state bank regulators and an individual state banking division also favored removing the requirement.

Industry commenters argued that: (1) The requirement does not benefit consumers because almost all consumers know that a fee will be charged, and the on-screen disclosure provides sufficient notice of the fee and amount before the transaction takes place; (2) vigilant compliance with the provision adds to costs; (3) the litigation over the provision is costly and threatens the existence of some small operators, potentially reducing ATM availability for consumers; and (4) some of the "on or at" notices are removed in order to support litigation, and the provision providing liability protection is not sufficient because of evidentiary problems.

In contrast, a joint letter of several leading consumer and community groups opposed removing the requirement. In addition, four national consumer groups wrote to Congress opposing legislation to remove the requirement. The consumer groups proposed instead that the Bureau clarify the statutory provision that gives ATM operators immunity from liability in certain cases. An attorney who has brought cases against banks wrote two comment letters to the Bureau in support of the requirement.

The consumer advocates argued that: (1) The Bureau has no authority to remove the requirement without Congressional action; (2) some consumers are unaware that a foreign ATM will charge a fee, and they will be less likely to forgo a transaction they have almost completed; (3) the "on or at" notice may be the only indication a consumer gets of the potential fee charged by the consumer's own financial institution; and (4) ATM operators who are the subject of litigation have violated the law.

*The December 2012 Statutory Amendment*

While the Bureau was considering this issue, legislation amending the relevant provision of the EFTA passed Congress and was signed into law on December 20, 2012 (December 2012 Legislation). Public Law 112–216. The legislation amends only the specific provision, at EFTA section 904(d)(3)(B), addressing the ATM fee disclosures, deleting the "on or at" requirement and some obsolete transitional language. The on-screen or paper disclosure requirement remains unchanged.

## II. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under EFTA and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the "consumer financial protection functions" previously vested in certain other Federal agencies. The term "consumer financial protection functions" is defined to include "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines."[7] EFTA is a Federal consumer financial law.[8] Accordingly, effective July 21, 2011, except with respect to persons excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act, the authority of the Board to issue regulations pursuant to EFTA transferred to the Bureau.

EFTA, as amended by the Dodd-Frank Act, authorizes the Bureau to "prescribe rules to carry out the purposes of [EFTA]." Public Law 111–203, sec. 1084(3); 15 U.S.C. 1693b(a). Section 904(d)(3)[9] of EFTA, as amended by Dodd-Frank Act section 1084(1), requires those rules to mandate specific fee disclosures at ATMs.

## III. Summary of the Final Rule

The December 2012 Legislation deletes from the EFTA the requirement that a fee notice be posted "on or at" an ATM. The Bureau, therefore, is issuing a final rule conforming Regulation E to the statutory amendment eliminating this requirement. Section 1005.16 of Regulation E is now amended by deleting the language requiring that disclosure. ATM operators will now only have to provide the on-screen or paper disclosure, which includes the amount of the fee to be charged and is provided before the consumer is committed to the transaction.

In addition to the deletion of the rule language requiring the "on or at" the machine disclosure, the Bureau is deleting Official Comment 16(b)(1)–1, which interpreted that requirement in regard to the permissible use of the word "may" in the disclosure, as well as the use of more specific language in making the "on or at" the machine disclosure. Because the requirement to which the comment pertains has been eliminated, there is no longer a need for this interpretation.

[6] 76 FR 75825 (Dec. 5, 2011). This was one of many issues on which the RFI solicited comment.

[7] Public Law 111–203, sec. 1061(a)(1) (2010). Effective on the designated transfer date, the Bureau was also granted "all powers and duties" vested in each of the Federal agencies, relating to the consumer financial protection functions, on the day before the designated transfer date. *Id.* sec. 1061(b).

[8] Public Law 111–203, sec. 1002(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws"); *id.* Sec. 1002(12) (defining "enumerated consumer laws" to include EFTA).

[9] 15 U.S.C. 1693(d)(3).

## IV. Section 1022(b)(2) of the Dodd-Frank Act

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts,[10] and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The final rule deletes a requirement that an ATM operator post a notice on or at an ATM machine informing consumers that a fee will or may be charged for use of the machine. Because this final rule merely conforms a regulation to a mandatory statutory amendment, and does not involve any exercise of agency discretion, the Bureau does not believe that the rule itself will have any benefits, costs, or impacts beyond those caused by the statute. In addition, the Bureau does not expect the final rule to cause a reduction in consumer access to credit. However, for informational purposes, the following discussion considers the benefits, costs, and impacts of the statutory amendment being implemented.

The Bureau believes that the benefits of the "on or at" notice requirement for consumers were likely more significant when it was adopted than they are today. The Bureau understands that when the requirement was enacted in 1999, ATMs did not always disclose fees on-screen. That is presumably why the statute allowed the industry five years to come into compliance with the on-screen requirement. Thus, for several years, the "on or at" notice might be the only fee disclosure a consumer would receive at the ATM.

Now, however, the Bureau believes that awareness that foreign ATMs charge a fee is already widespread, and thus the "on or at" notice provides little benefit to consumers with respect to foreign ATM fees.[11] Moreover, the "on or at" notice contains much less useful information about the foreign ATM fee than the on-screen disclosure. The "on or at" notice does not tell the consumer the amount of the fee or whether or not a fee will be charged—it usually only states that a fee "may" be charged. For these reasons, the Bureau considers the consumer benefit from the requirement being eliminated to be minimal.

In contrast, the Bureau considers the on-screen disclosure of the foreign fee amount and the screen's prompt requiring the consumer to agree to the fee to be a more effective means of disclosure. Although the consumer must begin the transaction before receiving this disclosure, the disclosure must occur before the transaction is completed, and the consumer then has the necessary price information before purchasing the service. The Bureau understands that fees at foreign ATMs have been increasing, so a disclosure of the specific price before purchase appears to be the most effective way to empower consumers in regard to this type of transaction. This consumer benefit will continue undisturbed when the "on or at" the machine disclosure is eliminated.

In regard to a consumer's *own* financial institution charging a fee for using a foreign ATM, neither the regulation nor the statute currently requires the ATM operator to disclose the potential existence or amount of that fee, of which the foreign ATM operator has no knowledge. Rather, the consumer's financial institution is required to disclose the fee when the account is opened and on a monthly statement when the fee is charged.[12] Also, the ongoing nature of consumers' relationships with their own financial institutions should help to discipline fee pricing better than a disclosure given as part of the one-off transactions that often occur with foreign ATMs. Accordingly, the ATM fee charged by consumers' own financial institutions for use of foreign ATMs appears to be less potentially harmful for consumers in the first place, and the disclosure that is being eliminated provided minimal consumer benefit in regard to it.

The compliance burden of the disclosure being eliminated appears not to have been very large. Costs included purchase of stickers or other disclosure means, personnel costs for placing and replacing stickers or other disclosure means, and monitoring whether or not the disclosures remained present and undamaged. Because the machines would need to be serviced and stocked regularly, it is likely that little extra travel or work time was needed. However, there was some burden, which is now being eliminated.

The statutory amendment and this conforming final rule have no unique impact on insured depository institutions or insured credit unions with $10 billion or less in assets as described in section 1026 of the Dodd-Frank Act, nor does the amendment or this rule have a unique impact on rural consumers.

## V. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, 12 CFR 1005.16 is amended to conform to a statutory change. The Bureau finds there is good cause under APA section 553 to issue this amendment to Regulation E as a final rule without advance notice and public comment because "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

Because the December 2012 Legislation mandates the elimination of the "on or at" the machine disclosure requirement, notice-and-comment procedures on this rule are unnecessary. Any delay in conforming the regulation to Congress's mandate as a result of such procedures would perpetuate inconsistency and confusion contrary to the public interest. Moreover, the Bureau is already informed as to the major concerns of stakeholders in this issue through the public comments received in response to the Streamlining RFI. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary and contrary to the public interest. The Bureau adopts the amendment in final form.

Further, under section 553(d) of the APA, the required publication or service of a substantive rule must be made not less than 30 days before its effective

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[10] Specifically, section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas. The manner and extent to which the provisions of section 1022(b)(2) apply to a rule of this kind are unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[11] The Bureau found only one study of awareness, which is over a decade old. A 2000 consumer survey commissioned by an ATM network (PULSE) found that 86 percent of consumers surveyed said they were adequately informed of charges they sometimes pay to withdraw cash from ATMs. The PULSE network, Pulsations (May 2000). Moreover, 96 percent of consumers who said they paid a surcharge in the last 14 days reported feeling that ATM fee disclosures were sufficient. The Bureau believes this survey has limited value since respondents may have felt disclosures were adequate but have been ignorant of the fees. Moreover, it is possible that consumers claimed awareness in part because they had read the notice "on or at" the ATM. However, the Bureau believes that whatever the level of awareness of foreign institution fees, the level will not drop significantly when the notice on or at the ATM is removed. The on-screen disclosure is clear and pointed and requires the consumer affirmatively to accept the fee before proceeding.

[12] 12 CFR 1005.7(b)(5), 12 CFR 1005.9(b)(3).

date except for certain instances, including when a substantive rule grants or recognizes an exemption or relieves a restriction. 5 U.S.C. 553(d). As this rule relieves a disclosure requirement and restriction on charging ATM fees, and is therefore a substantive rule that relieves requirements and restrictions, the Bureau is publishing this final rule less than 30 days before its effective date. As it is in the public interest to make the regulation conform to the statute as soon as possible, the Bureau is making the final rule effective immediately upon publication in the **Federal Register**.

### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Bureau has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

### VII. Paperwork Reduction Act

According to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, and notwithstanding any other provisions of law, the Bureau may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control number. The collection of information related to this final rule has been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the PRA, 44 U.S.C. 3507(d), and assigned OMB Control Number 3170–0014 (Expiration Date 03/31/15). The Bureau determined that this final rule would not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the PRA. This final rule revises a third-party disclosure requirement currently approved under the aforementioned OMB control number by eliminating the requirement that ATMs have an "on or at" notice posted disclosing that a consumer will or may be charged a fee. The Bureau has filed a no material non-substantive change request with OMB requesting that this third-party disclosure requirement be moved from OMB control number 3170–0014.

### List of Subjects in 12 CFR Part 1005

Consumer protection, Electronic funds transfers, Reporting and recordkeeping requirements, Automated teller machines.

### Authority and Issuance

For the reasons set forth above, the Bureau is amending Regulation E, 12 CFR part 1005, as set forth below:

## PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for Part 1005 continues to read as follows:

**Authority:** 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b.

■ 2. Amend § 1005.16 by revising paragraphs (b) through (d) to read as follows:

**§ 1005.16 Disclosures at automated teller machines.**

* * * * *

(b) *General.* An automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer or a balance inquiry must provide a notice that a fee will be imposed for providing electronic fund transfer services or a balance inquiry that discloses the amount of the fee.

(c) *Notice requirement.* An automated teller machine operator must provide the notice required by paragraph (b) of this section either by showing it on the screen of the automated teller machine or by providing it on paper, before the consumer is committed to paying a fee.

(d) *Imposition of fee.* An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer or a balance inquiry only if:

(1) The consumer is provided the notice required under paragraph (c) of this section, and

(2) The consumer elects to continue the transaction or inquiry after receiving such notice.

**Supplement I to Part 1005 [Amended]**

■ 3. In Supplement I to Part 1005, remove Section 1005.16.

Dated: March 20, 2013.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2013–06861 Filed 3–25–13; 8:45 am]

BILLING CODE 4810–AM–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–1088; Directorate Identifier 2012–SW–005–AD; Amendment 39–17387; AD 2013–05–15]**

**RIN 2120–AA64**

## Airworthiness Directives; Robinson Helicopter Company Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Robinson Helicopter Company (Robinson) Model R44 and R44 II helicopters equipped with emergency floats. This AD requires replacing the inflation valve assembly. This AD was prompted by the failure of the emergency floats to deploy during a factory test because a needle was binding within the inflation valve assembly. The actions are intended to prevent the failure of the floats to inflate during an emergency landing.

**DATES:** This AD is effective April 30, 2013.

**ADDRESSES:** For service information identified in this AD, contact Robinson Helicopter Company, 2901 Airport Drive, Torrance, CA 90505; telephone (310) 539–0508; fax (310) 539–5198; or at *http://www.robinsonheli.com*. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, 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:** Venessa Stiger, Aerospace Engineer, Cabin Safety/Mechanical & Environmental Systems, Los Angeles Aircraft Certification Office, Transport

Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5337; email *venessa.stiger@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On October 16, 2012, at 77 FR 63260, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Robinson Helicopter Company (Robinson) Model R44 and R44 II helicopters with emergency floats equipped with an inflation valve assembly, part number (P/N) D757–1, not engraved with "D758–4" or modified with modification B900–8, and containing a housing assembly, P/N D758–1, Revision C or prior. That NPRM proposed to require replacing the inflation valve assembly because the emergency floats failed to deploy during a factory test. The proposed requirements were intended to prevent the failure of the floats to inflate during an emergency landing.

**Comments**

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (77 FR 63260, October 16, 2012).

**FAA's Determination**

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

**Related Service Information**

We have reviewed Robinson R44 Service Bulletin SB–80, dated September 7, 2011 (SB), which describes procedures for upgrading certain valve assemblies within the next 250 flight hours or by June 30, 2012, whichever occurs first. The SB reports that during a factory test of pop-out emergency floats the floats failed to inflate because of a stuck cylinder valve.

**Differences Between This AD and the Service Information**

This AD requires replacing the inflation valve assembly within 1 year or 500 hours TIS, whichever occurs first. The SB specifies replacing the assembly within 250 flight hours or by June 30, 2012, whichever occurs first. We used the Monitor Safety/Analyze Data (MSAD) process and were able to predict when the next occurrence would likely occur if no repairs were completed.

**Costs of Compliance**

We estimate that this AD affects 165 helicopters of U.S. Registry and that the labor cost averages $85 per work-hour. Based on these assumptions, we estimate that replacing the inflation valve assembly takes 2.5 work-hours for a labor cost of about $213. Parts cost $850 to $955 for a total cost per helicopter of $1,063 to $1,168.

According to Robinson's service information, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage. Accordingly, 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**

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):

**2013–05–15 Robinson Helicopter Company:** Amendment 39–17387; Docket No. FAA–2012–1088; Directorate Identifier 2012–SW–005–AD.

**(a) Applicability**

This AD applies to Robinson Helicopter Company (Robinson) Model R44 and R44 II helicopters with emergency floats equipped with an inflation valve assembly, part number (P/N) D757–1, not engraved with "D758–4" or modified with modification B900–8, and containing a housing assembly, P/N D758–1, Revision C or prior, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as binding of the needle within the float inflation valve assembly, which has resulted in the emergency floats failing to inflate.

**(c) Effective Date**

This AD becomes effective April 30, 2013.

**(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 1 year or 500 hours time-in-service (TIS), whichever occurs first, replace the inflation valve assembly with an airworthy inflation valve assembly, P/N D757–1R.

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

(1) The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Venessa Stiger, Aerospace Engineer, Cabin Safety/Mechanical & Environmental Systems, Los Angeles Aircraft Certification Office,

Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5337; email *venessa.stiger@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**

Robinson R44 Service Bulletin SB–80, dated September 7, 2011, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Robinson Helicopter Company, 2901 Airport Drive, Torrance, CA 90505; telephone (310) 539–0508; fax (310) 539–5198; or at *http://www.robinsonheli.com/servelib.htm*. You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 3212, Emergency Flotation Section.

Issued in Fort Worth, Texas, on March 6, 2013.

**Lance T. Gant,**

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

[FR Doc. 2013–06297 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0890; Directorate Identifier 2011–SW–019–AD; Amendment 39–17388; AD 2013–05–16]**

**RIN 2120–AA64**

## Airworthiness Directives; Hughes Helicopters, Inc., and McDonnell Douglas Helicopter Systems (Type Certificate Is Currently Held by MD Helicopters, Inc.) Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model 369D, 369E, 369F, and 369FF helicopters with certain serial-numbered tailboom assemblies. This AD requires measuring the distance between aft longeron rivets and the outboard edge of frame rings. If the distance is too short to ensure a safe flight, the AD requires installing a doubler. This AD was prompted by the discovery of short-edge margin conditions on two tailboom assemblies. The actions are intended to detect a short-edge margin condition, prevent failure of the tailboom and loss of control of the helicopter.

**DATES:** This AD is effective April 30, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of April 30, 2013.

**ADDRESSES:** For service information identified in this AD, contact MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Road, Mail Stop M615, Mesa, AZ 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or at *http://www.mdhelicopters.com*. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, 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:** John Cecil, Aerospace Engineer, FAA, Los Angeles Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5228, fax (562) 627–5210, email *john.cecil@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On August 29, 2012, at 77 FR 52264, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to the specified MDHI helicopters with certain serial-numbered tailboom assemblies installed. Customers returned two tailboom assemblies to the manufacturer that contained an improperly installed frame ring at station 209.78. The frame rings were installed with too short a distance between an aft longeron rivet and the outboard edge of the frame ring. This is known as a short-edge margin condition. That NPRM proposed to require that within 6 months or 100 hours time-in-service, whichever occurs first, measuring the distance from the aft face of the station 209.78 frame ring to the center of the rivet No. 1 and rivet No. 2 at the four locations where the frame ring attaches to the tailboom longeron. If either the No. 1 or No. 2 aft rivet at a frame-ring-to-tailboom-longeron location is more than 0.50 inches (12.7 millimeters) from the aft face of the station 209.78 frame ring, before further flight, the AD proposed to modify that location by fabricating and installing a doubler over the location. The proposed requirements were intended to prevent failure of the tailboom and loss of control of the helicopter.

**Comments**

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (77 FR 52264, August 29, 2012).

**FAA's Determination**

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

**Related Service Information**

MDHI has issued one Service Bulletin (SB), dated July 20, 2010, with three numbers: SB No. SB369D–207 for the Model 369D helicopters, SB No. SB369E–102 for the Model 369E helicopters, and SB No. SB369F–087 for the Model 369F and 369FF helicopters. The MDHI SB describes procedures for measuring the distance from the aft face of the station 209.78 canted frame ring to the center of the No. 1 and No. 2 aft rivet locations on each of the four longerons spaced 90 degrees apart around the frame ring. If the short-edge margin condition exists, the SB specifies modifying the tailboom by installing a repair doubler at each affected location.

**Costs of Compliance**

We estimate that this AD will affect 109 helicopters of U.S. Registry and that operators will spend $340 for 4 work-hours at an average labor cost of $85 per work hour to access and measure for a short-edge margin condition for a cost of $37,060 for the U.S. fleet.

The on-condition costs for installing the doubler are not included in our cost

estimate because we have no way of determining the number of aircraft that might need a doubler. If they do, about 8 work-hours in labor and $19 in parts are required for a total cost of $699.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

(3) Will not affect intrastate aviation in Alaska 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):

**2013–05–16 Hughes Helicopters, Inc., and McDonnell Douglas Helicopter Systems (Type Certificate currently held by MD Helicopters, Inc., (MDHI):** Amendment 39–17388; Docket No. FAA–2012–0890; Directorate Identifier 2011–SW–019–AD.

**(a) Applicability**

This AD applies to Model 369D, E, F, and FF helicopters with tailboom assembly, part number 369D23500–505, –507, –511, or –513 with a serial number prefix of "7604" and –0001 through –0003, –0006 through –0047, –0049 through –0082, or –0084 through –0113, installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as too short an edge distance from an aft longeron rivet to the edge of a tailboom frame ring, which could result in failure of the tailboom and subsequent loss of control of the helicopter.

**(c) Effective Date**

This AD becomes effective April 30, 2013.

**(d) Compliance**

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

**(e) Required Actions**

(1) Within 6 months or 100 hours time-in-service, whichever occurs first, measure the distance from the aft face of the station 209.78 frame ring to the center of rivet No. 1 and rivet No. 2 at the four locations where the frame ring attaches to the tailboom longeron as depicted in Figure 2 of MD Helicopters Service Bulletin (SB) No. SB369D–207, SB369E–102, and SB369F–087, dated July 20, 2010. SB369D–207 applies to Model 369D helicopters; SB369E–102 applies to Model 369E helicopters; and SB369F–087 applies to Model 369F and FF helicopters.

(2) If either the No. 1 or No. 2 aft rivet at a frame-ring-to-tailboom-longeron location is more than 0.50 inches (12.7 millimeters) from the aft face of the station 209.78 frame ring, before further flight, modify that location by fabricating and installing a doubler over the location as depicted in Figures 3 and 4 and hy following the Accomplishment Instructions, paragraph 2.C., of the SB for your model helicopter.

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

(1) The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: John Cecil, Aerospace Engineer, FAA, Los Angeles Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5228, fax (562) 627–5210, email *john.cecil@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) Subject**

Joint Aircraft Service Component (JASC) Code 5302: Rotorcraft Tailboom.

**(h) 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) MD Helicopters, Inc., Service Bulletin (SB) No. SB369D–207, dated July 20, 2010.

(ii) MD Helicopters, Inc., SB No. SB369E–102, dated July 20, 2010.

(iii) MD Helicopters, Inc., SB No. SB369F–087, dated July 20, 2010.

**Note 1 to paragraph (h)(2) of this AD:** MD Helicopters, Inc., issued one service bulletin with three numbers, SB369D–207, SB369E–102, and SB369F–087, all dated July 20, 2010.

(3) 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.

(4) 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 March 6, 2013.

**Lance T. Gant,**

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

[FR Doc. 2013–06746 Filed 3–25–13; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2011–1453; Directorate Identifier 2009–SW–46–AD; Amendment 39–17394; AD 2013–05–22]**

**RIN 2120–AA64**

## Airworthiness Directives; Agusta S.p.A. Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Agusta S.p.A. (Agusta) Model A109, A109A, A109A II, A109C, A109K2, A109E, A109S, and A119 helicopters. This AD was prompted by a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that a Model A109E helicopter experienced a failure of the tail rotor pitch control link assembly caused by a production defect. The actions of this AD are intended to prevent failure of a tail rotor pitch control link and subsequent loss of control of the helicopter.

**DATES:** This AD is effective April 30, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of April 30, 2013.

**ADDRESSES:** For service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39 (0331) 711133; fax 39 (0331) 711180; or at *http://www.agustawestland.com/technical-bullettins*. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, 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, Aerospace Engineer, Rotorcraft Directorate, Regulations and Policy Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Discussion

On January 11, 2012, at 77 FR 1654, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Agusta Model A109, A109A, A109A II, A109C, A109K2, A109E, A109S, and A119 helicopters, with a certain tail rotor pitch control link assembly (link assembly). That NPRM proposed to require inspecting the link assembly for freedom of movement of the links and, if a rotation resistance or binding occurred, either replacing it with an airworthy link assembly with a "T" marked after the serial number, or inspecting it for the torsion value force of the ball bearing before further flight. If no rotation resistance or binding occurred during the inspection, the NPRM proposed inspecting the link assembly for the torsion value force of the ball bearing rotation within 5 hours time-in-service. If the torsion value force in either end of the link assembly is greater than 7.30 N, the NPRM proposed replacing the link assembly. If the torsion value force of the ball bearing in both ends of the link assembly is equal to or less than 7.30 N, the NPRM proposed inspecting the stem of the link assembly for a crack and, if there is a crack, replacing the link assembly. The proposed requirements were intended to prevent failure of a tail rotor pitch control link and subsequent loss of control of the helicopter.

EASA issued EASA AD No. 2006–0228–E, dated July 27, 2006 (AD 2006–0228–E), to correct an unsafe condition for Agusta Model A109A, A109A II, A109C, A109K2, A109E, A109S, A109LUH and A119 helicopters. EASA advises that an Agusta Model A109E helicopter experienced a failure of a tail rotor pitch control link assembly with 10 flight hours.

### Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (77 FR 1654, January 11, 2012).

### FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except we are correcting the paragraph reference in paragraph (e)(3) of the required actions. Paragraph (e)(3) references the inspection requirements of "paragraph (2)(ii)" when the correct reference is "paragraph (2)." This change is consistent with the intent of the proposals in the NPRM (77 FR 1654, January 11, 2012) and will not increase the economic burden on any operator nor increase the scope of the AD.

### Related Service Information

Agusta has issued Alert Bollettino Tecnico (ABT) No. 109S–5, dated July 26, 2006, for Model A109S helicopters; ABT No. 109EP–70, dated July 27, 2006, for Model A109E helicopters; ABT No. 109K–47, dated July 27, 2006, for Model A109K2 helicopters; ABT No. 109–122, dated July 27, 2006, for Model A109A, A109A II, and A109C helicopters; and ABT No. 119–15, dated July 27, 2006, for Model A119 helicopters. These ABTs specify performing a one-time inspection of the subject link assembly for excessive friction of the spherical bearing of the bearing ball and for a crack. The EASA classified these ABTs as mandatory and issued EASA AD 2006–0228–E, to ensure the continued airworthiness of these helicopters.

### Differences Between This AD and the EASA AD

This AD does not apply to uninstalled parts whereas the EASA AD does apply to uninstalled parts. This AD includes the Agusta Model A109 helicopter whereas the EASA AD does not. The EASA AD applies to the Model A109LUH helicopter; however, this AD does not. This AD does not require accomplishing Part III of the ABTs; the EASA AD does.

### Costs of Compliance

We estimate that this AD will affect 203 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. It will take about 5 work-hours per helicopter to inspect each tail

rotor pitch control link assembly, the average labor rate is $85 per work-hour, and required parts will cost about $3,188 per helicopter. Based on these figures, we estimate the total cost to be $733,439, assuming the tail rotor pitch control link assembly is replaced on the entire fleet.

According to the Agusta service information some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Agusta. Accordingly, 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 helicopters identified in this rulemaking action.

**Regulatory Findings**

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

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

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

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

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

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2013–05–22 Agusta S.p.A. (Agusta):** Amendment 39–17394; Docket No. FAA–2011–1453; Directorate Identifier 2009–SW–46–AD.

**(a) Applicability**

This AD applies to Agusta Model A109, A109A, A109A II, A109C, A109K2, A109E, A109S, and A119 helicopters, with a tail rotor pitch control link assembly (link assembly), part number (P/N) 109–0130–05–117, with less than 100 hours time-in-service (TIS) and with a serial number (S/N) with a prefix of "MO" and S/N 001 through 773 and without the letter "T" suffix after the S/N, installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a failure of the tail rotor pitch control link assembly, P/N 109–0130–05–117. This condition could result in failure of the tail rotor pitch control link and subsequent loss of control of the helicopter.

**(c) Effective Date**

This AD becomes effective April 30, 2013.

**(d) Compliance**

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

**(e) Required Actions**

(1) Before further flight, inspect the link assembly for freedom of movement while it is installed on the helicopter. If rotation resistance or binding occurs, before further flight, remove the link assembly from the helicopter, and either:

(i) Replace it with an airworthy link assembly with a "T" marked after the serial number, or

(ii) Inspect the link assembly for the torsion value force of the ball bearing rotation, in accordance with paragraph (e)(2) of this AD.

(2) If there is no rotation resistance or binding found during the inspection required by paragraph (e)(1) of this AD that required an immediate torsion value force inspection, within 5 hours TIS, remove the link assembly from the helicopter and inspect the torsion value force of the ball bearing rotation by referring to Figure 1 and following the Compliance Instructions, Part II, paragraphs 3. through 3.2, of Agusta Alert Bollettino Tecnico (ABT) No. 109S–5, dated July 26, 2006, for Model A109S helicopters; ABT No. 109EP–70, dated July 27, 2006, for Model A109E helicopters; ABT No. 109K–47, dated July 27, 2006, for Model A109K2 helicopters; ABT No. 109–122, dated July 27, 2006, for Model A109, A109A, A109A II, and A109C helicopters; or ABT No. 119–15, dated July 27, 2006, for Model A119 helicopters.

(i) If the torsion value force of the ball bearing in either end of the link assembly is greater than 7.30 N, the link assembly is unairworthy.

(ii) If the torsion value force of the ball bearing in both ends of the link assembly is equal to or less than 7.30 N, after cleaning the link assembly stem using aliphatic naphtha, or equivalent, and a soft non-metallic bristle brush, inspect all 4 (four) faces of the stem of the link assembly for a crack using a 10x or higher magnifying glass. If you cannot determine whether there is a crack in the stem of the link assembly by using a 10x or higher magnifying glass, conduct a dye penetrant inspection by referring to Figure 1 and following the Compliance Instructions, Part II, paragraphs 6. through 6.7, of the ABT that is applicable to your model helicopter. If a crack is found, the link assembly is unairworthy.

(3) For a link assembly which has been inspected in accordance with paragraph (e)(2) of this AD and determined to be unairworthy, before further flight, replace the link assembly with an airworthy link assembly. Only a link assembly with a "T" marked after the serial number, documenting that the link assembly has been inspected for a crack, is eligible for installation.

**(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 AD No. 2006–0228–E, dated July 27, 2006.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 6400, Tail Rotor System.

**(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) Agusta Alert Bollettino Tecnico No. 109S–5, dated July 26, 2006.

(ii) Agusta Alert Bollettino Tecnico No. 109EP–70, dated July 27, 2006;

(iii) Agusta Alert Bollettino Tecnico No. 109K–47, dated July 27, 2006;

(iv) Agusta Alert Bollettino Tecnico No. 109–122, dated July 27, 2006; and

(v) Agusta Alert Bollettino Tecnico No. 119–15, dated July 27, 2006.

(3) For Agusta service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39 (0331) 711133; fax 39 (0331) 711180; or at *http://www.agustawestland.com/technical-bullettins.*

(4) You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(5) You may also view this service information 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 March 7, 2013.

**Lance T. Gant,**

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

[FR Doc. 2013–06131 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–0772; Directorate Identifier 2007–SW–053–AD; Amendment 39–17393; AD 2013–05–21]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model EC130 B4 helicopters with a cabin vibration damper installed. This AD requires installing a vibration damper casing assembly on both sides of the helicopter. This AD was prompted by a crack and failure of a cabin vibration damper blade. The actions of this AD are intended to modify the cabin vibration damper assembly to prevent contact with the flight controls in the event of a cabin vibration blade failure, jamming of a flight control, and subsequent loss of control of the helicopter.

**DATES:** This AD is effective April 30, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of April 30, 2013.

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

**Examining the AD Docket**

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

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

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On July 26, 2012, at 77 FR 43738, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter Model EC130 B4 helicopters with a cabin vibration damper installed, except those modified in accordance with Modification 073565. That NPRM proposed to require installing a vibration damper casing assembly on both sides of the helicopter. The proposed requirements were intended to prevent contact with the flight controls in the event of a cabin vibration blade failure, jamming of a flight control, and subsequent loss of control of the helicopter.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, issued EASA AD No. 2006–0278, dated September 7, 2006 (AD 2006–0278), to correct an unsafe condition for the Eurocopter Model EC130 B4 helicopter. EASA advises of a cracked cabin vibration damper blade, which could lead to jamming of a flight control.

**Comments**

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (77 FR 43738, July 26, 2012).

**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 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.

**Differences Between This AD and the EASA AD**

The EASA AD requires two daily visual inspections for cracks in the blade of each cabin vibration damper and replacement of a blade if there is a crack; this AD does not. The EASA AD requires compliance by a calendar date. This AD requires compliance within 100 hours time-in-service.

**Related Service Information**

Eurocopter has issued Alert Service Bulletin (ASB) No. 53A008, Revision 0, dated July 19, 2006 (ASB 53A008), which supersedes ASB No. 05A002, Revision 0, dated July 18, 2006, and specifies installing a cabin vibration damper containment device. EASA classified ASB 53A008 as mandatory and issued AD 2006–0278 to ensure the

continued airworthiness of these helicopters.

**Costs of Compliance**

We estimate that this AD will affect 122 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD.

- $340 for 4 work-hours to install a vibration damper casing assembly at an average labor rate of $85 per work-hour,
- $1,500 for required parts per helicopter, and
- $224,480 total cost for the fleet.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2013–05–21 Eurocopter France:** Amendment 39–17393; Docket No. FAA–2012–0772; Directorate Identifier 2007–SW–053–AD.

**(a) Applicability**

This AD applies to Model EC130 B4 helicopters with a cabin vibration damper installed, except those modified in accordance with Modification 073565, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a cracked cabin vibration damper blade. This condition could result in failure of the blade, jamming of the flight controls, and subsequent loss of control of the helicopter.

**(c) Effective Date**

This AD becomes effective April 30, 2013.

**(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 the next 100 hours time-in-service:

(1) For helicopters that have not been modified in accordance with Modification 073521 or Modification 073525, install a vibration damper casing assembly on both sides of the helicopter by following paragraphs 2.B.2.a and 2.B.5 of the Accomplishment Instructions of Eurocopter Alert Service Bulletin No. 53A008, dated July 19, 2006 (ASB 53A008).

(2) For helicopters that have been modified in accordance with Modification 073521 either at the time of manufacture or pursuant to Eurocopter Service Bulletin (SB) No. 53–006, Revision 1, dated September 30, 2004; or Modification 073525 either at the time of manufacture or pursuant to Eurocopter SB No. 53–007, Revision 1, dated February 19, 2007, install a vibration damper casing assembly on both sides of the helicopter by following paragraphs 2.B.3.a, 2.B.3.b, and 2.B.5 of the Accomplishment Instructions of ASB 53A008.

**(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**

(1) Eurocopter SB No. 53–006, Revision 1, dated September 30, 2004; SB No. 53–007, Revision 1, dated February 19, 2007; and Alert SB No. 05A002, Revision 0, dated July 18, 2006, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, Texas 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub*. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency AD No. 2006–0278, dated September 7, 2006.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 1810, Helicopter Vibration Analysis.

**(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 Alert Service Bulletin No. 53A008, dated July 19, 2006.

(ii) Reserved.

(3) For Eurocopter service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, Texas 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.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 March 7, 2013.

**Lance T. Gant,**

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

[FR Doc. 2013–06134 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2013–0179; Airspace Docket No. 05–AGL–6]**

**RIN 2120–AA66**

## Amendment of VOR Federal Airway V–233, Springfield, IL

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

**ACTION:** Final rule, technical amendment.

**SUMMARY:** This action amends VHF Omnidirectional Range (VOR) Federal Airway V–233 in the vicinity of Springfield, IL. The FAA is taking this action to correct the V–233 description contained in Part 71 to ensure it matches the information contained in the FAA's aeronautical database, matches the depiction on the associated charts, and ensures the safety and efficiency of the National Airspace System (NAS).

**DATES:** Effective date 0901 UTC March 26, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Airspace Policy and ATC Procedures Group, Office of Mission Support Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### History

After a recent review of aeronautical data, the Aeronautical Navigation Products Group identified the VOR Federal airway V–233 description did not match the airway information contained in the FAA's aeronautical database or the charted depiction of the airway. When V–233 was amended in the **Federal Register** of August 8, 2005 (70 FR 45527), the airway was realigned to reflect a radial change due to the relocation of the Spinner VHF Omnidirectional Range Tactical Air Navigation (VORTAC) navigation aid. However, the final rule erroneously used the magnetic radial information from the Spinner VORTAC to describe the fix between the Spinner VORTAC and the Roberts VOR/Distance Measuring Equipment (VOR/DME) navigation aids instead of the true radial information that should have been used. The FAA aeronautical database contains the correct radial information for describing the airway fix between the Spinner VORTAC and Roberts VOR/DME in the airway description and the associated aeronautical charts remain published correctly. To overcome any confusion or flight safety issues associated with conflicting airway description information being published, the FAA is amending the V–233 legal description to reflect the correct Spinner VORTAC radial information.

### The Rule

The FAA amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the legal description of VOR Federal airway V–233 in the vicinity of Springfield, IL. Specifically, the FAA amends V–233 to reflect the true radial information from the Spinner VORTAC (061° radial) to describe the fix between the Spinner VORTAC and Roberts VOR/DME navigation aids; thus, matching the information currently contained in the FAA's aeronautical database and the charted depiction of the airway.

VOR Federal airways are listed in paragraph 6010 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be revised subsequently in the Order.

Accordingly, since this is an administrative correction to update the V–233 description to be in concert with the FAA's aeronautical database and charting, notice and public procedures under Title 5 U.S.C. 553(b) are unnecessary.

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. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends an existing VOR Federal airway within the NAS.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311a, FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures." This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### §71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, signed August 8, 2012, and

effective September 15, 2012, is amended as follows:

*Paragraph 6010 VOR Federal Airways.*

(a) Domestic VOR Federal airways.

* * * * *

**V–233**

From Spinner, IL; INT Spinner 061° and Roberts, IL, 233° radials; Roberts; Knox, IN; Goshen, IN; Litchfield, MI; Lansing, MI; Mount Pleasant, MI; INT Mount Pleasant 351° and Gaylord, MI, 207° radials; Gaylord; to Pellston, MI.

* * * * *

Issued in Washington, DC, March 13, 2013.

**Gary A. Norek,**

*Manager, Airspace Policy and ATC Procedures Group.*

[FR Doc. 2013–06365 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 814, 822, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892

**[Docket No. FDA–2013–N–0011]**

### Medical Devices; Technical Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending certain medical device regulations to correct minor errors in the Code of Federal Regulations (CFR). This action is editorial in nature and is intended to provide accuracy and clarity to the Agency's regulations.

**DATES:** This rule is effective March 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** Abigail Corbin, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, rm. 4430, Silver Spring, MD 20993–0002, 301–796–9142.

**SUPPLEMENTARY INFORMATION:** FDA is amending certain regulations in 21 CFR parts 814, 822, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892. This action corrects minor spelling errors and outdated Web site addresses affecting certain regulations regarding medical devices.

Publication of this document constitutes final action of these changes under the Administrative Procedure Act (5 U.S.C. 553). These amendments are merely correcting nonsubstantive errors. FDA therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary.

FDA has determined under 21 CFR 25.30(i) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. In addition, FDA has determined that this final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

**List of Subjects**

*21 CFR Part 814*

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

*21 CFR Part 822*

Medical devices, Reporting and recordkeeping requirements.

*21 CFR Part 862*

Medical devices.

*21 CFR Part 864*

Blood, Medical devices, Packaging and containers.

*21 CFR Part 866*

Biologics, Laboratories, Medical devices.

*21 CFR Part 868, 870, 872, 874, 876, 878, and 880*

Medical devices.

*21 CFR Part 882*

Medical devices, Neurological devices.

*21 CFR Part 884*

Medical devices.

*21 CFR Part 886*

Medical devices, Ophthalmic goods and services.

*21 CFR Part 888*

Medical devices.

*21 CFR Part 890*

Medical devices, Physical medicine devices.

*21 CFR Part 892*

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter I is amended as follows:

**§§ 814.20, 822.7, 822.15, 862.1, 864.1, 866.1, 868.1, 870.1, 872.1, 874.1, 876.1, 878.1, 880.1, 882.1, 884.1, 886.1, 888.1, 890.1, and 892.1 [Amended]**

1. In the table below, for each section indicated in the left column, remove the Web address indicated in the middle column from wherever it appears in the section, and add the Web address indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 814.20 | *http://www.fda.gov/cdrh/devadvice/pma/* | *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/HowtoMarketYourDevice/PremarketSubmissions/PremarketApprovalPMA/default.htm.* |
| 822.7 | *http://www.fda.gov/cdrh/ombudsman/dispute.html* | *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHOmbudsman/default.htm.* |
| 822.15 | www.fda.gov/cdrh/ombudsman/ | *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHOmbudsman/default.htm.* |
| 862.1, 864.1, 866.1, 868.1, 870.1, 872.1, 874.1, 876.1, 878.1, 880.1, 882.1, 884.1, 886.1, 888.1, 890.1, and 892.1. | *http://www.fda.gov/cdrh/guidance.html* | *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* |

## PART 870—CARDIOVASCULAR DEVICES

■ 2. The authority citation for 21 CFR part 870 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 3. Amend § 870.3600 by revising the second sentence in paragraph (a) to read as follows:

**§ 870.3600 External pacemaker pulse generator.**

(a) *Identification.* * * * This device, which is used outside the body, is used as a temporary substitute for the heart's intrinsic pacing system until a permanent pacemaker can be implanted, or to control irregular heartbeats in patients following cardiac surgery or a myocardial infarction. * * *

* * * * *

■ 4. Amend § 870.5300 by revising the section heading to read as follows:

**§ 870.5300 DC-defibrillator (including paddles).**

* * * * *

## PART 882—NEUROLOGICAL DEVICES

■ 5. The authority citation for 21 CFR part 882 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 6. Amend § 882.5870 by revising the second sentence in paragraph (a) to read as follows:

**§ 882.5870 Implanted peripheral nerve stimulator for pain relief.**

(a) *Identification.* * * * The stimulator consists of an implanted receiver with electrodes that are placed around a peripheral nerve and an external transmitter for transmitting the stimulating pulses across the patient's skin to the implanted receiver.

* * * * *

## PART 886—OPHTHALMIC DEVICES

■ 7. The authority citation for 21 CFR part 886 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 8. Amend § 886.1120 by revising the section heading to read as follows:

**§ 886.1120 Ophthalmic camera.**

* * * * *

Dated: March 20, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–06826 Filed 3–25–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 1005

**[Docket No. FDA–2007–N–0091; (formerly 2007N–0104)]**

### Service of Process on Manufacturers; Manufacturers Importing Electronic Products Into the United States; Agent Designation; Change of Address

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending a final rule that appeared in the **Federal Register** of April 9, 2007 (72 FR 17397 at 17401) to reflect changes to the Center for Devices and Radiological Health's address. This action is editorial in nature and is intended to improve the accuracy of the Agency's regulations.

**DATES:** This rule is effective March 26, 2013

**FOR FURTHER INFORMATION CONTACT:** Prince P. Kangoma, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, rm. G628B, 301–796–6627, FAX: 301–595–7850, email: *Prince.Kangoma@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** FDA is making technical amendments in the Agency's regulations under 21 CFR 1005.25(b) as a result of an office relocation. The former address was 9200 Corporate Blvd., Rockville, MD 20850. The new address is 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Designation of agent by manufacturers of electronic products offering such products for importation into the United States must be addressed to the Center for Devices and Radiological Health, Document Mail Center—WO66–G609. Publication of this document constitutes final action of these changes under the Administrative Procedures Act (5 U.S.C. 553). Notice and public procedures are unnecessary because FDA is merely updating nonsubstantive content.

### List of Subjects in 21 CFR Part 1005

Administrative practice and procedure; Electronic product; Imports; Radiation protection; Surety bonds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1005 is amended as follows:

## PART 1005—IMPORTATION OF ELECTRONIC PRODUCTS

■ 1. The authority citation for 21 CFR part 1005 continues to read as follows:

**Authority:** 21 U.S.C. 360ii, 360mm.

**§ 1005.25 [Amended]**

■ 2. Section 1005.25(b) is amended by removing "Center for Devices and Radiological Health (HFZ–240), 9200 Corporate Blvd., Rockville, MD 20850" and by adding in its place "Center for Devices and Radiological Health, 10903 New Hampshire Ave., Document Mail Center—WO66–G609, Silver Spring, MD 20993–0002".

Dated: March 20, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–06864 Filed 3–25–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 970

### Demolition or Disposition of Public Housing Projects

*CFR Correction*

■ In Title 24 of the Code of Federal Regulations, Parts 700 to 1699, revised as of April 1, 2012, on page 490, in § 970.27, redesignate paragraph (c) introductory text as paragraph (b).

[FR Doc. 2013–07091 Filed 3–25–13; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

### Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement

*CFR Correction*

■ In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.441 to 1.500), revised as of April 1, 2012, on page 604, in § 1.482–1, in paragraph (c)(1), before the last sentence, reinstate the following sentence:

**§ 1.482–1 Allocation of income and deductions among taxpayers.**

* * * * *

(c) * * * (1) * * * See § 1.482–8 for examples of the application of the best method rule. * * *

* * * * *

[FR Doc. 2013–07103 Filed 3–25–13; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

### Treatment of Overall Foreign and Domestic Losses

*CFR Correction*

■ In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.851 to 1.907), revised as of April 1, 2012, on page 810, in § 1.904(f)–0, under the heading *§ 1.904(f)–1 Overall foreign loss and the overall foreign loss account.*, listings for paragraphs (d)(4)(i) and (ii) are removed.

[FR Doc. 2013–07111 Filed 3–25–13; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

### Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangible Property; Stewardship Expense

*CFR Correction*

■ In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.851 to 1.907), revised as of April 1, 2012, on page 174, in § 1.861–8, paragraph (h) is removed.

[FR Doc. 2013–07104 Filed 3–25–13; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

### Unified Rule for Loss on Subsidiary Stock

*CFR Correction*

■ In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.1401 to 1.1550), revised as of April 1, 2012, on page 443, in § 1.1502–32, in paragraph (c)(3), after the first sentence, reinstate the following sentence:

**§ 1.1502–32 Investment adjustments.**

* * * * *

(c) * * *

(3) * * * For this purpose, the preferred stock is treated as entitled to a distribution no later than the time the distribution is taken into account under the Internal Revenue Code (e.g., under section 305). * * *

* * * * *

[FR Doc. 2013–07095 Filed 3–25–13; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

### Unified Rule for Loss on Subsidiary Stock

*CFR Correction*

■ In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.1401 to 1.1550), revised as of April 1, 2012, on page 505, in § 1.1502–36, at the end of paragraph (d)(8) *Example 6* (ii)(D)(3), reinstate the following sentence:

**§ 1.1502–36 Unified loss rule.**

* * * * *

(d) * * *

(8) * * *

*Example 6.* * * *

(ii) * * *

(D) * * *

(3) * * * Under the general rules of this paragraph (d), S1's $60 tier-down attribute reduction amount is allocated and applied to reduce S1's basis in its asset from $500 to $440.

* * * * *

[FR Doc. 2013–07100 Filed 3–25–13; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket No. USCG–2012–1073]**

**RIN 1625–AA08**

### Special Local Regulations; 2013 Lauderdale Air Show, Atlantic Ocean; Fort Lauderdale, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a special local regulation on the Atlantic Ocean and the entrance of Port Everglades in the vicinity of Fort Lauderdale, Florida during the 2013 Lauderdale Air Show. The event is scheduled to take place from Thursday April 18, 2013, until Sunday, April 21, 2013. The regulation is necessary to ensure the safety of the participants, spectators, and the general public during the event. The special local regulation will establish the following two areas: an exclusion area, where all persons and vessels, except those persons and vessels participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within; and a limited access area, where all vessels over 500 gross tons will be prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port Miami or a designated representative.

**DATES:** This rule is effective from 10 a.m. on April 18, 2013, until 5:30 p.m. on Sunday, April 21, 2013. The Atlantic Ocean exclusion area will be enforced daily from 10 a.m. until 5 p.m. from April 18, 2013, until April 21, 2013. The Port Everglades limited access area will be enforced daily from 4 p.m. until 5:30 p.m. on April 20, 2013, and April 21, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2012–1073. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *Mike.H.Wu@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, 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. Discussion of Comments and Changes**

On January 10, 2013, the USCG published a Notice of Proposed Rulemaking (NPRM) entitled, "Proposed Rule: NPRM: Special Local Regulations: 2013 Lauderdale Air Show, Atlantic Ocean; Fort Lauderdale, FL," in the **Federal Register** (78 FR 2225). We received no comments on the proposed rule (Docket No. USCG–2012–1073). No public meeting was requested, and none was held.

**B. Basis and Purpose**

From Thursday, April 18, 2013, until Sunday, April 21, 2013, Lauderdale Air Show, LLC. will be hosting the 2013 Lauderdale Air Show. The Lauderdale Air Show will include numerous aircraft engaging in aerobatic maneuvers over the Atlantic Ocean. It is expected that approximately 500 spectator vessels will be present in the area during the event. The high speed at which participant aircraft will be traveling and the maneuvers they will be performing pose a safety hazard to air show participants, participant aircraft, spectators, and the general public.

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to insure safety of life on navigable waters of the United States during the 2013 Lauderdale Air Show.

**C. Discussion of Comments, Changes and the Final Rule**

The Coast Guard did not receive any comments to the proposed rule and no changes were made to the regulatory text.

The Coast Guard is establishing a special local regulation comprised of two regulated areas for the 2013 Lauderdale Air Show. The two regulated areas are listed below.

1. *Atlantic Ocean, Fort Lauderdale, Florida (exclusion area).* Certain navigable waters of the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida. This area will be enforced daily from 10 a.m. until 5 p.m. from April 18, 2013, through April 21, 2013. All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

2. *Port Everglades, Fort Lauderdale, Florida (limited access area).* Certain navigable waters of the Atlantic Ocean in the vicinity of Port Everglades in Fort Lauderdale, Florida. This will be a limited access area, and will be enforced daily from 4 p.m. until 5:30 p.m. on April 20, 2013, and April 21, 2013. Vessels over 500 gross tons are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those orders. The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for a maximum of 7 and a half hours each day for only four days; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the exclusion area during their respective enforcement periods if authorized by the Captain of the Port Miami or a designated representative; (3) vessels 500 gross tons or more may enter, transit through, anchor in, or remain within the limited access area during their respective enforcement periods if authorized by the Captain of the Port Miami or a designated representative; (4) vessels not able to enter, transit through, anchor in, or remain within the regulated areas without authorization from the Captain of the Port Miami or a designated representative may operate in the surrounding areas during the respective enforcement periods; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

*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 zero 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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within any of the regulated areas during the respective enforcement period. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

*3. Assistance for Small Entities*

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). Due to potential environmental issues, we conducted an environmental assessment last year for both the issuance of the marine event permit and the establishment of this special local regulation. The same environmental assessment is being used for this year's event as it is substantially similar in all aspects and therefore the potential effects and alternatives remain unchanged. A supplemental environmental assessment was conducted for changes to the annual reoccurring event. After completing the supplemental environmental assessment for the issuance of the marine event permit, and the establishment of this special local regulation, we 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 a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. The supplemental environmental assessment, environmental assessment, and finding of no significant impact (FONSI) 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 100**

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 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

**Authority:** 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–1073 to read as follows:

**§ 100.35T07–1073 Special Local Regulation; 2013 Lauderdale Air Show, Atlantic Ocean, Fort Lauderdale, FL.**

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

(1) *Exclusion area.* All waters of the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida that are encompassed within an imaginary line connecting the following points: starting at Point 1 in position 26°10′39″ N, 80°05′47″ W; thence southeast to Point 2 in position 26°10′32″ N, 80°04′39″ W; thence southwest to Point 3 in position 26°06′33″N, 80°05′08″ W; thence northwest to Point 4 in position 26°06′40″ N, 80°06′15″W; thence northeast back to origin.

(2) *Limited access area.* All waters of the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida that are encompassed within an imaginary line connecting the following points: starting at Point 1 in position 26°05′41″ N, 80°06′59″ W; thence southeast to Point 2 in position 26°05′26″ N, 80°06′51″ W; thence northeast to Point 3 in position 26°05′32″ N, 80°05′24″ W; thence north to Point 4 in position 26°05′42″ N, 80°05′24″ W; thence southwest back to origin.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast

Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels, are prohibited from:

(i) Entering, transiting through, anchoring in, or remaining within the exclusion area, unless participating in the event.

(ii) Transiting through, anchoring in, or remaining within the limited access area, unless less than 500 gross tons.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

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

(d) *Enforcement periods.* The exclusion area will be enforced daily from 10 a.m. until 5 p.m. from April 18, 2013, through April 21, 2013. The limited access area will be enforced daily from 4 p.m. until 5:30 p.m. on April 20, 2013, and April 21, 2013.

Dated: March 7, 2013.

**C. P. Scraba,**

*Captain, U.S. Coast Guard, Captain of the Port Miami.*

[FR Doc. 2013–06800 Filed 3–25–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0148]**

**RIN 1625–AA00**

## Safety Zone; SFPD Training Safety Zone; San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary Final Rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of the San Francisco Bay near Hunters Point in San Francisco, CA in support of the San Francisco Police Department's maritime interdiction training exercises. This safety zone is established to ensure the safety of the exercise participants and mariners transiting the area. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

**DATES:** This rule is effective with actual notice from March 14, 2013, until March 26, 2013. This rule is effective in the **Federal Register** from March 26, 2013 until April 19, 2013. This rule will be enforced from 8 a.m. until 5 p.m. on March 14, 2013, from 8 a.m. until 1 p.m. on March 15, 2013, and from 8 a.m. until 5 p.m. on April 15, 2013, through April 19, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0148. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202)366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
SFPD San Francisco Police Department
NPRM Notice of Proposed Rulemaking

### A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable. The Coast Guard received notification of the event on March 7, 2013, and the event would occur before the rulemaking process would be completed. Law enforcement officers will be conducting maritime interdiction operations that require freedom of movement in a defined area. The safety zone is necessary to provide for the safety of the law enforcement officers participating in the training exercises as well as provide for the safety of vessels transiting near the training area. Because the Coast Guard received late notice and the safety concerns noted, it is impracticable to publish an NPRM for this safety zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the reasons stated above, delaying the effective date would be impracticable and contrary to the public interest.

### B. Basis and Purpose

The legal basis for the proposed temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C sections 1221 et seq.).

San Francisco Police Department will host the SFPD Training Safety Zone on March 14 and March 15, 2013, and from April 15 through April 19, 2013, in the navigable waters of the San Francisco Bay off of Hunters Point in San Francisco, CA. This safety zone establishes a temporary restricted area on the water within a box connecting the following points: 37°43′45″ N, 122°20′48″ W; 37°43′45″ N, 122°19′33″ W; 37°42′12″ N, 122°20′48″ W; 37°42′12″ N, 122°19′33″ W; thence back to the point of origin (NAD 83). The safety zone is issued to establish a temporary restricted area on the waters surrounding the training exercise.

This restricted area is necessary to provide freedom of movement for law enforcement officers conducting maritime interdiction training and to ensure the safety of mariners transiting the area.

### C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters around the SFPD's maritime interdiction training exercises. The SFPD Training Safety

Zone establishes a temporary restricted area on the waters of the San Francisco Bay off of Hunters Point within a box connecting the following points: 37°43′45″ N, 122°20′48″ W; 37°43′45″ N, 122°19′33″ W; 37°42′12″ N, 122°20′48″ W; 37°42′12″ N, 122°19′33″ W; thence back to the point of origin (NAD 83). This safety zone will be enforced from 8 a.m. until 5 p.m. on March 14, 2013, from 8 a.m. until 1 p.m. on March 15, 2013, and from 8 a.m. until 5 p.m. on April 15, 2013, through 19, 2013. At the conclusion of the training exercises the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the training exercise. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep vessels away from the vicinity of the training exercise to ensure the safety of law enforcement officers conducting training and other mariners transiting the area.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

*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 Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: Owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) and 35(b) 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, and 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165–T11–551 to read as follows:

**§ 165.T11–551 Safety zone; SFPD Training Safety Zone, San Francisco Bay, San Francisco, CA.**

(a) *Location.* This temporary safety zone will encompass the navigable waters of the San Francisco Bay near Hunters Point within a box connecting the following points: 37°43′45″ N, 122°20′48″ W; 37°43′45″ N, 122°19′33″ W; 37°42′12″ N, 122°20′48″ W; 37°42′12″ N, 122°19′33″ W; thence back to the point of origin, as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18649.

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be enforced from 8 a.m. until 5 p.m. on March 14, 2013, from 8 a.m. until 1 p.m. on March 15, 2013, and from 8 a.m. until 5 p.m. on April 15, 2013, through April 19, 2013. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR 165.23, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: March 13, 2013

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard. Captain of the Port San Francisco.*

[FR Doc. 2013–06813 Filed 3–25–13; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 51**

**RIN 2900–AO36**

## Removal of 30-Day Residency Requirement for Per Diem Payments

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Department of Veterans Affairs (VA) published a direct final rule amending its regulations concerning per diem payments to State homes for the provision of nursing home care to veterans. Specifically, this rule removes the requirement that a veteran must have resided in a State home for 30 consecutive days before VA will pay per diem for that veteran when there is no overnight stay. VA received no significant adverse comments concerning this rule or its companion substantially identical proposed rule published on the same date. This document confirms that the direct final rule became effective on November 26, 2012. In a companion document in this issue of the **Federal Register**, we are withdrawing as unnecessary the proposed rule.

**DATES:** *Effective Date:* This final rule is effective November 26, 2012.

**FOR FURTHER INFORMATION CONTACT:** Harold Bailey, Program Management Officer (Director of Administration), VA Health Administration Center, Purchased Care (10NB3), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420; (303) 331–7551. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In a direct final rule published in the **Federal Register** on September 27, 2012, 77 FR 59318, VA amended 38 CFR 51.43 to eliminate a requirement that a veteran must have resided in a State home for 30 consecutive days before VA will pay per diem for that veteran when there is no overnight stay. VA published a companion substantially identical proposed rule at 77 FR 59354 on the same date to serve as a proposal for the provisions in the direct final rule in case adverse comments were received. The direct final rule and proposed rule each provided a 30-day comment period that ended on October 29, 2012. No significant adverse comments were received. Members of the general public submitted two comments supporting the rulemaking.

Under the direct final rule procedures that were described in 77 FR 59318 and

77 FR 59354, the direct final rule became effective on November 26, 2012, because no significant adverse comments were received within the comment period. In a companion document in this issue of the **Federal Register**, VA is withdrawing the proposed rulemaking, RIN 2900–AO37, published at 77 FR 59354, as unnecessary.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on March 20, 2013 for publication.

Dated: March 21, 2013.

**Robert C. McFetridge,**

*Director of Regulation Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2013–06828 Filed 3–25–13; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2011–0328; FRL–9792–8]**

### Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Flint Hills Resources Pine Bend

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to the receipt of an adverse comment, EPA is withdrawing the January 31, 2013, direct final rule approving a revision to the Minnesota State Implementation Plan (SIP). EPA will address the comment in a subsequent final action based upon the proposed rulemaking action, also published on January 31, 2013. EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published at 78 FR 6733 on January 31, 2013, is withdrawn as of March 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA is withdrawing the January 31, 2013 (78 FR 6733), direct final rule approving a revision to the the Minnesota sulfur dioxide SIP for Flint Hills Resources Pine Bend, LLC, in Dakota County. In the direct final rule, EPA stated that if adverse comments were received by March 4, 2013, the rule would be withdrawn and not take effect. On February 5, 2013, EPA received a comment, which it interprets as adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed rulemaking action, also published on January 31, 2013 (78 FR 6783). EPA will not institute a second comment period on this action.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

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

Dated: March 13, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

### PART 52—[AMENDED]

Accordingly, the amendment to 40 CFR 52.1220 published in the **Federal Register** on January 31, 2013 (78 FR 6733) on pages 6735–6736 is withdrawn as of March 26, 2013.

[FR Doc. 2013–06652 Filed 3–25–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2012–0814; FRL–9792–2]**

### Approval and Promulgation of Implementation Plans; Region 4 States; Prong 3 of Section 110(a)(2)(D)(i) Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to conditionally approve submissions from Kentucky, North Carolina and Tennessee for inclusion into each State Implementation Plan (SIP). This action addresses the Clean Air Act (CAA or Act) requirements pertaining to prevention of significant deterioration (PSD) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) infrastructure SIPs. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. EPA is conditionally approving the submissions for Kentucky, North Carolina and Tennessee that relate to adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. All other applicable infrastructure requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS associated with these States have been addressed in separate rulemakings.

**DATES:** This rule will be effective April 25, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0814. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 38652), EPA promulgated a new annual $PM_{2.5}$ NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour $PM_{2.5}$ NAAQS. On December 5, 2012, EPA proposed to conditionally approve Kentucky, North Carolina and Tennessee's submissions addressing section 110(a)(2)(D)(i)(II) related to PSD. A summary of the background for today's final action is provided below. See EPA's December 5, 2012, proposed rulemaking (77 FR 72291) for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. However, in this action, EPA is only addressing element 110(a)(2)(D)(i)(II) as it relates to PSD requirements.

Section 110(a)(2)(D) has two components; 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4"). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

In previous actions, EPA has already addressed Kentucky, North Carolina and Tennessee's SIP submissions related to sections 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Today's final conditional approval relates only to the requirements of section 110(a)(2)(D)(i), prong 3, which as previously described, requires that the SIP contain adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. More information on this requirement and EPA's rationale for today's conditional approval of this requirement for purposes of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS is provided below.

## II. This Action

On July 3, 2012, and July 10, 2012, respectively, Kentucky and North Carolina submitted commitment letters to EPA requesting conditional approval of outstanding PSD requirements related to the New Source Review (NSR) $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment—Significant Impact Levels (SILs)—Significant Monitoring Concentration (SMC) Rule. EPA determined that these letters of commitment met the requirements of section 110(k)(4) of the CAA, and accordingly, EPA conditionally approved the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule submission for Kentucky on October 3, 2012, (77 FR 60307) and the submission for North Carolina on October 16, 2012 (77 FR 63234). EPA is relying upon these commitments to address the NSR $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ increments) as the basis for conditionally approving Kentucky and North Carolina's infrastructure SIPs as they relate to prong 3 of section 110(a)(2)(D)(i). If Kentucky fails to submit the revisions described in its July 3, 2012, commitment letter by October 3, 2013, today's conditional approval of prong 3 for Kentucky will automatically become a disapproval, and EPA will issue a finding of disapproval. Likewise, if North Carolina fails to submit the revisions described in its July 10, 2012, commitment letter by October 16, 2013, today's conditional approval of prong 3 for North Carolina will automatically become a disapproval, and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If either conditional approval is converted to a disapproval, that final disapproval would trigger the Federal Implementation Plan (FIP) requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action on the submittals.

On October 4, 2012, Tennessee submitted a commitment letter to EPA requesting conditional approval of specific enforceable measures related to prong 3 of section 110(a)(2)(D)(i); specifically, the applicable requirements of the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ increments). Consistent with section 110(k)(4) of the Act, EPA is relying upon this commitment by Tennessee to address the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ increments) as the basis for conditionally approving Tennessee's infrastructure SIP as it relates to prong 3 of section 110(a)(2)(D)(i). If Tennessee fails to submit these revisions by March 6, 2014, today's conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the FIP requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal.

EPA received one comment on its December 5, 2012, proposed rulemaking

to conditionally approve Kentucky, North Carolina and Tennessee's SIP submissions as meeting the section 110(a)(2)(D)(i)(II) requirements of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The Commenter wanted "to congratulate EPA workers for trying to decrease particles and increase the public's health." This comment does not appear to be related to the issues presented in the proposed rulemaking, and instead, appears related to a wholly separate topic—promulgation of the PM NAAQS. EPA does not interpret this comment as relevant to the topic of EPA's December 5, 2012, proposed action. Instead, EPA interprets this comment as off-topic and outside of the scope of today's final rulemaking.

EPA notes that on January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA*, No. 08–1250, 2013 WL 45653 (D.C. Cir., filed July 15, 2008) (consolidated with 09–1102, 11–1430), issued a judgment that remanded EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at *8. Subpart 4 of Part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 implementation rule (NSR $PM_{2.5}$ Rule) addressed by the court decision promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). *See* 73 FR 28321 (May 16, 2008). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 rule in order to comply with the court's decision. Accordingly, EPA's actions for the Kentucky, North Carolina and Tennessee infrastructure SIPs as related to element (D)(i)(II) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due 3 years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

Once the above-described specific enforceable measures related to the $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ increments) have been adopted into the respective SIPs of Kentucky, North Carolina and Tennessee, the infrastructure SIPs for these states will adequately address applicable requirements of section 110(a)(2)(D)(i), prong 3 for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA has determined that Kentucky, North Carolina and Tennessee's submissions, in conjunction with the above-described revisions, are consistent with section 110 of the CAA.

## III. Final Action

As described above, EPA is conditionally approving the SIP submissions for Kentucky, North Carolina and Tennessee as addressing prong 3 of section 110(a)(2)(D)(i) of the CAA for both the 1997 and 2006 $PM_{2.5}$ NAAQS.

## IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

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

Dated: March 11, 2013.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

### Subpart S—Kentucky

■ 2. Section 52.919 is amended by adding paragraph (c) to read as follows:

**§ 52.919 Identification of plan-conditional approval.**

* * * * *

(c) Kentucky submitted a commitment letter to EPA on July 3, 2012, requesting conditional approval of outstanding requirements related to the NSR $PM_{2.5}$ Rule. In this letter, the Commonwealth provided a schedule as to how it will address outstanding requirements related to the NSR $PM_{2.5}$ Rule (including $PM_{2.5}$ PSD Increment-SILs-SMC, as it relates to $PM_{2.5}$ increments to meet the prong 3 requirements of section 110(a)(2)(D)(i)). EPA conditionally approved the NSR $PM_{2.5}$ Rule submission for Kentucky on October 3, 2012, (77 FR 60307). If the Commonwealth fails to submit these revisions by October 3, 2013, the conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval.

### Subpart II—North Carolina

■ 3. Section 52.1773 is amended by adding paragraph (c) to read as follows:

**§ 52.1773 Conditional Approval.**

* * * * *

(c) North Carolina submitted a commitment letter to EPA on July 10, 2012, requesting conditional approval of outstanding requirements related to the NSR $PM_{2.5}$ Rule. In this letter, North Carolina provided a schedule as to how it will address outstanding requirements related to the NSR $PM_{2.5}$ Rule (including $PM_{2.5}$ PSD Increment-SILs-SMC, as it relates to $PM_{2.5}$ increments to meet the prong 3 requirements of section 110(a)(2)(D)(i)). EPA conditionally approved the NSR $PM_{2.5}$ Rule submission for North Carolina on October 16, 2012, (77 FR 63234). If the North Carolina fails to,submit these revisions by October 16, 2013, the conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval.

### Subpart RR—Tennessee

■ 4. Section 52.2219 is amended by revising paragraph (e) to read as follows:

**§ 52.2219 Conditional Approval.**

* * * * *

(e) *Conditional Approval.* On October 4, 2012, Tennessee submitted a commitment letter to EPA requesting conditional approval of specific enforceable measures related to prong 3 of section 110(a)(2)(D)(i); specifically, the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ increments) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards. EPA is conditionally approving Tennessee's commitment to address outstanding requirements promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ increments). If Tennessee fails to submit these revisions by March 6, 2014, the conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval.

[FR Doc. 2013–06646 Filed 3–25–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2012–0827; FRL–9785–6]**

## Revisions to the California State Implementation Plan, South Coast Air Quality Management District

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on November 7, 2012 and concerns volatile organic compound (VOC) emissions from architectural coatings. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on April 25, 2013.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2012–0827 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, (415) 947–4126, law.nicole@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

**Table of Contents**



### I. Proposed Action

On November 7, 2012 (77 FR 66780), EPA proposed to approve the following rule into the California SIP.

| Local agency | Rule # | Rule title | Amended | Submitted |
|---|---|---|---|---|
| SCAQMD | 1113 | Architectural Coatings | 06/03/11 | 09/27/11 |

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

### II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received a comment through the anonymous access system.

The comment and our response are summarized below.

*Comment:* Rule changes of this type are only designed to hurt the local businesses that use architectural coatings with higher costs that only serve to bolster the EPA pocketbook. Please leave well enough alone. You have not provided a study to back up your regulations to start with and this further limits our businesses. Please clarify what the current rule is and what exactly you are proposing.

*Response:* This rule is designed to help reduce significant public health impacts from ground-level ozone and smog. It has no financial impact on EPA. The local process for adopting the rule included development of a cost effectiveness analysis (included in the district staff report) which provides support for the revised architectural coating requirements.

This action finalizes EPA approval of SCAQMD Rule 1113 as submitted to EPA on September 27, 2011. The current version in the SIP was approved on August 17, 2011 (76 FR 50891). A summary of the revisions from the last SIP approved rule can be found in our TSD. The comment does not provide any specific information to support its general concerns, while both SCAQMD's staff report and EPA's TSD provide specific rationale supporting the revised rule.

### III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

### IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 28, 2013]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

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

Dated: February 14, 2013.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart F—California

■ 2. Section 52.220, is amended by adding paragraph (c)(404) (i)(A)(*3*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(404) * * *

(i) * * *

(A) * * *

(*3*) Rule 1113, "Architectural Coatings," amended on June 3, 2011.

* * * * *

[FR Doc. 2013–06754 Filed 3–25–13; 8:45 am]

BILLING CODE 6560–50–P

## OFFICE OF PERSONNEL MANAGEMENT

### 45 CFR Part 800

**RIN 3206–AM47**

### Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges; Correction

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule; correction

**SUMMARY:** This document corrects technical and typographical errors that appeared in the final rule published in the **Federal Register** on March 11, 2013, entitled "Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges." The changes are not substantive to our policy.

**DATES:** These corrections are effective on May 10, 2013.

**FOR FURTHER INFORMATION CONTACT:** Julia Elam by telephone at (202) 606–2128, by FAX at (202) 606–0033, or by email at *mspp@opm.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Background

In FR Doc. 2013–04954 of March 11, 2013, there were technical and typographical errors that are identified and corrected in the "Correction of Errors" section below. The provisions in this correction notice are effective as if they had been included in the document published on March 11, 2013. Accordingly, the corrections are effective on May 10, 2013.

#### Correction of Errors

In FR Doc. 2013–04954 of March 11, 2013, make the following corrections:

1. On Web page 15564, in the third column, first paragraph, after the third sentence, add the following sentence: "We have modified the language to clarify that we will be reviewing the MSPP issuer's plan as part of the contract negotiation process."

2. On Web page 15564, in the third column, first paragraph, remove the fourth sentence.

3. On Web page 15566, in the first column, fourth paragraph, second sentence, revise "(b)(2)(ii) to read "(b)(1)(ii)".

4. On Web page 15566, in the third column, fourth full paragraph, revise the last sentence to read: "We are adopting proposed § 800.105(c)(3) as final, with one editorial clarification." Also, after the corrected sentence, add two sentences that read, "We have slightly reworded and moved a sentence from paragraph (c)(4) to paragraph (c)(3) because it is more appropriately placed there. Paragraph (c) now refers consistently to 'habilitative services and devices' throughout."

5. On Web page 15567, in the first column, second full paragraph, revise the sentence to read: "Except for the editorial change described above, we are making no other changes to § 800.105(c)(4), because it is consistent with standards applicable to QHPs at 45 CFR 155.170."

6. On Web page 15567, in the second column, third full paragraph, last sentence, remove the phrase, "including by inserting a reference to both habilitative 'services and devices' in § 800.105(c)(3) to be consistent with § 800.105(c)(4)".

7. On Web page 15567, in the second column, fourth paragraph, after the third sentence, add a sentence to read: "An eligible individual is an applicable taxpayer as defined in § 36B(c)(1) of the Code, or an eligible insured as defined in section 1402(b) of the Affordable Care Act."

8. On Web page 15568, in the third column, second full paragraph, in the first sentence, remove the phrase "for that plan year". Also, after the first sentence, add the sentence, "These costs include the costs of the OPM Office of Inspector General performing audits and investigations related to the MSPP."

9. On Web page 15568, in the third column, third full paragraph, in the second sentence, revise "reasonable" to read "unreasonable."

10. On Web page 15570, in the first column, revise the second full paragraph to read as follows:

"Similar to our response to comments on § 800.104, we are encouraging MSPP issuers to offer coverage in all service areas, if they have the capacity to do so. We recognize the challenges that issuers would face if they were required to offer coverage in all service areas, and we are maintaining in the final rule our proposed requirement for MSPP issuers to submit a plan for offering coverage in all service areas without initially requiring statewide coverage. We have modified the language to clarify that we will be reviewing the MSPP issuer's plan as part of the contract negotiation process. We are also clarifying in the final rule that MSPs will be required to comply with the service area requirements applicable to all QHPs in a State. We believe this requirement will create a level playing field and prevent issuers from cherry-picking. In addition, we intend to pay special attention to whether service areas include rural areas and American Indian/Alaska Natives during MSPP contract negotiations. We will evaluate the service area of an MSP to ensure that it has been established without regard to racial, ethnic, language, health status-related factors specified under § 2705(a) of the PHS Act, or other factors that exclude specific high-utilizing, high-cost or medically-underserved populations."

11. On Web page 15570, second column, remove the first full paragraph.

12. On Web page 15582, second column, in the first full sentence, remove the phrase "no changes" and add in its place, "one minor clarifying editorial change relating to the authority of OPM's Office of Inspector General."

#### § 800.20 [Corrected]

■ 13. On Web page 15588, in § 800.20, revise the two instances of the word "paragraph" to read "section" in the definition of *group of issuers*.

#### § 800.110 [Corrected]

■ 14. On Web page 15590, in § 800.110, add the following sentence after the third sentence: "For each State in which the MSPP issuer does not offer coverage in all service areas, the MSPP issuer must submit a plan for offering coverage throughout the State."

#### § 800.202 [Corrected]

■ 15. On Web page 15592, in § 800.202(f), revise "2702" to read "2705."

U.S. Office of Personnel Management.

**Robert H. Shriver,**

*Assistant Director, National Healthcare Operations.*

[FR Doc. 2013–06782 Filed 3–25–13; 8:45 am]

**BILLING CODE 6325–64–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 64

**[CG Docket No. 12–129; FCC 12–129]**

### Implementation of the Middle Class Tax Relief and Job Creation Act of 2012; Establishment of a Public Safety Answering Point Do-Not-Call Registry

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Implementation of the

Middle Class Tax Relief and Job Creation Act of 2012; Establishment of a Public Safety Answering Point Do-Not-Call Registry, Report and Order (*Order*). This notice is consistent with the *Order*, which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the requirements. Once the operational details of the PSAP Do-Not-Call Registry have been finalized, the Commission intends to issue a Public Notice noting the date by which affected entities must begin complying with these requirements.

**DATES:** 47 CFR 1.80 and 64.1202, published at 77 FR 71131, November 29, 2012, and at 78 FR 10099, February 13, 2013, are effective March 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** Richard D. Smith, Consumer and Governmental Affairs Bureau at (717) 338–2797, or email *Richard.Smith@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This document announces that, on March 13, 2013, OMB approved, for a period of three years, the new information collection requirements contained in the Commission's *Order*, FCC 12–129, published at 77 FR 71131, November 29, 2012, and at 78 FR 10099, February 13, 2013. The OMB Control Number is 3060–1183. The Commission publishes this notice as an announcement of the effective date of the requirements. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1183, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov*.

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

### Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on March 13, 2013, for the new information collection requirements contained in the Commission's rules published at 77 FR 71131, November 29, 2012, and at 78 FR 10099, February 13, 2013.

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

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1183.

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

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060–1183.

*OMB Approval Date:* March 13, 2013.

*OMB Expiration Date:* March 31, 2016.

*Title:* Establishment of a Public Safety Answering Point Do-Not-Call Registry, CG Docket No. 12–129.

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* Businesses or other for-profit entities; Federal Government; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents and Responses:* 106,500 respondents; 1,446,333 responses.

*Estimated Time per Response:* 30 minutes (.50 hours) to 2 hours.

*Frequency of Response:* Recordkeeping requirement; Annual, monthly, on occasion and one-time reporting requirements.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for the information collection is found in the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, February 22, 2012.

*Total Annual Burden:* 792,667 hours.

*Total Annual Cost:* None.

*Nature and Extent of Confidentiality:* An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* The rules adopted herein establish recordkeeping requirements for a large variety of entities, including small business entities. First, each Public Safety Answering Point (PSAP) may designate a representative who shall be required to file a certification with the administrator of the PSAP registry that they are authorized to place numbers onto that registry. The designated PSAP representative shall provide contact information including the PSAP represented, name, title, address, telephone number and email address. Verified PSAPs shall be permitted to upload to the registry any PSAP telephone associated with the provision of emergency services or communications with other public safety agencies. On an annual basis designated PSAP representatives shall access the registry, review their numbers and remove any ineligible numbers from the registry. Second, an operator of automatic dialing equipment (OADE) is prohibited from contacting any number on the PSAP registry. Each OADE must register for access to the PSAP registry by providing contact information which includes name, business address, contact person, telephone number, email, and all outbound telephone numbers used to place autodialed calls. All such contact information must be updated within 30 days of any change. In addition, the OADE must certify that it is accessing the registry solely to prevent autodialed calls to numbers on the registry. An OADE must access and employ a version of the PSAP registry obtained from the registry administrator no more than 31 days prior to the date any call is made, and maintain record documenting this process. No person or entity may sell, rent, lease, purchase, share, or use the PSAP registry for any purpose expect to comply with our rules prohibiting contact with numbers on the registry.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–06838 Filed 3–25–13; 8:45 am]

**BILLING CODE 6712–01–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket Nos. 100120037–1626–02 and 101217620–1788–03]**

**RIN 0648–XC574**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2013 Accountability Measures for Species in the U. S. Caribbean

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

**ACTION:** Temporary rule; accountability measures.

**SUMMARY:** NMFS implements accountability measures (AMs) for species and species groups in the exclusive economic zone of the U.S. Caribbean (EEZ) for the 2013 fishing year through this temporary rule. NMFS has determined that several annual catch limits (ACLs), as estimated by the Science and Research Director (SRD), were exceeded during the 2010 or 2011 fishing years. This temporary rule reduces the length of the 2013 fishing season for these species and species groups by the amount necessary to ensure that landings do not exceed the applicable ACL in 2013. NMFS implements AMs for the following species and species groups as of the date specified until the end of the fishing year: Snapper Unit 2 (commercial) in the EEZ off Puerto Rico, September 21, 2013; wrasses (recreational) in the EEZ off Puerto Rico, October 21, 2013; triggerfish and filefish in the EEZ off St. Croix, November 21, 2013; spiny lobster in the EEZ off St. Croix, December 19, 2013; groupers in the EEZ off St. Thomas/St. John, December 20, 2013. These AMs are necessary to protect the Caribbean reef fish and spiny lobster resources.

**DATES:** This rule is effective April 25, 2013 through December 31, 2013. Snapper Unit 2 (commercial) AMs in the EEZ off Puerto Rico are effective 12:01 a.m., local time, September 21, 2013, until 12:01 a.m., local time, January 1, 2014. Wrasses (recreational) AMs in the EEZ off Puerto Rico are effective 12:01 a.m., local time, October 21, 2013, until 12:01 a.m., local time, January 1, 2014. Triggerfish and filefish AMs in the EEZ off St. Croix are effective 12:01 a.m., local time, November 21, 2013, until 12:01 a.m., local time, January 1, 2014. Spiny lobster AMs in the EEZ off St. Croix are effective 12:01 a.m., local time, December 19, 2013, until 12:01 a.m., local time, January 1, 2014. Groupers AMs in the EEZ off St. Thomas/St. John are effective 12:01 a.m., local time, December 20, 2013, until 12:01 a.m., local time, January 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** William S. Arnold, telephone: 727–824–5305, email: *Bill.Arnold@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Caribbean, which includes snappers in Snapper Unit 2, triggerfish and filefish, wrasses, and groupers, is managed under the Fishery Management Plan (FMP) for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP). Spiny lobster of the Caribbean is managed under the FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP). The Spiny Lobster FMP and the Reef Fish FMP were prepared by the Caribbean Fishery Management Council and are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. The ACLs specified in this temporary rule are given in round weight.

## Background

The Magnuson-Stevens Act requires that ACLs and AMs be established to end overfishing and prevent overfishing from occurring. ACLs are levels of annual catch of a stock or stock complex that are set to prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACL if they occur.

The final rule for the 2010 Caribbean ACL Amendment published on December 30, 2011 (76 FR 82404), established, in part, ACLs and AMs for reef fish units or sub-units that are classified as undergoing overfishing, including the species with ACL overages identified in this temporary rule: snappers in Snapper Unit 2 (cardinal and queen snapper), and groupers in Grouper Unit 3 (coney, graysby, red hind, and rock hind), Grouper Unit 4 (black grouper, red grouper, tiger grouper, and yellowfin grouper), and Grouper Unit 5 (misty grouper and yellowedge grouper). That final rule allocated these ACLs among three Caribbean island management areas, *i.e.*, the Puerto Rico, St. Croix, and St. Thomas/St. John management areas of the EEZ, as specified in Appendix E to part 622.

The final rule for the 2011 Caribbean ACL Amendment published on December 30, 2011 (76 FR 82414), established, in part, ACLs and AMs for species and species groups that were not determined to be undergoing overfishing, including the species with ACL overages identified in this temporary rule: spiny lobster and specific reef fish including wrasses (hogfish, puddingwife, and Spanish hogfish), triggerfish (ocean triggerfish, queen triggerfish, and sargassum triggerfish), and filefish (scrawled filefish, whitespotted filefish, and black durgon). That final rule allocated these ACLs among the three Caribbean island management areas.

Each ACL allocated to Puerto Rico is also allocated between the commercial and recreational sectors because both commercial and recreational sector landings are available. For the St. Croix and St. Thomas/St. John island management areas, only commercial data are available. Therefore, each ACL for the St. Croix and St. Thomas/St. John island management areas applies to both the commercial and recreational sectors.

## Accountability Measures

Pursuant to the AMs established in the Reef Fish FMP and the Spiny Lobster FMP, the AMs that apply to each of the species or species groups addressed in this temporary rule are as follows: if landings from a Caribbean island management area, as specified in Appendix E to part 622, are estimated by the SRD to have exceeded the applicable ACL, the Assistant Administrator for Fisheries, NOAA, (AA), will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species groups that year by the amount necessary to ensure landings do not exceed the applicable ACL, as specified at 50 CFR 622.49(c). Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMP. However, if NMFS determines the ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. NMFS has determined that the ACLs for the species and species groups in this temporary rule were exceeded because of an increase in total catch and not because of enhanced data collection and monitoring methods. Therefore, NMFS reduces the length of the 2013 fishing season for these species and species groups by the amount necessary to ensure that landings do not exceed the applicable ACL in 2013.

Some of the species contained in this temporary rule have specific prohibited and limited-harvest species limitations. These limitations apply without regard to whether the species is harvested by a vessel operating under a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands or by a person subject to the bag limits, as specified at 50 CFR 622.32(b)(1).

### *Puerto Rico Commercial Snapper Unit 2*

The commercial ACL for Snapper Unit 2 in the Puerto Rico management

area is 145,916 lb (66,186 kg), as specified at 50 CFR 622.49(c)(1)(i)(D).

NMFS has determined the commercial ACL for Snapper Unit 2 based on 2010–2011 data has been exceeded. Therefore, this temporary rule implements AMs for the commercial sector for Snapper Unit 2 to reduce the 2013 fishing season to ensure landings do not exceed the commercial ACL for Snapper Unit 2 in the 2013 fishing year. The 2013 fishing season for the commercial sector for Snapper Unit 2 in or from the Puerto Rico management area of the EEZ ends effective September 21, 2013. The 2014 fishing season begins 12:01 a.m., local time, January 1, 2014.

*Puerto Rico Recreational Wrasses*

The recreational ACL for wrasses in the Puerto Rico management area is 5,050 lb (2,291 kg), as specified at 50 CFR 622.49(c)(1)(ii)(L).

NMFS has determined the recreational ACL for wrasses based on 2011 data has been exceeded. Therefore, this temporary rule implements AMs for the recreational sector for wrasses to reduce the 2013 fishing season to ensure landings do not exceed the recreational ACL for wrasses in the 2013 fishing year. The 2013 fishing season for the recreational sector for wrasses in or from the Puerto Rico management area of the EEZ ends effective October 21, 2013. The 2014 fishing season begins 12:01 a.m., local time, January 1, 2014.

*St. Croix Triggerfish and Filefish*

The ACL for triggerfish and filefish in the St. Croix management area is 24,980 lb (11,331 kg), as specified at 50 CFR 622.49(c)(2)(i)(N).

NMFS has determined the ACL for triggerfish and filefish based on 2011 data has been exceeded. Therefore, this temporary rule implements AMs for triggerfish and filefish to reduce the 2013 fishing season to ensure landings do not exceed the stock ACL for triggerfish and filefish in the 2013 fishing year. The 2013 fishing season for triggerfish and filefish in or from the St. Croix management area of the EEZ ends effective November 21, 2013. The 2014 fishing season begins 12:01 a.m., local time, January 1, 2014.

*St. Croix Spiny Lobster*

The ACL for spiny lobster, in the St. Croix management area is 107,307 lb (48,674 kg), as specified at 50 CFR 622.49(c)(2)(i)(O).

NMFS has determined the ACL for spiny lobster based on 2011 data has been exceeded. Therefore, this temporary rule implements AMs for spiny lobster to reduce the 2013 fishing season to ensure landings do not exceed the ACL for spiny lobster in the 2013 fishing year. The 2013 fishing season for spiny lobster in or from the St. Croix management area of the EEZ ends effective December 19, 2013. The 2014 fishing season begins 12:01 a.m., local time, January 1, 2014.

*St. Thomas/St. John Groupers*

The ACL for groupers, in the St. Thomas/St. John management area is 51,849 lb (23,518 kg), as specified at 50 CFR 622.49(c)(3)(i)(D).

NMFS has determined the ACL for groupers based on 2010–2011 data has been exceeded. Therefore, this temporary rule implements AMs for groupers to reduce the 2013 fishing season to ensure landings do not exceed the ACL for groupers in the 2013 fishing year. The 2013 fishing season for groupers in or from the St. Thomas/St. John management area of the EEZ ends effective December 20, 2013. The 2014 fishing season begins 12:01 a.m., local time, January 1, 2014.

**Classification**

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the Caribbean reef fish and spiny lobster fisheries and is consistent with the Magnuson-Stevens Act, the FMPs, and other applicable laws.

This action is taken under 50 CFR 622.49(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available information recently obtained from the fisheries. The AA finds there is good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B). Such procedures would be unnecessary because the rules implementing the ACLs and AMs for these species and species groups have been subject to notice and comment, and all that remains is to notify the public that the ACLs were exceeded and that the AMs for these species and species groups are being implemented for the 2013 fishing year.

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

Dated: March 21, 2013.

**Kara Meckley,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–06862 Filed 3–25–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

[Docket No. 120924487–3221–02]

RIN 0648–XC263

## Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the annual catch limit (ACL), harvest guideline (HG), annual catch target (ACT) and associated annual reference points for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2012, through June 30, 2013. These specifications were determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2012–2013 ACL or maximum HG for Pacific mackerel is 40,514 metric tons (mt). The proposed ACT, which will be the directed fishing harvest target, is 30,386 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the ACL and ACT (10,128 mt) as a set aside for incidental landings in other CPS fisheries and other sources of mortality. This rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

**DATES:** Effective March 26, 2013 through June 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

**SUPPLEMENTARY INFORMATION:** During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species (CPS) Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), where the biomass and the status of the fisheries are

reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL) and available biological catch (ABC), annual catch limit (ACL) and harvest guideline (HG) and/or annual catch target (ACT) recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

NMFS is implementing through this rule the 2012–2013 ACL, HG, ACT and other annual catch reference points, including the OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass, for Pacific mackerel in the U.S. EEZ off the Pacific coast. (The EEZ off the Pacific Coast encompasses ocean waters seaward of the outer boundary of state waters, which is 3 nautical miles off the coast, out to a line 200 nautical miles from the coast.) The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. This level is reduced from the Maximum Sustainable Yield/OFL level for economic and ecological considerations. The HG is based, in large part, on the current estimate of stock biomass. The harvest control rule in the CPS FMP is HG = [(Biomass-Cutoff) * Fraction * Distribution] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific mackerel for the 2012–2013 management season is 211,126 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.

3. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested.

4. *Distribution.* The average portion (currently 70%) of the total Pacific mackerel biomass that is estimated to be in the U.S. EEZ off the Pacific coast, based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

At the June 2012 Council meeting, the Council recommended management measures for the Pacific mackerel fishery. These management measures were based on the 2011 full stock assessment, which estimated the biomass of Pacific mackerel to be 211,126 mt. The 2011 full stock assessment of Pacific mackerel was reviewed by a Stock Assessment Review Panel in May 2011, and was approved in June 2011 by the SSC as the best available science for use in management. Based on recommendations from the Council's SSC and other advisory bodies, the Council recommended and NOAA Fisheries (NMFS) is implementing, an OFL of 44,336 mt, an ABC of 42,375 mt, an ACL and maximum harvest guideline (HG) of 40,514 mt, and an ACT of 30,386 mt for the 2012–2013 Pacific mackerel fishing year. These catch specifications are based on the biomass estimate for Pacific mackerel and the control rules established in the CPS FMP.

If the ACT is attained, the directed fishery will close, and the difference between the ACL and ACT (10,128 mt) will be reserved as a set aside for incidental landings in other CPS fisheries and other sources of mortality. In that event, incidental harvest measures will be in place for the remainder of the fishing year, including a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS. In other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel, except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS. Upon the fishery attaining the ACL/HG (40,514 mt), no vessels in CPS fisheries may retain Pacific mackerel. The purpose of the incidental set-aside and allowance of an incidental fishery is to allow for the restricted incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important CPS fisheries.

The NMFS Southwest Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure NMFS will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

On December 7, 2013, NMFS published a proposed rule for this action and solicited public comments (77 FR 73005). After considering public comments, NMFS is publishing this final rule, which includes the content of the proposed rule without change.

NMFS received multiple comments from one commenter.

**Comments and Responses**

*Comment 1:* The commenter stated that the proposed catch levels fail to account for ecological factors. Specifically, among the factors listed in the CPS FMP that are considered when setting annual specifications, that "Information on ecological factors such as the status of the ecosystem, predator-prey interactions, or oceanographic conditions that may warrant additional ecosystem-based management considerations" was not considered.

*Response:* To the extent this comment is directed to the setting of the 2012/2013 Pacific mackerel ACL, HG, and other associated annual reference points, these harvest levels are based on the HG and ABC control rules established in the FMP and are based on the best available science. Furthermore, ecological factors such as the life-cycles, distributions, and population dynamics of the various CPS stocks, as well as their role as forage were considered and evaluated in developing these control rules. Beyond the ecological factors used in the development of the control rules, other ecological information related to the annual management of CPS is presented to the Council through the annual CPS Stock Assessment and Fishery Evaluation which contains a chapter titled Ecosystem Considerations. In this chapter information on current climate and oceanographic conditions such as El Niño and the Pacific Decadal Oscillation are presented, as well as ecosystem trends and indicators relevant to CPS such as sea surface temperature, ocean productivity and copepod abundance are summarized. Additionally, NMFS also considered ecological information in its review of the 2012/13 Pacific mackerel specifications through both the Environmental Assessment (EA) and the Essential Fish Habitat consultation. The EA analyzed the effects of the proposed action on the environment, which included an examination of available ecosystem and predator/prey modeling efforts. NMFS is unaware of any ecological factors that warranted additional ecosystem-based considerations in the 2012/2013 Pacific mackerel specifications and none were presented by the commenter. In addition to the considerations mentioned above, OY considerations are built into the HG control rule which for the 2012/2013 fishing season resulted in an HG 4,000 mt and 2,000 mt below the OFL and ABC respectively. Moreover, for the Council recommended and NMFS implemented an ACT that is

10,000 mt below the ACL/HG level, not for management uncertainty, but to prevent discard of Pacific mackerel in other CPS fisheries if the mackerel fishery is closed.

*Comment 2:* The commenter stated that management of Pacific mackerel fails to include a reasonable overfished threshold.

*Response:* This comment is directed at the overfished criteria for Pacific mackerel established in Amendment 8 to the CPS FMP. This rulemaking is not intended to revise or re-examine this criterion, and so the comment is beyond the scope of this rulemaking.

Although reconsideration of the existing overfished criteria is beyond the scope of this rulemaking, NMFS notes that the commenter does not provide any explicit information as to why the current criteria for determining whether Pacific mackerel is overfished is not supported by the best available science. NMFS also points out that protection against the Pacific mackerel stock from reaching an overfished state through overfishing is an explicit part of the HG control rule through the use of the CUTOFF parameter. If the CUTOFF value is greater than zero (currently set at the 18,200 mt), then the allowable rate of harvest under the HG rule is automatically reduced as biomass declines. By the time biomass falls as low as CUTOFF, the harvest rate is reduced to zero. The combination of this CUTOFF and reduced harvest rates at low biomass levels means that a rebuilding program for Pacific mackerel is defined implicitly in the control and occurs even when the stock is not overfished.

*Comment 3:* The same commenter also requested that alternative control rules for Pacific mackerel be considered that include a maximum catch threshold or MAXCAT as described in the CPS FMP and currently in place for Pacific sardine.

*Response:* This comment is directed at part of the management framework beyond the scope of implementing the annual specifications for Pacific mackerel under the CPS FMP. This rulemaking is not intended to revise or re-examine that framework, and so the comment is beyond the scope of this rulemaking.

Although consideration of additional harvest control mechanisms was not part of this rulemaking, NMFS will briefly address the subject of MAXCAT for Pacific mackerel. Although MAXCAT provisions can be useful control mechanisms, they have not been determined to be necessary or useful for managing Pacific mackerel under the CPS FMP. This is in part due to the assumption that the U.S. fishery appears to be limited by markets and resource availability to about 40,000 mt per year; landings have rarely exceeded 20,000 mt over the last 20 years and have averaged approximately 6,000 mt over the last 10 years and only 2,000 mt over the last three. If landings were to increase substantially, the need for a MAXCAT would likely be revisited sited. However, although there is not a MAXCAT for Pacific mackerel, during the years 2007–2010, the Council recommended, and NMFS implemented, HGs much lower (10,000 to 40,000 mt lower) than those calculated from the HG control rule as a precautionary measure based on uncertainties surrounding the model estimating biomass.

*Comment 4:* The same commenter also noted that NMFS completed the Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) after the Council made its recommendation to NMFS on the proposed action and stated that the EA that was ultimately completed by NMFS did not include adequate consideration of a range of alternatives or the environmental impacts, including cumulative impacts of the action and subsequently requested that an Environment Impact Statement (EIS) be prepared.

*Response:* NOAA prepared an EIS to analyze the management framework in the FMP for Pacific mackerel *at the time the FMP was adopted;* the adjustments to the management regime in Amendment 13 did not substantively change the harvest levels, and was analyzed in an EA. The EA for the 2012–2013 annual specifications demonstrates that the implementation of these annual catch levels for the Pacific mackerel fishery based on the HG and ABC control rules in the FMP will not significantly adversely impact the quality of the human environment. Therefore an EIS is not necessary to comply with NEPA for this action.

With regard to the scope and range of alternatives, the six alternatives analyzed in the EA was a reasonable number and covered an appropriate scope based on the limited nature of this action, which is the application of set formulae in the FMP for the HG and ABC control rules to determine harvest levels of Pacific mackerel for one year. The six alternatives analyzed (including the proposed action and no action) were objectively evaluated in recognition of the purpose and need of this action and the framework process in place based on the specified control rules for setting catch levels for Pacific mackerel. The CPS FMP describes a specific framework process for annually setting required catch levels and reference points. Within this framework are specific control rules used for determining the annual OFL, ABC, ACL and HG/ACT. Although there is some flexibility built into this process in terms of determinations of scientific and management uncertainty, there is little discretion in the control rules for the OFL (level for determining overfishing) and the HG (level at which directed fishing is stopped), with the annual biomass estimate being the primary determinant in both these levels. Therefore, the alternatives in the EA covered a range of higher and lower ABC and ACL levels in the context of the OFL and HG levels and the environmental impacts of those alternatives. Additionally, although the commenter states that cumulative impacts were not analyzed, Chapter 6 of the EA does include an examination of cumulative impacts.

## Classification

The Administrator, Southwest Region, NMFS, determined that this action is necessary for the conservation and management of the Pacific mackerel fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is exempt from Office of Management and Budget review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have 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. 1801 *et seq.*

Dated: March 20, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2013–06901 Filed 3–25–13; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 78, No. 58
Tuesday, March 26, 2013

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AM78**

## Prevailing Rate Systems; North American Industry Classification System Based Federal Wage System Wage Surveys

**AGENCY:** U. S. Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The U.S. Office of Personnel Management is issuing a proposed rule that would update the 2007 North American Industry Classification System (NAICS) codes currently used in Federal Wage System wage survey industry regulations with the 2012 NAICS revisions published by the Office of Management and Budget.

**DATES:** We must receive comments on or before April 25, 2013.

**ADDRESSES:** You may submit comments, identified by "RIN 3206–AM78," using either of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Mail:* Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or email *pay-leave-policy@opm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Madeline Gonzalez, by telephone at (202) 606–2838, or by email at *pay-leave-policy@opm.gov.*

**SUPPLEMENTARY INFORMATION:** On August 7, 2008, the U.S. Office of Personnel Management (OPM) issued a final rule (73 FR 45853) to update the 2002 North American Industry Classification System (NAICS) codes used in Federal Wage System (FWS) wage survey industry regulations with the 2007 NAICS revisions published by the Office of Management and Budget (OMB). OPM's current regulations use 2007 NAICS codes. OMB has now published the NAICS revisions for 2012, which result in certain changes in industry coverage for FWS wage surveys.

The following sections of title 5, Code of Federal Regulations, list the industries included in the FWS wage surveys by 2007 NAICS codes:

Section 532.213—Industries included in regular appropriated fund wage surveys.

Section 532.221—Industries included in regular nonappropriated fund surveys.

Section 532.267—Special wage schedules for aircraft, electronic, and optical instrument overhaul and repair positions in Puerto Rico.

Section 532.285—Special wage schedules for supervisors of negotiated rate Bureau of Reclamation employees.

Section 532.313—Private sector industries.

OPM has reviewed these regulations in light of OMB's NAICS revisions for 2012 and is proposing the following changes:

- Delete NAICS codes 44311 (Appliance, television, and other electronic stores), 7221 (Full-service restaurants), and 7222 (Limited-service eating places) from the list of required NAICS codes in 5 CFR 532.221 and add NAICS codes 443 (Electronics and appliance stores) and 7225 (Restaurants and other eating places);
- Add NAICS code 333316 (Photographic and photocopying equipment manufacturing) to the list of required NAICS codes in 5 CFR 532.267 and three of the specialized industries (Electronics, Guided missiles, and Sighting and fire control equipment) in 5 CFR 532.313;
- Delete NAICS codes 332212 (Hand and edge tool manufacturing), 332995 (Other ordnance and accessories manufacturing), 336312 (Gasoline engine and engine parts manufacturing), 336322 (Other motor vehicle electrical and electronic equipment manufacturing), and 336399 (All other motor vehicle parts manufacturing) from the list of required NAICS codes in the Artillery and combat vehicle specialized industry in 5 CFR 532.313 and add NAICS codes 332216 (Saw blade and hand tool manufacturing), 332994 (Small arms, ordnance, and ordnance accessories manufacturing), 33631 (Motor vehicle gasoline engine and engine parts manufacturing), 33632 (Motor vehicle electrical and electronic equipment manufacturing), and 33639 (Other motor vehicle parts manufacturing);
- Delete NAICS codes 334414 (Electronic capacitor manufacturing) and 334415 (Electronic resistor manufacturing) from the list of required NAICS codes in the Electronics specialized industry in 5 CFR 532.313;
- Revise the title of NAICS code 334613 (Magnetic and optical recording media manufacturing) to read "Blank magnetic and optical recording media manufacturing" in the list of required NAICS codes in 5 CFR 532.267 and to three of the specialized industries (Electronics, Guided missiles, and Sighting and fire control equipment) in 5 CFR 532.313; and
- Revise the title of NAICS code 4921 (Couriers) to read "Couriers and express delivery services" in the list of required NAICS codes in 5 CFR 532.267 and in the Aircraft specialized industry in 5 CFR 532.313.

None of the other sections are affected by 2012 changes in NAICS codes. OPM is also proposing to replace the year "2007" with "2012" in the table titles of all applicable sections.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we adopt these changes.

### Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

### Executive Order 13563 and Executive Order 12866

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 13563 and Executive Order 12866.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information,

Government employees, Reporting and recordkeeping requirements, Wages.

**John Berry,**

*Director, U.S. Office of Personnel Management.*

Accordingly, the U.S. Office of Personnel Management is proposing to amend 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

**§ 532.213 [Amended]**

■ 2. In § 532.213, amend the table headings in both columns by removing "2007" and adding "2012."

**§ 532.221 [Amended]**

■ 3. In § 532.221, amend the table as follows:

■ a. Revise the year "2007" to "2012" in the table headings in both columns;

■ b. Remove NAICS codes "44311," "7221," and "7222" in the first column and "Appliance, television, and other electronic stores," "Full-service restaurants," and "Limited-service eating places" in the second column; and

■ c. Add NAICS codes "443" and "7225" in the first column in numerical order and "Electronics and appliance stores" and "Restaurants and other eating places" in the second column.

**§ 532.267 [Amended]**

■ 4. In § 532.267(c)(1), amend the table as follows:

■ a. Revise the year "2007" to "2012" in the table headings in both columns;

■ b. Add NAICS code "333316" in the first column in numerical order and "Photographic and photocopying equipment manufacturing" in the second column;

■ c. Revise the title of NAICS code 334613 from "Magnetic and optical recording media manufacturing" to "Blank magnetic and optical recording media manufacturing" in the second column; and

■ d. Revise the title of NAICS code 4921 from "Couriers" to "Couriers and express delivery services" in the second column.

**§ 532.285 [Amended]**

■ 5. In § 532.285(c)(1), amend the table headings in both columns by replacing the year "2007" with "2012."

**§ 532.313 [Amended]**

■ 6. In § 532.313(a), amend the table as follows:

■ a. Revise the year "2007" to "2012" in the table headings in both columns;

■ b. Add NAICS code "333316" in the first column in numerical order and "Photographic and photocopying equipment manufacturing" in the second column to the list of required NAICS codes for the Electronics Specialized Industry, Guided Missiles Specialized Industry, and Sighting and Fire Control Equipment Specialized Industry; and

■ c. Remove NAICS codes "332212," "332995," "336312," "336322," and "336399" in the first column and "Hand and edge tool manufacturing," "Other ordnance and accessories manufacturing," "Gasoline engine and engine parts manufacturing," "Other motor vehicle electrical and electronic equipment manufacturing," and "All other motor vehicle parts manufacturing" in the second column from the list of required NAICS codes for the Artillery and Combat Vehicle Specialized Industry.

■ d. Add NAICS codes "332216," "332994," "33631," "33632," and "33639" in the first column in numerical order and "Saw blade and hand tool manufacturing," "Small arms, ordnance, and ordnance accessories manufacturing," "Motor vehicle gasoline engine and engine parts manufacturing," "Motor vehicle electrical and electronic equipment manufacturing," and "Other motor vehicle parts manufacturing" in the second column to the list of required NAICS codes for the for the Artillery and Combat Vehicle Specialized Industry;

[FR Doc. 2013–06783 Filed 3–25–13; 8:45 am]

**BILLING CODE 6325–39–P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

**[Docket No. EERE–2008–BT–STD–0005]**

**RIN 1904–AB57**

### Request for Information on Evaluating New Products for the Battery Chargers and External Power Supply Rulemaking

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

**ACTION:** Request for information (RFI) for proposed rulemaking.

**SUMMARY:** The U.S. Department of Energy (DOE) requests information to help inform its current rulemaking in which it has proposed to set energy conservation standards for classes of battery chargers and external power supplies. Specifically, DOE seeks information on battery chargers that manufacturers have certified as compliant with the California Energy Commission (CEC) standards that became effective on February 1, 2013. DOE is actively reviewing battery chargers that have been certified as compliant with the CEC standards to determine if the analysis DOE prepared in support of the notice of proposed rulemaking for Battery Chargers and External Power Supplies published on March 27, 2012, needs revision in light of the availability of these products. Based on testing data and information received from stakeholders, DOE may propose alternative energy conservation standard levels for battery chargers if it is determined that new energy conservation standards for battery chargers are technologically feasible and economically justified. If DOE determined that different standards could satisfy these criteria, DOE would issue a supplemental notice of proposed rulemaking in order to discuss any new findings, propose alternative energy conservation standard levels, and request stakeholder feedback. At this time, DOE welcomes written comments from the public on the issues brought up in this Request for Information or on any other topic within the scope of this rulemaking.

**DATES:** Written comments and information are requested on or before May 28, 2013.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2011–BT–STD–0005, by any of the following methods:

- *Email:* to *BC&EPS_ECS@ee.doe.gov*. Include EERE–2011–BT–STD–0005 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Revisions to Energy Efficiency Enforcement Regulations, EERE–2011–BT–STD–0005, 1000 Independence Avenue SW., Washington, DC 20585–0121. Phone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

*Instructions:* All submissions received must include the agency name and

docket number or RIN for this rulemaking.

*Docket:* For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information may be sent to Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: 202–586–9870. Email: *battery_chargers_and_external_power_supplies@ee.doe.gov* or Mr. Michael Kido, Esq., U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. (202) 586–8145, *Michael.Kido@hq.doe.gov*

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

On March 27, 2012, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NOPR) proposing Federal energy conservation standards for battery chargers and external power supplies (BCEPS). 77 FR 18478. This proposal, however, came after the California Energy Commission (CEC) had issued its own standards for battery charger systems on January 12, 2012, which took effect on February 1, 2013.[1] There is some overlap between the classes of battery chargers affected by the CEC rule and those classes of battery chargers that DOE is proposing to regulate. Additionally, the standards proposed by DOE differ from the ones issued by the CEC, with some being more stringent and others being less stringent than the CEC standards. Pursuant to the Energy Policy and Conservation Act of 1975, as amended (EPCA), DOE performs a robust analysis to determine whether potential new or amended energy conservation standards that DOE prescribes for certain products, such as battery chargers, are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)). While the analysis performed in support of the NOPR determined that the proposed standards would achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, DOE is interested in determining if revisions to its analysis are necessary now that manufacturers have begun complying with CEC standards that are more stringent than DOE's proposed energy conservation standards for some product classes of battery chargers.

## II. Discussion

DOE is particularly interested in the effect the CEC standards have on the market for battery chargers within DOE's product classes 2 through 6, as DOE's proposed standards are lower than the equivalent CEC standards for these product classes. Under EPCA, any standards that DOE sets will preempt CEC's standards once those Federal standards become effective. See 42 U.S.C. 6295(ii) (prescribing specific application for the preemption of State and local standards for, among other products, battery chargers and external power supplies). Table 1 compares the Candidate Standard Levels (CSLs) proposed in the NOPR to the CSLs closest to the CEC standards for each product class. Further details on each product class can be found in the NOPR for battery chargers and external power supplies. 77 FR 18478 (March 27, 2012).

TABLE 1—CSLs EQUIVALENT TO CALIFORNIA PROPOSED STANDARDS

| Product class | DOE proposed level | CSL closest equivalent to CEC standard |
|---|---|---|
| 1 (Low-Energy, Inductive) | CSL 2 | CSL 0. |
| 2 (Low-Energy, Low-Voltage) | CSL 1 | CSL 2. |
| 3 (Low-Energy, Medium-Voltage) | CSL 1 | CSL 2. |
| 4 (Low-Energy, High-Voltage) | CSL 1 | CSL 2. |
| 5 (Medium-Energy, Low-Voltage) | CSL 2 | CSL 3. |
| 6 (Medium-Energy, High Voltage) | CSL 2 | CSL 3. |
| 7 (High-Energy) | CSL 1 | CSL 1. |
| 8 (DC Input < 9 V) | CSL 1 | CSL 0. |
| 10 (AC Output) | CSL 3 | CSL 3. |

DOE is interested in learning information about how manufacturers are complying with the CEC standards, particularly with respect to the technologies that are being used. DOE is particularly interested in products contained within CEC's public database[2] which contains a listing of products that meet the CEC standards. DOE has already identified several battery chargers in that list for further analysis. Thus far these products have included chargers in end use products such as wireless mouse devices, cordless phones, power tools, and cordless vacuums. Using the information sought in this notice, DOE plans to assess whether its current analyses need revision.

If any new information is presented that was not previously considered by DOE in the NOPR, DOE may revise its analysis. If a revised analysis supports an alternative proposed energy conservation standards for certain product classes, DOE would issue a supplemental notice of proposed rulemaking (SNOPR). Following a SNOPR publication, stakeholders would have additional opportunity to provide comments to DOE.

## III. Public Participation

### *A. Submission of Information*

DOE will accept comments in response to this RFI under the timeline provided in the **DATES** section. Comments submitted to the Department through the eRulemaking Portal or by email should be provided in WordPerfect, Microsoft Word, portable document format (PDF), or text file format. Those responding should avoid the use of special characters or any form

[1] *http://www.energy.ca.gov/appliances/battery_chargers/.*

[2] Available here: *www.appliances.energy.ca.gov/.*

of encryption. No facsimiles will be accepted. Comments submitted in response to this notice will become a matter of public record and will be made publicly available.

*B. Issues on Which DOE Seeks Information*

For this RFI, DOE requests comments, information, and recommendations on the following topics for the purpose of determining if DOE should revise its NOPR analysis:

1. DOE seeks comment on the product designs and technologies used by manufacturers to meet the CEC standards, as well as other changes made to the products since DOE's initial NOPR analysis.

2. DOE seeks comment on the product costs incurred by manufactures to meet the CEC standards, including those related to engineering, design, manufacturing and product labeling.

3. DOE seeks information on the impact of the CEC standards on manufacturer's supply chain. Specifically; DOE seeks information on whether manufacturers will continue to manufacture products that do not meet the CEC standards for sale outside California, while selling a separate product of similar utility and function compliant with CEC standards for sale in California

4. DOE requests information on whether there are any types of products that have been discontinued from sale in California due to the CEC standards. DOE is specifically interested in whether these discontinued products offer consumer utility not offered by products compliant with the CEC standards.

5. Finally, DOE seeks information from manufacturers on the potential costs and burdens of complying with a battery charger labeling requirement.

DOE is also interested in comments on other relevant issues that participants believe would affect the proposed standards for battery chargers. DOE invites all interested parties to submit in writing by May 28, 2013, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of the battery charger and external power supply rulemaking.

After the close of the comment period, DOE will review the public comments and determine if any changes to the proposed standards for the battery charger and external power supply rulemaking are necessary and warranted.

DOE considers public participation to be a very important part of the process for developing rulemakings. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov*.

Issued in Washington, DC, on March 19, 2013.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2013–06745 Filed 3–25–13; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2013–0130; Directorate Identifier 2013–NE–07–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Hartzell Propeller, Inc. Propellers

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Hartzell Propeller, Inc. propeller models HC-(1, D)2(X, V, MV)20–7, HC-(1, D)2(X, V, MV)20–8 and HC-(1, D)3(X, V, MV)20–8. This proposed AD was prompted by failures of the propeller hydraulic bladder diaphragm and resulting engine oil leak. This proposed AD would require replacement of the propeller hydraulic bladder diaphragm. We are proposing this AD to prevent propeller hydraulic bladder diaphragm rupture, loss of engine oil, damage to the engine, and loss of the airplane.

**DATES:** We must receive comments on this proposed AD by May 28, 2013.

**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 Hartzell Propeller, Inc., 1 Propeller Place, Piqua, OH 45356; phone: 937–778–4200; email: *techsupport@hartzellprop.com*. You may view this service information at the FAA, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Mark Grace, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Propulsion Branch, 2300 E. Devon Avenue, Des Planes, IL 60018; phone: 847–294–7377; fax: 847–294–7834; email: *mark.grace@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–2013–0130; Directorate Identifier 2013–NE–07–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 a report of Hartzell propeller failures of the variable pitch

propeller hydraulic bladder diaphragm, part number (P/N) B–119–2, without tab, resulting in engine oil leakage. The variable pitch propeller control mechanism uses engine oil as a hydraulic fluid. Failure of this bladder diaphragm results in engine oil loss with oil covering the airplane windshield and may lead to uncommanded loss of engine power. This condition, if not corrected, could result in loss of engine oil, damage to the engine, and loss of the airplane.

**Relevant Service Information**

We reviewed Hartzell Alert Service Bulletin (ASB) HC–ASB–61–338, Revision 1, dated December 18, 2012. The ASB lists the propeller hub models that are affected and describes procedures for replacement of propeller hydraulic bladder diaphragm with a new propeller hydraulic bladder diaphragm, P/N B–119–2, with tab.

Hartzell Propeller has redesigned bladder diaphragm, P/N B–119–2, to include a tab containing the bladder diaphragm batch/lot number. The tab with batch/lot number is visible after installation. The old design bladder diaphragm, P/N B–119–2 has no such tab.

**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 removing the old propeller hydraulic bladder diaphragm and replacing it with the redesigned part.

**Differences Between the Proposed AD and the Service Information**

Hartzell ASB HC–ASB–61–338, Revision 1, dated December 18, 2012, recommends replacement of all affected bladder diaphragms within 10 flight hours. This proposed AD would require replacement of affected bladder diaphragms within 12 months of the effective date of the AD. FAA risk analysis determined the 12 month period for compliance is acceptable.

**Costs of Compliance**

We estimate that this proposed AD would affect about 400 propellers installed on airplanes of U.S. registry. We also estimate that it would take about 4 hours per propeller to replace the bladder diaphragm. The average labor rate is $85 per hour. We estimate parts costs at $53 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $157,200. Our cost estimate is exclusive of possible warranty coverage.

**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 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.

**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):

**Hartzell Propeller, Inc.:** Docket No. FAA–2013–0130; Directorate Identifier 2013–NE07–AD.

**(a) Comments Due Date**

We must receive comments by May 28, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Hartzell Propeller, Inc. propeller models HC-(1, D)2(X, V, MV)20–7, HC-(1, D)2(X, V, MV)20–8 and HC-(1, D)3(X, V, MV)20–8 with a propeller hydraulic bladder diaphragm, part number (P/N) B–119–2, without tab, installed.

**(d) Unsafe Condition**

This AD was prompted by failures of the propeller hydraulic bladder diaphragm and resulting engine oil leak. We are issuing this AD to prevent propeller hydraulic bladder diaphragm rupture, loss of engine oil, damage to the engine, and loss of the airplane.

**(e) Compliance**

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

**(f) Bladder Diaphragm Replacement**

(1) Within 12 months after the effective date of this AD, remove from service the propeller hydraulic bladder diaphragm, P/N B–119–2, without tab.

(2) Install a redesigned propeller hydraulic bladder diaphragm, P/N B–119–2, with tab. The bladder diaphragm, eligible for installation, is identified by a tab with a batch/lot number. The tab is visible after installation and confirms the installation of the proper redesigned propeller hydraulic bladder diaphragm, P/N B–119–2, with tab, in the Hartzell propeller assembly.

**(g) Installation Prohibition**

After the effective date of this AD, do not install into any engine any hydraulic bladder diaphragm, P/N B–119–2, that is without tab.

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

The Manager, Chicago Aircraft Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(i) Related Information**

(1) For more information about this AD, contact Mark Grace, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018;

phone: 847–294–7377; fax: 847–294–7384; email: *mark.grace@faa.gov.*

(2) For service information identified in this AD, contact Hartzell Propeller Inc., 1 Propeller Place, Piqua, OH 45356–2634; phone: 937–778–4379; fax: 937–778–4391; email: *techsupport@hartzellprop.com.* You may view this service information at the FAA, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on March 19, 2013.

**Colleen M. D'Alessandro,**

*Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2013–06843 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0209; Directorate Identifier 2012–NM–127–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

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

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

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to certain Bombardier, Inc. Model DHC–8–100, -200, and -300 series airplanes. The existing AD currently requires replacing certain parking brake accumulators. Since we issued that AD, we have determined that it is necessary to protect the hydraulic system and airplane structure from possible damage by any faulty screw cap or end cap of any accumulator. This proposed AD would require installing restraint devices around the parking brake accumulator end caps. We are proposing this AD to prevent failure of the parking brake accumulator screw cap or end cap resulting in loss of the number 2 hydraulic system and damage to airplane structures, which could adversely affect the controllability of the airplane.

**DATES:** Send comments on or before April 25, 2013.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2013–0209; Directorate Identifier 2012–NM–127–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

On June 28, 2012, we issued AD 2012–14–04, Amendment 39–17118 (77 FR 42956, July 23, 2012). That AD required actions intended to address an unsafe condition on certain Model DHC–8–100, –200, and –300 series airplanes.

Since we issued AD 2012–14–04, Amendment 39–17118 (77 FR 42956, July 23, 2012), we have determined that it is necessary to protect the hydraulic system and airplane structure from possible damage by any faulty screw cap or end cap of any accumulator. Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issned Canadian Airworthiness Directive CF–2011–29R1, dated May 24, 2012 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Seven cases of on-ground hydraulic accumulator screw cap or end cap failure have been experienced on CL–600–2B19 (CRJ) aeroplanes, resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. To date, the lowest number of flight cycles accumulated at the time of failure has been 6991.
>
> Although there have been no failures to date on any DHC–8 aeroplanes, similar accumulators to those installed on the CL–600–2B19, Part Numbers (P/N)0860162001 and 0860162002 (Parking Brake Accumulator), are installed on the aeroplanes listed in the Applicability section of this [TCCA] directive.
>
> A detailed analysis of the systems and structure in the potential line of trajectory of a failed screw cap/end cap for the accumulator has been conducted. It has identified that the worst-case scenarios would be the loss of number 2 hydraulic system, and damage to aeroplane structures.
>
> This [original TCCA] directive [which corresponds to FAA AD 2012–14–04, Amendment 39–17118 (77 FR 42956, July 23, 2012)] gives instructions to determine the part number and serial number of the existing parking brake accumulator, and where applicable, replace the accumulator.
>
> Revision 1 of this [TCCA] AD mandates the installation of restraint devices aronnd [all] the parking brake accumulator end caps to hold them in place in the event of an end cap failure.

Uncontained failure of the parking brake accumulator screw caps and/or end caps could result in loss of the number 2 hydraulic system, and damage to airplane structures, and could adversely

affect the controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Bombardier, Inc. has issued Service Bulletin 8–32–169, Revision A, dated December 16, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 129 products of U.S. registry.

The actions that are required by AD 2012–14–04, Amendment 39–17118 (77 FR 42956, July 23, 2012), and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $170 per product.

We estimate that it would take about 15 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts cost $5,302 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $848,433, or $6,577 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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.

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2012–14–04, Amendment 39–17118 (77 FR July 23, 2012), and adding the following new AD:

**Bombardier, Inc.:** Docket No. FAA–2013–0209; Directorate Identifier 2012–NM–127–AD.

**(a) Comments Due Date**

We must receive comments by May 10, 2013.

**(b) Affected ADs**

This AD supersedes AD 2012–14–04, Amendment 39–17118 (77 FR 42956, July 23, 2012).

**(c) Applicability**

This AD applies to Bombardier, Inc. Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category, serial numbers 003 and subsequent.

**(d) Subject**

Air Transport Association (ATA) of America Code 32, Landing gear.

**(e) Reason**

This AD was prompted by reports of hydraulic accumulator screw cap or end cap failure. We are issuing this AD to prevent failure of the parking brake accumulator screw caps or end caps resulting in loss of the number 2 hydraulic system and damage to airplane structures, which could adversely affect the controllability of the airplane.

**(f) Compliance**

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

**(g) Retained Inspection and Replacement**

This paragraph restates the requirements of paragraph (g) of AD 2012–14–04, Amendment 39–17118 (77 FR 42956, July 23, 2012), with no changes. Within 2,000 flight hours or 12 months after August 27, 2012 (the effective date of AD 2012–14–04), whichever occurs first: Inspect to determine the part number (P/N) and serial number of the parking brake hydraulic accumulator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–32–170, dated February 25, 2011. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the parking brake hydraulic accumulator can be conclusively determined from that review.

(1) For accumulators not having P/N 0860162001 or 0860162002: No further action is required by this paragraph.

(2) For accumulators having P/N 0860162001 or 0860162002: Before further flight, do the applicable actions specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) If the serial number is listed in the table in paragraph 3.B.(2) of Bombardier Service Bulletin 8–32–170, dated February 25, 2011: No further action is required by this paragraph.

(ii) If the serial number is not listed in the table in paragraph 3.B.(2) of Bombardier Service Bulletin 8–32–170, dated February 25, 2011: Within 2,000 flight hours or 12 months after August 27, 2012 (the effective date of AD 2012–14–04, Amendment 39–17118 (77 FR 42956, July 23, 2012)),

whichever occurs first, replace the accumulator with a new non-suspect accumulator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–32–172, dated March 15, 2011.

**(h) Retained Parts Installation Prohibition**

This paragraph restates the requirements of paragraph (h) of AD 2012–14–04, Amendment 39–17118 (77 FR 42956, July 23, 2012), with no changes. As of August 27, 2012 (the effective date of AD 2012–14–04), no person may install a parking brake accumulator, P/N 0860162001 or 0860162002 with a serial number that is not listed in the table in paragraph 3.B.(2) of Bombardier Service Bulletin 8–32–170, dated February 25, 2011, on any airplane.

**(i) New Requirement of this AD: Install Restraint Devices on All Airplanes**

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Install restraint devices around the parking brake hydraulic accumulator end caps by incorporating Bombardier ModSum 8Q101901, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–32–169, Revision A, dated December 16, 2011.

**(j) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–32–169, dated November 25, 2011, which is not incorporated by reference in this AD.

**(k) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

**(l) Related Information**

(1) Refer to MCAI Canadian Airworthiness Directive CF–2011–29R1, dated May 24, 2012; and the service information identified in paragraphs (m)(1)(i) through (m)(1)(v) of this AD; for related information.

(i) Bombardier Service Bulletin 8–32–169, Revision A, dated December 16, 2011.

(ii) Bombardier Service Bulletin 8–32–170, dated February 25, 2011.

(iii) Bombardier Service Bulletin 8–32–172, dated March 15, 2011.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may review copies of the 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 March 5, 2013.

**Ali Bahrami,**

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

[FR Doc. 2013–05813 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2012–1345; Airspace Docket No. 12–ANM–31]**

## Proposed Modification of Class D and Class E Airspace and Establishment of Class E Airspace; Pasco, WA

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

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

**SUMMARY:** This action proposes to establish Class E surface airspace at Tri-Cities Airport, Pasco, WA. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Tri-Cities Airport, Pasco, WA. This action also would modify the Class D airspace and Class E airspace by adjusting the geographic coordinates of Tri-Cities Airport and Kennewick, Vista Field Airport. This will also correct the airport name from Vista Airport, Kennewick, WA to Kennewick, Vista Field Airport, WA. The FAA is proposing this action to enhance the safety and management of aircraft operations at Tri-Cities Airport, Pasco, WA.

**DATES:** Comments must be received on or before May 10, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–1345; Airspace Docket No. 12–ANM–31, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–1345 and Airspace Docket No. 12–ANM–31) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2012–1345 and Airspace Docket No. 12–ANM–31". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned

with this rulemaking will be filed in the docket.

**Availability of NPRM's**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E surface airspace at Tri-Cities Airport, Pasco, WA. Controlled airspace is necessary to accommodate aircraft using RNAV (GPS) standard instrument approach procedures at Tri-Cities Airport, Pasco, WA. Also, the geographic coordinates of Tri-Cities Airport and Kennewick, Vista Field Airport would be updated to coincide with the FAA's aeronautical database for the Class D airspace and Class E airspace designated as an extension to Class D surface area, and Class E airspace extending upward from 700 feet above the surface, at Pasco, WA. This action would enhance the safety and management of aircraft operations at Tri-Cities Airport, Pasco, WA. This will also correct the name from Vista Airport, Kennewick, WA to Kennewick, Vista Field Airport, WA.

Class E airspace designations are published in paragraphs 5000, 6002, 6004 and 6005, respectively, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Tri-Cities Airport, Pasco, WA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

*Paragraph 5000 Class D airspace.*

* * * * *

**ANM WA D Pasco, WA [Modified]**

Pasco, Tri-Cities Airport, WA
(lat. 46°15′53″ N., long. 119°07′09″ W.)
Kennewick, Vista Field Airport, WA
(lat. 46°13′07″ N., long. 119°12′36″ W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.3-mile radius of the Tri-Cities Airport, excluding that airspace within a 2-mile radius of the Vista Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**ANM WA E2 Pasco, WA [New]**

Pasco, Tri-Cities Airport, WA
(lat. 46°15′53″ N., long. 119°07′09′ W.)
Kennewick, Vista Field Airport, WA
(lat. 46°13′07″ N., long. 119°12′36″ W.)

Within a 4.3-mile radius of the Tri-Cities Airport, excluding that airspace within a 2-mile radius of the Vista Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6004 Class E airspace designated as an extension to a Class D surface area.*

* * * * *

**ANM WA E4 Pasco, WA [Modified]**

Pasco, Tri-Cities Airport, WA
(Lat. 46°15′53″ N., long. 119°07′09″ W.)
Pasco VOR/DME
(Lat. 46°15′47″ N., long. 119°06′57″ W.)
LOM
(Lat. 46°20′17″.N., long. 119°00′45″ W.)

That airspace extending upward from the surface within 3.5 miles each side of the Pasco ILS localizer northeast course extending from the 4.3-mile radius of Tri-Cities Airport to 8.7 miles northeast of the LOM, and within 2.7 miles each side of the Pasco VOR/DME 131° radial extending from the 4.3-mile radius of the airport to 7 miles southeast of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM WA E5 Pasco, WA [Modified]**

Pasco, Tri-Cities Airport, WA
(Lat. 46°15′53″ N., long. 119°07′09″ W.)
Pasco VOR/DME
(Lat. 46°15′47″ N., long. 119°06′57″ W.)

Richland Airport, WA
(Lat. 46°18′20″ N., long. 119°18′15″ W.)

That airspace extending upward from 700 feet above the surface within 9.2 miles northwest and 5.3 miles southeast of the Pasco VOR/DME 046° and 226° radials extending from 20.1 miles northeast to 10.5 miles southwest of the VOR/DME, and within 8.3 miles northeast and 6.1 miles southwest of the Pasco VOR/DME 131° radial extending from the VOR/DME to 26.3 miles southeast of the VOR/DME, and within 4.3 miles north and 6.6 miles south of the Pasco VOR/DME 288° radial extending from 7 miles west of the VOR/DME to 23.1 miles west of the VOR/DME, and within 8.3 miles west and 4 miles east of the 026° bearing of the Richland Airport extending 20.9 miles northeast of the Richland Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°49′00″ N., long. 118°00′00″ W.; thence to lat. 45°49′00″ N., long. 119°45′00″ W.; to lat. 47°00′00″ N., long. 119°45′00″ W., to lat. 47°00′00″ N., long., 118°00′00″ W.; thence to the point of origin.

Issued in Seattle, Washington, on March 18, 2013.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–06943 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2011–1111; Airspace Docket No. 11–ASW–13]**

## Proposed Amendment of Class E Airspace; Gruver, TX

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

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

**SUMMARY:** This action proposes to amend Class E airspace at Gruver, TX. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Gruver Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

**DATES:** 0901 UTC. Comments must be received on or before May 10, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1111/Airspace Docket No. 11–ASW–13, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–1111/Airspace Docket No. 11–ASW–13." The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to ensure that required controlled airspace extending from the 6.5-mile radius of the airport to 9.6 miles southwest of the airport is available to contain aircraft executing new standard instrument approach procedures at Gruver Municipal Airport, Gruver, TX. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would create additional controlled airspace at Gruver Municipal Airport, Gruver, TX.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASW TX E5 Gruver, TX [Amended]**

Gruver Municipal Airport, TX
(Lat. 36°14′01″ N., long. 101°25′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Gruver Municipal Airport, and within 2 miles each side of the 210° bearing from the airport extending from the 6.5-mile radius to 9.6 miles southwest of the airport.

Issued in Fort Worth, TX on March 15, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–06935 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2012–1138; Airspace Docket No. 12–ACE–6]**

## Proposed Amendment of Class E Airspace; Ogallala, NE

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

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

**SUMMARY:** This action proposes to amend Class E airspace at Ogallala, NE. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Searle Field Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

**DATES:** Comments must be received on or before May 10, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2012–1138/Airspace Docket No. 12–ACE–6, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2012–1138/Airspace Docket No. 12–ACE–6." The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Searle Field Airport, Ogallala, NE. A small segment would extend from the current 8.6-mile radius of the airport to 11.2 miles southeast of the airport to provide adequate controlled airspace for the safety and

management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Searle Field Airport, Ogallala, NE.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ACE NE E5 Ogallala, NE [Amended]**

Searle Field Airport, NE
(Lat. 41°07′10″ N., long. 101°46′11″ W.)

That airspace extending upward from 700 feet above the surface within a 8.6-mile radius of Searle Field Airport, and within 2 miles each side of the 144° bearing from the airport extending from the 8.6-mile radius to 11.2 miles southeast of the airport.

Issued in Fort Worth, TX on March 15, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–06945 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2012–1139; Airspace Docket No. 12–AGL–12]**

### Proposed Amendment of Class E Airspace; Worthington, MN

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

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

**SUMMARY:** This action proposes to amend Class E airspace at Worthington, MN. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Worthington Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport. Geographical coordinates would also be updated.

**DATES:** Comments must be received on or before May 10, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2012–1139/Airspace Docket No. 12–AGL–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2012–1139/Airspace Docket No. 12–AGL–12." The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/*

*air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Worthington Municipal Airport, Worthington, MN. Accordingly, a segment would extend from the current 7-mile radius of the airport to 11.6 miles north of the airport; another segment would extend from the current 7-mile radius to 11.1 miles south of the airport, to retain the safety and management of IFR aircraft in Class E airspace to/from the en route environment. The airport's geographical coordinates would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Worthington Municipal Airport, Worthington, MN.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MN E5 Worthington, MN [Amended]**

Worthington, Municipal Airport, MN

(Lat. 43°39′18″ N., long. 95°34′45″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Worthington Municipal Airport, and within 2 miles each side of the 000° bearing from the airport extending from the 7-mile radius to 11.6 miles north of the airport, and within 2 miles each side of the 176° bearing from the airport extending from the 7-mile radius to 11.1 miles south of the airport.

Issued in Fort Worth, TX on March 15, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–06958 Filed 3–25–13; 8:45 am]

**BILLING CODE 4901–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2013–0194; Airspace Docket No. 13–ANM–10]**

## Proposed Establishment of Class E Airspace; Tobe, CO

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

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

**SUMMARY:** This action proposes to establish Class E airspace at the Tobe VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME), Tobe, CO to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Denver and Albuquerque Air Route Traffic Control Centers (ARTCCs). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

**DATES:** Comments must be received on or before May 10, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0194; Airspace Docket No. 13–ANM–10, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0194 and Airspace Docket No. 13–ANM–10) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2013–0194 and Airspace Docket No. 13–ANM–10". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface at the Tobe VOR/DME, Tobe, CO. This action would contain aircraft while in IFR conditions under control of Denver and Albuquerque ARTCCs by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Tobe VOR/DME, Tobe, CO.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

*Paragraph 6006 En Route Domestic Airspace Areas.*

* * * * *

**ANM CO E6 Tobe, CO [New]**

Tobe VOR/DME, CO
(Lat. 37°15′31″ N., long. 103°36′00″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 36°17′00″ N., long. 104°14′00″ W.; to lat. 36°59′57″ N., long. 104°18′04″ W.; to lat. 39°40′23″ N., long. 103°29′02″ W.; to lat. 39°00′35″ N., long. 101°59′12″ W.; to lat. 38°33′23″ N., long. 101°59′12″ W.; to lat. 37°29′58″ N., long. 102°33′04″ W.; to lat. 37°00′17″ N., long. 102°09′21″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on March 18, 2013.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–06948 Filed 3–25–13; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2013–0185; Airspace Docket No. 13–ANM–8]**

## Proposed Establishment of Class E Airspace; Gillette, WY

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

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

**SUMMARY:** This action proposes to establish Class E airspace at the Gillette VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME), Gillette, WY to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Denver, Salt Lake City and Minneapolis Air Route Traffic Control Centers (ARTCCs). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

**DATES:** Comments must be received on or before May 10, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0185; Airspace Docket No. 13–ANM–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0185 and Airspace Docket No. 13–ANM–8) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2013–0185 and Airspace Docket No. 13–ANM–8". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface at the Gillette VOR/DME, Gillette, WY. This action would contain aircraft while in IFR conditions under control of Denver, Salt Lake City and Minneapolis ARTCCs by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Gillette VOR/DME, Gillette, WY.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

*Paragraph 6006 En Route Domestic Airspace Areas.*

* * * * *

**ANM WY E6 Gillette, WY [New]**

Gillette VOR/DME, WY
(Lat. 44°20′52″ N., long. 105°32′37″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 43°01′57″ N., long. 107°06′08″ W.; to lat. 42°52′37″ N., long. 107°47′58″ W.; to lat. 44°09′12″ N., long. 108°02′32″ W.; to lat. 44°36′58″ N., long. 106°53′16″ W.; to lat. 45°48′16″ N., long. 106°34′25″ W.; to lat. 45°36′35″ N., long. 104°05′26″ W.; to lat. 45°06′45″ N., long. 100°48′20″ W.; to lat. 44°02′34″ N., long. 100°44′12″ W.; to lat. 43°40′10″ N., long. 99°37′18″ W.; to lat. 43°14′52″ N., long. 100°08′15″ W.; to lat. 43°41′03″ N., long. 101°28′52″ W.; to lat. 44°40′23″ N., long. 101°32′34″ W.; to lat. 44°44′40″ N., long. 104°52′04″ W.; to lat. 43°29′00″ N., long. 104°14′29″ W.; to lat. 43°22′06″ N., long. 104°46′22″ W.; to lat. 44°35′02″ N., long. 105°59′24″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on March 18, 2013.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–06944 Filed 3–25–13; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2012–1121; Airspace Docket No. 12–AGL–8]**

**Proposed Establishment of Class E Airspace; Elbow Lake, MN**

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

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

**SUMMARY:** This action proposes to establish Class E airspace at Elbow Lake, MN. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Elbow Lake Municipal-Pride of the Prairie Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

**DATES:** 0901 UTC. Comments must be received on or before May 10, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2012–1121/Airspace Docket No. 12–AGL–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2012–1121/Airspace Docket No. 12–AGL–8." The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6-mile radius to accommodate new standard instrument approach procedures at Elbow Lake Municipal-Pride of the Prairie Airport, Elbow Lake, MN. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Elbow Lake Municipal-Pride of the Prairie Airport, Elbow Lake, MN.

### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MN E5 Elbow Lake, MN [New]**

Elbow Lake Municipal—Pride of the Prairie Airport, MN
(Lat. 45°59′05″ N., long. 95°59′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Elbow Lake Municipal—Pride of the Prairie Airport.

Issued in Fort Worth, TX, on March 14, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–06942 Filed 3–25–13; 8:45 am]

**BILLING CODE 4901–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2013–0193; Airspace Docket No. 13–ANM–9]**

## Proposed Establishment of Class E Airspace; Blue Mesa, CO

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

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

**SUMMARY:** This action proposes to establish Class E airspace at the Blue Mesa VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME), Blue Mesa, CO to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Denver and Albuquerque Air Route Traffic Control Centers (ARTCCs). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

**DATES:** Comments must be received on or before May 10, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0193; Airspace Docket No. 13–ANM–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0193 and Airspace Docket No. 13–ANM–9) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2013–0193 and Airspace Docket No. 13–ANM–9". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking

documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface at the Blue Mesa VOR/DME, Blue Mesa, CO. This action would contain aircraft while in IFR conditions under control of Denver and Albuquerque ARTCCs by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at the Blue Mesa VOR/DME, Blue Mesa, CO.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

*Paragraph 6006 En Route Domestic Airspace Areas.*

* * * * *

**ANM CO E6 Blue Mesa, CO [New]**

Blue Mesa VOR/DME, CO
(Lat. 38°27′08″ N., long. 107°02′23″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 35°39′30″ N., long. 107°25′27″ W.; to lat. 36°14′38″ N., long. 107°40′25″ W.; to lat. 37°34′25″ N., long. 108°25′31″ W.; to lat. 37°58′51″ N., long. 108°22′29″ W.; to lat. 38°45′39″ N., long. 107°41′00″ W.; to lat. 39°07′40″ N., long. 107°13′47″W.; to lat. 39°11′48″ N., long. 106°29′16″ W.; to lat. 39°02′30″ N., long. 105°32′13″ W.; to lat. 36°59′57″N., long. 104°18′04″ W.; to lat. 36°17′00″ N., long. 104°14′00″ W.; to lat. 36°12′53″ N., long. 104°56′21″ W.; to lat. 36°13′34″N., long. 105°54′42″ W., thence to the point of beginning.

Issued in Seattle, Washington, on March 18, 2013.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–06949 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2012–1237; Airspace Docket No. 12–AWP–9]**

### Proposed Modification of Class E Airspace; Clifton/Morenci, AZ

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

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

**SUMMARY:** This action proposes to modify Class E airspace at Greenlee County Airport, Clifton/Morenci, AZ to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Greenlee County Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

**DATES:** Comments must be received on or before May 10, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–1237; Airspace Docket No. 12–AWP–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–1237 and Airspace Docket No. 12–AWP–9) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2012–1237 and Airspace Docket No. 12–AWP–9". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Greenlee County Airport, Clifton/Morenci, AZ. Additional controlled airspace extending upward from 1,200 feet above the surface would be established at the airport to accommodate RNAV (GPS) standard instrument approach procedures. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Greenlee County Airport, Clifton/Morenci, AZ.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AWP AZ E5 Clifton/Morenci, AZ [Modified]**

Greenlee County Airport, AZ
(Lat. 32°57′25″ N., long. 109°12′40″ W.)

That airspace extending from 700 feet above the surface within a 6.5-mile radius of Greenlee County Airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 33°09′00″ N., long. 109°51′00″ W.; to lat. 33°07′00″ N., long. 108°47′00″ W.; to lat. 32°27′00″ N., long. 108°15′00″ W.; to lat. 32°17′00″ N., long. 108°38′00″ W.; to lat. 32°18′00″ N., long. 109°31′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on March 18, 2013.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–06941 Filed 3–25–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0236; Airspace Docket No. 13–AGL–5]**

**RIN 2120–AA66**

## Proposed Modification of VOR Federal Airway V–345 in the Vicinity of Ashland, WI

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

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

**SUMMARY:** This action proposes to modify the legal description of VHF Omnidirectional Range (VOR) Federal airway V–345 in the vicinity of Ashland, WI. The Ashland (ASX) VOR Distance Measuring Equipment (VOR/DME) navigation aid, which forms the northern most point of the airway, has been out of service for over ten months, with a Notice to Airmen (NOTAM) published, and is scheduled to be decommissioned in 2013. The FAA is proposing this action to remove that portion of V–345 affected by the loss of service by the Ashland, WI, VOR/DME.

**DATES:** Comments must be received on or before May 10, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2013–0236 and Airspace Docket No. 13–AGL–5 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0236 and Airspace Docket No. 13–AGL–5) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2013–0236 and Airspace Docket No. 13–AGL–5." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Operations Support Group, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the description of VOR Federal airway V–345 in the vicinity of Ashland, WI. This action is necessary because the Ashland, WI, VOR/DME, which serves as the northern endpoint of the airway, has been out of service for over ten months and is scheduled to be decommissioned in 2013. The proposed change would end the airway at the Haywood, WI, VOR/DME by removing the airway segment between the Haywood, WI, VOR/DME and the Ashland, WI, VOR/DME navigation aids.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9W signed August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as

it modifies VOR Federal airway V–345 in the vicinity of Ashland, WI.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9W, Airspace Designations and Reporting Points, signed August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways*

* * * * *

**V–345 [Modified]**

From Dells, WI; INT Dells 321° and Eau Claire, WI, 134° radials; Eau Claire; to Hayward, WI.

* * * * *

Issued in Washington, DC, on March 14, 2013.

**Gary A. Norek,**

*Manager, Airspace Policy and ATC Procedures Group.*

[FR Doc. 2013–06794 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

## FEDERAL TRADE COMMISSION

## 16 CFR Part 305

**[3084–AB15]**

## Energy Labeling Rule

**AGENCY:** Federal Trade Commission ("FTC" or "Commission").

**ACTION:** Reopening of comment period.

**SUMMARY:** The Commission is reopening the comment period of its January 9, 2013 Notice of Proposed Rulemaking (NPRM) until April 1, 2013.

**DATES:** Comments must be received by April 1, 2013.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Write "Energy Label Ranges, Matter No. R611004" on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/energylabelranges* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex U), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M–8102B, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** The Commission is reopening the comment period for its January 9, 2013 (78 FR 1779) Notice of Proposed Rulemaking (NPRM) until April 1, 2013. In the NPRM, the Commission proposed to amend the Energy Labeling Rule ("Rule") (16 CFR part 305) by updating ranges of comparability and unit energy cost figures for many EnergyGuide labels. The Commission also sought comment on a proposed exemption request by the Association of Home Appliance Manufacturers (AHAM) to help consumers compare the labels on refrigerators and clothes washers after the implementation of upcoming changes to the Department of Energy test procedures for those products. On March 7, 2013, the California Investor Owned Utilities (CA IOUs), citing unforeseeable circumstances that prevented the group from filing comments by the March 1, 2013 deadline, petitioned the Commission to reopen the comment period for the Proposed Rule for the Appliance Labeling Rule. In response, the Commission reopens the comment period to April 1, 2013. This action is reasonable for it will help ensure a full record in the proceeding and should not unduly delay this proceeding.

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Energy Label Ranges, Matter No. R611004" to facilitate the organization of comments. Please note that your comment, including your name and your state, will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm*.

Because comments will be made public, they should not include any sensitive personal information, such as any individual'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. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential as provided in Section 6(f) of the Federal Trade Commission Act (FTC Act, 15 U.S.C. 46(f)), and FTC Rule 4.10(a)(2) (16 CFR 4.10(a)(2)). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled Confidential, and must comply with FTC Rule 4.9(c).

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: *https://ftcpublic.commentworks.com/ftc/energylabelranges* (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink *https://ftcpublic.commentworks.com/ftc/energylabelranges*. If this Notice appears at *http://www.regulations.gov/#!home*, you may also file an electronic comment through that Web site. The Commission will consider all comments that *regulations.gov* forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the Energy Label Ranges, Matter No. R611004 reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex U), 600 Pennsylvania Avenue NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission

is subject to delay due to heightened security precautions.

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, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

By direction of the Commission.

**Richard C. Donahue,**

*Acting Secretary.*

[FR Doc. 2013–06894 Filed 3–25–13; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 123

**[Docket No. FDA–2013–D–0269]**

## Draft Guidance for Industry on Purchasing Reef Fish Species Associated With the Hazard of Ciguatera Fish Poisoning; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance entitled "Guidance for Industry: Purchasing Reef Fish Species Associated With the Hazard of Ciguatera Fish Poisoning." The draft guidance, when finalized, will advise primary seafood processors who purchase reef fish how to minimize the risk of ciguatera fish poisoning (CFP) from fish that they distribute. The draft guidance is intended to help protect the public health by reducing the risk of CFP.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that FDA considers your comment on the draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 28, 2013.

**ADDRESSES:** Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the draft guidance to Division of Seafood Safety/Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

**FOR FURTHER INFORMATION CONTACT:** Karen Swajian, Division of Seafood Safety, Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2300.

**SUPPLEMENTARY INFORMATION:**

### I. Background

We are announcing the availability of the draft guidance entitled "Guidance for Industry: Purchasing Reef Fish Species Associated With the Hazard of Ciguatera Fish Poisoning." The draft guidance is intended for primary seafood processors who purchase reef fish such as grouper, amberjack, snapper, lionfish, king mackerel, and barracuda. The draft guidance recommends that primary seafood processors take measures to minimize the risk of CFP from fish that they distribute. This draft guidance is an update to and complements information from the guidance document entitled "Fish and Fishery Products Hazards and Controls Guidance" (the Guide) (Ref. 1), which helps the seafood processing industry develop seafood Hazard Analysis and Critical Control Point programs. The Guide identifies food safety hazards, including CFP, which are associated with fish and fishery products, and provides examples of recommended preventive measures to minimize the likelihood of the hazard's occurrence. Table 3–2 in the Guide provides a list of fish species currently associated with CFP. The draft guidance adds to the list of reef fish species associated with CFP.

The draft guidance is being issued consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent our current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

### II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

### III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*. Use the FDA Web site to find the most current version of the draft guidance.

### IV. Reference

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov*. (FDA has verified the Web site address, but we are not responsible for any subsequent changes to Web sites after this document publishes in the **Federal Register**.)

1. Food and Drug Administration, "Fish and Fishery Products Hazards and Controls Guidance," April 28, 2011, available at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/Seafood/FishandFisheriesProductsHazardsandControlsGuide/default.htm*.

Dated: March 19, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–06824 Filed 3–25–13; 8:45 am]

BILLING CODE 4160–01–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket No. USCG–2013–0114]**

**RIN 1625–AA08**

## Special Local Regulations; Red Bull Flugtag National Harbor Event, Potomac River; National Harbor Access Channel, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Coast Guard proposes to establish special local regulations during the "Red Bull Flugtag National Harbor event," to be held on the waters of the Potomac River on September 21, 2013. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. These special local regulations will establish an event area, where all persons and vessels, except those persons and vessels participating in the Flugtag event, are prohibited from entering, transiting through, anchoring in or remaining within, and a spectator area, where all vessels are prohibited from transiting in excess of wake speed, unless authorized by the Captain of the Port Baltimore or his designated representative. This action is intended to temporarily restrict vessel traffic in a portion of the Potomac River during the event.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 25, 2013.

**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, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, 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–2013–0114] 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–2013–0114) 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. Basis and Purpose

On September 21, 2013, The Peterson Companies of National Harbor, Maryland, is sponsoring the Red Bull Flugtag National Harbor event, a competition held along the Potomac River at National Harbor, Maryland. Approximately 30 competing teams will operate homemade, human-powered flying devices launched from a ramp constructed at National Harbor, located downriver from the Woodrow Wilson Memorial (I–495/I–95) Bridge, in Maryland. The competitors will be supported by sponsor-provided watercraft. The sponsor estimates 10,000 spectators during the event. The Coast Guard anticipates a large spectator vessel fleet present during the event.

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to

ensure safety of life on navigable waters of the United States during the Red Bull Flugtag National Harbor event.

**C. Discussion of Proposed Rule**

The Coast Guard proposes to establish special local regulations on specified waters of the Potomac River. The regulations will be effective from 9 a.m. to 7 p.m. on September 21, 2013. The regulated area, approximately 600 yards in length and 500 yards in width and extends across the entire width of the National Harbor Access Channel, includes all waters of the Potomac River, contained within lines connecting the following points: from the shoreline at position latitude 38°46′51″ N, longitude 077°01′31″ W, thence northerly to position latitude 38°47′02″ N, longitude 077°01′35″ W, thence easterly to position latitude 38°47′05″ N, longitude 077°01′22″ W, thence southeasterly to the shoreline at position latitude 38°46′56″ N, longitude 077°01′07″ W. An event area and a designated spectator area exist within this regulated area. The event area, where all persons and vessels, except those persons and vessels participating in the competition, are prohibited from entering, transiting through, anchoring in, or remaining within, includes all waters of the Potomac River, contained within lines connecting the following points: from the shoreline at position latitude 38°46′51″ N, longitude 077°01′31″ W, thence northerly to position latitude 38°46′52″ N, longitude 077°01′31″ W, thence easterly to position latitude 38°46′54″ N, longitude 077°01′17″ W, thence northerly to position latitude 38°46′59″ N, longitude 077°01′14″ W, thence southeasterly to the shoreline at position latitude 38°46′56″ N, longitude 077°01′07″ W. The designated spectator area, where all vessels are prohibited from transiting in excess of wake speed unless authorized by the Captain of the Port Baltimore or his designated representative and persons and vessels may request authorization to enter, transit through, anchor in, or remain within, includes all waters of the Potomac River, within lines connecting the following positions: from 38°46′53″ N, longitude 077°01′32″ W, thence northerly to latitude 38°47′02″ N, longitude 077°01′35″ W, thence easterly to position latitude 38°47′05″ N, longitude 077°01′22″ W, thence southeasterly to position latitude 38°47′02″ N, longitude 077°01′16″ W, thence southwesterly to position latitude 38°46′58″ N, longitude 077°01′18″ W, thence southwesterly to position latitude 38°46′55″ N, longitude 077°01′22″ W, thence westerly to position latitude 38°46′53″ N, longitude 077°01′32″ W.

The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Vessels intending to transit the Potomac River through the regulated area, including the National Harbor Access Channel, will only be allowed to safely transit the regulated area when the Coast Guard Patrol Commander has deemed it safe to do so. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for only 10 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the event area, without authorization from the Captain of the Port Baltimore or his designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the designated spectator area during the enforcement period; (4) persons and vessels may still enter and transit through the National Harbor Access Channel, within the regulated area during the enforcement period, with prior authorization from the Captain of the Port Baltimore or his designated representative and without loitering; and (5) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. 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 rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Potomac River encompassed within the special local regulations from 9 a.m. until 7 p.m. on September 21, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*4. Collection of Information*

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

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children From Environmental Health Risks*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves special local regulations issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) 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 100**

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

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

**Authority:** 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35–T05–0114 to read as follows:

**§ 100.35–T05–0114 Special Local Regulations for Marine Events; Potomac River, National Harbor Access Channel, MD.**

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

(1) *Regulated Area:* All waters of the Potomac River, contained within lines connecting the following points: from the shoreline at position latitude 38°46′51″ N, longitude 077°01′31″ W, thence northerly to position latitude 38°47′02″ N, longitude 077°01′35″ W, thence easterly to position latitude 38°47′05″ N, longitude 077°01′22″ W, thence southeasterly to the shoreline at position latitude 38°46′56″ N, longitude 077°01′07″ W.

(1) Event Area: All waters of the Potomac River, contained within lines connecting the following points: from the shoreline at position latitude 38°46′51″ N, longitude 077°01′31″ W, thence northerly to position latitude 38°46′52″ N, longitude 077°01′31″ W, thence easterly to position latitude 38°46′54″ N, longitude 077°01′17″ W, thence northerly to position latitude 38°46′59″ N, longitude 077°01′14″ W, thence southeasterly to the shoreline at position latitude 38°46′56″ N, longitude 077°01′07″ W.

(2) Designated Spectator Area: All waters of the Potomac River, within lines connecting the following positions: from 38°46′53″ N, longitude 077°01′32″ W, thence northerly to latitude 38°47′02″ N, longitude 077°01′35″ W, thence easterly to position latitude 38°47′05″ N, longitude 077°01′22″ W, thence southeasterly to position latitude 38°47′02″ N, longitude 077°01′16″ W, thence southwesterly to position latitude 38°46′58″ N, longitude 077°01′18″ W, thence southwesterly to position latitude 38°46′55″ N, longitude 077°01′22″ W, thence westerly to position latitude 38°46′53″ N, longitude 077°01′32″ W.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all persons and vessels participating in the Red Bull Flugtag National Harbor event under the auspices of the Marine Event Permit issued to the event sponsor and

approved by Commander, Coast Guard Sector Baltimore.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) *Special local regulations.* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant in the event, at any time it is deemed necessary for the protection of life or property.

(3) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(4) Only participants and official patrol are allowed to enter the event area.

(5) Spectators are allowed inside the regulated area only if they remain within the designated spectator area. Spectators will be permitted to anchor within the designated spectator area. No vessel may anchor within the regulated area outside the designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area, outside the event area, at a safe speed and without loitering.

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Effective period.* This section is effective from 9 a.m. until 7 p.m. on September 21, 2013.

Dated: March, 6, 2013.

**Kevin C. Kiefer,**

*Captain, U.S. Coast Guard, Captain of the Port Baltimore.*

[FR Doc. 2013–06802 Filed 3–25–13; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket Number USCG–2013–0052**

**RIN 1625–AA08**

## Special Local Regulation; Low Country Splash, Wando River, Cooper River, and Charleston Harbor, Charleston, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Coast Guard proposes to issue a special local regulation on the waters of the Wando River, Cooper River, and Charleston Harbor in Charleston, SC during the Low Country Splash in Charleston, SC, on June 1, 2013. This special local regulation is necessary to ensure the safety of participants, spectators, and the general public during the event. The special local regulation will temporarily restrict vessel traffic in a portion of the Wando River and Charleston Harbor, preventing non-participant vessels from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 25, 2013.

**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 Chief Warrant Officer Christopher Ruleman, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Christopher.L.Ruleman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, 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–2013–0052 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–2013–0052 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. Basis and Purpose**

The legal basis for the rule is the Coast Guard's Authority to establish special local regulations: 33 U.S.C 1233. The purpose of the rule is to ensure safety of life on the navigable water of the United States during the Low Country Splash.

**C. Discussion of Proposed Rule**

On Saturday, June 1, 2013, the Low Country Splash is scheduled to take place on the waters of the Wando River, Cooper River, and Charleston Harbor. The race will commence at Daniel Island Pier, transit south in the Wando River, crossing the navigational channel at Hobcaw Point and continuing South into Charleston Harbor. The race will finish at Charleston Harbor Resort Marina. The event consists of a large number of swimmers. There will be safety vessels preceding the participating swimmers, and following the last participating swimmers. This event poses significant risks to participants, spectators, and the boating public because of the large number of swimmers and recreational vessels that are expected in the area of the event. The special local regulation is necessary to ensure the safety of participants, spectators, and vessels from the hazards associated with the event.

The special local regulation will designate a temporary regulated area on the Wando River, Cooper River, and Charleston Harbor in Charleston, South Carolina. The special local regulation will be enforced from 7:00 a.m. until 10:00 a.m. on June 1, 2013. Persons and vessels may not enter, transit through, anchor in, or remain within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

The economic impact of this proposed rule is not significant for the following reasons: (1) The special local regulations will be enforced for a maximum of 3 hours for only one day; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by the Captain of the Port Charleston or a designated representative; (3) vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative may operate in the surrounding areas during the enforcement period; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. 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 rule may affect the following entities, some of which may be small entities: the owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons discussed in Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This proposed rule will not call for a new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children From Environmental Health Risks*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have 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 a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 100**

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

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

**Authority:** 33 U.S.C. 1233

■ 2. Add a temporary § 100.35T07–0052 to read as follows:

**§ 100.35T07–0052 Special Local Regulation; Low Country Splash, Wando River, Cooper River, and Charleston Harbor, Charleston, SC.**

(a) Regulated Area. The following regulated area is established as a special local regulation. All waters within a moving zone, beginning at Daniel Island Pier in approximate position 32°51′20″ N, 079°54′06″W, South along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, in approximate position 32°49′20″ N, 079°53′49″ W, South along the coast of Mt. Pleasant, S.C., to Charleston Harbor Resort Marina, in approximate position 32°47′20″ N, 079°54′39″ W. There will be a temporary Channel Closer from 0730 to 0815 on June 1, 2013 between Wando River Terminal Buoy 3 (LLNR 3305), and Wando River Terminal Buoy 5 (LLNR 3315). The zone will at all times extend 75 yards both in front of the lead safety vessel preceding the first race participants; 75 yards behind the safety vessel trailing the last race participants; and at all times extending 100 yards on either side of participating race and safety vessels. Information regarding the identity of the lead safety vessel and the last safety vessel will be provided 2 days prior to the race via broadcast notice to mariners and marine safety information bulletins.

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

(c) *Regulations.*

(1) All persons and vessels, except those participating in the Low Country Splash or serving as safety vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the

Captain of the Port Charleston or a designated representative.

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

(d) *Enforcement Date.* This rule will be enforced from 7:00 a.m. to 10:00 a.m. June 1, 2013.

Dated: March 5, 2013.

**M.F. White,**

*Captain, U.S. Coast Guard, Captain of the Port Charleston.*

[FR Doc. 2013–06799 Filed 3–25–13; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 51

**RIN 2900–AO37**

### Removal of 30-Day Residency Requirement for Per Diem Payments

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is withdrawing VA's proposed rulemaking, published in the **Federal Register** on September 27, 2012, which proposed to amend its regulations that govern VA payments to State homes for bed holds on behalf of veterans. Specifically, the regulation proposed to remove a 30-day residency requirement before VA would make such payments. VA received no significant adverse comments concerning the proposed rule or its companion substantially identical direct final rule published on the same date in the **Federal Register.** In a companion document in this issue of the **Federal Register,** we are confirming that the direct final rule became effective on November 26, 2012. Accordingly, this document withdraws as unnecessary the proposed rule.

**DATES:** The proposed rule is withdrawn as of March 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** Harold Bailey, Program Management Officer (Director of Administration), VA Health Administration Center, Purchased Care (10NB3), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420; (303) 331–7551. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In a proposed rule published in the **Federal Register** on September 27, 2012, 77 FR 59354, VA proposed to amend 38 CFR 51.43 to eliminate a requirement that a veteran must have resided in a State home for 30 consecutive days before VA will pay per diem for that veteran when there is no overnight stay. Additionally, VA published a companion substantially identical direct final rule at 77 FR 59318 on the same date. The direct final rule and proposed rule each provided a 30-day comment period that ended on October 29, 2012. No significant adverse comments were received. Members of the general public submitted two comments supporting the rulemaking.

Because no significant adverse comments were received within the comment period, VA is withdrawing the proposed rule as unnecessary. In a companion document in this issue of the **Federal Register,** VA is confirming the effective date of the direct final rule, RIN 2900–AO36, published at 77 FR 59318.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on March 20, 2013 for publication.

Dated: March 21, 2013.

**Robert C. McFetridge,**

*Director of Regulation Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2013–06829 Filed 3–25–13; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2013–0148; FRL–9793–3]**

### Approval and Promulgation of Air Quality Implementation Plans; Nevada; Regional Haze Federal Implementation Plan; Reconsideration of BART Compliance Date for Reid Gardner Generating Station

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

**ACTION:** Proposed rule; Notice of Reconsideration of Final Rule.

**SUMMARY:** EPA is granting reconsideration of the compliance date for the Best Available Retrofit Technology (BART) emission limits for oxides of nitrogen ($NO_X$) at the Reid Gardner Generating Station (RGGS) promulgated in a Federal Implementation Plan (FIP) on August 23, 2012. EPA is also proposing to extend the compliance date for the $NO_X$ emission limits applicable to Units 1, 2, and 3 at RGGS by 18 months from January 1, 2015, to June 30, 2016. We seek comment only on the aspects of the FIP specifically identified in this notice. We are not opening for reconsideration any other provisions of our FIP for RGGS or our partial approval of the Nevada Regional Haze SIP.

**DATES:** Comments must be submitted no later than May 28, 2013.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2013–0148, by one of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

(2) *Email: r9_airplanning@epa.gov.*

(3) *Mail or Deliver:* Anita Lee (Air-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Hearings:* EPA intends to hold one or more public hearings to accept oral and written comments on the proposed rulemaking. EPA will provide notice and additional details related to the hearings in the **Federal Register,** on our Web site, and in the docket.

*Docket:* The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at EPA Region 9

(*e.g.*, maps, voluminous reports, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Anita Lee, EPA Region 9, (415) 972–3958, *r9_airplanning@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we", "us", and "our" refer to EPA.

**Table of Contents**



## I. Background

### *A. Summary of Relevant EPA Actions*

On December 13, 2011, EPA signed a final rule approving all aspects of the Nevada Regional Haze SIP except for the state's BART determination for reducing $NO_X$ emissions at RGGS.[1] Due to delays associated with publication of this final rule in the **Federal Register**, the rule was not published until March 26, 2012.[2] However, an unofficial copy of the final rule was provided to all interested parties soon after signature.

On March 22, 2012, the state of Nevada indicated by letter that it intended to submit a SIP revision to EPA in September 2012, including provisions to reduce the emission limit for Unit 3 at RGGS from 0.28 pounds of $NO_X$ per million British thermal units (lb/MMBtu) to 0.20 lb/MMBtu and to require installation of controls on or before June 30, 2016.[3]

On April 12, 2012, EPA proposed to partially approve and partially disapprove the remaining portion of the Nevada Regional Haze SIP, *i.e.*, Nevada's BART determination for reducing $NO_X$ emissions at RGGS.[4] EPA proposed approval of the $NO_X$ emission limit of 0.20 lb/MMBtu for Units 1 and 2. Because the state's intended SIP revision to reduce the emission limit for Unit 3 had not yet been submitted to EPA, we proposed, among other things, disapproval of the $NO_X$ emission limit of 0.28 lb/MMBtu for Unit 3. EPA concurrently proposed a FIP, generally consistent with the state's intentions, including an emission limit for Unit 3 of 0.20 lb/MMBtu. EPA's proposed FIP included a provision requiring compliance with the BART emission limits within five years from promulgation of the final rule. EPA held two public hearings on May 3, 2012 to take comment on our proposed FIP. The comment period closed on June 4, 2012.

On August 23, 2012, EPA promulgated our final rule to approve in part, disapprove in part, and implement a FIP for the disapproved portions of the Nevada BART determination for RGGS.[5] The preamble to the final rule discusses in more detail our final action and the comments we received during the comment period for our proposal. Based on comments from EarthJustice, representing a consortium of eight non-governmental organizations, that a 5-year compliance timeframe to meet the $NO_X$ emission limit of 0.20 lb/MMBtu was excessive,[6] EPA reevaluated the compliance date for our final rulemaking. Notwithstanding an inaccurate statement in section I of the preamble to our final rule,[7] EPA noted in section II.K of the preamble that our March 26, 2012 approval of the portions of the Nevada Regional Haze SIP included the portion of the Nevada Administrative Code (NAC 445B.22096(2)(a)) requiring compliance with BART emission limits on three power plants, including RGGS, "[o]n or before January 1, 2015; or (2) [n]ot later than 5 years after approval of Nevada's state implementation plan for regional haze by the United States Environmental Protection Agency Region 9, whichever comes first."[8] Therefore, consistent with the compliance dates in the Nevada Regional Haze SIP that EPA approved on March 26, 2012, EPA finalized a compliance date in the FIP of January 1, 2015.[9]

### *B. Petition for Reconsideration*

On October 19, 2012, Nevada Energy (NV Energy, also known as Nevada Power Company) filed a petition to the Administrator for reconsideration of our August 23, 2012, final rule pursuant to section 307(d)(7)(B) of the CAA.[10] The petition addresses one issue and requests that EPA reconsider the compliance date of January 1, 2015, for meeting the final $NO_X$ emission limits of 0.20 lb/MMBtu on Units 1, 2 and 3 at RGGS. NV Energy asserts that (1) EPA erroneously adopted a January 1, 2015, deadline for Reid Gardner Generating Station, (2) EPA's decision to set the January 1, 2015, compliance date without having proposed it deprived NV Energy of the ability to comment on a shorter compliance period, and (3) EPA's adoption of the January 1, 2015, compliance date was arbitrary and capricious because EPA failed to consider the impact of administrative

[1] The Regional Haze Rule (RHR), BART, and the Nevada Regional Haze SIP are described elsewhere in greater detail. See, for example, EPA's proposed approval of the Nevada Regional Haze SIP on June 22, 2011 (76 FR 36450).

[2] 77 FR 17334.

[3] See letter dated March 22, 2012 from Michael Elges, Deputy Administrator of the Nevada Division of Environmental Protection, to Deborah Jordan, Director of the Air Division at EPA Region 9, re: Proposed Amendment to Nevada's 2009 Regional Haze State Implementation Plan.

[4] 77 FR 21896.

[5] 77 FR 50936.

[6] See letter dated June 4, 2012 from Suma Peesapati, EarthJustice, to Thomas Webb, EPA Region 9, re: Approval and Promulgation of Air Quality Implementation Plans; State of Nevada; Regional Haze State Implementation Plan (Docket ID No. EPA–R09–OAR–2011–0130).

[7] In section I of the preamble to the final rule, EPA incorrectly stated that we did not take action on the schedules for compliance for RGGS in our March 26, 2012 final rulemaking. See 77 FR 50936 (August 23, 2012).

[8] EPA's final rulemaking on March 26, 2012 approved portions of the NAC, including "445B.22096, excluding the $NO_X$ emission limits and control types in sub-paragraph (1)(c)." See Table 1 in 40 CFR 52.1470(c).

[9] On October 11, 2012, the Nevada State Environmental Commission adopted a revised regulation from the Nevada Division of Environmental Protection that, among other things, extended the compliance date for achieving BART emission limits for $NO_X$ at RGGS from January 1, 2015 to June 30, 2016. See information available at *http://www.sec.nv.gov/main/hearing_1012.htm*.

[10] See letter dated October 19, 2012 from Samuel Boxerman, Sidley Austin LLP representing Nevada Energy, to Lisa P. Jackson, Administrator, US EPA, re: Petition for Reconsideration of EPA's Final Rule entitled, "Approval and Promulgation of Air Quality Implementation Plans; Nevada; Regional Haze State and Federal Implementation Plans; BART Determination for Reid Gardner Generating Station."

delays in issuing the final rule before setting the compliance deadline.

*C. Supplemental Information*

In a letter dated January 31, 2013, NV Energy submitted supplemental information to EPA describing the steps necessary to comply with the BART emission limits for $NO_X$ on Units 1, 2 and 3 at RGGS, including required regulatory approvals, design, procurement, construction, commissioning, and testing of the new air pollution controls that NV Energy would need to install to comply with BART.[11] Based on the amount of time required for the necessary steps, NV Energy states that the January 1, 2015 deadline originally included in the Nevada Regional Haze SIP, and finalized in EPA's FIP for RGGS, is not achievable, but demonstrates that the affected units at RGGS could meet the BART emission limits for $NO_X$ by June 30, 2016, based on an expeditious and compressed schedule for compliance.

## II. EPA's Proposed Action

In today's action, EPA is granting reconsideration of the compliance date in our FIP for achieving the $NO_X$ emission limits at RGGS and proposing to extend the compliance date by 18 months from January 1, 2015, to June 30, 2016. EPA is granting reconsideration of the compliance date based on one of the arguments provided by NV Energy in the October 19, 2012, petition for reconsideration. Specifically, EPA agrees that NV Energy may not have had an adequate opportunity to comment on the final compliance date for the $NO_X$ emission limits because we had proposed a 5-year period for compliance. Therefore, EPA is granting the petition for reconsideration from NV Energy.

EPA is proposing to extend the compliance date based on our review of the supplemental information NV Energy provided to EPA by letter dated January 31, 2013. The information NV Energy submitted justifies our proposed finding that compliance by January 2015 is not achievable, and we are proposing to extend the compliance date for meeting the $NO_X$ emission limits on Units 1, 2 and 3 at RGGS to June 30, 2016.

*A. Justification for Proposing To Extend Compliance Date*

In its letter dated January 31, 2013, NV Energy sets forth its plans to install multiple control technologies to meet emission limits for $NO_X$ established as BART. NV Energy will install new advanced low-$NO_X$ burners coupled with over fire air (LNB/OFA), new selective non-catalytic reduction (SNCR) systems, and a new neural network control system, as well as modify the existing burner management system and combustion control system (BMS/CCS). NV Energy has contracted with Sargent and Lundy (S&L), an engineering firm, to develop and manage the installation of this BART air pollution control project to reduce emissions of $NO_X$ at RGGS.

This project, as documented in a Gantt chart created by S&L and submitted to EPA by NV Energy, requires detailed engineering, procurement, construction, commissioning, tuning, and testing of the new control technologies, as well as regulatory approvals from the Nevada Public Utilities Commission and Nevada Division of Environmental Protection (NDEP).

NV Energy states that, if all necessary activities were conducted in sequence, final installation and operation of the new air pollution controls would require 77 months (over six years); however, NV Energy and S&L have developed a compressed 42-month (three and one-half year) schedule set forth in the Gantt chart in order to complete the project by June 30, 2016. In its letter, NV Energy states that as of December 31, 2012, it has invested $1.9 million on the project for engineering and design, and intends to initiate engineering and procurement of the LNB/OFA in early 2013.

The LNB/OFA combustion controls reduce the amount of $NO_X$ formed during combustion by controlling the airflow and temperature during combustion.[12] As such, the design of LNB/OFA must occur before the design of the SNCR, a post-combustion control that requires detailed fluid dynamic modeling of combustion to ensure that the placement of nozzles to inject the ammonia or urea occurs at the most appropriate locations (where the flue gas is within a prescribed temperature range) to optimize emission reductions of $NO_X$.[13]

NV Energy further states that modifications to the existing BMS/CCS first require a completed design for the LNB/OFA, and the specifications for the neural network require knowledge of what modifications will be made to the existing BMS/CCS. This information means that, although some tasks can be conducted simultaneously, many tasks are dependent on the completion of other tasks and must be staged sequentially.

The information provided by NV Energy shows that the design, procurement, and fabrication of the multiple air pollution controls are scheduled to occur from 2013 through 2015. Construction of controls on Units 1, 2 and 3 is scheduled to be staged over 2015 and 2016, including three to six months of pre-outage construction for each unit, two-month outages for each unit, four-month periods for tuning, and one-month periods for testing for each of the three units.

In total, NV Energy expects to complete the installation of all air pollution controls to meet the BART limits in 42 months, an average of 14 months per unit. The Institute of Clean Air Companies estimates that the installation of SNCR typically requires 10 to 13 months, and typical deployment of LNB requires six to eight months.[14] The combination of LNB and SNCR may then be expected to require 16 to 21 months. Based on the schedule provided by NV Energy and the anticipated timeframe requiring an average of 14 months per unit for the design, procurement, construction, commissioning, and testing of LNB/OFA, SNCR, a neural network, and modifications to the BMS/CCS, EPA considers the 42-month schedule for RGGS to comply with the BART limits for $NO_X$ to be as expeditious as practicable, and a deadline of January 1, 2015 to be not practically achievable.[15] Therefore, EPA is proposing to extend the compliance timeframe for compliance with the $NO_X$ limits of 0.20 lb/MMBtu at RGGS by 18 months, from January 1, 2015, to June 30, 2016.

*C. Compliance Date Extension Does Not Interfere With Attainment or Reasonable Further Progress*

The CAA requires that any revision to an implementation plan shall not be approved by the Administrator "if the revision would interfere with any

[11] See letter dated January 31, 2013 from Starla Lacy, Executive, Environmental, Health, and Safety at NV Energy to Anita Lee, US EPA Region 9, re: Nevada Regional Haze State Implementation Plan, Compliance Deadline for Units 1, 2, & 3 at Reid Gardner Generating Station.

[12] See, for example, EPA's Technical Bulletin on $NO_X$ formation and control, available at *http://www.epa.gov/ttn/catc/dir1/fnoxdoc.pdf*.

[13] *Id.*

[14] Institute of Clean Air Companies, *Typical Installation Timelines for $NO_X$ Emissions Control* technologies on Industrial Sources, December 4, 2006.

[15] Pursuant to CAA sections 169A(b)(2)(A and (g)(4), sources must procure, install, and operate BART as expeditiously as practicable, but in no event later than five years after the date of approval of a SIP or promulgation of a FIP.

applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the CAA]." [16]

EPA has promulgated health-based standards, known as the national ambient air quality standards (NAAQS), for seven pollutants, including $NO_2$, a component of $NO_X$, and pollutants such as ozone and particulate matter with a diameter less than or equal to 2.5 micrometers ($PM_{2.5}$), that are formed in the atmosphere from reactions between $NO_X$ and other pollutants.[17] Using a process that considers air quality data and other factors, EPA designates areas as "nonattainment" if those areas cause or contribute to violations of a NAAQS. Reasonable further progress, as defined in section 171 of the CAA, is related to attainment and means "such annual incremental reductions in emissions of the relevant air pollutant * * * for the purpose of ensuring attainment of the applicable [NAAQS]."

RGGS is located in Clark County, Nevada. Portions of Clark County (the Las Vegas Valley) have previously been designated nonattainment for $PM_{10}$, carbon monoxide, and the 1997 8-hour ozone standard. Clark County is now in attainment with the NAAQS for carbon monoxide and ozone.[18] RGGS is not located in the nonattainment areas for $PM_{10}$. The plans developed by Clark County, in part to satisfy a requirement for redesignation from nonattainment to attainment, and approved by EPA, do not rely on additional emission reductions of $NO_X$ at RGGS to ensure continued attainment with the carbon monoxide or the 1997 8-hour ozone standards. Therefore, an 18-month extension, from January 1, 2015, to June 30, 2016, in the compliance date for RGGS to meet the BART limit for $NO_X$ will not interfere with attainment or reasonable further progress for any air quality standard.

[16] See section 110(l) of the CAA.

[17] The other pollutants are sulfur dioxide, carbon monoxide, lead, and $PM_{10}$.

[18] See: "Determination of Attainment for $PM_{10}$ for the Las Vegas Valley Nonattainment Area, NV," 75 FR 45485 (August 3, 2012); "Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Nevada; Redesignation of Las Vegas Valley to Attainment for the Carbon Monoxide Standard," 75 FR 59090 (September 27, 2010); and "Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Nevada; Redesignation of Clark County to Attainment for the 1997 8-Hour Ozone Standard," 78 FR 1149 (January 8, 2013).

*D. Compliance Date Extension Does Not Interfere With Any Other Applicable Requirement of the CAA*

The other requirements of the CAA that are applicable to RGGS are the visibility protection requirements for class I Federal areas under section 169A, *i.e.*, BART and a long-term strategy for making reasonable progress toward meeting the national goal of restoring visibility at class I Federal areas to natural conditions.[19]

The CAA requires that the procurement, installation, and operation of BART be as expeditious as practicable but in no event later than five years after the date of approval of a SIP or promulgation of a FIP.[20] Based on the information described in section II.B of this notice, EPA is proposing to determine that a date of June 30, 2016, to comply with the $NO_X$ limits previously determined as BART for RGGS is as expeditious as practicable and within five years of the effective date of EPA's FIP for RGGS.[21] Therefore, the 18-month extension we are proposing today will not interfere with the BART compliance requirement of the CAA.

Nevada's Regional Haze SIP included a long-term strategy for making reasonable progress toward restoring visibility at the Jarbidge Wilderness Area to natural conditions by 2064. The CAA defines long-term as 10 to 15 years and Nevada's long-term strategy, submitted to EPA in 2009, includes emission reductions and visibility improvements that are expected by 2018.[22] Because the proposed compliance date of June 30, 2016, occurs within the period of the first long-term strategy, *i.e.*, prior to 2018, the 18-month extension we are proposing will not interfere with the long-term strategy requirement of the CAA.

## III. Administrative Requirements

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

This action proposes to extend the compliance date for a single source. This type of action is exempt from review under Executive Orders (EO) 12866 (58 FR 51735, October 4, 1993) and EO 13563 (76 FR 3821, January 21, 2011).

[19] CAA section 169A(b)(2)(A) and (B).

[20] CAA sections 169A(b)(2)(A) and (g)(4).

[21] The effective date of the final FIP is September 24, 2012. See 77 FR 50936 (August 23, 2012). Five years after the effective date is September 24, 2017.

[22] See CAA section 169A(b)(2)(B) and Section 7 of the Nevada Regional Haze SIP.

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). Because the proposed action merely extends a compliance date, it does not impose an information collection burden and the Paperwork Reduction Act does not apply.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The owner of the affected units at Reid Gardner Generating Station, Nevada Energy, also known as Nevada Power Company, is not a small entity and the extended compliance date being proposed today reduces the burden on this entity in general. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (DC Cir. 1985). We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act (UMRA)*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal

governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule merely proposes an 18-month extension of a compliance date. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule does not impose regulatory requirements on any government entity.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action proposes an 18-month extension of a compliance date. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

Under Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this proposed rule may have tribal implications because the Reid Gardner Generating Station is located adjacent to reservation lands of the the Moapa Band of Paiute Indians. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

EPA consulted with tribal officials early in the process of developing regulations related to Reid Gardner Generating Station to permit them to have meaningful and timely input into its development. During the comment period for prior EPA actions related to the Nevada Regional Haze SIP and EPA's FIP for RGGS, the Moapa Band of Paiute Indians has raised concerns to EPA about the environmental impacts of this facility. For those previous rulemakings, EPA consulted the Moapa Band regarding these concerns and visited the reservation and the facility. Additional details of our consultation with the Moapa Band are provided in section IV.F of our final rulemaking published on August 23, 2012 (77 FR 50936). For this proposed action to extend the compliance date for $NO_X$ at RGGS by 18 months, we will continue to consult with the Moapa Band as we proceed with this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This proposed action addresses regional haze and visibility protection.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is exempt under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, 12 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

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

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule does not change any applicable emission limit for the Reid Gardner Generating Station. This proposed rule merely extends the compliance date for a single pollutant by 18 months.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Nitrogen Dioxide.

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

Dated: March 15, 2013.

**Bob Perciasepe,**

*Acting Administrator.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 52—[AMENDED]**

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

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

■ 2. In section § 52.1488 revise paragraph (f)(3) to read as follows:

**§ 52.1488 Visibility protection.**

* * * * *

(f) * * *

(3) *Compliance date.* The owners and operators subject to this section shall comply with the emission limitations and other requirements of this section by June 30, 2016, and thereafter.

* * * * *

[FR Doc. 2013–06756 Filed 3–25–13; 8:45 am]

**BILLING CODE 6560–50–P**

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 552 and 538

**[OMB Control No. 3090–00XX; Docket 2012–0001; Sequence 21]**

### General Services Administration Acquisition Regulation; Submission for OMB Review; Modifications 552.243–72 (Multiple Award Schedules)

**AGENCY:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Notice of request for public comments on an information collection requirement for an OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement regarding the Modifications (Multiple Award Schedule) clause.

**DATES:** Submit comments on or before: April 25, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dana Munson, General Services Acquisition Policy Division, GSA, (202) 357–9652 or email *Dana.Munson@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite information collection 3090–00XX.

**ADDRESSES:** Submit comments identified by Information Collection 3090–00XX, Modifications, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090–00XX, Modifications," under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–00XX, Modifications." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–00XX, Modifications," on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–00XX, Information Collection 3090–00XX, Modifications.

*Instructions:* Please submit comments only and cite Information Collection 3090–00XX, Modifications, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**SUPPLEMENTARY INFORMATION:**

#### A. Purpose

GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add clause 552.243–72 Modifications (Multiple Award Schedules). Under the modifications clause, vendors may request a contract modification by submitting a request to the Contracting Officer for approval. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

#### B. Discussion and Analysis

A notice for this collection was published in the **Federal Register** at 77 FR 74631, on December 17, 2012. One comment was received.

*Comment:* The commenter suggested that GSA increase the estimated burden hours per response to reflect the additional time required for complex modification requests. Further, the commenter stated that the number of estimated respondents per year be reduced, based on the logic that companies with zero sales under their contracts are not likely to submit modification requests.

*Response:* In calculating the current estimate of five burden hours per response, GSA has taken into consideration that modification requests can range from simple administrative changes to more complex changes involving the award of additional products and services. Additionally, the current estimate of 20,500 respondents per year is based on the total number of contracts awarded under the Federal Supply Schedule program, and is utilized consistent with other Federal Supply Schedule burden calculations for clauses and provisions applicable to all Federal Supply Schedule contracts. As a result, no change to the burden estimate for this collection was made.

#### C. Annual Reporting Burden

*Respondents:* 20,500.
*Responses per Respondent:* 3.
*Total Responses:* 61,500.
*Hours per Response:* 5.
*Total Burden Hours:* 307,500.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417; telephone (202) 501–4755. Please cite OMB Control No. 3090–00XX, "Modifications" in all correspondence.

Dated: March 20, 2013.

**Joseph A. Neurauter,**

*Director, Office of Acquisition Policy, Senior Procurement Executive.*

[FR Doc. 2013–06860 Filed 3–25–13; 8:45 am]

**BILLING CODE 6820–61–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 553

**[NHTSA–2013–0042]**

**RIN 2127–AL32**

### Direct Final Rulemaking Procedures

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** NHTSA is proposing to establish direct final rulemaking (DFR) procedures for use in adopting amendments to its regulations on which no adverse public comment is expected by the agency. Under these procedures, NHTSA would issue a direct final rule adopting amendments that become effective a number of days (specified in the rule) after the date of publication of the rule in the **Federal Register**, unless NHTSA receives written adverse comment(s) or written notice of intent to submit adverse comment(s) by the specified date. Adoption of these new procedures would expedite the promulgation of routine and noncontroversial rules by reducing the time and resources necessary to develop, review, clear and publish separate proposed and final rules. NHTSA would not use direct final rule procedures for complex or controversial issues.

**DATES:** Written comments must be received by May 28, 2013. Comments received after that date will be considered to the extent possible.

**ADDRESSES:** Docket: For access to the docket to submit comments, read background documents including those referenced in this document, or to read comments received, go to *http://www.regulations.gov* and search by Docket ID number NHTSA–2013–0042 at any time. Follow the online instructions for submitting comments. For hand delivery of comments, go to the ground floor, room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form for all 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 the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Lily Smith, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone: (202) 366–2992.

**SUPPLEMENTARY INFORMATION:**

## Background

On January 30, 2004, the Office of the Secretary of Transportation (OST) published a final rule establishing DFR procedures[1] in order to expedite the process for non-controversial actions within that office. Several operating administrations within DOT have since established their own DFR procedures.[2] NHTSA believes similar provisions would be useful to its rulemaking activities.

Notice and comment rulemaking procedures are not required under the Administrative Procedure Act (APA) (5 U.S.C. 553) when an agency has good cause not to use them, such as when they would be unnecessary.[3] NHTSA is proposing to use the DFR process when the action to be taken is not anticipated to generate adverse comment, and therefore, providing notice and opportunity for comment would not be necessary. NHTSA believes this procedural option would expedite the issuance of, and thereby save time and agency resources on, rules that are not controversial.

NHTSA would not use direct final rule procedures for complex or controversial issues.

## Procedure for Direct Final Rulemaking

NHTSA proposes to use the DFR process for rules that the agency determines are not controversial and therefore unlikely to receive adverse comment. The agency anticipates that it would be able to make this determination based on experience with prior rulemakings and/or technical or policy assessments of the likely impacts of the rule, if any. NHTSA would consider a comment to be adverse if it were critical of the rule's adoption or any provision of the rule, or suggested a change to the rule. NHTSA would not consider frivolous or irrelevant comments to be adverse. NHTSA would also not consider a comment recommending additional actions or changes to be adverse, unless the comment also stated why the DFR would be ineffective without the additional action or change.

NHTSA anticipates that a DFR might be appropriate when the agency seeks to make the following types of changes: (1) Non-substantive amendments, such as clarifications or corrections, to an existing rule; (2) updates to existing forms or rules, such as incorporations by reference of the latest technical standards; (3) changes affecting NHTSA's internal procedures, such as filing requirements and rules governing inspection and copying of documents; (4) minor substantive rules or changes to existing rules on which the agency does not expect adverse comment.

If NHTSA decided a DFR is the appropriate procedure for an action, the agency would publish the final rule in the **Federal Register**. The preamble to the rule would describe the specific actions the agency is taking, along with any anticipated impacts, and explain why the agency does not expect adverse comment to those actions. The preamble would state that unless written adverse comment or written notice of intent to submit adverse comment were received, the rule would become effective on the date specified after publication in the **Federal Register**.

NHTSA would provide sufficient time to allow for public comment on its DFRs. NHTSA anticipates that it would allow 30 days for submission of an adverse comment (or statement of intent to submit an adverse comment) on a DFR, and that a DFR would go into effect 60 days after publication in the **Federal Register**. NHTSA might use a longer comment period, or a longer time between publication and the effective date, if the agency determined that it was necessary.

If either written adverse comment or written notice of intent to submit adverse comment were received, NHTSA would withdraw the DFR either in whole or in part (i.e., with respect to those parts on which adverse comment was received). If the agency decided to pursue further a provision on which adverse comment was received, the agency would publish a subsequent notice of proposed rulemaking in the **Federal Register** and provide another opportunity for comment on that provision.

If no adverse comment or notice of intent to submit adverse comment were received on the DFR, NHTSA would publish another **Federal Register** notice, generally within 15 days after the comment period closes, indicating that the DFR did not receive adverse comment and would become effective on the specified date.

NHTSA believes that the time and resources that would be involved in withdrawing a DFR in whole or part and issuing a subsequent notice of proposed rulemaking with a second comment period would induce the agency to evaluate carefully whether the DFR process is appropriate for a given action.

In accordance with the above, NHTSA is proposing to also amend 49 CFR Sections 553.14 and 553.23, which describe the content specifications and consideration of comments for proposed rules, to apply to direct final rules. This would ensure that direct final rules provide the same level of notice and consideration of public input as would a proposed rule.

## Statutory and Executive Orders

### *Executive Orders 12866 and 13563*

NHTSA has determined that this action is not a significant regulatory action under Executive Orders 12866 and 13563, or under the Department's Regulatory Policies and Procedures. There are no costs associated with the proposed rule. There would be some cost savings in **Federal Register** publication costs and efficiencies for the public and NHTSA personnel in eliminating duplicative reviews.

### *Regulatory Flexibility Act*

NHTSA certifies that this rule, if adopted, would not have a significant impact on a substantial number of small entities.

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[1] 69 FR 4455.

[2] *See* 70 FR 67318 (FTA), 72 FR 10086 (FRA), and 75 FR 29915 (FMCSA).

[3] 5 U.S.C. 553(b)(B). Good cause may also exist where notice and comment procedures would be impracticable or contrary to the public interest.

*Executive Order 13132*

NHTSA does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment.

*Paperwork Reduction Act*

The proposed rule does not contain any information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*Unfunded Mandates Reform Act of 1995*

NHTSA has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

*Privacy Act*

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For more information on DOT's implementation of the Privacy Act, please visit: *http://www.dot.gov/privacy*.

**List of Subjects in 49 CFR Part 553**

Rulemaking Procedures.

For the reasons set forth in the preamble, the National Highway Traffic Safety Administration proposes to amend 49 CFR part 553 of the Code of Federal Regulations as follows:

## PART 553—RULEMAKING PROCEDURES

■ 1. The authority citation is revised to read 49 U.S.C. 322, 1657, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33102, 33103, and 33107; delegation of authority at 49 CFR 1.95.

■ 2. Add § 553.14 to Subpart B to read as follows:

### § 553.14 Direct final rulemaking.

If the Administrator, for good cause, finds that notice is unnecessary, and incorporates that finding and a brief statement of the reasons for it in the rule, a direct final rule may be issued according to the following procedures.

(a) Rules that the Administrator judges to be non-controversial and unlikely to result in adverse public comment may be published as direct final rules. These may include rules that:

(1) Are non-substantive amendments, such as clarifications or corrections, to an existing rule;

(2) Update existing forms or rules, such as incorporations by reference of the latest technical standards;

(3) Affect NHTSA's internal procedures, such as filing requirements and rules governing inspection and copying of documents;

(4) Are minor substantive rules or changes to existing rules on which the agency does not expect adverse comment.

(b) The **Federal Register** document will state that any adverse comment or notice of intent to submit adverse comment must be received in writing by NHTSA within the specified time after the date of publication of the direct final rule and that, if no written adverse comment or written notice of intent to submit adverse comment is received in that period, the rule will become effective a specified number of days after the date of publication of the direct final rule.

(c) If no written adverse comment or written notice of intent to submit adverse comment is received by NHTSA within the specified time after the date of publication in the **Federal Register**, NHTSA will publish a notice in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If NHTSA receives any written adverse comment or written notice of intent to submit adverse comment within the specified time after publication of the direct final rule in the **Federal Register**, the agency will publish a notice withdrawing the direct final rule, in whole or in part, in the final rule section of the **Federal Register**. If NHTSA decides to proceed with a provision on which adverse comment was received, the agency will publish a notice of proposed rulemaking in the proposed rule section of the **Federal Register** to provide another opportunity to comment.

(e) An "adverse" comment, for the purpose of this subpart, means any comment that NHTSA determines is critical of any provision of the rule, suggests that the rule should not be adopted, or suggests a change that should be made in the rule. A comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule is not adverse.

■ 3. In § 553.15, revise paragraphs (a), (b)(1) and (b)(3) to read as follows:

### § 553.15 Contents of notices of proposed rulemaking and direct final rules.

(a) Each notice of proposed rulemaking, and each direct final rule, is published in the **Federal Register**, unless all persons subject to it are named and are personally served with a copy of it.

(b) * * *

(1) A statement of the time, place, and nature of the rulemaking proceeding;

* * * * *

(3) A description of the subjects and issues involved or the substance and terms of the rule;

* * * * *

■ 4. Revise § 553.23 to read as follows:

### § 553.23, Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal or direct final rule. Late filed comments will be considered to the extent practicable.

Issued in Washington, DC on March 19, 2013, under authority delegated in 49 CFR part 1.95.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2013–06724 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### 49 CFR Part 1540

**[Docket No. TSA–2013–0004]**

**RIN 1652–AA67**

## Passenger Screening Using Advanced Imaging Technology

**AGENCY:** Transportation Security Administration, DHS.

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

**SUMMARY:** The Transportation Security Administration (TSA) is proposing to revise its civil aviation security regulations to clarify that TSA may use advanced imaging technology (AIT) to screen individuals at security screening checkpoints. This proposed rule is issued to comply with a decision of the U.S. Court of Appeals for the District of Columbia Circuit, which ordered TSA to engage in notice-and-comment rulemaking on the use of AIT for screening. The Court decided that TSA should provide notice and invite comments on the use of AIT technology for primary screening.

**DATES:** Submit comments by June 24, 2013.

**ADDRESSES:** You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a

government-wide, electronic docket management system, using any one of the following methods:

*Electronically:* You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

*Mail, In Person, or Fax:* Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; fax (202) 493–2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

**FOR FURTHER INFORMATION CONTACT:** Chawanna Carrington, Project Manager, Passenger Screening Program, Office of Security Capabilities, Transportation Security Administration, 701 South 12th Street, Arlington, VA 20598–6016; telephone: (571) 227–2958; facsimile: (571) 227–1931; email: *Chawanna.Carrington@tsa.dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. See **ADDRESSES** above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file all comments to our docket address, as well as items sent to the address or email under **FOR FURTHER INFORMATION CONTACT**, in the public docket, except for comments containing confidential information and sensitive security information (SSI).[1] Should you wish your personally identifiable information redacted prior to filing in the docket, please so state. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

## Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the FOIA regulations of the Department of Homeland Security (DHS) found in 6 CFR part 5.

## Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual who submitted the comment (or signed the comment, if an association, business, labor union, etc., submitted the comment). You may review the applicable Privacy Act System of Records Notice published in the **Federal Register** on April 11, 2000 (65 FR 19477) and modified on January 17, 2008 (73 FR 3316).

You may review TSA's electronic public docket on the Internet at *http://www.regulations.gov*. In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue SE., Washington, DC 20590.

## Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the electronic FDMS Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Web site at *http://www.tsa.gov* and accessing the link for "Stakeholders" at the top of the Web page, selecting the link for "Research Center" in the left column, and then the link for "Security Regulations" in the left column.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

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[1] "Sensitive Security Information" or "SSI" is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

## I. Executive Summary

### A. Purpose of the Regulation

TSA is proposing to amend its regulations to specify that screening and inspection of an individual conducted to control access to the sterile area of an airport or to an aircraft may include the use of advanced imaging technology (AIT), also referred to as whole body imaging, as a screening method. Terrorists have repeatedly attempted to cause harm with the aid of weapons and devices smuggled aboard aircraft. It is the primary mission of DHS to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism.[2] The use of AIT is an important tool in accomplishing that mission.

This NPRM is being issued to comply with the decision rendered by the U.S. Court of Appeals for the District of Columbia Circuit in *Electronic Privacy Information Center* v. *U.S. Department of Homeland Security*.[3] In that case, the U.S. Court of Appeals directed TSA to conduct notice-and-comment rulemaking on the use of AIT as a screening method for passengers. The Court did not require TSA to stop using AIT to screen passengers, explaining that ' vacating the present rule would severely disrupt an essential security operation," and that the rule is "otherwise lawful."[4]

### B. Summary of Major Provisions

The proposed rule codifies the use of AIT to screen individuals at aviation security screening checkpoints. This NPRM discusses the following points regarding the use of AIT:

- The threat to aviation security has evolved to include the use of non-metallic explosives, non-metallic explosive devices, and non-metallic weapons.
- AIT currently provides the best available opportunity to detect non-metallic anomalies[5] concealed under clothing without touching the passenger and is an essential component of TSA's security layers.
- Congress has authorized TSA to procure and deploy AIT for use at security checkpoints.
- TSA implemented stringent safeguards to protect the privacy of passengers undergoing AIT screening when AIT units were initially deployed and enhanced privacy even further by upgrading its millimeter wave AIT units with automatic target recognition (ATR) software. An AIT unit equipped with ATR creates a generic outline, not an image of a specific individual, and eliminates the need for operator interpretation of an image. TSA is removing all units that are not equipped with ATR from its checkpoints by May 31, 2013.[6]
- The safety of the two types of AIT equipment initially deployed was tested by TSA and independent entities and all results confirmed that both the backscatter and millimeter wave technologies are safe because the x-ray or radio waves emissions are well below applicable safety and health standards, and are so low as to present a negligible risk to passengers, airline crew members, airport employees, and TSA employees.[7]
- TSA has provided a detailed explanation of AIT procedures on its webWeb site at *www.tsa.gov/ait-how-it-works* (which allows opt out procedures for passengers) and posted signs at airport checkpoints to notify passengers about AIT and alternative screening procedures. The level of acceptance by passengers has been high; the vast majority of passengers do not object to AIT screening.
- TSA's experience in using AIT confirms that it is effective in detecting small, non-metallic items hidden underneath passenger clothing that could otherwise escape detection. When an item is detected, additional screening must be performed to determine whether the item is prohibited.

### C. Costs and Benefits

When estimating the cost of a rulemaking, agencies typically estimate future expected costs imposed by a regulation over a period of analysis. As the AIT machine life cycle from deployment to disposal is eight years, the period of analysis for estimating the cost of AIT is eight years. However, as AIT deployment began in 2008, there are costs that have already been borne by TSA, the traveling public, and airport operators that were not due to this rule. Consequently, in the Initial Regulatory Impact Analysis for this rule, TSA is reporting the AIT-related costs that have already occurred (years 2008–2011), while considering the additional cost of this rulemaking to be years 2012–2015. By reporting the costs that have already happened and estimating future costs in this manner, TSA considers and discloses the full eight-year life cycle of AIT deployment.

TSA reports that the net cost of AIT deployment from 2008–2011 has been $841.2 million (undiscounted) and that TSA has borne over 99 percent of all costs related to AIT deployment. TSA projects that from 2012–2015 net AIT-related costs will be approximately $1.5 billion (undiscounted), $1.4 billion at a three percent discount rate, and $1.3 billion at a seven percent discount rate. During 2012–2015, TSA estimates it will also incur over 98 percent of AIT-related costs with equipment and personnel costs being the largest categories of expenditures. Table 1 below reports the costs that have already occurred (2008–2011) by cost category, while Table 2 shows the additional costs TSA is attributing to this rulemaking (2012–2015). Table 3 shows the total cost of AIT deployment from 2008 to 2015.

TABLE 1—NET COST[8] SUMMARY OF AIT DEPLOYMENT FROM 2008–2011 BY COST COMPONENT

[Costs already incurred in $ thousands—undiscounted]

| Year | Passenger opt outs | Industry utilities | TSA costs | | | | Total |
|---|---|---|---|---|---|---|---|
| | | | Personnel | Training | Equipment | Utilities | |
| 2008 | $7.0 | $5.7 | $14,689.1 | $389.5 | $37,425.2 | $18.8 | $52,535.3 |
| 2009 | 32.2 | 5.7 | 15,618.6 | 88.0 | 42,563.6 | 20.4 | 58328.5 |
| 2010 | 262.2 | 158.2 | 247,566.7 | 5,332.8 | 119,105.4 | 241.4 | 372,666.6 |

[2] 49 U.S.C. 114.

[3] 653 F.3d 1 (DC Cir. 2011).

[4] *Id* at 8.

[5] An anomaly is any object that would not ordinarily be found on someone's person.

[6] The manufacturer of these units will bear the costs of removal and storage. TSA is following the Federal Management Regulation process to transfer and donate this equipment to other DHS components and then to other Federal, State, and local government agencies, if necessary. TSA will not hold any public auction or sale and will not donate or abandon any of the equipment to the public in the interests of security.

[7] See, *http://www.tsa.gov/ait-safety*.

TABLE 1—NET COST[8] SUMMARY OF AIT DEPLOYMENT FROM 2008–2011 BY COST COMPONENT—Continued

[Costs already incurred in $ thousands—undiscounted]

| Year | Passenger opt outs | Industry utilities | TSA costs | | | | Total |
|---|---|---|---|---|---|---|---|
| | | | Personnel | Training | Equipment | Utilities | |
| 2011 | 1,384.2 | 186.7 | 284,938.7 | 15,354.4 | 55,567.2 | 269.1 | 357,700.2 |
| Total | 1,685.6 | 356.3 | 562,813.0 | 21,164.7 | 254,661.3 | 549.6 | 841,230.6 |

[8] TSA removed costs related to Walk Through Metal Detectors (WTMDs) that would have occurred regardless of AIT deployment to obtain an estimated net cost for AIT.

TABLE 2—COST SUMMARY (NET COST OF AIT DEPLOYMENT 2012–2015) BY COST COMPONENT

[AIT Costs in $ thousands]

| Year | Passenger Opt Outs | Industry Utilities | TSA Costs | | | | Rapiscan Removal | Total |
|---|---|---|---|---|---|---|---|---|
| | | | Personnel | Training | Equipment | Utilities | | |
| 2012 | $2,716.5 | $325.7 | $375,886.9 | $12,043.0 | $116,499.3 | $473 | $0.0 | $507,924.4 |
| 2013 | 3,991.7 | 329.3 | 280,844.3 | 4,277.5 | 51,588.8 | 324.4 | 1,809.6 | 343,165.7 |
| 2014 | 4,238.7 | 312.0 | 263,677.6 | 4,190.5 | 51,397.8 | 317.7 | 0.0 | 324,134.2 |
| 2015 | 5,611.8 | 300.3 | 278,580.2 | 4,144.2 | 68,052.6 | 365.7 | 0.0 | 357,054.9 |
| Total | 16,558.7 | 1,267.3 | 1,198,969.0 | 24,655.2 | 287,538.5 | 1,480.9 | 1,809.6 | 1,532,279.2 |
| Discounted 3% | 15,265.0 | 1,178.9 | 1,118,459.3 | 23,810.2 | 269,233.7 | 1,380.7 | 1,705.7 | 1,431,033.5 |
| Discounted 7% | 13,766.6 | 1,075.8 | 1,024,344.7 | 22,048.8 | 247,810.4 | 1,263.8 | 1,580.6 | 1,311,890.7 |

TABLE 3—COST SUMMARY (NET COST OF AIT DEPLOYMENT 2008–2015) BY COST COMPONENT

[AIT Costs in $ thousands—undiscounted]

| Year | Passenger opt outs | Industry tilities | TSA costs | | | | Rapiscan removal | Total |
|---|---|---|---|---|---|---|---|---|
| | | | Personnel | Training | Equipment | Utilities | | |
| 2008 | $7.0 | $5.7 | $14,689.1 | $389.5 | $37,425.2 | $18.8 | $0.0 | $52,535.3 |
| 2009 | 32.2 | 5.7 | 15,618.6 | 88.0 | 42,563.6 | 20.4 | 0.0 | 58,328.5 |
| 2010 | 262.2 | 158.2 | 247,566.7 | 5,332.8 | 119,105.4 | 241.4 | 0.0 | 372,666.6 |
| 2011 | 1,384.2 | 186.7 | 284,938.7 | 15,354.4 | 55,567.2 | 269.1 | 0.0 | 357,700.2 |
| 2012 | 2,716.5 | 325.7 | 375,866.9 | 12,043.0 | 116,499.3 | 473.0 | 0.0 | 507,924.4 |
| 2013 | 3,991.7 | 329.3 | 280,844.3 | 4,277.5 | 51,588.8 | 324.4 | 1,809.6 | 343,165.7 |
| 2014 | 4,238.7 | 312.0 | 263,677.6 | 4,190.5 | 51,397.8 | 317.7 | 0.0 | 324,134.2 |
| 2015 | 5,611.8 | 300.3 | 278,580.2 | 4,144.2 | 68,052.6 | 365.7 | 0.0 | 357,054.9 |
| Total | 18,944.4 | 1,623.6 | 1,761,782.0 | 45,819.9 | 542,199.9 | 2,030.4 | 1,809.6 | 2,373,509.9 |

The operations described in this proposed rule produce benefits by reducing security risks through the deployment of AIT that is capable of detecting both metallic and non-metallic weapons and explosives.[9] Terrorists continue to test our security measures in an attempt to find and exploit vulnerabilities. The threat to aviation security has evolved to include the use of non-metallic explosives. AIT is a proven technology based on laboratory testing and field experience and is an essential component of TSA's security screening because it provides the best opportunity to detect metallic and non-metallic anomalies concealed under clothing without the need to touch the passenger. Since it began using AIT, TSA has been able to detect many kinds of non-metallic items, small items, and items concealed on parts of the body that would not have been detected using the WTMD.

## II. Background

### *A. The Evolving Threat to Aviation Security*

The need for security screening at airports dates back to the 1960s when the most significant threat to aviation security was hijacking. To combat this threat, metal detectors were installed at airports and used by air carriers to detect firearms and other metallic weapons. In 1974, Congress passed the Air Transportation Security Act,[10] which directed the Federal Aviation Administration (FAA) to require all passengers to be screened by weapon-detecting devices, and conduct research to develop and evaluate systems, procedures, facilities, and devices to protect persons and property aboard aircraft. Since that time, technological and procedural improvements have been implemented to keep pace with evolving threats.

Following the events of September 11, 2001, it was clear that the security screening at airports was insufficient to protect the traveling public against the threat posed by Al Qaeda and other terrorists who sought to harm the United States by targeting civil aviation. In response to those events, TSA was created to ensure freedom of movement

[9] Metal detectors and AITs are both designed to detect metallic threats on passengers, but go about it in different ways. Metal detectors rely on the inductance that is generated by the metal, while AIT relies on the metal's reflectivity properties to indicate an anomaly. AIT capabilities exceed metal detectors because AIT can detect metallic/non-metallic weapons, non-metallic bulk explosives, and non-metallic liquid explosives.

[10] Public Law 93–366.

for people and commerce by preventing terrorist attacks, reducing the vulnerability of the United States to terrorism, and effectively securing all modes of transportation, including aviation.

Pursuant to law, TSA is required to "provide for the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft * * *."[11] Regulations restricting the carriage of weapons, explosives, and incendiaries on an individual's person or accessible property and requiring individuals to submit to the screening and inspection of their person and accessible property prior to entering a sterile area or boarding an aircraft were transferred from FAA to TSA in February 2002.[12] TSA took over operation of the screening checkpoints from the air carriers and began instituting additional protocols and new equipment to detect individuals and items that could pose a threat to aviation security.

The FAA had begun exploring AIT in the mid-1990s and started testing and evaluating AIT in 2000. Once TSA was established, the evaluation of AIT and other technology that could detect metallic and non-metallic threats continued. TSA began testing early AIT equipment and protocols to evaluate the size of the units, image quality, detection capabilities, safety, and other operational issues.

Since September 11, 2001, the nature of the threat to transportation security has evolved as terrorists continue to test our security measures in an attempt to find and exploit vulnerabilities. As the recent instances described below demonstrate, non-metallic explosives have become one of the greatest threats to aviation security. TSA has responded to the developing threats by deploying new screening protocols and increasing its use of technology to improve its ability to detect weapons, explosives, and incendiaries.

On December 22, 2001, on board an airplane bound for the United States, Richard Reid attempted to detonate a non-metallic bomb concealed in his shoe. Following this terrorist attempt, screening procedures were revised by enhancing the screening of footwear.

In 2004, terrorists mounted a successful attack on two domestic Russian passenger aircraft using explosives that were concealed on the torsos of female passengers. TSA responded to this demonstrated security vulnerability by implementing a variety of enhancements to its standard operating procedures. Revised pat-down protocols that increased the thoroughness of pat-downs on the female torso were among the enhancements implemented to improve the ability to detect explosives concealed on the body.

In 2006, terrorists in the United Kingdom plotted to bring on board aircraft liquid explosives that would be used to construct and detonate a bomb while in flight. Following this threat, TSA again adjusted its security procedures by limiting the amount of liquids that could be brought on board aircraft and enhancing the screening of liquids, aerosols, and gels. TSA also deployed technology to improve detection of liquid explosives.

On December 25, 2009, a bombing plot by Al Qaeda in the Arabian Peninsula (AQAP) culminated in Umar Farouk Abdulmutallab's attempt to blow up an American aircraft over the United States using a non-metallic explosive device hidden in his underwear. TSA's pat-down procedures then in effect may not have detected the device. TSA modified its screening procedures to improve its ability to detect explosives hidden in an area of the body that previously was not thoroughly searched and hastened to expand deployment of AIT to improve its ability to detect non-metallic explosives concealed on the body through the use of technology, rather than the pat-down.[13]

In October 2010, AQAP attempted to destroy two airplanes in flight using non-metallic explosives hidden in two printer cartridges. TSA immediately instituted new screening requirements for cargo bound for the United States.

In May 2012, AQAP developed another non-metallic explosive device that could be hidden in an individual's underwear and detonated while on board an aircraft. Fortunately, this device was obtained by an undercover operative and was not given to a potential suicide bomber. The device was provided to the Federal Bureau of Investigation for technical and forensic analysis and the results indicate that terrorists have modified certain characteristics of the bomb in comparison with the December 25, 2009 bomb in an attempt to avoid the 2009 bombing attempt's design failure.

As evidenced by the incidents described above, TSA operates in a high-threat environment. Terrorists look for security gaps or exceptions to exploit. The device used in the December 25, 2009 attempt is illustrative. It was cleverly constructed and intentionally hidden on a sensitive part of the body to avert detection. If this attack were successful as planned, the lives of the almost 300 passengers and crew and potentially people on the ground would have been in jeopardy.

As these examples of the real and ever-evolving threats to aviation security demonstrate, non-metallic explosives are now one of the foremost known threats to passenger aircraft. The best defense against these and other terrorist threats remains a risk-based, layered security approach that uses a range of screening measures, both seen and unseen. This includes the use of AIT, which is proven technology for identifying non-metallic explosives during passenger screening, such as the device Umar Farouk Abdulmutallab attempted to detonate on Christmas Day 2009. TSA requests comment on the threat to aviation security described above and the risk-based, layered security approach it has adopted.

*B. Layers of Security*

TSA deploys approximately 50,000 Transportation Security Officers (TSOs) at more than 446 domestic airports with over 700 security checkpoints to screen nearly 2 million passengers each day using various screening methods and technologies. Although the airport checkpoints are the most visible layer of security used by TSA, TSA also relies extensively on intelligence regarding potential and actual terrorist threats to inform and identify what security measures are necessary to meet the nature of those threats. Other security layers include checking passenger manifests against records from the Government known or suspected terrorist watch lists through TSA's Secure Flight program, examining identity and travel documents, using explosives detection systems, and conducting random security operations at the checkpoint and throughout the airport.

Because even the best intelligence does not identify in advance every individual who would seek to do harm to passengers, aviation security, and the United States, TSA must rely on the security expertise of its frontline personnel—TSOs, Federal Air Marshals, Transportation Security Specialists-Explosives, Behavior Detection Officers,

[11] 49 U.S.C. 44901.

[12] See 49 CFR 1540.107 and 1540.111.

[13] On January 7, 2010, the President issued a "Presidential Memorandum Regarding 12/25/2009 Attempted Terrorist Attack," which charged TSA with aggressively pursuing enhanced screening technology in order to prevent further such attempts, while at the same time protecting passenger privacy. A copy of that memorandum is available in the docket for this rulemaking and can be found at *http://www.whitehouse.gov/the-press-office/presidential-memorandum-regarding-12252009-attempted-terrorist-attack.*

and explosives detection canine teams, among others—to help prevent acts of terrorism.

Effective technology is an essential component of TSA's arsenal of tools to detect and deter threats against our nation's transportation systems. Since its creation, TSA has deployed an increasingly sophisticated range of next generation detection equipment—including bottled liquid scanners, advanced technology x-ray systems, explosives trace detection (ETD) units, and AIT—as the threats to aviation security change and become more sophisticated. As recent history illustrates, TSA changes its screening equipment and procedures as needed to respond to evolving threats based on experience and the latest intelligence. TSA's layered approach and its ability to deploy new security methods to respond to the latest threats are necessary to provide adequate security for the traveling public. Advanced Imaging Technology currently provides the best opportunity to detect metallic and non-metallic threats concealed on the body under clothing without physical contact.[14]

*C. Congressional Direction To Pursue AIT*

In 2004, Congress directed TSA to continue to explore the use of new technologies to improve its threat detection capabilities.[15] Specifically, the law provides:

> Deployment and use of detection equipment at airport screening checkpoints
>
> • Weapons and explosives.—The Secretary of Homeland Security shall give a high priority to developing, testing, improving, and deploying, at airport screening checkpoints, equipment that detects nonmetallic, chemical, biological, and radiological weapons, and explosives, in all forms, on individuals and in their personal property * * * the types of weapons and explosives that terrorists would likely try to smuggle aboard an air carrier aircraft.
>
> • [The TSA Administrator shall submit] * * * a strategic plan to promote the optimal utilization and deployment of explosive detection equipment at airports to screen individuals and their personal property. Such equipment includes walk-through explosive detection portals, document scanners, shoe scanners, and backscatter x-ray scanners.

Additional references in congressional reports accompanying appropriations and authorizing legislation demonstrate Congress' continued direction to DHS and TSA to pursue enhanced screening technologies and imaging technology, including:

(1) Explanatory Statement, House Appropriations Committee Print for Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (FY09 DHS Appropriations) Pub. L. 110–329 at p. 640:

> The bill provides $250,000,000 for Checkpoint Support to deploy a number of emerging technologies to screen airline passengers and carry-on baggage for explosives, weapons, and other threat objects by the most advanced equipment currently under development. TSA is directed to spend funds on multiple whole body imaging technologies including backscatter and millimeter wave as directed in the Senate report.

(2) H. Rep. 110–862 at p. 64, FY09 DHS Appropriations:

> Over the past year, TSA has made some advances in testing, piloting, and deploying next-generation checkpoint technologies that will be used to screen airline passengers and carry-on baggage for explosives, weapons, and other threats. Even with this progress, however, additional funding is necessary to expedite pilot testing and deployment of advanced checkpoint explosive detection equipment and screening techniques to determine optimal deployment as well as preferred operational and equipment protocols for these new systems. Eligible systems may include, but are not limited to, advanced technology screening systems; whole body imagers; * * * The Committee expects TSA to give the highest priority to deploying next-generation technologies to designated Tier One threat airports.

(3) S. Rep. 110–396 at p. 60, FY09 DHS Appropriations:

> WHOLE BODY IMAGERS. The Committee is fully supportive of emerging technologies at passenger screening checkpoints, including the whole body imaging program currently underway at Category X airports. These technologies provide an increased level of screening for passengers by detecting explosives and other non-metal objects that current checkpoint technologies are not capable of detecting. The Committee directs that funds for whole body imaging continue to be spent by TSA on multiple imaging technologies, including backscatter and millimeter wave.

(4) H. Rep.110–259, at Web page 363, Conference Report to Implementing Recommendations of 9/11 Commission Act of 2007, Pub. L. 110–53, sec. 1601—Airport checkpoint screening fund:

> The National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) asserted that while more advanced screening technology is being developed, Congress should provide funding for, and TSA should move as expeditiously as possible to support, the installation of explosives detection trace portals or other applicable technologies at more of the nation's commercial airports. Advanced technologies, such as the use of non-intrusive imaging, have been evaluated by TSA over the last few years and have demonstrated that they can provide significant improvements in threat detection at airport passenger screening checkpoints for both carry-on baggage and the screening of passengers. The Conference urges TSA to deploy such technologies quickly and broadly to address security shortcomings at passenger screening checkpoints.[16]

*D. U.S. Court of Appeals Decision in EPIC v. DHS*

In July 2010, the EPIC petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of TSA's use of AIT as a primary screening device to screen airline passengers. EPIC argued that the use of AIT violated various federal statutes and the Fourth Amendment to the Constitution and should have been the subject of notice-and-comment rulemaking.

The Court of Appeals issued a decision on July 15, 2011, which rejected nearly all of EPIC's claims.[17] In ruling on EPIC's Fourth Amendment claim, the Court held that screening passengers at an airport is an administrative search that does not rely on individualized suspicion. "Instead, whether an administrative search is 'unreasonable' within the condemnation of the Fourth Amendment 'is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests'." [18]

The Court found that the "balance clearly favors the Government here." [19] The Court recognized the clear need for AIT screening, and the advantages the AIT provides over the WTMD. The Court stated that "[t]he need to search

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[14] In September 2012, TSA initiated a limited procurement for next generation AIT units for the purpose of testing such units in a laboratory environment. The outcome of the testing will determine if the units will proceed to testing in an airport environment. TSA anticipates that next generation AIT units will have enhanced detection capabilities, faster passenger throughput, and a smaller footprint.

[15] 49 U.S.C. 44925.

[16] *See also*, sec. 109 of the Aviation and Transportation Security Act (ATSA), Public Law 107–71 (2001), as amended by sec. 1403(b) of the Homeland Security Act of 2002, Public Law 107–296, "(7) Provide for the use of voice stress analysis, biometric, or other technologies to prevent a person who might pose a danger to air safety or security from boarding the aircraft of an air carrier or foreign air carrier in air transportation or intrastate air transportation" and Title IV of the American Recovery and Reinvestment Act of 2009, Public Law 111–5 "* * * for procurement and installation of checked baggage explosives detection systems and checkpoint explosives detection equipment."

[17] *Electronic Privacy Information Center* v. *U.S. Department of Homeland Security*, 653 F.3d 1 (D.C. Cir. 2011).

[18] *Id.* at 10 (quoting *United States* v. *Knights*, 534 U.S. 112, 118–119 (2001)).

[19] *Id.*

airline passengers 'to ensure public safety can be particularly acute' and, crucially, an AIT scanner, unlike a magnetometer, is capable of detecting, and therefore of deterring, attempts to carry aboard airplanes explosives in liquid or powder form." [20]

As explained in the decision, the AIT scanners then in use produce a "crude image of an unclothed person * * *."[21] In rejecting EPIC's privacy argument, the Court recognized that TSA has taken steps:

[T]o mitigate the effect a scan using AIT might have upon passenger privacy: Each image produced by a scanner passes through a filter to obscure facial features and is viewable on a computer screen only by an officer sitting in a remote and secure room. As soon as the passenger has been cleared, moreover, the image is deleted; the officer cannot retain the image on his computer, nor is he permitted to bring a cell phone or camera into the secure room.[22]

The Court also noted that three Privacy Impact Assessments (PIAs) of the AIT program had been completed and were sufficient. "[T]he petitioners make no more specific objection that would enable us to disturb the [Chief Privacy Officer's] conclusion that the privacy protections built into the AIT program are sufficiently 'strong'." [23]

In its decision, the Court acknowledged that Congress authorized TSA to prescribe the details of the screening process. The Court noted that "Congress did * * * in 2004, direct the TSA to 'give a high priority to developing, testing, improving, and deploying' at airport screening checkpoints a new technology 'that detects nonmetallic, chemical, biological, and radiological weapons, and explosives, in all forms'." [24] The Court observed that TSA responded to this directive through the development and procurement of AIT scanners, which enable the operator of the machine to detect non-metallic objects, such as a liquid or powder, which a metal detector cannot detect, without touching the passengers coming through the checkpoint.[25]

TSA tested the use of AIT machines in 2009 for primary screening at a limited number of airports. The Court acknowledged that "based on the apparent success of the test, the TSA decided early in 2010 to use the scanners everywhere for primary screening." [26] The Court also pointed out that passengers are not required to go through the AIT screening process. The Court stated "no passenger is ever required to submit to an AIT scan * * * [and] signs at the security checkpoint notify passengers they may opt instead for a patdown." [27] The Court also rejected EPIC's claims that the AIT is unlawful under the Video Voyeurism Prevention Act and the Religious Freedom Restoration Act.

In ruling on EPIC's Administrative Procedure Act claim, the Court determined that TSA did not justify "its failure to initiate notice-and-comment rulemaking before announcing it would use AIT scanners for primary screening." [28] Even though privacy precautions had been implemented, the Court stated "it is clear that by producing an image of the unclothed passenger, an AIT scanner intrudes upon * * * personal privacy in a way a magnetometer does not." [29] Thus, the Court found the use of the AIT in primary screening "substantively affects the public to a degree sufficient to implicate the policy interests animating notice-and-comment rulemaking." [30] The Court did not require TSA to stop using AIT. "[D]ue to the obvious need for the TSA to continue its airport security operations without interruption, we remand the rule to the TSA but do not vacate it * * *." [31]

## III. AIT Screening Protocols

### *A. Types of AIT Equipment*

TSA engaged in extensive laboratory and operational testing before approving the two types of AIT equipment initially deployed. In February 2007, TSA initiated a pilot operation at an airport to test AIT detection capability in the secondary screening position for aviation passengers who set off the alarm of the WTMD. In January 2008, TSA published a PIA to cover AIT screening of all passengers at the security screening checkpoint. Throughout 2007 and 2008, additional AIT units were tested in the secondary screening position and TSA continued to evaluate different types of AIT equipment, including both general-use x-ray backscatter and millimeter wave. In 2009, TSA began to evaluate using AIT in the primary screening position as an alternative to WTMD.[32] Deploying AIT in the primary position to screen all passengers for both metallic and non-metallic threats allows TSA to use the technology to its full capability. In February 2010, TSA submitted a report to Congress on privacy protections and deployment of AIT.[33]

TSA has compared AIT to other transportation security equipment and manual processes, including ETD, WTMD, and pat-downs. Based on the testing results, TSA determined that AIT currently offers the best opportunity to detect both metallic and non-metallic threat items concealed underneath clothing, such as the explosives carried by Mr. Abdulmutallab, without physical contact.

One type of AIT equipment initially deployed by TSA, the Rapiscan Secure 1000, uses backscatter technology. Unlike a traditional x-ray machine, which relies on the transmission of x-rays through an object, general-use backscatter technology projects low level x-ray beams over the body surface at high speed. The reflection or "backscatter" of the beam is detected and digitized to create an image.[34]

The L–3 ProVision, another type of AIT equipment currently deployed by TSA, uses millimeter-length radio waves. Millimeter wave technology bounces electromagnetic waves off of the human body to detectors in the machine, which a computer then interprets in order to create a black and white image.[35]

Working with the DHS Science & Technology Directorate and private industry, TSA began testing ATR software in 2010. Automatic Target Recognition software generates a generic outline and not an individual image.[36]

[20] *Id.* (quoting *City of Indianapolis* v. *Edmond*, 531 U.S. 32, 47–48) (internal citation omitted).

[21] *Id.* at 3.

[22] *Id.* at 4.

[23] *Id.* at 9.

[24] *Id.* at 3 (quoting sec. 4013 of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3719).

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.* at 6.

[30] *Id.*

[31] *Id.* at 8.

[32] In addition to the AIT equipment described below, TSA evaluated infrared (IR) technology, which scans for temperature differences on the body's surface or for temperature imbalances between the body, clothes, and any hidden objects.

[33] "Advanced Imaging Technologies: Passenger Privacy Protections," Fiscal Year 2010 Report to Congress, February 25, 2010.

[34] An example of the image produced by the backscatter technology is posted on TSA's Web site at *http://www.tsa.gov/travelers-guide/ait-how-it-works.*

[35] See "Safety of AIT" for a discussion of the safety of the millimeter wave equipment. The Food and Drug Administration has found that millimeter wave is safe and states on its Web site that "[m]illimeter wave security systems which comply with the limits set in the applicable national non-ionizing radiation safety standard * * * cause no known adverse health effects." *http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/SecuritySystems/ucm227201.htm#2.*

[36] Examples of the generic outline that the ATR software produces are available on TSA's Web site at *http://www.tsa.gov/travelers-guide/ait-how-it-works.*

In July 2011, TSA began installing ATR software on millimeter wave AIT units and completed installation on all millimeter wave units currently in use. This advancement significantly enhances privacy by eliminating the passenger-specific images referred to in the *EPIC* v. *DHS* decision.

As part of the Federal Aviation Administration Modernization and Reform Act of 2012, Congress mandated that all AIT units must be equipped with ATR by June 1, 2012.[37] As permitted by law, the deadline was extended to June 1, 2013. While all of the millimeter wave units have been equipped with the ATR software, Rapiscan was unable to develop ATR software that would work on the general-use backscatter units. As a result, TSA terminated its Rapiscan ATR delivery order and all Rapiscan general-use backscatter AIT units currently deployed at TSA checkpoints are being removed from operation by Rapiscan.[38] By June 1, 2013, only AIT equipped with ATR will be used at TSA checkpoints.

TSA will continue to evaluate current AIT systems and associated screening procedures, as well as any new technologies and procedures that may be considered for deployment, to ensure that they are safe and meet all relevant government and consensus industry standards, are effective against established and anticipated threats, and require the least disruption and intrusion on passenger privacy possible.

*B. Privacy Safeguards for AIT*

The use of ATR software enhances passenger privacy by eliminating images of individual passengers, as well as the need for a TSO to view the individual images to identify anomalies.[39] Automatic Target Recognition software auto-detects anomalies concealed on the body and displays these on a generic outline, which is viewable on a screen located on the AIT equipment. These anomalies are then resolved through additional screening. Automatic Target Recognition-enabled units deployed at airports are not capable of storing or printing the generic outline that will be visible to passengers. TSA has installed the software on all currently-deployed millimeter wave units. As noted above, AIT units without ATR software are being removed from operation and only ATR-equipped AIT units will be used at the checkpoint as of June 1, 2013.

Section 222 of the Homeland Security Act requires that the Privacy Office assure that the use of technologies sustain and do not erode privacy protections relating to the use, collection, and disclosure of personal information, and to conduct a privacy impact assessment (PIA) for proposed rules impacting the privacy of personal information (6 U.S.C. 142). Even before the development of the ATR software, TSA instituted rigorous safeguards to protect the privacy of individuals who are screened using AIT. In addition, as noted by the Court in *EPIC* v. *DHS*, the DHS Chief Privacy Officer has conducted several PIAs on the use of AIT equipment to ensure that the public's privacy concerns related to AIT screening are adequately addressed. These PIAs meet the requirements of section 222 for this NPRM and describe the strict measures TSA uses to protect privacy.[40] To the extent that TSA receives substantive comments on privacy issues related to the use of AIT, they will be addressed in the final rule and any resulting changes will be addressed appropriately in a revised PIA.

While graphic images purportedly from TSA's AIT machines have been circulated in the media, those images were not the type produced by TSA's AIT equipment. Neither of the AIT technologies that have been used by TSA produced photographs or images that would enable personal identification. As deployed by TSA, neither technology is able to store, print, or export any image.

When using the backscatter technology, TSA requirements dictated that a filter be applied to prevent a detailed image of an individual. In addition, the images were viewed by a trained TSO in a locked, remote location. The anonymity of the individual being screened was preserved, since the TSO assisting the individual at the AIT unit never saw the image, and the TSO viewing the image never saw the individual being screened. No TSA personnel were permitted to view both the image and the individual. The backscatter units did not store, print, or export any images. Storage capability was disabled prior to deployment, and TSA airport personnel were not able to activate the storage capability. In addition, the backscatter images were transmitted securely between the unit and the viewing room so they could not be lost, modified, or disclosed. The images produced by the backscatter units were encrypted during transmission. The images were deleted from the screen in the viewing room when the individual was cleared. TSOs in the viewing room were prohibited from bringing electronic devices such as cameras, cell phones, or other recording devices into the room. Violations of these procedures subjected the TSO to disciplinary action, which included termination.

To give further effect to the Fair Information Practice Principles that are the foundation for privacy policy and implementation at DHS, individuals may opt-out of the AIT in favor of physical screening. TSA provides notice of the use of AIT and the opt-out option at the checkpoint so that individuals may exercise an informed judgment on AIT. Signs are posted that explain the technology and state "use of this technology is optional. If you choose not to be screened by this technology you will receive a thorough pat down."[41] TSA requests comment on the privacy safeguards discussed above and on the ability of passengers to opt-out of AIT screening.

*C. Safety of AIT*

AIT equipment has been subject to extensive testing that has confirmed that it is safe for individuals being screened, equipment operators, and bystanders.[42] The exposure to ionizing x-ray beams emitted by the backscatter machines that are being removed pursuant to statute, as well as the non-ionizing electromagnetic waves from the millimeter wave machines is well within the limits allowed under relevant national health and safety standards. Prior to procuring and deploying both backscatter and millimeter wave AIT equipment, TSA tested the units to determine whether they would be safe for use in passenger screening. As explained further below, TSA determined that the general-use backscatter and millimeter wave technologies were safe for use in screening the public because the x-ray and radio waves emissions were so low as to present a negligible risk to passengers, airline crew members, airport employees, and TSA employees.

1. Millimeter Wave Units

The millimeter wave AIT systems that will be the only technology deployed at

[37] Public Law 112–95.

[38] *http://blog.tsa.gov/2013/01/rapiscan-backscatter-contract.html.*

[39] Before the installation of ATR software, TSA required that all millimeter wave machines blur the face of the passenger.

[40] The most recent update to the PIA is posted on the DHS Web site at *http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-tsa-ait.pdf* and is available in the docket for this rulemaking.

[41] See AIT Signs at *http://www.tsa.gov/ait-how-it-works.*

[42] See AIT: Safety at *http://www.tsa.gov/ait-safety.*

the checkpoint as of June 1, 2013 use non-ionizing radio frequency energy in the millimeter wave spectrum to generate a three-dimensional image based on the energy reflected from the body. Millimeter wave imaging technology meets all known national and international health and safety standards. In fact, the energy emitted by millimeter wave technology is 1,000 times less than the international limits and guidelines. The millimeter wave AIT systems that TSA uses must comply with the 2005 Institute of Electrical and Electronics Engineers, Inc. Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields (IEEE Std. C95.1™–2005) as well as the International Commission on Non-Ionizing Radiation Protection Guidelines for Limiting Exposure to Time-Varying Electric, Magnetic, and Electromagnetic Fields, Health Physics 74(4); 494–522, published April 1998. TSA's millimeter wave units are also consistent with Federal Communications Commission OET Bulletin 65, Health Canada Safety Code 6, and RSS–102 Issue 3 for Canada. The FDA has also confirmed that millimeter wave security systems that comply with the IEEE Std. C95.1™–2005 cause no known adverse health effects.[43]

2. Backscatter Units

As required by statute, TSA will remove all currently deployed Rapiscan backscatter units by May 31, 2013. When in use, TSA addressed potential health concerns regarding the ionizing radiation emitted by general-use backscatter technology. TSA's procurement specifications required that the backscatter units must conform to the consensus radiation safety standard of the American National Standards Institute (ANSI)[44] and Health Physics Society (HPS)[45] for the design and operation of security screening systems that use ionizing radiation. That standard is ANSI/HPS N43.17, which was first published in 2002 and revised in 2009.[46]

The annual dose limits in ANSI/HPS N43.17 are based on dose limit recommendations for the general public published by the National Council on Radiation Protection and Measurements[47] in Report 116, "Limitations of Exposure to Ionizing Radiation."[48] The dose limits were set with consideration given to individuals, such as pregnant women, children, and persons who receive radiation treatments, who may be more susceptible to radiation health effects. Further, the standard also takes into consideration the fact that individuals are continuously exposed to ionizing radiation from the environment. ANSI/HPS N43.17 sets the maximum permissible dose of ionizing radiation from a general-use system per security screening at 0.25 microsieverts.[49] The standard also requires that individuals should not receive 250 microsieverts or more from a general-use x-ray security screening system in a year.

The radiation dose (effective dose) a passenger receives from a general-use backscatter AIT screening has been independently evaluated by the Food and Drug Administration's (FDA's) Center for Devices and Radiological Health, the National Institute for Standards and Technology, and the Johns Hopkins University Applied Physics Laboratory. All results affirmed that the effective dose for individuals being screened, operators, and bystanders was well below the dose limits specified by ANSI/HPS N43.17.[50] These results were confirmed in a report issued by the DHS Office of Inspector General (OIG) in February 2012.[51] The OIG report found that the independent surveys show that backscatter radiation levels are below the established limits and that TSA complied with ANSI/HPS N43.17.

Typical doses from backscatter machines are no more than 0.05 microsieverts per screening, well below the ANSI/HPS N43.17 maximum dosage of 0.25 microsievert per screening. An individual would have to have been screened by the Rapiscan Secure 1000 more than 13 times daily for 365 consecutive days before exceeding the ANSI/HPS standard.

By comparison, a traveler would have to be screened via Rapiscan/backscatter AIT 2,000 times to equal the dosage received in a single chest x-ray, which delivers 100 microsieverts of ionizing radiation. A typical bite-wing dental x-ray of 5 microsieverts would be equivalent to 100 backscatter screenings, and a two-view mammogram that delivers 360 microsieverts would be equivalent to 7,200 backscatter screenings.[52] A passenger flying one-way from Washington, DC to Los Angeles is exposed to approximately 19.1 microsieverts of ionizing radiation over the course of the 4.7 hour flight.[53]

ANSI/HPS also reflects the standard for a negligible individual dose of radiation established by the National Council on Radiation Protection and Measurements at 10 microsieverts per year. Efforts to reduce radiation exposure below the negligible individual dose are not warranted because the risks associated with that level of exposure are so small as to be indistinguishable from the risks attendant to environmental radiation that individuals are exposed to every day.[54] The level of radiation issued by the Rapiscan Secure 1000 is so low that most passengers would not have exceeded even the negligible individual

[43] *http://www.fdo.gov/Rodiation-EmittingProducts/HadiotionEmittingProductsandProcedures/SecuritySystems/ucm227201.htm.*

[44] ANSI is a private, non-profit organization that administers and coordinates the U.S. voluntary standards and conformity assessment system. The Institute oversees the development and use of voluntary consensus standards by providing neutral, third-party accreditation of the procedures used by standards developing organizations, and approving their documents as American National Standards.

[45] HPS is a scientific organization of professionals who specialize in radiation safety. Its mission is to support its members and to promote excellence in the science and practice of radiation safety. As an independent nonprofit scientific organization, HPS is not affiliated with any government or industrial organization or private entity.

[46] American National Standard, "Radiation Safety for Personnel Security Screening Systems Using X-Ray or Gamma Radiation," ANSI/HPS N43.17 (2009); Health Physics Society, McLean, VA. Copies can be ordered at: *http://webstore.ansi.org/foq.aspx#resellers.*

[47] The National Council on Radiation Protection and Measurements was founded in 1964 by Congress to cooperate with the International Commission on Radiological Protection, the Federal Radiation Council, the International Commission on Radiation Units and Measurements, and other national and international organizations, both governmental and private, concerned with radiation quantities, units, and measurements as well as radiation protection.

[48] Copies of the report can be ordered at: *http://www.ncrppublications.org/Reports/116.*

[49] The biological effect of radiation is measured in sieverts. One sievert equals 1,000 millisieverts and one millisievert equals 1,000 microsieverts.

[50] TSA's Web site at *http://www.tso.gov/travelers-guide/ait-sofety* contains many articles and studies that discuss AIT safety, including a description of the built-in safety features of the Rapiscan Secure 1000, an Archives of Internal Medicine report on the risks of imaging technology, the FDA evaluation of backscatter technology, and other independent safety assessments of AIT.

[51] Department of Homeland Security, Office of Inspector General, "Transportation Security Administration's Use of Backscatter Units," OIG–12–38, February 2012.

[52] HPS Fact Sheet: Radiation Exposure from Medical Exams and Procedures, January 2010, *http://hps.org/documents/Medicol_Exposures_Foct_Sheet.pdf.*

[53] Federal Aviation Administration, "What Aircrews Should Know About Their Occupational Exposure to Ionizing Radiation," DOT–FAA–AM–03–1 (October 2003) at p. 9. Available at: *http://www.faa.gov/data_research/research/med_humanfocs/oomtechreports/2000s/media/0316.pdf.*

[54] The World Health Organization estimates that each person is exposed, on average, to 2.4 millisieverts (*i.e.*, 2400 microsieverts) of ionizing radiation each year from natural sources. *www.who.int/ionizing_radiation/about/what_is_ir/en/index2.html.*

dose. In fact, an individual would have to be screened more than 200 times a year by a Rapiscan Secure 1000 before he or she would exceed the negligible individual dose and, even then, the exposure would be below the ANSI/HPS N43.17 standard.

The European Commission released a report conducted by the Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) on the risks related to the use of security scanners for passenger screening that use ionizing radiation such as the general-use backscatter AIT machines.[55] The committee found no short term health effects that can result from the doses of radiation delivered by security scanners. In the long term, it found that the potential cancer risk cannot be estimated, but is likely to remain so low that it cannot be distinguished from the effects of other exposures including both ionizing radiation from other natural sources, and background risk due to other factors.

The ANSI/HPS N43.17 standard also requires that any general-use backscatter machine have safety interlocks to terminate emission of x-rays in the event of any system problem that could result in abnormal or unintended radiation emission. The Rapiscan Secure 1000 had three such features. First, the unit was designed to cease x-ray emission once the programmed scan motion ends. That feature could not be adjusted. Second, the unit was programmed to terminate emission once the requiWeb site number of lines of data necessary to create an image was received. Both of these automatic features reduced the possibility that emissions could continue if the unit malfunctions. Finally, the unit had an emergency stop button that would terminate x-ray emission.

Upon installation, a radiation emission survey was conducted on each Rapiscan Secure 1000 to ensure the unit operated properly. Preventive maintenance checks, including radiation safety surveys, were performed at least once every six months; after any maintenance that affected the radiation shielding, shutter mechanism, or x-ray production components; after any incident where damage was suspected; or after a unit was moved. The U.S. Army Public Health Command also conducted an independent radiation survey on deployed systems. The report confirmed that the general-use backscatter units tested were well within applicable national safety standards.[56]

The DHS Office of the Chief Procurement Officer is also requesting the National Academy of Sciences to review previous studies as well as the current processes used by DHS and equipment manufacturers to estimate radiation exposure resulting from general-use backscatter equipment and to provide a report on whether radiation exposures comply with applicable health and safety standards and whether system design operating procedures and maintenance procedures are appropriate.

*D. AIT Procedures at the Checkpoint*

TSA's regulations require that "[i]ndividuals may not enter or be present within a secured area, air operations area, security identification display area, or sterile area without complying with the systems, measures, or procedures used to control access to such areas."[57] In addition, "[i]ndividuals may not enter a sterile area or board an aircraft without submitting to the screening and inspection of their person and accessible property in accordance with the procedures being applied to control access to that area or the aircraft."[58] Federal law also requires that air carriers refuse to transport a passenger who does not consent to a search of his person or baggage,[59] and authorizes air carriers to refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.[60]

The specific security procedures, systems, or measures that TSA deploys are included in its Standard Operating Procedures (SOPs). The SOPs instruct the TSOs how to conduct the screening measures currently in use. Terrorists continue to seek ways to thwart aviation security measures and could use information on TSA procedures, such as the instructions on how to operate AIT equipment and the AIT equipment specifications, to plan and execute attacks. Therefore, the SOPs are SSI and are not made public as such disclosure would prove detrimental to transportation security.[61]

In response to the decision in *EPIC* v. *DHS*, TSA is proposing to add the following language to its current regulations at 49 CFR 1540.107, quoted above, to specifically address AIT screening:

> (d) The screening and inspection described in (a) may include the use of advanced imaging technology. For purposes of this section, advanced imaging technology is defined as screening technology used to detect concealed anomalies without requiring physical contact with the individual being screened.

In addition, TSA has posted information on its Web site on what individuals can expect when submitting to AIT screening. AIT screening is currently optional, but when opting out of AIT screening, a passenger will receive a pat-down. When TSA deploys AIT equipment at a screening lane, a sign is posted to inform the public that AIT may be used as part of the screening process prior to passengers entering the machine so that each passenger may exercise an informed decision on the use of AIT. The sign also indicates that a passenger who chooses not to be screened by AIT will receive a pat-down. However, TSA has found that since 2009, fewer than two percent of passengers opt for a pat-down in lieu of AIT screening.[62]

TSA's Web site[63] explains that AIT looks for any items, both metallic and non-metallic, that might be anywhere on the body. It recommends that individuals remove all items from pockets and their person and place them in carry-on baggage prior to entering the checkpoint. It notes that removal will lessen the chance that additional screening will be required. The Web site also explains that for AIT units not equipped with ATR, the TSO who views the image cannot see the individual; while for AIT equipped with ATR software, the screen with the generic outline is located on the scanner and is visible to the passenger and the TSO. The Web site states that AIT is optional.

After any items are removed, individuals are directed to enter the

[55] The SCENIHR is an independent committee that provides the European Commission with the scientific advice it needs when preparing policy and proposals relating to consumer safety, public health and the environment. The committee is made up of external experts. The report can be found at *http://ec.europa.eu/health/scientific_committees/emerging/docs/scenihr_o_036.pdf*

[56] The report is available on TSA's Web site at *http://www.tsa.gov/travelers-guide/ait-safety*.

[57] 49 CFR 1540.105(a)(2).

[58] 49 CFR 1540.107(a).

[59] 49 U.S.C. 44902(a), 49 CFR 1544.201(c).

[60] 49 U.S.C. 44902(b).

[61] SSI is defined in footnote 1.

[62] TSA's Web site describes the results of independent polling on AIT acceptance showing strong public support for and understanding of the need for AIT. See *http://www.tsa.gov/ait-more-information*. In addition, passengers with joint replacements or other medical devices that would regularly set off the alarm on a metal detector often prefer AIT because it is quicker and less invasive than a pat-down. See *http://www.tsa.gov/traveler-information/advanced-imaging-technology-ait*. An internet campaign in 2010 failed in an attempt to disrupt checkpoint operations by urging passengers to request a pat-down in lieu of AIT screening during the Thanksgiving holiday travel period. See "Opt Out Turns Into Opt In," The TSA Blog, November 24, 2010, *http://blog.tsa.gov/2010_11_24_archive.html*.

[63] *http://www.tsa.gov/travelers-guide/ait-how-it-works*.

AIT. Once inside, individuals are directed to stand with arms raised, and to remain still for several seconds while the image is created. When using AIT with ATR, the image is not an image of the individual passenger, rather a generic outline that indicates where the anomaly is detected. Individuals are directed to exit the opposite side of the portal. Once the image is reviewed and any anomalies are resolved, the image is deleted. This process usually takes less than a minute.

TSA has also refined its procedures to make sure that the screening process addresses the needs of families. TSA never separates a child from an accompanying adult and makes sure that the accompanying adult observes the entire screening process. Advanced Imaging Technology is safe for children, and children may undergo screening using AIT as long as they are able to stand with their hands above their head for the five to seven seconds needed to conduct the scan. However, TSA no longer requires children who are 12 years old or younger to be screened by AIT and will direct those passengers to the WTMD unless instructed otherwise by an accompanying adult.[64] TSA has also implemented procedures to accommodate those passengers with disabilities and medical conditions that make them ineligible for AIT screening because they cannot stand in the necessary pose.

## IV. Deployment of AIT

As of February 22, 2013, TSA has deployed over 800 AIT machines at approximately 200 airports in the United States.[65] TSA is removing the 174 Rapiscan general-use backscatter units from its checkpoints and by June 1, 2013, only units equipped with ATR software will be used to conduct screening.

Since it began using AIT, TSA has been able to detect many kinds of non-metallic items, small items, and items concealed on parts of the body that would not have been detected using metal detectors. Once an anomaly is detected, additional screening is required to determine if the item is prohibited.

Since January 2010, this technology has helped TSA officers detect hundreds of prohibited, dangerous, or illegal items concealed on passengers.[66] TSA's procurement specifications require that any AIT system must meet certain thresholds with respect to the detection of anomalies concealed under an individual's clothing. While the detection requirements of AIT are classified, the procurement specifications require that any approved system be sensitive enough to detect smaller items, such as a Web pager, wallet, or small bottle of contact lens solution.

Experience has confirmed that AIT will detect metallic and non-metallic items, including material that could be in various forms concealed under an individual's clothing. For example, a non-metallic martial arts weapon called a "Tactical Spike" was discovered in the sock of a passenger in Pensacola, Florida after being screened by AIT.[67] Advanced Imaging Technology is also effective in detecting metallic items. In December, 2011, a loaded .38 caliber firearm in an ankle holster was discovered during AIT screening of a passenger at Detroit Metropolitan Airport.[68] The versatility of AIT in detecting both metallic and non-metallic concealed items without physical contact makes it more effective than metal detectors as a tool to protect transportation security.

Some of the items discovered concealed on passengers during AIT screening are small items, such as weapons made of composite, non-metallic materials, including a three inch pocket knife hidden on a passenger's back; little packets of powder, including a packet the size of a thumbprint; and a syringe full of liquid hidden in a passenger's underwear.[69] A plastic dagger hidden in the hemline of a passenger's shirt was detected using AIT[70] and a plastic dagger concealed inside a comb was detected in a passenger's pocket.[71] Advanced Imaging Technology's capability to identify these small items is important because in addition to weapons and explosive materials, TSA also searches for improvised explosive device components, such as timers, initiators, switches, and power sources. Such items may be very small. Advanced Imaging Technology enhances TSA's ability to find these small items and further assists TSA in detecting threats.

## V. Rulemaking Analyses and Notices

### *A. Regulatory Evaluation Summary and Economic Impact Analyses*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), as supplemented by E.O. 13563, Improving Regulation and Regulatory Review (76 FR 3821, January 21, 2011), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to consider the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

### *B. Executive Orders 12866 and 13563 Assessment*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is a

[64] See Advanced Imaging Technology (AIT) at *http://www.tsa.gov/traveler-information/traveling-children.*

[65] TSA maintains a list of airports that have AIT machines on its Web site at *http://www.tsa.gov/travelers-guide/ait-frequently-asked-questions.*

[66] Remarks of TSA Administrator John S. Pistole, Homeland Security Policy Institute, George Washington University, November 10, 2011.

[67] "TSA Week In Review: Non Metallic Martial Arts Weapon Found with Body Scanner," *http://blog.tsa.gov/2011/12/tsa-week-in-review-non-metallic-martial.html.*

[68] *http://blog.tsa.gov/2011/12/loaded-380-found-strapped-to-passengers.html.*

[69] "Advanced Imaging Off To a Great Start," April 20, 2010, at *http://blog.tsa.gov/2010/04/advanced-imaging-technology-off-to.html* and "Advanced Imaging Technology—Yes, It's Worth It," March 31, 2010, at *http://blog.tsa.gov/2010/03/advanced-imaging-technology-yes-its.html.*

[70] "TSA Week in Review: Plastic Dagger Found With Body Scanner," May 4, 2012, at *http://blog.tsa.gov/2012/05/tsa-week-in-review-plastic-dagger-found.html.*

[71] "TSA Week in Review: Comb Dagger Discovered With Body Scanner, 28 Loaded Guns, and More," August 17, 2012 at *http://blog.tsa.gov/2012/08/tsa-week-in-review-comb-dagger.html.*

"significant regulatory action" that is economically significant under sec. 3(f)(1) of E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation.

In conducting these analyses, TSA has determined:

(1) This rulemaking is a "significant regulatory action" as defined in the E.O.

(2) An Initial Regulatory Flexibility Analysis suggests this rulemaking would not have a significant economic impact on a substantial number of small entities.

(3) This rulemaking would not constitute a barrier to international trade.

(4) This rulemaking does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector under UMRA.

These analyses, available in the docket, are summarized below. This NPRM proposes to codify the use of AIT to screen passengers boarding commercial aircraft for weapons, explosives, and other prohibited items concealed on the body. These costs are incurred by airport operators, the traveling public, Rapiscan, and TSA. Some airport operators incur utility costs for the additional electricity consumed by AIT machines. The small percentage of passengers (approximately one percent) who choose to opt out of AIT screening will incur opportunity costs due to the additional screening time needed to receive a pat-down. Rapiscan, a company that manufactures AIT machines, will incur a cost to remove backscatter AIT units in 2013 that have been deployed in previous years.[72] TSA incurs equipment costs associated with the life-cycle of AIT machines (testing, acquisition, maintenance, *etc.*); personnel costs to hire TSOs to operate the AIT machines; utility costs at reimbursed airports; and training costs to train TSOs to operate AIT, and to detect and resolve any anomalies that may be discovered during AIT screening.

When estimating the cost of a rulemaking, agencies typically estimate future expected costs imposed by a regulation over a period of analysis. Because the AIT machine life cycle from deployment to disposal is eight years, the period of analysis for estimating the cost of AIT is also eight years. However, as AIT deployment began in 2008, there are costs that have already been borne by airport operators, the traveling public, and TSA that were not due to this rule. Consequently, in the Initial Regulatory Impact Analysis for this rule, TSA is reporting the AIT-related costs that have already occurred (years 2008–2011), but TSA considers the additional cost of this rulemaking to be years 2012–2015. By reporting the costs that have already happened and estimating future costs in this manner, TSA will have considered and disclosed the full eight-year life cycle of AIT deployment.

TSA reports that the net cost of AIT deployment from 2008–2011 has been $841.2 million (undiscounted) and that TSA has borne over 99 percent of all costs related to AIT deployment. TSA projects that from 2012–2015 total AIT-related costs will be approximately $1.5 billion (undiscounted), $1.4 billion at a three percent discount rate, and $1.3 billion at a seven percent discount rate. During 2012–2015, TSA estimates it will also incur over 98 percent of AIT-related costs with equipment and personnel costs being the largest categories of costs. Table 4 below reports the costs that have already happened (2008–2011) by cost category, while Table 5 shows the additional costs TSA is attributing to this rulemaking (2012–2015). Table 6 shows the total cost of AIT deployment from 2008 to 2015.

TABLE 4—NET COST[73] SUMMARY OF AIT DEPLOYMENT FROM 2008–2011 BY COST COMPONENT

[Costs already incurred in $ thousands—undiscounted]

| Year | Passenger opt outs | Industry utilities | TSA costs | | | | Total |
|---|---|---|---|---|---|---|---|
| | | | Personnel | Training | Equipment | Utilities | |
| 2008 | $7.0 | $5.7 | $14,689.1 | $389.5 | $37,425.2 | $18.8 | $52,535.3 |
| 2009 | 32.2 | 5.7 | 15,618.6 | 88.0 | 42,563.6 | 20.4 | 58,328.5 |
| 2010 | 262.2 | 158.2 | 247,566.7 | 5,332.8 | 119,105.4 | 241.4 | 372,666.6 |
| 2011 | 1,384.2 | 186.7 | 284,938.7 | 15,354.4 | 55,567.2 | 269.1 | 357,700.2 |
| Total | 1,685.6 | 356.3 | 562,813.0 | 21,164.7 | 254,661.3 | 549.6 | 841,230.6 |

TABLE 5—COST SUMMARY (NET COST OF AIT DEPLOYMENT 2012–2015) BY COST COMPONENT

[AIT costs in $ thousands]

| Year | Passenger opt outs | Industry tilities | TSA costs | | | | Rapiscan removal | Total |
|---|---|---|---|---|---|---|---|---|
| | | | Personnel | Training | Equipment | Utilities | | |
| 2012 | $2,716.5 | $325.7 | $375,866.9 | $12,043.0 | $116,499.3 | $473.0 | $0.0 | $507,924.4 |
| 2013 | 3,991.7 | 329.3 | 280,844.3 | 4,277.5 | 51,588.8 | 324.4 | 1,809.6 | 343,165.7 |
| 2014 | 4,238.7 | 312.0 | 263,677.6 | 4,190.5 | 51,397.8 | 317.7 | 0.0 | 324,134.2 |
| 2015 | 5,611.8 | 300.3 | 278,580.2 | 4,144.2 | 68,052.6 | 365.7 | 0.0 | 357,054.9 |
| Total | 16,558.7 | 1,267.3 | 1,198,969.0 | 24,655.2 | 287,538.5 | 1,480.9 | 1,809.6 | 1,532,279.2 |
| Discounted 3% | 15,265.0 | 1,178.9 | 1,118,459.3 | 23,810.2 | 269,233.7 | 1,380.7 | 1,705.7 | 1,431,033.5 |
| Discounted 7% | 13,766.6 | 1,075.8 | 1,024,344.7 | 22,048.8 | 247,810.4 | 1,263.8 | 1,580.6 | 1,311,890.7 |

[72] On December 21, 2012, TSA terminated part of its contract with Rapiscan for the Convenience of the Government because it could not meet development related issues in regards to ATR by the Congressionally-mandated June 2013 deadline. As a result of the contract termination, Rapiscan will pay for the removal of all units still in the field.

[73] TSA removed costs related to WTMD that would have occurred regardless of AIT deployment to obtain an estimated net cost for AIT.

TABLE 6—COST SUMMARY (NET COST OF AIT DEPLOYMENT 2008–2015) BY COST COMPONENT

[AIT costs in $ thousands—undiscounted]

| Year | Passenger opt outs | Industry utilities | TSA costs | | | | Rapiscan removal | Total |
|---|---|---|---|---|---|---|---|---|
| | | | Personnel | Training | Equipment | Utilities | | |
| 2008 | $7.0 | $5.7 | $14,689.1 | $389.5 | $37,425.2 | $18.8 | $0.0 | $52,535.3 |
| 2009 | 32.2 | 5.7 | 15,618.6 | 88.0 | 42,563.6 | 20.4 | 0.0 | 58,328.5 |
| 2010 | 262.2 | 158.2 | 247,566.7 | 5,332.8 | 119,105.4 | 241.4 | 0.0 | 372,666.6 |
| 2011 | 1,384.2 | 186.7 | 284,938.7 | 15,354.4 | 55,567.2 | 269.1 | 0.0 | 357,700.2 |
| 2012 | 2,716.5 | 325.7 | 375,866.9 | 12,043.0 | 116,499.3 | 473.0 | 0.0 | 507,924.4 |
| 2013 | 3,991.7 | 329.3 | 280,844.3 | 4,277.5 | 51,588.8 | 324.4 | 1,809.6 | 343,165.7 |
| 2014 | 4,238.7 | 312.0 | 263,677.6 | 4,190.5 | 51,397.8 | 317.7 | 0.0 | 324,134.2 |
| 2015 | 5,611.8 | 300.3 | 278,580.2 | 4,144.2 | 68,052.6 | 365.7 | 0.0 | 357,054.9 |
| Total | 18,244.4 | 1,623.6 | 1,761,782.0 | 45,819.9 | 542,199.9 | 2,030.4 | 1,809.6 | 2,373,509.9 |

This preamble (in the Background section above) has previously explained in detail the need for AIT and the Congressional direction to pursue AIT. In summary, terrorists continue to test our security measures in an attempt to find and exploit vulnerabilities. The threat to aviation security has evolved to include the use of non-metallic explosives, non-metallic explosive devices, and non-metallic weapons. Below are examples of this threat:

- On December 22, 2001, on board an airplane bound for the United States, Richard Reid attempted to detonate a non-metallic bomb concealed in his shoe.
- On December 25, 2009, a bombing plot by Al Qaeda in the Arabian Peninsula (AQAP) culminated in Umar Farouk Abdulmutallab's attempt to blow up an American aircraft over the United States using a non-metallic explosive device hidden in his underwear.
- In October 2010, AQAP attempted to destroy two airplanes in flight using non-metallic explosives hidden in two printer cartridges.
- In May 2012, during the most recent terrorist plot thwarted, AQAP developed another non-metallic explosive device that could be hidden in an individual's underwear and detonated while on board an aircraft.

As evidenced by the incidents described in the above sections, TSA operates in a high-threat environment. Terrorists look for security gaps or exceptions to exploit. The device used in the December 25, 2009, attempt is illustrative. It was cleverly constructed and intentionally hidden on a sensitive part of the body to avert detection. If detonated, the lives of the almost 300 passengers and crew and untold numbers of people on the ground would have been in jeopardy.

Advanced Imaging Technology is proven technology which provides the best opportunity to detect metallic and non-metallic anomalies concealed under clothing without touching the passenger and is an essential component of TSA's security. Since it began using AIT, TSA has been able to detect many kinds of non-metallic items, small items, and items concealed on parts of the body that would not have been detected using metal detectors. In addition, risk reduction analysis shows that the chance of a successful terrorist attack on aviation targets generally decreases as TSA deploys AIT. However, the results of TSA's risk-reduction analysis are classified.

Passengers do not experience additional wait time due to use of AIT equipment because the x-ray screening of carry-on baggage constrains the overall screening process; they wait for their personal belongings regardless of which passenger screening technology is used.

In Tables 7 and 8 below, we present annualized cost estimates and qualitative benefits of AIT deployment. In Table 7, we show the annualized net cost of AIT deployment from 2012 to 2015. As previously explained, costs incurred from 2008–2011 occurred in the past and are not considered costs attributable to this proposed rule. However, given the life cycle of the AIT technology considered in this analysis is eight years; we have also added Table 8 showing the annualized net cost of AIT deployment from 2008–2015 (a full eight-year life cycle and includes the "sunk costs" from 2008 to 2011). Please note that while the *total costs* of AIT deployment for a full eight-year life cycle (2008–2015) are higher than the *total costs* of AIT deployment during the four-year period of 2012–2015, the *annualized* costs ($368,262.8 at seven percent discount) of the full eight-year cycle shown in Table 8 are actually lower than the *annualized* costs ($387,307.7 at seven percent discount) of the 2012–2015 deployment shown in Table 7. As previously shown in Tables 4 and 5, AIT deployment costs in 2008 and 2009 are relatively low compared with the later year AIT expenditures, resulting in lower annualized costs for the eight-year life cycle of 2008–2015. The costs are annualized and discounted at both three and seven percent and presented in 2011 dollars.

TABLE 7—OMB A–4 ACCOUNTING STATEMENT

[$ Thousands for 2012–2015]

| Category | Primary estimate | Minimum estimate | Maximum estimate | Source citation (initial RIA, preamble, etc.) |
|---|---|---|---|---|
| **BENEFITS** | | | | |
| Monetized benefits | Not estimated | Not estimated | Not estimated | Initial RIA. |
| Annualized quantified, but unmonetized, benefits | 0 | 0 | 0 | Initial RIA. |

TABLE 7—OMB A–4 ACCOUNTING STATEMENT—Continued

[$ Thousands for 2012–2015]

| Category | Primary estimate | Minimum estimate | Maximum estimate | Source citation (initial RIA, preamble, etc.) |
|---|---|---|---|---|
| Unquantified benefits | The operations described in this proposed rule produce benefits by reducing security risks through the deployment of AIT technology that is capable of detecting both metallic and non-metallic weapons and explosives. | | | Initial RIA. |
| **COSTS** | | | | |
| Annualized monetized costs (discount rate in parenthesis) | (7%) $387,307.0<br>(3%) $384,986.7 | | Initial RIA. | |
| Annualized quantified, but unmonetized, costs | 0 | 0 | 0 | Initial RIA. |
| Qualitative costs (unquantified) | Not estimated | | | Initial RIA. |
| **TRANSFERS** | | | | |
| Annualized monetized transfers: "on budget" | 0 | 0 | 0 | Initial RIA. |
| From whom to whom? | N/A | N/A | N/A | None. |
| Annualized monetized transfers: "off-budget" | 0 | 0 | 0 | Initial RIA. |
| From whom to whom? | N/A | N/A | N/A | None. |
| **Miscellaneous analyses/category** | **Effects** | | | **Source citation (initial RIA, preamble, etc.).** |
| Effects on state, local, and/or tribal governments | None | | | Initial RIA. |
| Effects on small businesses | No significant economic impact anticipated. Prepared Initial Regulatory Flexibility Analysis | | | Initial Regulatory Flexibility Analysis. |
| Effects on wages | None | | | None. |
| Effects on growth | None | | | None. |

TABLE 8—OMB A–4 ACCOUNTING STATEMENT

[$ Thousands, 2008–2015, eight-year lifecycle]

| Category | Primary estimate | Minimum estimate | Maximum estimate | Source citation (initial RIA, preamble, etc.) |
|---|---|---|---|---|
| **BENEFITS** | | | | |
| Monetized benefits | Not estimated | Not estimated | Not estimated | Initial RIA. |
| Annualized quantified, but unmonetized, benefits | 0 | 0 | 0 | Initial RIA. |
| Unquantified benefits | The operations described in this proposed rule produce benefits by reducing security risks through the deployment of AIT technology that is capable of detecting both metallic and non-metallic weapons and explosives. | | | Initial RIA. |
| **COSTS** | | | | |
| Annualized monetized costs (discount rate in parentheses) | (7%) $368,262.8<br>(3%) $326,410.1 | | | Initial RIA. |
| Annualized quantified, but unmonetized, costs | 0 | 0 | 0 | Initial RIA. |
| Qualitative costs (unquantified) | Not estimated | | | Initial RIA. |
| **TRANSFERS** | | | | |
| Annualized monetized transfers: "on budget" | 0 | 0 | 0 | Initial RIA. |
| From whom to whom? | N/A | N/A | N/A | None. |
| Annualized monetized transfers: "off-budget" | 0 | 0 | 0 | Initial RIA. |
| From whom to whom? | N/A | N/A | N/A | None. |

TABLE 8—OMB A–4 ACCOUNTING STATEMENT—Continued

[$ Thousands, 2008–2015, eight-year lifecycle]

| Category | Primary estimate | Minimum estimate | Maximum estimate | Source citation (initial RIA, preamble, etc.) |
|---|---|---|---|---|
| **Miscellaneous analyses/category** | **Effects** | | | **Source citation (initial RIA, preamble, etc.).** |
| Effects on state, local, and/or tribal governments | None | | | Initial RIA. |
| Effects on small businesses | No significant economic impact anticipated. Prepared IRFA | | | IRFA. |
| Effects on wages | None | | | None. |
| Effects on growth | None | | | None. |

As alternatives to the preferred regulatory proposal presented in the NPRM, TSA examined three other options. The following table briefly describes these options, which include a continuation of the current screening environment (no action), increased use of physical pat-down searches that supplements primary screening with WTMDs, and increased use of ETD screening that supplements primary screening with WTMDs. These alternatives, and the reasons why TSA rejected them in favor of the proposed rule, are discussed in detail in Chapter 3 of the regulatory evaluation located in this docket, and summarized in Table 9.

TABLE 9—COMPARISON OF REGULATORY ALTERNATIVES

| Regulatory alternative | Name | Description |
|---|---|---|
| 1 | No Action | Under this alternative, the passenger screening environment remains the same as it was prior to 2008. TSA continues to use WTMDs as the primary passenger screening technology and to resolve alarms with a pat-down. |
| 2 | Pat-Down | Under this alternative, TSA continues to use WTMDs as the primary passenger screening technology. In addition, TSA supplements the WTMD screening by conducting a pat-down on a randomly selected portion of passengers after screening by a WTMD. |
| 3 | ETD Screening | Under this alternative, TSA continues to use WTMDs as the primary passenger screening technology. In addition, TSA supplements the WTMD screening by conducting ETD screening on a randomly selected portion of passengers after screening by a WTMD. |
| 4 | AIT Screening (NPRM) | Under this alternative, the proposed alternative, TSA uses AIT as a passenger screening technology. Alarms would be resolved through a pat-down. |

*C. Regulatory Flexibility Act Assessment*

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies consider the impacts of their rules on small entities. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. TSA has included an Initial Regulatory Flexibility Analysis within the Initial Regulatory Impact Analysis.

This NPRM proposes to codify the use of AIT to screen passengers boarding commercial aircraft for weapons, explosives, and other prohibited items concealed on the body. The only additional direct cost small entities incur due to this rule is for utilities, as a result of increased power consumption from AIT operation. TSA identified 102 small entities that could have potentially incurred additional utility costs due to AIT; however, TSA reimburses the additional utility costs for five of these small entities. Consequently, this rule would cause 97 small entities to incur additional direct costs. Of the 97 small entities affected by this proposed rule, 96 are small governmental jurisdictions with populations less than 50,000. A privately-owned airport is considered small under SBA standards if revenue amounts to less than $30 million. TSA identified one small privately-owned airport.

The small entities incur an additional utility cost as a result of increased power consumption from AIT operation. To estimate the costs of the deployment of AIT on small entities TSA uses the average kilowatt hour (kWh) consumed per unit on an annual basis at federalized airports. Depending on the size of the airport, TSA estimates the average additional utility cost to range from $815 to $1,270 per year while the average annual revenue for these small entities ranges from $69.5 million to $133.1 million per year. Consequently, TSA estimates that the cost of this NPRM on small entities represents approximately 0.001 percent of their annual revenue. Therefore, TSA's Initial Regulatory Flexibility Analysis suggests that this rulemaking would not have a significant economic impact on a substantial number of small entities.

*D. International Trade Impact Assessment*

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and has determined that it

will have only a domestic impact and therefore no effect on any trade-sensitive activity.

*E. Unfunded Mandates Assessment*

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

*F. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA sec. 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. The PRA defines "collection of information" to be "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinion by or for an agency, regardless of form or format...imposed on ten or more persons." 44 U.S.C. 3502(3)(A). TSA has determined that there are no current or new information collection requirements associated with this proposed rule. TSA's use of AIT to screen passengers does not constitute activity that would result in the collection of information as defined in the PRA.

*G. Executive Order 13132, Federalism*

TSA has analyzed this proposed rule under the principles and criteria of E.O. 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

*H. Environmental Analysis*

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

*I. Energy Impact Analysis*

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as-amended (42 U.S.C. 6362). TSA has determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

**List of Subjects in 49 CFR Part 1540**

Air carriers, Aircraft, Airports, Civil aviation security, Law enforcement officers, Reporting and recordkeeping requirements, Screening, Security measures.

**The Proposed Amendment**

For the reasons set forth in the preamble, the Transportation Security Administration proposes to amend Chapter XII, of Title 49, Code of Federal Regulations, as follows:

## PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

■ 1. The authority citation for part 1540 is revised to read as follows:

**Authority:** 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44925, 44935–44936, 44942, 46105.

■ 2. In § 1540.107, add paragraph (d) to read as follows:

**§ 1540.107 Submission to screening and inspection.**

* * * * *

(d) The screening and inspection described in (a) may include the use of advanced imaging technology. For purposes of this section, advanced imaging technology is defined as screening technology used to detect concealed anomalies without requiring physical contact with the individual being screened.

Issued in Arlington, Virginia, on March 20, 2013.

**John S. Pistole,**

*Administrator.*

[FR Doc. 2013–07023 Filed 3–22–13; 4:15 pm]

**BILLING CODE 9110–05–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

**[Docket No. 130103006–3243–01]**

**RIN 0648–BC89**

## Fisheries in the Western Pacific; 5-Year Extension of Moratorium on Harvest of Gold Corals

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would extend the region-wide moratorium on the harvest of gold corals in the U.S. Pacific Islands through June 30, 2018. NMFS intends this proposed rule to prevent overfishing and to stimulate research on gold corals.

**DATES:** Comments must be received by April 25, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2013–0002, 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-2013-0002*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

*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), and will accept attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Lewis Van Fossen, NMFS PIR Sustainable Fisheries, 808–541–1378.

**SUPPLEMENTARY INFORMATION:** Precious corals (also called deep-sea corals) belong to the class of animals that includes corals, jellyfish, sea anemones, and their relatives. They are harvested for use in high-quality jewelry. Gold corals live in deep water (100–1,500 m) on solid substrates where bottom currents are strong. Precious corals are suspension feeders, thriving in areas swept by strong currents, and are most abundant on substrates of shell sandstone, limestone, or basaltic rock with a limestone veneer. All precious corals are slow-growing and are characterized by low rates of natural mortality and recruitment.

Unexploited populations are relatively stable, and a wide range of age classes is generally present. This life-history pattern (longevity and many age classes) has two important consequences with respect to exploitation. First, the population response to harvesting is drawn out over many years. Second, because of the great longevity of individuals and the associated slow population turnover rates, a long period of reduced fishing effort is required to restore a stock's ability to produce at the maximum sustainable yield if a stock has been over exploited for several years.

Beds of gold corals (*Gerardia* spp., *Callogorgia gilberti, Narella* spp., and *Calyptrophora* spp.) are found in several locations in the U.S. Exclusive Economic Zone (EEZ) around Hawaii. They likely occur in the EEZ around American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Pacific Remote Island Areas (Baker Isl., Howland Isl., Jarvis Isl., Wake Atoll, Johnston Atoll, Kingman Reef, Midway Atoll, and Palmyra Atoll), but their distribution and abundance are unknown in areas beyond Hawaii.

NMFS and the Western Pacific Fishery Management Council (Council) manage precious coral fisheries in the U.S. Pacific Islands under fishery ecosystem plans (FEPs) for American Samoa, Hawaii, the Mariana Archipelago, and the PRIA. The plans and associated Federal regulations require permits and data reporting, and allow harvesting of precious corals only with selective gear (e.g., submersibles, remotely-operated vehicles, or by hand). There are also bed-specific quotas, refuges from fishing, and size limits. The gold coral fishery in the U.S. Pacific Islands is dormant.

In 2008, after researchers presented information suggesting extremely slow growth rates for gold corals, the Council and NMFS established a 5-year moratorium on harvesting gold corals (September 12, 2008, 78 FR 47098). The Council and NMFS established the moratorium in response to research that indicated that reference points for estimating maximum sustainable yield had been overestimated, and that could result in overharvesting gold corals. The moratorium was intended to allow research on gold coral age, growth, and recruitment (the ability to repopulate). The moratorium is scheduled to expire on June 30, 2012.

Past stock assessments of gold corals assumed that colonies had linear growth of 6.60 cm/yr. Research now indicates that gold coral colonies in Hawaii grow at just 0.22 cm/yr, and that the average colony age is about 950 years, much older than previously estimated. The slow growth and extreme old age of gold coral colonies make them susceptible to overharvesting.

Gold corals may also have previously-unknown habitat requirements—gold corals may depend on bamboo corals to provide required substrate for gold coral larvae. As with other precious corals, gold corals produce tiny free-swimming larvae that, if they settle onto an appropriate substrate, they begin to form a colony. Most precious corals prefer hard substrates like basalt or limestone. NMFS researchers have discovered that, in contrast, gold coral larvae may prefer to settle on bamboo coral colonies, eventually overgrowing them. It is not clear whether gold coral merely covers the host colony, or also consumes its live tissues.

The Council considered the new gold coral life-history information and the implications for gold coral fishery management. At its 155th meeting, held from October 29 through November 1, 2012, in Honolulu, the Council recommended that NMFS extend the current moratorium on gold coral harvests for another five years. This will allow NMFS and the Council to conduct further research and develop sustainable management measures for gold corals, specifically the Council's stated goal of developing an appropriate annual catch limit prior to the moratorium expiring in 2018This proposed rule would extend the region-wide moratorium on the harvest of gold corals through June 30, 2018. NMFS intends this proposed rule to prevent overfishing and to stimulate research on gold coral life-history that will inform management models and reference points for appropriate gold coral catch limits.

NMFS must receive any public comments on this proposed rule by the close of business on April 25, 2013, and will not consider late comments.

## Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the fishery ecosystem plans for American Samoa, the Pacific Remote Island Areas, Hawaii, and the Mariana Islands, 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 Counsel for Regulation of the Department of Commerce certified to the Chief Counsel 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 analysis follows:

The proposed rule would extend the current five-year moratorium on gold coral harvest in the U.S. Pacific Islands for another five years, in light of new information on gold coral growth rates and habitat requirements. The current moratorium is scheduled to expire on June 30, 2013. The proposed rule would extend the harvest moratorium until June 30, 2018.

Any entity possessing a western Pacific precious corals permit would potentially be affected by the proposed action, as those entities would be permitted to harvest or land gold coral, in addition to black, bamboo, pink, and red coral. Only two entities, both based in the state of Hawaii, currently possess a western Pacific precious corals permit (*http://www.fpir.noaa.gov/SFD/SFD_permits_index.html*, accessed: February 22, 2013). NMFS believes that both of these would be considered small entities with annual revenues below $4 million.

Although NMFS believes that these two entities would be considered small entities, it is unlikely that either of these entities would begin to harvest gold coral in the absence of a moratorium. The western Pacific gold coral fishery had been dormant when the current moratorium went into effect in 2008. Gold coral harvesting had occurred occasionally during the past 50 years. Between 1973 and 1979, a manned submersible was used to selectively harvest a couple thousand kilograms of gold coral from the Makapuu Bed. There has been no gold coral harvest at the Makapuu Bed since 1979. In 1999–2000, a second entity extracted a small amount of gold coral, along with other

deepwater precious corals, from exploratory areas off Kailua-Kona.

Extending the moratorium on gold coral harvests will not likely cause immediate economic impact to entities permitted to harvest gold coral. This fishery had been dormant prior to the current moratorium. Furthermore, this fishery is still characterized by high equipment and operating costs, continued safety concerns and other logistical constraints, and gold coral market prices are not high enough to offset those risks and expenses. Because of these challenges to entities wishing to harvest and land gold coral, interest in this fishery will likely to remain low even without the moratorium. However, extending the moratorium for another five years would ensure that no harvesting of gold coral would occur until 2018. Additional research may better inform future management decisions regarding sustainable harvesting of this resource.

The no action alternative was the only other alternative considered. That alternative would allow the gold coral fishery to open on July 1, 2013. It would have little to no positive immediate impact to the commercial gold coral fishery, as this fishery would likely to remain dormant in the near term. However, there could potentially be negative long-term impacts in terms of the sustainability of gold corals and in turn, this fishery. These negative impacts would come through the development of future potentially unsustainable management decisions that are made based on incomplete research on gold coral biology.

The proposed rule does not duplicate, overlap, or conflict with other Federal rules and not expected to have significant impact on small entities (as discussed above), organizations or government jurisdictions. There does not appear to be disproportionate economic impacts from the proposed rule based on home port, gear type, or relative vessel size. The proposed rule will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects in 50 CFR 665**

Administrative practice and procedure, American Samoa, Deep sea coral, Fisheries, Fishing, Guam, Hawaii, Northern Mariana Islands, Precious coral.

Dated: March 21, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

## PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 665 continues to read as follows:

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

■ 2. Revise § 665.169 to read as follows:

**§ 665.169 Gold coral harvest moratorium.**

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2018.

■ 3. Revise § 665.270 to read as follows:

**§ 665.270 Gold coral harvest moratorium.**

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2018.

■ 4. Revise § 665.469 to read as follows:

**§ 665.469 Gold coral harvest moratorium.**

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2018.

■ 5. Revise § 665.669 to read as follows:

**§ 665.669 Gold coral harvest moratorium.**

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2018.

[FR Doc. 2013–06903 Filed 3–25–13; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 78, No. 58
Tuesday, March 26, 2013

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

### Office of the Secretary

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Office of Homeland Security and Emergency Coordination, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Office of Homeland Security and Emergency Coordination's (OHSEC) intention to request an extension for and revision to a currently approved information collection for US Department of Agriculture (USDA) Personal Identity Verification (PIV) Request for Credential, the USDA Homeland Security Presidential Directive 12 (HSPD–12) program. HSPD–12 establishes a mandatory, Government-wide standard for secure and reliable forms of identification (credentials) issued by the Federal Government to its Federal Employees, Non-Federal employees and contractors. The Office of Management and Budget (OMB) mandated that these credentials be issued to all Federal Government employees, contractors, and other applicable individuals who require long-term access to federally controlled facilities and/or information systems. The HSPD–12 compliant program is jointly owned and administered by the Office of the Chief Information Officer (OCIO) and OHSEC.

**DATES:** Comments on this notice must be received by March 20, 2013, to be assured of consideration.

*Additional Information or Comments:* Contact Richard Holman, Chief, Physical Security Division, Office of Homeland Security and Emergency Coordination, USDA, Room 101, Reporter's Agriculture Building, 300 7th Street SW., Washington, DC 20024.

**SUPPLEMENTARY INFORMATION:** *Title:* USDA PIV Request for Credential.

*OMB Number:* 0505–0022.

*Expiration Date of Approval:* June 30, 2013.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The HSPD–12 information collection consists of two phases of implementation: Personal Identity Verification phase I (PIV I) and Personal Identity Verification phase II (PIV II). The information requested must be provided by Federal employees, contractors and other applicable individuals when applying for a USDA credential (identification card). This information collection is necessary to comply with the requirements outlined in Homeland Security Presidential Directive (HSPD) 12, and Federal Information Processing Standard (FIPS) 201, Personal Identity Verification (PIV) Phases I & II. USDA must implement an identity proofing, registration, and issuance process consistent with the requirements outlined in FIPS 201–1. Previously, this information collection form was required as part of USDA's PIV I identity proofing and registration process. For PIV II, implemented after 10/27/06, form AD 1197 has been eliminated and the identity process has been streamlined with the addition of a Web-based HSPD–12 system. As USDA has entered Phase II (PIV II) of the HSPD–12 program, one estimate of burden has been calculated and one process description has been included.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1.5 hours for PIV II. The Burden is estimated based on the three prerequisites for PIV Credential issuance as well as the receipt of the PIV Credential itself.

*Respondents:* For PIV I, new long term contractors, affiliates, and employees must undergo the information collection process. For PIV II, long term contractors, affiliates, and employees must undergo the information collection process. Existing contractors/employees/affiliates must undergo the process to receive a PIV Credential.

*Estimated Number of Respondents:* Estimated Annual Number of Respondents: PIV II respondents: 12,000.

*Estimated Number of Responses per Respondent:* Each respondent should complete one response.

*Estimated Total One-Time Burden on Respondents:* PIV II: 30,000 hours.

Comments are invited on: (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 including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Richard Holman. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

**Gregory L. Parham,**

*Acting Assistant Secretary for Administration.*

[FR Doc. 2013–06891 Filed 3–25–13; 8:45 am]

BILLING CODE P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

March 20, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c)

ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received by April 25, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Grain Inspection, Packers and Stockyard Administration**

*Title:* Swine Contract Library.

*OMB Control Number:* 0580–0021.

*Summary of Collection:* The Swine Packer Marketing Contracts, subtitle of the Livestock Mandatory Reporting Act of 1999, amended the Packers and Stockyards Act (P&S Act) to mandate the establishment of a library of swine packer marketing contracts (swine contract library), and a monthly report of types of contracts in existence and available and commitments under such contracts. The collection of information is necessary for the Grain Inspection, Packers and Stockyards Administration (GIPSA) to perform the functions required for the mandatory reporting of swine packer marketing contract information.

*Need and Use of the Information:* Information is required from packers for processing plants that meet certain criteria, including size as measured by annual slaughter. This information is collected using forms P&SP–341, 342 and 343. GIPSA is responsible for implementing and enforcing the P&S Act, including the swine contract library. The information collection and recordkeeping requirements for the swine contract library are essential for maintaining a mandatory library of information on contracts used by packers to purchase swine from producers and monthly reports of commitments under such contracts.

*Description of Respondents:* Business or other for-profit; Farms.

*Number of Respondents:* 55.

*Frequency of Responses:* Reporting: On occasion; Monthly.

*Total Burden Hours:* 2,705.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2013–06931 Filed 3–25–13; 8:45 am]

**BILLING CODE 3410–KD–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

March 20, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Food Safety and Inspection Service**

*Title:* Importation and Transportation of Meat and Poultry Products.

*OMB Control Number:* 0583–0094.

*Summary of Collection:* The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.)* and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. Meat and poultry products not marked with the mark of inspection and shipped from one official establishment to another for further processing must be transported under FSIS seal to prevent such unmarked product for entering into commerce. To track product shipped under seal, FSIS requires shipping establishments to complete a form that identifies the type, amount, and weight of the product. Foreign countries exporting meat and poultry products to the U.S. must establish eligibility for importation of product into the U.S., and annually certify that their inspection systems are "equivalent to" the U.S. inspection system. Meat and poultry products intended for import into the U.S. must be accompanied by a health certificate, signed by an official of the foreign government, stating that products have been produced by certified foreign establishments. FSIS will collect information using form 7350–1, Request and Notice of Shipment of Sealed Meat/Poultry.

*Need and Use of the Information:* FSIS will collect information to identify the product type, quantity, destination, and originating country of the meat and poultry. Also, FSIS will collect name, number, method of shipping, and destination of product, type and description of product to be shipped, reason for shipping product, and a signature.

FSIS will use the information to verify that a meat or poultry product intended for import has been prepared in a plant certified to prepare product for export to the U.S. FSIS will use the information to conduct re-inspection of meat and poultry imported to the U.S.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 136.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 2,846.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2013–06932 Filed 3–25–13; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

March 20, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 25, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* Animal and Plant Health Inspection Service (APHIS) Student Outreach Program.

*OMB Control Number:* 0579–0362.

*Summary of Collection:* APHIS Student Outreach Program to help students learn about careers in animal science, veterinary medicine, and plant pathology. The objective(s) of the APHIS Student Outreach Program is to: (1) Provide students an opportunity to live on a university campus while learning about APHIS programs; (2) identify and recruit students who are interested in agricultural science; (3) provide demonstrations in APHIS programs including veterinary medicine, animal science, plant pathology; and (4) increase awareness of career opportunities within APHIS. The Application and brochure is provided to the applicant via of the APHIS and University Web site.

*Need and Use of the Information:* APHIS will collect information annually to be used to select the participants for the APHIS Student Outreach Program. The application provides the information needed to assess the students true interest in agriculture; provide references from others who are familiar with the students interest and character; and provides verification of the student age and enrollment in school. The information collected from the applications will help APHIS to rate and rank the applicants.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 1,100.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 6,200.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2013–06934 Filed 3–25–13; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Forest Resource Coordinating Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting; Correction.

**SUMMARY:** The Forest Service published a document in the **Federal Register** of January 31, 2013, concering a notice of meeting for the Forest Resource Coordinating Committee. The document contained an incorrect date.

**FOR FURTHER INFORMATION CONTACT:** Maya Solomon, Forest Resource Coordinating Committee Program Coordinator, 202–205–1376 or Ted Beauvais, Deginated Federal Officer, 202–205–1190.

**Correction**

In the **Federal Register** of January 31, 2013, in FR Doc. 2013–02091, on page 6806, in the third column, correct the **ADDRESSES** caption to read: Written comments regarding agenda items must be received by March 29, 2013.

Dated: March 21, 2013.

**Paul Ries,**

*Associate Deputy Chief, State & Private Forestry.*

[FR Doc. 2013–06926 Filed 3–25–13; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Rural Business—Cooperative Service

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Business—Cooperative Service, Department of Agriculture.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business—Cooperative Service's (RBS) intention to request information collection in support of the Rural Business Enterprise Grant (RBEG) program and Televisions Demonstration Grants (7 CFR part 1942–G).

**DATES:** Comments on this notice must be received by May 28, 2013 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Cindy Mason, Specialty Programs Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3226, 1400 Independence Ave. SW., Washington, DC 20250–3225, Telephone (202) 690–1433, Email: *cindy.mason@wdc.usda.gov.*

**ADDRESSES:** Submit written comments on the collection via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742.

**SUPPLEMENTARY INFORMATION:**

*Title:* Rural Business Enterprise Grants and Televisions Demonstration Grants.

*OMB Number:* 0570–0022.
*Expiration Date of Approval:*
*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The objective of the RBEG program is to facilitate the development of small and emerging private businesses in rural areas. This purpose is achieved through grants made by RBS to public bodies and nonprofit corporations. Television Demonstration grants are available to private nonprofit public television systems to provide information on agriculture and other issues of importance to farmers and the rural residents. The regulation contains various requirements for information from the grantees, and some requirements may cause the grantees to require information from other parties. The information requested is vital for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information to determine eligibility; the specific purpose for which grant funds will be used; timeframes; who will be carrying out the grant purposes; project priority; applicant experience; employment improvement; and mitigation of economic distress.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1.8 hours per response.

*Respondents:* Nonprofit corporations and public bodies.

*Estimated Number of Respondents:* 720.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 16,805.

*Estimated Total Annual Burden on Respondents:* 29,718.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0040.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: March 15, 2013.

**Lillian E. Salerno,**

*Acting Administrator, Rural Business—Cooperative Service.*

[FR Doc. 2013–06899 Filed 3–25–13; 8:45 am]

BILLING CODE 3410–XY–P

## DEPARTMENT OF AGRICULTURE

### Rural Business—Cooperative Service

### Notice of Funding Availability (NOFA) for Delta Health Care Services Grants

**AGENCY:** Rural Business—Cooperative Service, USDA.

**ACTION:** NOFA.

**SUMMARY:** Rural Business—Cooperative Service (RBS), an agency of the United States Department of Agriculture, announces the availability of grant funds through the Delta Health Care Services Grant Program. Pursuant to the 2012 Appropriations Act, $3,000,000 is available to be competitively awarded for the Delta Health Care Services Grant Program. The minimum grant amount is $50,000.

**DATES:** You must submit completed applications for grants according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than May 28, 2013 to be eligible for grant funding. Late or incomplete applications will not be eligible for grant funding.
- Electronic copies must be received by May 28, 2013 to be eligible for grant funding. Late or incomplete applications will not be eligible for grant funding.

**ADDRESSES:** You may obtain application guides and materials for the Delta Health Care Services grants the following ways:

- The Internet at the RBS Cooperative Programs Web site: *http://www.rurdev.usda.gov/bcp_deltahealthcare.html.*
- You may also request application guides and materials from RBS by contacting, RBS Office of the Deputy Administrator, Cooperative Programs at (202) 690–1374 or your local State Office. A list of State Office contacts can be found at *http://www.rurdev.usda.gov/StateOfficeAddresses.html.*

**Alabama**

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495

**Arkansas**

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279

**Illinois**

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240

**Kentucky**

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422

**Louisiana**

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655

**Mississippi**

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850

**Missouri**

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480

**Tennessee**

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300

- You must submit either:
- Completed paper applications for Delta Health Care Services grants to Office of the Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 4016, STOP 3250, Washington, DC 20250–3250, or
- Electronic grant applications at *http://www.grants.gov/* (Grants.gov),

following the instructions you find on that Web site.

**FOR FURTHER INFORMATION CONTACT:** Office of the Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Programs, 1400 Independence Ave. SW., Room 4016, STOP 3250, Washington, DC 20250–3250; telephone: (202) 690–1374, fax: (202) 690–2724.

Visit the program Web site at *http://www.rurdev.usda.gov/BCP_deltahealthcare.html* for application assistance or contact your USDA Rural Development State Office at *http://www.rurdev.usda.gov/recd_map.html*. Applicants are encouraged to contact their State Offices in advance of the deadline to discuss their projects and ask any questions about the application process.

**EO 13175 Consultations and Coordination With Indian Tribal Governments**

To introduce tribes and tribal leaders in the Delta Region to this program USDA hosted a teleconference on December 7, 2010. USDA extended an invitation to Tribal Leaders of the six Federally recognized Tribes in Mississippi, Louisiana, and Alabama on November 30, 2010. Through this call USDA aimed to review, discuss, and open the door for consultation on this program, in case the tribes brought forward any unanticipated concerns regarding the draft NOFA provisions of the Delta Health Care Services Grant Program, authorized under Section 379G of the Consolidated Farm and Rural Development Act. Three of the six tribes participated on the teleconference on December 7, 2010. It was explained that eligible grant applicants are limited to consortiums or groups of regional institutions of higher education, academic health and research institutes, and economic development entities located in the Delta Region that have experience in addressing the health care issues in the region. It was also articulated that eligible consortiums may include participation with Indian Tribes. The Tribal Leaders did not express any perceived negative impact regarding the draft, and were given appropriate Rural Development contact information should they have any future concerns regarding the NOFA. Since that time Rural Development has not received any further suggestions, or request from tribes to consult on this program. As a result of the teleconference, and no further requests to consult on the program, USDA has assessed the impact of this NOFA on Indian Tribal Governments in the Delta Region, and has concluded that this NOFA will not negatively affect the Federally recognized Tribes in the region, or impose substantial direct compliance costs on Indian Tribal Governments, nor preempt tribal law.

**Paperwork Reduction Act**

The Paperwork Reduction Act requires Federal agencies to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the agency conducted an analysis to determine the universe of respondents that could meet the eligibility requirements to apply for the Delta Health Care Services Grant Program. It was determined that the eligible number of entities in the Delta Region was fewer than nine and in accordance with 5 CFR 1320, no OMB approval is necessary at this time.

**SUPPLEMENTARY INFORMATION:**

**Overview**

*Federal Agency:* Rural Business—Cooperative Service (RBS).

*Funding Opportunity Title:* Delta Health Care Services Grant Program.

*Announcement Type:* Funding announcement.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 10.874.

*Dates:* The due date for application submissions is May 28, 2013:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than May 28, 2013 to be eligible for grant funding. Late or incomplete applications will not be eligible for grant funding.
- Electronic copies must be received by May 28, 2013 to be eligible for grant funding. Late or incomplete applications will not be eligible for grant funding.

**I. Funding Opportunity**

The Delta Health Care Services Grant Program is designed to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and other individuals and entities in the Delta Region. Grant funds may be utilized for the development of health care cooperatives, health care services; health education programs; health care job training programs; and for the development and expansion of public health-related facilities in the Delta Region. Grants will be awarded to eligible entities in the Delta Region serving communities of no more than 50,000 inhabitants to help to address the long standing and unmet health needs of the region.

**II. Definitions**

The terms and conditions provided in this Notice are applicable to and for purposes of this Notice only.

*Academic Health and Research Institute* consists of a medical school, one or more other health profession schools or programs (such as allied health, dentistry, graduate studies, nursing, pharmacy, public health, veterinary medicine), and one or more owned or affiliated teaching hospitals or health systems.

*Consortium* means a group of at least three entities that are regional institutions of higher education, academic health and research institutes, health care cooperatives and economic development entities located in the Delta Region that have experience in addressing the health care issues in the region. At least one of the consortium members must be legally organized as an incorporated organization or other legal entity and have legal authority to contract with the Government.

*Delta Region* means the 252 counties and parishes within the states of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee that are served by the Delta Regional Authority. (The Delta Region may be adjusted by future Federal statute.) To view the areas identified within the Delta Region visit *http://www.dra.gov/about-us/eight-state-map.aspx*.

*Economic Development Entity* means an entity that makes investments or conducts activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment.

*Institution of Higher Education* means either a postsecondary (post-high school) educational institution that awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or a postsecondary vocational institution that provides a program of training to prepare students for gainful employment in a recognized occupation.

*Rural area* means any area of the United States not included within (a) the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 50,000 inhabitants and (b) any urbanized area contiguous and adjacent to a city or town described in clause (a).

*RBS (referred to as the Agency)* means Rural Business-Cooperative Service, an agency under the mission of Rural Development which is under the Unites States Department of Agriculture.

**III. Award Information**

*Type of Award:* Grant.
*Total Funding:* $3 million.
*Maximum Award:* N/A.
*Minimum Award:* $50,000.

Award documents specify the term of each award. The Agency will make awards and execute documents appropriate to the project prior to any advance of funds to successful applicants.

**IV. Eligibility Information**

An applicant must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number (see Section IV.B.) and register in the System for Award Management (SAM), formerly Central Contractor Registry (CCR), prior to submitting an application. (See 2 CFR 25.200(b).) In addition, an applicant must maintain its registration in the SAM database during the time its application is active. Finally, an applicant must have the necessary processes and systems in place to comply with the reporting requirements in 2 CFR 170.200(b), as long as it is not exempted from reporting. Exemptions are identified at 2 CFR 170.110(b).

*A. Eligible Applicants*

Grants may be made to a Consortium, as defined in Section II of this Notice. The Consortium, itself, does not have to be legally organized. However, at least one member of the Consortium must be legally organized as an incorporated organization, or other legal entity, and have legal authority to contract with the Government. The Consortium must be located in the Delta Region and must include at least three entities that are regional institutions of higher education, academic health and research institutes, health care cooperatives or economic development entities.

As stated above, at least one member of the Consortium must have legal capacity and authority to carry out the purposes of the projects in its application, and to enter into contracts and to otherwise comply with applicable Federal statutes and regulations. A member of the Consortium may serve as the lead representative for the applicant.

The applicant must be able to demonstrate at least one year of experience in addressing the health care issues in the Delta Region.

Individuals are not eligible to apply for Delta Health Care Services Grant Program financial assistance directly.

*B. Cost Sharing or Matching*

Matching funds are not required. The Agency will accept other contributions, but these funds will not be factored into the scoring criteria.

*C. Other Eligibility Requirements*

The project must serve, and grant funds must be expended in the Delta Region, as defined in this Notice. However, the applicant need not propose to serve the entire Delta Regional Authority area.

Project funds must be used to develop health care cooperatives, health care services, health education programs, health care job training programs; or for the development and expansion of public health-related facilities in the Delta Region through increased resources, increased service area coverage or major health system reorganization, to address longstanding and unmet health needs of the region.

In accordance with Section 704 of General Provisions set forth in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, the total amount for salaries and wages, administrative expenses, and recurring operating costs may not exceed 10 percent of the grant.

Awards made under this Notice are subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, P.L. No. 112–55, Division A sections 738 and 739 regarding corporate felony convictions and corporate federal tax delinquencies. You must provide representation as to whether your organization or any officers or agents of your organization has or has not been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of application. In addition, you must provide representation as to whether your organization has or does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. To comply with these provisions, all applicants must complete paragraph (A) of this representation, and all corporate applicants also must complete paragraphs (B) and (C) of this representation:

(A) Applicant _____ [insert applicant name] is ____ is not _____ (check one) and entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa. Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands.

(B) Applicant _____ [insert applicant name] has ____ has not _____ (check one) been convicted of a felony criminal violation under Federal or state law in the 24 months preceding the date of application. Applicant has _____ has not _____ (check one) had any officer or agent of the Applicant convicted of a felony criminal violation for actions taken on behalf of the Applicant under Federal or State law in the 24 months preceding the date of the signature on the pre-application.

(C) Applicant _____ [insert applicant name] has ____ does not have _____ (check one) any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

If you have an existing Delta Health Care Grant award, you must be performing satisfactorily to be considered eligible for a new award. Satisfactory performance includes, but is not limited to, being up-to-date on all financial and performance reports and being current on all tasks as approved in the work plan. The Agency will consider a one-time request to extend the period for up to one year during which grant funding is available.

*D. Completeness Eligibility*

Your application will not be considered for funding if it does not provide sufficient information to determine eligibility or is missing required elements. In particular, you must include a project budget that identifies each task to be performed, along with the time period of performance for each task, and the amounts of grant funds and other contributions needed for each task.

**V. Application and Submission Information**

*A. Where To Get Application Information*

The application guide and copies of necessary forms for the Delta Health

Care Services Grant Program are available from these sources:

- The Internet at *http://www.rurdev.usda.gov/hcp_deltahealthcare.html*
- *http://www.grants.gov*, or,
- For paper copies of these materials: call (202) 690–1374.

*B. How and Where To Submit an Application*

You may file an application in either paper or electronic format. To submit your application electronically you must use the Grants.gov Web site at *http://www.grants.gov*. You may not submit an application electronically in any way other than through Grants.gov. Fax or email applications will not be accepted.

Whether you file a paper or an electronic application, you will need a DUNS number.

1. *DUNS Number.*

As required by the OMB, all applicants for grants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. A DUNS number can be obtained at no cost by visiting *http://fedgov.dnb.com/webform* or calling toll-free (866) 705–5711.

2. *System for Award Management (SAM).*

(a) In accordance with 2 CFR part 25, applicants, whether applying electronically or by paper, must be registered in SAM prior to submitting an application. Applicants may register with SAM at *https://www.sam.gov* or by calling 1–(866) 606–8220. Completing the SAM registration process takes up to five business days, and applicants are strongly encouraged to begin the process well in advance of the deadline specified in this Notice.

(b) The SAM registration must remain active, with current information, at all times during which an entity has an application under consideration by an agency or has an active Federal Award. To remain registered in the SAM database after the initial registration, the applicant is required to review and update, on an annual basis from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate and complete.

For paper applications, send or deliver the applications by the U.S. Postal Service (USPS) or courier delivery services to the RBS receipt point set forth below. The Agency will not accept applications by fax or email. Original paper application (no stamped, photocopied, or initialed signatures) and one copy must be postmarked by May 28, 2013, to the following address:

Office of the Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Service, 1400 Independence Avenue SW., STOP 3250, Room 4016, Washington, DC 20250–3250.

*C. Submission Date and Time*

Application Deadline date: [May 28, 2013.

Explanation of Deadlines: Complete paper applications must be postmarked by May 28, 2013. Electronic applications submitted through Grants.gov will be accepted by the system through midnight eastern time on the deadline date.

*D. What constitutes a complete application?*

1. Detailed information on each item required can be found in the Delta Health Care Services Grant Program application guide. The program's application guide provides specific guidance on each of the items listed and also provides all necessary forms and sample worksheets.

2. Applications should be prepared in conformance with applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. A completed application must include the following:

a. *An Application for Federal Assistance.* A completed SF 424.

b. *Evidence of eligibility.* Evidence of the applicant's eligibility to apply under this Notice, demonstrating that the applicant is a consortium as defined in this Notice.

c. *A project abstract.* A summary not to exceed one Web page, suitable for dissemination to the public and to Congress.

d. *Executive summary.* An executive summary of the project describing its purpose, not to exceed two Web pages.

e. *Scoring documentation.* The grant applicant must address and provide documentation on how it meets each of the scoring criteria, specifically the rurality of the project area and communities served, the community needs and benefits derived from the project, and project management and organization capability.

f. *Service area maps.* Maps with sufficient detail to show the area that will benefit from the proposed facilities and services, and the location of facilities purchased with grant funds.

g. *Scope of work.* The scope of work must include (1) the specific activities and services, such as programs and training, to be performed under the project, (2) the facilities to be purchased or constructed, (3) who will carry out the activities and services, (4) specific time frames for completion and (5) documentation regarding how the applicant solicited input for the project from local governments, public health care providers, and other entities in the Delta Region.

h. *Budget.* The applicant must provide a budget showing the line item costs for all capital and operating expenditures eligible for the grant funds, and other sources of funds necessary to complete the project.

i. *Financial information and sustainability.* The applicant must provide current financial statements and a narrative description demonstrating sustainability of the project, all of which show sufficient resources and expertise to undertake and complete the project and how the project will be sustained following completion.

j. *Statement of experience.* The applicant must provide a written narrative describing its demonstrated capability and experience in addressing the health care issues in the Delta Region and in managing and operating a project similar to the proposed project.

k. *Evidence of legal authority and existence.* At least one member of the Consortium must provide evidence of its legal existence and authority to enter into a grant agreement with Rural Business-Cooperative Service and perform the activities proposed under the grant application.

l. *Compliance with other Federal statutes.* The applicant must provide evidence or certification that it is in compliance with all applicable Federal statutes and regulations, including, but not limited to the following (sample certifications are provided in the application guide.):

(1) Equal Opportunity and Nondiscrimination;.

(2) Form AD–1047, "Certification Regarding Debarment, Suspension; and Other Responsibility Matters—Primary Covered Transactions";

(3) Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions";

(4) Form AD–1049, "Certification Regarding a Drug-Free Workplace Requirement (Grants)";

(5) Lobbying for Contracts, Grants, Loans, and Cooperative Agreements (31 U.S.C. 1352).

m. *Environmental impact and historic preservation.* The applicant must provide details of the project's impact on the environment and historic preservation, and comply with 7 CFR Part 1940, which contains the Agency's policies and procedures for

implementing a variety of Federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment. This must be contained in a separate section entitled "Environmental Impact of the Project" and must include the Environmental Questionnaire/Certification describing the impact of the project. The Environmental Questionnaire/Certification is available on the RBS Cooperative Programs Web site at: *http://www.rurdev.usda.gov/bcp_deltahealthcare.html*. Submission of the Environmental Questionnaire/Certification alone does not constitute compliance with 7 CFR part 1940.

n. *Acknowledgment from Consortiums.* Each application must include an acknowledgement from each member of the Consortium that it is a member of the Consortium. This acknowledgement must be on each entity's letterhead and signed by an authorized representative of the entity.

## VI. Application Review Information

### *A. Criteria*

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria are detailed in the Delta Health Care Services Grant Application Guide. There are three criteria that when totaled together can add up to a total of 100 points, broken down as follows:

a. The rurality of the Project area and communities served. (up to 15 points);

b. The Community Needs and Benefits Derived from the project. (up to 45 points); and

c. The Project Management and Organization capability. (up to 40 points).

### *B. Grant Review Standards*

1. All applications for grants must be delivered to RBS at the address specified in this Notice, or submitted electronically to *http://www.grants.gov/* (Grants.gov) to be eligible for funding. The Agency will review each application for conformance with the provisions of this Notice. The Agency may contact the applicant for additional information or clarification.

2. We will review each application to determine if it is eligible for assistance based on the requirements of this Notice as well as other applicable Federal regulations.

3. Applications conforming with this Notice will be evaluated competitively by the Agency, and will be awarded points as described in the Delta Health Care Services Grant Application Guide. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

### *C. Scoring Guidelines*

1. The applicant's rurality calculation will be checked and, if necessary, corrected by the Agency.

2. The Community Needs and Benefits derived from the project score will be determined by the Agency based on information presented in the application. The Community Needs and Benefits score is a subjective score based on the reviewer's assessment of the supporting arguments made in the application. The score aims to assess how the project's purpose and goals benefit the residents in the Delta Region.

3. The Project Management and Organization Capability score will be determined by the Agency based on information presented in the application. The Agency will evaluate the applicant's experience, past performance, and accomplishments addressing health care issues to ensure effective project implementation.

### *D. Selection Process*

Grant applications are ranked by final score. The Agency selects applications based on those rankings, subject to availability of funds. Rural Development has the authority to limit the number of applications selected in any one state, or from any applicant.

## VII. Award Administration Information

### *A. Award Notices*

The Agency recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. The Agency generally notifies applicants whose projects are selected for awards by faxing an award letter. The Agency follows the award letter with a grant agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement. If your application is not successful, you will receive notification, including mediation procedures and appeal rights, by mail.

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable (see 7 CFR part 11). Instructions on the appeal process will be provided at the time an applicant is notified of the adverse decision.

### *B. Administrative and National Policy Requirements*

All recipients of Federal financial assistance are required to comply with the Federal Funding Accountability and Transparency Act of 2006 and must report information about sub-awards and executive compensation (see 2 CFR Part 170). These recipients must also maintain their registration in the SAM database as long as their grants are active. These regulations may be obtained at *http://www.gpoaccess.gov/cfr/index.html*.

The following additional requirements apply to grantees selected for this program:

- Agency-approved Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, "Request for Obligation of Funds."
- Form RD 1942–46, "Letter of Intent to Meet Conditions."
- Form RD 400–4, "Assurance Agreement."

### *C. Performance Reporting*

All recipients of Delta Health Care Services Grant Program financial assistance must provide quarterly performance activity reports to the Agency until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project.

### *D. Recipient and Subrecipient Reporting*

The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR Part 170, § 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

1. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR Part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made.

2. The Total Compensation of the Recipient's Executives (five most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR Part 170) to *http://www.sam.gov* by the end of the month following the month in which the award was made.

3. The Total Compensation of the Subrecipient's Executives (five most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2

CFR Part 170) to the Recipient by the end of the month following the month in which the sub-award was made.

Further details regarding these requirements can be obtained at *http://www.gpoaccess.gov/cfr/index.html.*

**VIII. Agency Contacts**

A. Web site: *http://www.rurdev.usda.gov/bcp_deltahealthcare.html.* The Web site maintains up-to-date resources and contact information for the Delta Health Care Services Grant Program.

B. Phone: (202) 690–1374.

C. Fax: (202) 690–2724.

D. Main point of contact: Deputy Administrator, Cooperative Programs, RBS.

**IX. Nondiscrimination Statement**

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Stop 9410, Washington, DC 20250–9410, or call toll-free at (866) 632–9992 (English) or (800) 877–8339 (TDD) or (866) 733–8642 (English Federal-relay) or (800) 845–6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

Dated: February 6, 2013.

**Lillian Salerno,**

*Acting Administrator, Rural Business—Cooperative Programs.*

[FR Doc. 2013–06896 Filed 3–25–13; 8:45 am]

BILLING CODE 3410–XY–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* International Trade Administration (ITA).

*Title:* Procedures for Importation of Supplies for Use in Emergency Relief Work.

*OMB Control Number:* 0625–0256.

*Form Number(s):* N/A.

*Type of Request:* Regular submission (extension of a currently approved information collection).

*Burden Hours:* 10.

*Number of Respondents:* 5.

*Average Hours per Response:* 2.

*Needs and Uses:* The regulations (19 CFR 358.101–104) provide procedures for requesting the Secretary of Commerce to permit the importation of supplies, such as food, clothing, and medical, surgical, and other supplies, for use in emergency relief work free of antidumping and countervailing duties. Since the regulations issuance, no request has been submitted.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: March 21, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–06867 Filed 3–25–13; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Gulf of Mexico Fishery Management Council Stakeholder Survey.

*OMB Control Number:* None.

*Form Number(s):* NA.

*Type of Request:* Regular submission (request for a new information collection).

*Number of Respondents:* 881.

*Average Hours per Response:* 10 minutes.

*Burden Hours:* 147.

*Needs and Uses:* This request is for a new information collection.

The Gulf of Mexico Fishery Management Council (Council) has adopted a five-year strategic communications plan that requires the Communications staff to not only implement specific outreach and education strategies and tactics to Gulf of Mexico commercial fishermen, recreational anglers, NGOs, and others interested in fisheries issues, but to also provide a means to evaluate the effectiveness and measure the success of specific tactics. In order to incorporate these performance metrics into the communications plan, a baseline survey is necessary to identify current attitudes, awareness, and communication gaps. This information will help us establish a point from which we can evaluate and measure program effectiveness and success.

The information collected by the survey will be used to achieve a baseline measurement of the effectiveness of current Council communications. The survey will be conducted by council staff through a Web-based survey. A survey link will be emailed to stakeholders, posted on the Council Web site, and published in the Council blog. The link will also be made available through our smart phone regulations Apps and Facebook page. A follow-up survey will be conducted within 2–3 years of the initial survey.

*Affected Public:* Individuals or households; business or other for-profit organizations.

*Frequency:* One time and two to three years later.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: March 21, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–06868 Filed 3–25–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–24–2013]**

### Foreign-Trade Zone 169—Manatee County, Florida; Application for Production Authority; ASO, LLC; Subzone 169A (Textile Fabric Adhesive Bandage Coating and Production); Sarasota, Florida

An application has been submitted to the Foreign-Trade Zones Board (the Board) by ASO LLC (ASO), operator of Subzone 169A, for its facility located in Sarasota, Florida. The application conforming to the requirements of the regulations of the Board (15 CFR 400.23) was docketed on March 19, 2013.

The ASO facility (270 employees, 31 acres/150,000 square feet) is located within Subzone 169A, in Sarasota, Florida. The facility is used for the production of plastic and textile fabric adhesive bandages. ASO is also proposing to coat foreign uncoated textile fabric under FTZ procedures. Production under FTZ procedures could exempt ASO from customs duty payments on the foreign textile fabrics used in export production. The company anticipates that some four percent of the plant's shipments will be exported. On its domestic sales, ASO would be able to choose the duty rate during customs entry procedures that applies to textile fabric adhesive bandages (duty-free) for the foreign inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

Uncoated textile fabrics sourced from abroad (representing some 22% of the value of the finished product) include the following: 100% polyester, 100% cotton dyed plain weave, and 62% cotton/38% polyester plain weave (duty rates range from 7 to 12%).

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 28, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 10, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* (202) 482–1367.

Dated: March 21, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–06933 Filed 3–25–13; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–25–2013]**

### Foreign-Trade Zone (FTZ) 39—Dallas-Fort Worth, Texas; Notification of Proposed Production Activity; CSI Calendering, Inc. (Rubber Coated Textile Fabric); Arlington, Texas

The Dallas/Fort Worth International Airport Board, grantee of FTZ 39, submitted a notification of proposed production activity to the FTZ Board on behalf of CSI Calendering, Inc. (CSI), located in Arlington, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 4, 2013.

A separate application for "usage-driven" Web site designation at the CSI facility is planned and will be processed under Section 400.24 of the FTZ Board's regulations. The facility is used for the calendering, slitting, and laminating of RFL (resorcinol formaldehyde latex) textile fabric. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt CSI from customs duty payments on the foreign status components used in export production. On its domestic sales, CSI would be able to choose the duty rate during customs entry procedures that applies to rubber coated, calendered fabric (duty rate—free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: synthetic rubber; natural rubber; woven industrial fabric (of synthetic staple fibers); woven industrial fabric (of synthetic filament yarn); and, polyester tire cord fabric (duty rate ranges from free to 13.6%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is *May 6, 2013.*

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov*, or (202) 482–1378.

Dated: March 21, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–06925 Filed 3–25–13; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1888]**

### Reorganization and Expansion of Foreign-Trade Zone 200 Under Alternative Site Framework; County of Mercer, New Jersey

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Board adopted the alternative site framework (ASF) (74 FR 1170–1173, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

*Whereas,* the County of Mercer, grantee of Foreign-Trade Zone 200,

submitted an application to the Board (FTZ Docket 30–2012, filed 04/12/12) for authority to reorganize under the ASF with a service area of the County of Mercer, adjacent to the Philadelphia Customs and Border Protection port of entry; FTZ 200's Site 1 would be categorized as a magnet site; acreage would be removed from Site 4; and Sites 4 and 8 would be categorized as usage-driven sites;

*Whereas*, notice inviting public comment was given in the **Federal Register** (77 FR 23221–23222, 04/18/12) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

*Now, therefore*, the Board hereby orders:

The application to reorganize and expand FTZ 200 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 4 and 8 if no foreign status merchandise is admitted for a *bona fide* customs purpose by March 31, 2016.

Signed at Washington, DC, this 5th day of March 2013.

**Paul Piquado,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

ATTEST:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–06940 Filed 3–25–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–851]**

## Certain Preserved Mushrooms From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review; 2011–2012

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On January 18, 2013, the Department of Commerce (the Department) published in the **Federal Register** the preliminary rescission of this new shipper review (NSR) of Shandong Yinfeng Rare Fungus Corporation Ltd. (Yinfeng) under the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period of review (POR) February 1, 2011, through January 31, 2012.[1] The *Preliminary Rescission* invited interested parties to comment. No comments were received from any party. As discussed below, based on our analysis of the record, the Department has determined that Yinfeng did not satisfy the regulatory requirements for a NSR. Therefore, we are rescinding this NSR.

**DATES:** *Effective Date:* March 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

In the *Preliminary Rescission*, the Department determined that Yinfeng did not meet the minimum requirements in its request for a NSR under 19 CFR 351.214(b)(2)(iv)(C) and 19 CFR 351.214(c) because the Department could not determine whether Yinfeng had reported its first shipment of subject merchandise to the United States and, thus, whether Yinfeng requested a NSR within one year of the date of first entry.[2] The complete discussion of the Department's decision to preliminarily rescind the NSR was set forth in its preliminary analysis memorandum, dated January 18, 2013.[3] We invited interested parties to comment on the *Preliminary Rescission* of this NSR. No party submitted comments.

### Period of Review

Pursuant to 19 CFR 351.214(g), the POR for this NSR is February 1, 2011, through January 31, 2012.

### Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Certain Preserved Mushrooms" refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.[4]

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms;" (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

### Rescission of New Shipper Review

The NSR provisions of the Department's regulations require that the entity making a request for a NSR must document and certify, among other things: (1) The date on which subject merchandise of the exporter or producer making the request was first entered or

[1] *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review: 2011–2012*, 78 FR 4126 (January 18, 2013) (*Preliminary Rescission*).

[2] *See Preliminary Rescission*, 78 FR at 4127; *see also* "Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China," from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Preliminary Decision Memorandum), dated January 10, 2013, at 4.

[3] *See generally* Preliminary Decision Memorandum.

[4] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* "Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.*, for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000. On February 9, 2005, the United States Court of Appeals for the Federal Circuit upheld this decision. *See Tak Fat v. United States*, 396 F.3d 1378 (Fed. Cir. 2005).

withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which the exporter or producer first shipped the merchandise for export to the United States; (2) the volume of that and subsequent shipments; and (3) the date of the first sale to an unaffiliated customer in the United States. *See* 19 CFR 351.214(b)(2)(iv)(A)–(C). The regulations also state that the entity requesting the NSR must make the request within one year of the date of first entry. *See* 19 CFR 351.214(c). The Department has not acquired or received any additional information that would alter our preliminary determination that Yinfeng did not satisfy the minimum regulatory requirements in its request for a NSR under 19 CFR 351.214(b)(2)(iv)(C) and 19 CFR 351.214(c). Furthermore, since the publication of the *Preliminary Rescission*, the Department solicited comments from interested parties regarding the intended rescission of the NSR for Yinfeng, but received no such comments.

Because we find that Yinfeng did not satisfy the requirements of 19 CFR 351.214(b)(2)(iv)(C) and 19 CFR 351.214(c), we are rescinding this NSR. Consequently, we are not calculating a company-specific rate for Yinfeng, and Yinfeng will remain a part of the PRC-wide entity.

**Assessment Rate**

Yinfeng remains under review as part of the PRC-wide entity in the ongoing administrative review covering the 2011–2012 POR.[5] Accordingly, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend entries of subject merchandise produced and/or exported by Yinfeng during the period February 1, 2011, through January 31, 2012, until CBP receives instructions relating to the administrative review covering the period February 1, 2011, through January 31, 2012.

**Cash Deposit**

The Department will notify CBP that bonding is no longer permitted to fulfill security requirements for subject merchandise produced and/or exported by Yinfeng that is entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**. The Department will notify CBP that a cash deposit rate of 198.63 percent should be collected for all shipments of subject merchandise by Yinfeng entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice.

**Notification to Importers**

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this rescission and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: March 19, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2013–06922 Filed 3–25–13; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, and Deferral of Administrative Review*, 77 FR 19179 (March 30, 2012).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–831]**

## Fresh Garlic From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Reviews; 2010–2011

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 25, 2012, the Department of Commerce (Department) published its preliminary rescission for the new shipper reviews (NSRs) of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) [1] covering the period of review (POR) November 1, 2010, through October 31, 2011, for Foshan Fuyi Food Co., Ltd. (Fuyi) and Qingdao May Carrier Import & Export Co., Ltd. (Maycarrier). For these final results, the Department continues to find that Fuyi's new shipper sales were not *bona fide*. Additionally, the Department continues to find that Maycarrier does not qualify as a new shipper. Therefore, the Department is rescinding the NSRs of both Fuyi and Maycarrier.

**DATES:** *Effective Date:* March 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** Lingjun Wang or David Lindgren, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2316 or (202) 482–3870, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 25, 2012, the Department published the *Preliminary Rescission*. Between November 2012 and January 2013, the Department issued, and Fuyi and Maycarrier responded to, supplemental questionnaires. Additionally, on January 25, 2013, Maycarrier filed comments on factual information on the record. In February 2013, Fuyi and Maycarrier filed case briefs and Petitioners [2] filed rebuttal briefs.

The Department placed factual information regarding Fuyi's NSR on the record on January 9, 2013, and, based on a request from Maycarrier, on January 30, 2013, the Department placed on the record the surrogate country selection and surrogate value memorandum, intermediate input methodology memorandum, and surrogate value data used in the concurrent administrative review on fresh garlic from the PRC. Finally, Maycarrier submitted comments on February 20, 2013, requesting that, if the Department were to conduct a *bona fides* analysis of the price and quantity of Maycarrier's sales, it should have an opportunity to submit comments on such analysis. As discussed in more detail below, the Department has not conducted a *bona fides* analysis of Maycarrier's sales.

**Scope of the Order**

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves. Fresh garlic that is

[1] *See Fresh Garlic From the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Reviews; 2010–2011*, 77 FR 65171 (October 25, 2012) (*Preliminary Rescission*).

[2] Petitioners are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

subject to the order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 0703.20.0000, 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 2005.99.9700. A full description of the scope of the order is contained in the Final Decision Memorandum.[3] The written description is dispositive.

**Final Rescission of Fuyi and Maycarrier**

Due to the totality of circumstances, including price, quantity and inconsistencies about the reported producer, as detailed in the Fuyi final analysis memorandum,[4] the Department finds that Fuyi's sales are not *bona fide*. The Department has explained in the Maycarrier final analysis memorandum[5] that Maycarrier does not meet the minimum requirements set forth in 19 CFR 351.214(b)(2)(iv)(C) to qualify as a new shipper. As a result, the Department is rescinding the NSRs of both Fuyi and Maycarrier.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs are addressed in the Final Decision Memorandum, dated concurrently with this notice and hereby adopted by this notice. A list of the issues raised in the briefs and addressed in the Final Decision Memorandum is appended to this notice. The Final Decision Memorandum is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov*, and is available to all parties in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Final Decision Memorandum and the electronic versions of the Final Decision Memorandum are identical in content.

**Cash Deposit Requirements**

Effective upon publication of the final rescission of the NSRs of Fuyi and Maycarrier, the Department will instruct U.S. Customs and Border Protection (CBP) to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Fuyi and Maycarrier. Cash deposits will be required for exports of subject merchandise by Fuyi and Maycarrier entered, or withdrawn from warehouse, for consumption on or after the publication date at the per-unit PRC-wide rate, $4.71 per kilogram.

**Assessment Instructions**

As a result of the rescission of the NSRs of Fuyi and Maycarrier, the entries of subject merchandise made by Fuyi and Maycarrier covered by these NSRs will be assessed at the PRC-wide rate. Because the PRC entity is under review in the 2010–2011 administrative review currently being conducted,[6] and because the POR of the administrative review coincides with the POR of these NSRs, we will issue liquidation instructions for Fuyi's and Maycarrier's entries upon completion of the administrative review. Upon completion of the administrative review, the Department will instruct CBP to assess antidumping duties on entries for Fuyi and Maycarrier at the PRG-wide rate pursuant to the final results of the 2010–2011 administrative review.

**Notification to Importers**

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Return or Destruction of Proprietary Information**

This notice serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.214.

Dated: March 19, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

**List of Issues Addressed in the Final Decision Memorandum**

Comment 1: Whether Maycarrier Is a New Shipper
Comment 2: Whether Maycarrier's Sales Are *Bona Fide*
Comment 3: Whether the Department Should Deduct the VAT From the Surrogate Value for Raw Garlic Bulb
Comment 4: Whether the Department's Policies on Handling Import Statistics Distort Surrogate Values
Comment 5: Whether Maycarrier Is Entitled to a Separate Rate
Comment 6: Whether Fuyi's Sales Were *Bona Fide*

[FR Doc. 2013–06960 Filed 3–25–13; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Memorandum to Paul Piquado, Assistant Secretary for Import Administration from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Issues and Decision Memorandum for the Final Rescission of the Antidumping Duty New Shipper Reviews of Fresh Garlic from the People's Republic of China," dated concurrently with this notice (Final Decision Memorandum).

[4] *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Import Administration regarding "New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Analysis of Fŏshan Fuyi Food Co., Ltd.," dated March 19, 2013.

[5] *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Import Administration regarding "Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Analysis of Qingdao May Carrier Import & Export Co., Ltd.," dated March 19, 2013.

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 76 FR 82268.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### U.S. Healthcare Trade Mission to Russia— Amendment

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Amendment to Notice.

**SUMMARY:** The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is publishing this supplement to the Notice of the *U.S. Healthcare Trade Mission to Russia published at 77 FR 77032, December 31, 2012*, to amend the Notice to revise the dates of the application deadline from March 15, 2013 to the new deadline of March 29, 2013.

**SUPPLEMENTARY INFORMATION:**

**Amendments To Revise the Dates**

*Background*

Recruitment for this Mission began in January, 2013. Due to the recent snow closures and upcoming Easter holiday

season, it has been determined that an additional time is needed to allow for additional recruitment and marketing in support of the mission. Applications will be now be accepted through March 29, 2013 (and after that date if space remains and scheduling constraints permit), interested U.S. healthcare firms and trade organizations which have not already submitted an application are encouraged to do so as soon as possible.

*Amendments*

1. For the reasons stated above, the Timeframe for Recruitment and Applications section of the Notice of the *U.S. Healthcare Trade Mission to Russia published at 77 FR 77032, December 31, 2012*, is amended to read as follows:

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register** *(http://www.gpoaccess.gov/fr), posting on ITA's trade mission calendar—http://export.gov/trademissions*—and other Internet web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment will conclude no later than Friday, March 29, 2013. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis until the maximum of fifteen participants is reached. We will inform all applicants of selection decisions as soon as possible after the applications are reviewed. Applications received after the March 29nd deadline will be considered only if space and scheduling constraints permit

**FOR FURTHER INFORMATION CONTACT:** Jessica Arnold, Commercial Service Trade Missions Program, Tel: 202–482–2026, Fax: 202–482–9000, Email: *jessica.arnold@trade.gov.*

**Elnora Moye,**

*Trade Program Assistant.*

[FR Doc. 2013–06796 Filed 3–25–13; 8:45 am]

**BILLING CODE 3510–FP–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### U.S. Healthcare Trade Mission to Turkey

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Department of Commerce, International Trade Administration.

**Mission Description**

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing an Executive-Led U.S.—Turkey Healthcare Trade Mission to Ankara, Istanbul, and Izmir on May 4–8, 2014.

The trade mission to this Department-priority market follows successful Renewable Energy/Energy Efficiency and Aerospace/Defense trade missions in December 2011 and December 2012 respectively.

Turkey has a compelling economic success story to tell and its healthcare sector has followed suit. 2011 was a record year for U.S. exports to Turkey and 2012 is expected to be a close second. Moreover, the Government of Turkey has set an ambitious goal of becoming a top ten economy by 2023; Turkey is currently at number 17. The U.S.—Turkey Healthcare Trade Mission is intended support growing healthcare services and technologies demand in Turkey. The Mission will focus on high-potential healthcare sub-sectors and opportunities identified through our market research. We expect the trade mission delegation to include representatives from a variety of U.S. medical equipment and device manufacturers and healthcare services providers. The mission will introduce these suppliers to end-users and prospective partners whose needs and capabilities are targeted to each U.S. participant's strengths. Trade mission participants will have the opportunity to interact extensively with Commercial Service (CS) Turkey officers and specialists and key players in the industry to discuss industry developments, opportunities, and sales strategies.

**Commercial Setting**

Turkey is at the crossroads of Europe, the Middle East, and North Africa. With a population close to 80 million people, it has a significantly higher population growth rate compared than the U.K., France, Italy, and Germany. Median age is 29 years with 67% of the population between the ages of 15 to 64. Average life expectancy is 75 years. It has a fast-growing middle class that is willing to spend more on quality goods and services, and a democratically elected government which has historically invested in raising living standards. Turkey's GDP tripled in the last decade and is widely considered as one of the fastest growing economies in the world today.

Turkey has a public healthcare system with a $20 billion federal budget for 2013—an increase of 19% over 2012. Healthcare budget allocation in the national budget jumped from 2.25% in 2002 to 4.4% in 2012 while per capita healthcare spending grew from $330 to $780 in the same period. With the OECD per capita spending average at $2,386 in 2012, there is significant growth potential in this market thanks to Turkey's growing income and government programs. The Turkish government has made healthcare access and quality a priority. To improve healthcare access for its citizens, Turkey, in the last decade, invested $4.7 billion in healthcare construction. This resulted in a 172% increase in the number of hospital visits since 2002. Now the focus has evolved to quality care as state hospitals compete with privately run institutions. The government has unveiled a PPP (Public Private Partnership) initiative where 29 integrated health campuses will be built. A total of 45,000 beds will be integrated into the Turkish healthcare system through this model. Sixty percent of these projects have either been tendered or contracted, however equipment/services packages will only be finalized in 2014–2015.

**Specific Opportunities for Trade Mission Delegates**

Today, the medical equipment and supplies market is a $2.2 billion industry, placing Turkey in the worldwide marketplace for healthcare goods. By 2015, the medical equipment and supplies market in Turkey is projected to reach $3 billion as the above-mentioned integrated health campuses are built. These projects lend opportunities to healthcare architectural and engineering firms, medical device and supplies manufacturers as well as hospital operators.

The Ministry of Health is the largest purchaser in the healthcare market in Turkey. The Table below shows the distribution of healthcare facilities by type of ownership:

| Type | 2002 | | | | 2011 | | | | Growth percent | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Number of hospitals | Percent | Number of hospital beds | Percent | Number of hospitals | Percent | Number of hospital beds | Percent | Number of hospitals | Number of hospital beds |
| Ministry of Health | 774 | 67 | 107,394 | 65 | 840 | 58 | 121,297 | 62 | 8.5 | 12 |
| University .... | 50 | 4 | 26,341 | 16 | 65 | 4 | 34,802 | 18 | 30 | 32 |
| Private .. | 271 | 23 | 12,387 | 8 | 503 | 35 | 31,648 | 16 | 85 | 155 |
| Other .... | 61 | 6 | 18,349 | 12 | 45 | 3 | 6,757 | 4 | -26 | -63 |
| Total ..... | 1,156 | ..... | 164,471 | ..... | 1,453 | ..... | 194,504 | ..... | 26 | 19 |

The growth in the number of healthcare facilities, the patients accessing healthcare services, and the renewed focus on quality care has resulted in higher demand for advanced medical devices like MRI, CT, ECHO, Ultrasound and Doppler Ultrasonography. U.S. firms are particularly competitive in these sectors, thus our trade mission focus.

Growth in the number of devices in Turkey's in-patient healthcare facilities from 2002 to 2011 is impressive:

| Type of device | 2002 | 2011 | Growth (percent) |
|---|---|---|---|
| MRI | 58 | 781 | 1,247 |
| CT | 323 | 1,088 | 237 |
| ECHO | 259 | 1,181 | 356 |
| Ultrasound | 1,005 | 3,775 | 276 |
| Doppler Ultrasonography | 681 | 2,091 | 207 |

Medical services for foreign patients, also sustains growth in the Turkish medical equipment and healthcare markets. It is estimated that Turkish private and public establishments will serve one million foreign patients by 2015. Turkey attracts a lot of patients from the Middle East, North Africa and Europe. These patients mainly visit Turkish hospitals for bone marrow transplantation, cardiovascular surgery, cyber knife and gamma knife treatments, ophthalmology, plastic surgery, dental services and oncology. Again, U.S. exporters are highly competitive in these sectors.

As a result of this externally and internally driven transformation in the Turkish health sector, we believe there are opportunities for U.S. manufacturers for the following medical devices –

- Advanced pre-screening and diagnostics devices,
- Advanced point-of-care devices,
- Advanced surgical devices,
- Remote patient monitoring devices,
- Cancer treatment devices,
- Clinical chemistry and laboratory devices,
- Dental devices,
- Implants used in orthopedics and traumatology
- Ultrasound and Imaging equipment
- E-health and Mhealth systems and
- Telemedicine systems

**Mission Goals**

Our mission goal is to leverage our detailed understanding of the Turkish healthcare market and match its demand with select U.S. suppliers to generate sales on an immediate or short-term basis. For the medium and longer term, the goal is to educate participants on the healthcare-related commercial, political and regulatory environment in Turkey in order to arm them with the ability to sustain and expand their business in Turkey and around the region.

**Mission Scenario**

The trade mission will go to Ankara, Istanbul, and Izmir May 4–8, 2014. Recognizing Turkey's regional importance, CS Bulgaria and State Partner Posts, Azerbaijan, Georgia, Uzbekistan and Turkmenistan will join the mission on the last day to meet with U.S. participants looking for regional opportunities.

Trade mission members will meet with officials from the Ministry of Health and Social Security Agency, and will take part in business matchmaking appointments with private-sector entities. In addition, they will attend an Embassy briefing and networking events with industry and business associations, and participate in two site visits.

Participation in the mission will include the following:

- Pre-travel briefings/webinar on subjects ranging from business practices in Turkey to industry opportunities;
- Pre-screened, targeted 1–1 meetings with potential partners, distributors, or local industry contacts in Ankara, Izmir and Istanbul;
- Briefing by the U.S. Embassy Country Team;
- Transportation to/from Ambassador residence and all official networking events.
- Participation in industry networking receptions;
- Optional add-on for meetings with potential customers from Bulgaria, Caucasus and Central Asia.

PROPOSED TIMETABLE

| | |
|---|---|
| Sunday, May 4 ..... | • Trade Mission Participants Arrive in Ankara.<br>• Sponsored reception. |
| Monday, May 5 ..... | • Welcome Briefing by U.S. Ambassador and U.S. Embassy Country Team. |

PROPOSED TIMETABLE—Continued

| | |
|---|---|
| | • Presentation by the Ministry of Health on Turkish healthcare system and Social Security Agency on healthcare reimbursement system;<br>• Delegation splits into groups. Customized briefing by Ministry of Health officials for each group's specific line of business;<br>• Hosted Lunch for mission participants.<br>• One-on-one business matchmaking appointments.<br>• Ambassador's Reception. |
| Tuesday, May 6 | • Morning flight to Izmir.<br>• No-host lunch.<br>• One-on-one business matchmaking appointments.<br>• Sponsored dinner—Bay Cruise. |
| Wednesday, May 7 | • Morning flight to Istanbul.<br>• Site visit of a Turkish private hospital (includes sponsored lunch at hospital).<br>• Site visit at a Turkish public hospital.<br>• No-host dinner. |
| Thursday, May 8 | • Full-day one-on-one business matchmaking appointments.<br>• Evening networking event dinner. |
| Friday, May 9 (Optional) | • One-on-one business matchmaking appointments with delegations from Partner Posts (as needed).<br>• Trade Mission ends. |

**Participation Requirements**

All parties interested in participating in the Executive-Led U.S.—Turkey Healthcare Trade Mission must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission is open on a first come first served basis up to 18–22 qualified U.S. companies. Post can host a maximum of 22 individual firms, as such, we will vet applicants on the basis of their consistency with the selection criteria listed below.

**Fees and Expenses**

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for one principal representative will be $ 4,665 for large firms and $3,553 for a small or medium-sized enterprise (SME).* The fee for each additional firm representative (large firm or SME) is $ 750. Expenses for lodging, some meals, incidentals, and travel to/from Turkey and flights in Turkey will be the responsibility of each mission participant.

**Conditions for Participation**

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

**Selection Criteria for Participation**

Selection will be based on the following criteria:

• Suitability of a company's products or services to the mission's goals.

• Applicant's potential for business in Turkey, including likelihood of exports resulting from the trade mission.

• Consistency of the applicant's goals and objectives with the stated scope of the trade mission.

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process. Referrals from political organizations and any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register** (*https://www.federalregister.gov/*), posting on ITA's business development mission calendar (*http://export.gov/trademissions*) and other Internet web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment will begin immediately and conclude no later than Monday, December 16, 2013. The Department of Commerce will evaluate applications and inform applicants of selection in three group vettings, Group A, Group B, and Group C respectively.

We will vet all of the applications that are eligible at the time of each vetting as a group on the three dates listed below:

Group A—August 15, 2013
Group B—October 14, 2013
Group C—December 16, 2013

Applications received after the December 16 deadline will be considered only if space and scheduling constraints permit.

**How To Apply**

Applications can be downloaded from the business development mission Web site (*http://export.gov/trademissions/turkeyhealthcare2014*) or can be obtained by contacting the list of contacts (below). Completed applications should be submitted to Global Trade Programs at (email: *turkeyhealthcare2014@trade.gov* or fax: 202–482–9000).

**Contacts**

**U.S. Commercial Service, Trade Events Program**

Ms. Jessica Arnold, International Trade Specialist, Tel: 202–482–2026, Email: *Jessica.Arnold@trade.gov*.

**U.S. Commercial Service Turkey**

Mr. Manoj Desai, Commercial Officer, Email: *Manoj.Desai@trade.gov*.

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see *http://www.export.gov/newsletter/march2008/initiatives.html*).

Ms. Ebru Olcay, Commercial Specialist, Email: *Ebru.Olcay@trade.gov*.

**U.S. Commercial Service Turkey**

55 New Sudbury Street, Suite 1826A, Boston, MA 02203, Tel: 617 565–4301, Fax: 617 565–4313, *Email: Michelle.Ouellette@trade.gov*.

**American Consulate General**

Ucsehitler Sok. Kaplicalar Mevkii No: 2, 34460 Istinye, Istanbul, Turkey, Tel: (90) 212 335–9000, Fax: (90) 212 335–9223.

**U.S. Commercial Service Medical Technologies Team**

Michelle Ouellette, Senior International Trade Specialist, U.S. Department of Commerce, U.S. Export Assistance Center—Massachusetts.

**Elnora Moye,**

*Trade Program Assistant.*

[FR Doc. 2013–06797 Filed 3–25–13; 8:45 am]

**BILLING CODE 3510–FP–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### International Code Council: The Update Process for the International Codes and Standards

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** The International Code Council (ICC), promulgator of the International Codes and Standards, maintains a process for updating the entire family of International Codes based on receipt of proposals from interested individuals and organizations involved in the construction industry as well as the general public. The codes are updated every three years.

The purpose of this notice is to increase public participation in the system used by ICC to develop and maintain its codes and standards. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of ICC is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the codes or standards referenced in the notice.

**DATES:** The date of the next Committee Action Hearings is April 21–30, 2013 in Dallas, TX at the Sheraton Dallas Hotel. This will be followed by the Public Comment Hearings October 2, 2013 in Atlantic City, New Jersey at the Atlantic City Convention Center.

**ADDRESSES:** Committee Action Hearings in Dallas, TX at the Sheraton Dallas Hotel and the Public Comment Hearings in Atlantic City, New Jersey at the Atlantic City Convention Center.

**FOR FURTHER INFORMATION CONTACT:** Mike Pfeiffer, PE, Deputy SVP, Technical Services,4051 West Flossmoor Road, Country Club Hills, Illinois 60478; Telephone 888–ICC–SAFE, Extension 4338. David F. Alderman, NIST, 100 Bureau Drive, MS 2100, Gaithersburg, MD 20899, email: *david.alderman@nist.gov* or by phone at 301–975–4019.

**SUPPLEMENTARY INFORMATION:**

**Background**

ICC produces the only family of Codes and Standards that are comprehensive, coordinated, and necessary to regulate the built environment. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning new and existing construction.

This is the second year of ICC's three year cycle. The fifteen International Codes are updated on a three year cycle where each code is updated in a specific year. In this current three year cycle, 5 codes were updated in 2012, 9 will be updated in 2013 and one will be updated in 2014. Completion of this cycle results in the 2015 edition of the International Codes which are scheduled to be published in the first half of 2014. For detailed information on the 2012/2013/2014 Cycle, including a list of codes to be updated and in which cycle, go to: *http://www.iccsafe.org/cs/codes/Web pages/cycle.aspx*.

The Code Development Process is initiated when proposals from interested persons, supported by written data, views, or arguments are solicited and published in the Code Change Agenda document. This document is posted a minimum of 30 days in advance of the Committee Action Hearing serves as the agenda.

At the Committee Action Hearing, the ICC Code Development Committee considers testimony on every proposal and acts on each one individually (Approval, Disapproval, or Approval as Modified). The results are published in a report entitled the Report of the Committee Action Hearing, which identifies the disposition of each proposal and the reason for the committee's action. Anyone wishing to submit a comment on the committee's action, expressing support or opposition to the action, is provided the opportunity to do so. Comments received are published and distributed in a document called the Public Comment Agenda which serves as the agenda for the second hearing called the Public Comment Hearing. As part of ICC's Governmental Consensus Process, at the Public Comment Hearing, only ICC's Governmental Members are permitted to vote as they have no vested interest other than health, safety and welfare in the enforcement of the code. Proposals which are approved at the Public Comment Hearing are incorporated in the subsequent Edition, with the next cycle starting with the submittal deadline for proposals.

International Code Council, 4051 W Flossmoor Road, Country Club Hills, Illinois 60478; or download a copy from the ICC Web site noted previously.

The International Codes and Standards consist of the following:

**ICC Codes**

International Building Code.
International Energy Conservation Code.
International Existing Building Code.
International Fire Code.
International Fuel Gas Code.
International Green Construction Code.
International Mechanical Code.
ICC Performance Code for Buildings and Facilities.
International Plumbing Code.
International Private Sewage Disposal Code.
International Property Maintenance Code.
International Residential Code.
International Swimming Pool and Spa Code
International Wildland-Urban Interface Code.
International Zoning Code.

**ICC Standards**

ICC A 117.1: Accessible and Usable Buildings and Facilities.
ICC 300: Standard on Bleachers, Folding and Telescopic Seating and Grandstands.
ICC 400: Standard on the Design and Construction of Log Structures.
ICC 500: ICC/NSSA Standard on the Design and Construction of Storm Shelters.
ICC 600: Standard for Residential Construction in High Wind Regions.
ICC 700: National Green Building Standard

The maintenance process for ICC Standards such as ICC A117.1 follows a similar process of soliciting proposals, committee action, public comment and ultimately the update and publication of the standard. ICC's Standard development process meets ANSI requirements for standard's development.

Dated: March 21, 2013.

**Willie E. May,**

*Associate Director for Laboratory Programs.*

[FR Doc. 2013–06909 Filed 3–25–13; 8:45 am]

BILLING CODE 3510–10–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Smart Grid Advisory Committee Meeting

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Smart Grid Advisory Committee (SGAC or Committee), will meet in open session on Friday, April 19, 2013 from 8:30 a.m. to 5:00 p.m. Eastern time. The primary purpose of this meeting is to discuss the NIST Smart Grid Program Plan. The agenda may change to accommodate Committee business. The final agenda will be posted on the Smart Grid Web site at *http://www.nist.gov/smartgrid.*

**DATES:** The SGAC will meet on Friday, April 19, 2013 from 8:30 a.m. to 5:00 p.m. Eastern time. The meeting will be open to the public.

**ADDRESSES:** The meeting will be held in the Portrait Room, Administration Building, National Institute of Standards and Technology (NIST), 100 Bureau Drive, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cuong Nguyen, Smart Grid and Cyber-Physical Systems Program Office, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8200, Gaithersburg, MD 20899–8200; telephone 301–975–2254, fax 301–975–4091; or via email at *cuong.nguyen@nist.gov.*

**SUPPLEMENTARY INFORMATION:** The Committee was established in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Committee is composed of ten to fifteen members, appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and knowledge of issues affecting Smart Grid deployment and operations. The Committee advises the Director of NIST on carrying out duties authorized by section 1305 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The Committee provides input to NIST on Smart Grid standards, priorities, and gaps, on the overall direction, status, and health of the Smart Grid implementation by the Smart Grid industry, and on Smart Grid Interoperability Panel activities, including the direction of research and standards activities. Background information on the Committee is available at *http://www.nist.gov/smartgrid/committee.cfm.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Smart Grid Advisory Committee (SGAC or Committee) will meet in open session on Friday, April 19, 2013 from 8:30 a.m. to 5:00 p.m. Eastern time. The meeting will be open to the public and held in the Portrait Room, in the Administration Building at NIST in Gaithersburg, Maryland. The primary purpose of this meeting is to discuss the NIST Smart Grid Program Plan. The agenda may change to accommodate Committee business. The final agenda will be posted on the Smart Grid Web site at *http://www.nist.gov/smartgrid.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda by submitting their request to Cuong Nguyen at *cuong.nguyen@nist.gov* or (301) 975–2254 no later than 5:00 p.m. Eastern time, Friday, April 12, 2013. On Friday, April 19, 2013, approximately one-half hour will be reserved at the end of the meeting for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about three minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the Smart Grid and Cyber-Physical Systems Program Office, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8200, Gaithersburg, MD 20899–8200; fax 301–975–4091; or via email at *nistsgfac@nist.gov.*

All visitors to the NIST Web site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by 5:00 p.m. Eastern time, Friday, April 12, 2013, in order to attend. Please submit your full name, time of arrival, email address, and phone number to Cuong Nguyen. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mr. Nguyen's email address is *cuong.nguyen@nist.gov* and his phone number is (301) 975–2254.

Dated: March 20, 2013.

**Willie E. May,**

*Associate Director for Laboratory Programs.*

[FR Doc. 2013–06910 Filed 3–25–13; 8:45 am]

BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC580**

### Marine Mammals; File No. 17751

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Yoko Mitani, Ph.D., Hokkaido University, 3–1–1 Minato-cho, Hakodate, Hokkaido 041–8611, Japan, has applied in due form for a permit to conduct research on gray (*Eschrichtius robustus*) and killer (*Orcinus orca*) whales.

**DATES:** Written, telefaxed, or email comments must be received on or before April 25, 2013.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 17751 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Carrie Hubard or Kristy Beard, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216). Dr. Mitani requests a five-year permit to study gray and killer whales in Alaskan waters, including the Pacific Ocean, Bering Sea, Chukchi Sea, and Arctic Ocean. The objectives of the research are to examine the distribution and movement patterns of gray and killer whales in the area. The marine mammal research is part of a larger study on the reduction of sea ice in the Arctic with the goal of developing predictive ecosystem models. Research methods would consist of vessel surveys, photo-identification, behavioral observations, passive acoustics, thermal imaging, collection of sloughed skin and prey items, and dart tagging. Annually, up to ten killer whales and ten gray whales may have a LIMPET satellite dart tag attached. An additional 1000 animals of each species would be approached for non-invasive research activities or incidentally harassed annually. No other marine mammal species would be approached.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 21, 2013.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–06827 Filed 3–25–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 121203679–2679–01]**

**RIN 0648–XC386**

### Notice of Availability of a Draft Programmatic Environmental Assessment of the Proposed United States Regional Climate Reference Network (USRCRN)

**AGENCY:** National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC).

**ACTION:** Notice of Availability; Opportunity for comments.

**SUMMARY:** NOAA announces the public release of the Draft Programmatic Environmental Assessment (PEA) of the proposed USRCRN in accordance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations, and NOAA Administrative Order 216–6, *Environmental Review Procedures for Implementing the National Environmental Policy Act.* Written public comments on the Draft PEA are being accepted for a 30-day period following publication of this NOA. Comments received will be reviewed and taken into consideration during preparation of a Final PEA. The Draft PEA evaluates the environmental impacts from the Proposed Action to implement, operate, and manage the USRCRN Program and the No Action alternative.

**DATES:** Written comments and input will be accepted on or before April 25, 2013.

**ADDRESSES:** Written comments should be sent to Desiree Gordon, Environmental Engineer, NOAA, Safety and Environmental Compliance Office, 1305 East West Highway, SSMC–4; Room 11126, Silver Spring, MD 20910. Email: *seco@noaa.gov ATTN: USRCRN.*

**FOR FURTHER INFORMATION CONTACT:** Contact Desiree Gordon at the address provided above. A copy of the Draft PEA can be viewed or downloaded at *http://www.seco.noaa.gov/environmental_compliance/Final_Draft%20PEA_11_16_12-rev2.pdf.*

**SUPPLEMENTARY INFORMATION:** The National Weather Service, in collaboration with the National Climatic Data Center, is proposing to implement, operate, and manage a USRCRN. With other climate monitoring efforts deployed at differing scales and density, the proposed USRCRN would provide a greater density of reliable, high-quality climate data for use in climate-monitoring activities and for placing current climate anomalies into a regional and historical perspective. Each USRCRN Web site is solar-powered and has a footprint of approximately 24 feet by 24 feet with a 10-foot tall mast/tower. It is typically located away from tall objects and existing or anticipated future development.

Beginning with a pilot deployment and operation project in the Southwest region, 538 USRCRN stations would be deployed over multiple years in nine NOAA climate regions throughout the continental United States at an approximate 80-mile grid spacing. Key among the operational considerations is the placement of USRCRN Web sites on public lands not expected to undergo development for the foreseeable future (50 to 100 years). Preferred Web sites meeting these criteria are often on Federal lands, and selection would occur in coordination with the land managers within Federal agencies and bureaus. Other undeveloped properties meeting these criteria are present on state-owned lands such as at parks, airports, or state university reserves. Unencumbered properties on Federal or state public lands that meet the spatial requirements for the USRCRN would be considered as candidate sites.

Dated: March 20, 2013.

**David Murray,**

*Director, Management and Organization Division, Office of the Chief Financial Officer, National Weather Service.*

[FR Doc. 2013–06966 Filed 3–25–13; 8:45 am]

**BILLING CODE 3510–KE–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC577**

### Pacific Halibut Fishery; Guideline Harvest Levels for the Guided Sport Fishery for Pacific Halibut in International Pacific Halibut Commission Regulatory Areas 2C and 3A

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

**ACTION:** Notice of guideline harvest level.

**SUMMARY:** NMFS provides notice of the 2013 Pacific halibut guideline harvest levels (GHLs) for the guided sport fishery in International Pacific Halibut Commission (IPHC) Regulatory Areas 2C

(Southeast Alaska) and 3A (Central Gulf of Alaska). This notice is necessary to meet the regulatory requirement to publish notice announcing the GHLs and to inform the public about the 2013 GHLs for the guided sport fishery for halibut. The GHLs are benchmark harvest levels for participants in the guided sport fishery. The Area 2C GHL is 788,000 lb (357.4 mt); and the Area 3A GHL is 2,734,000 lb (1,240.1 mt). These GHLs revise and supersede those published in the 2013 IPHC annual management measures (78 FR 16423, March 15, 2013).

**DATES:** The GHLs are effective February 1, 2013, through December 31, 2013. This period is specified by IPHC as the sport fishing season in all waters in and off Alaska.

**FOR FURTHER INFORMATION CONTACT:** Julie Scheurer, (907) 586–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

In 2003, NMFS implemented a final rule (68 FR 47256, August 8, 2003) to establish GHLs for Pacific halibut (*Hippoglossus stenolepis*) harvested by the guided sport fishery in IPHC Areas 2C and 3A. Regulations implementing the GHLs have been amended twice. In 2008, the GHL table was corrected at 50 CFR 300.65(c)(1) (73 FR 30504, May 28, 2008). In 2009, regulatory provisions were amended for NMFS' annual publication of the GHL notice and to clarify NMFS' authority to take action at any time to limit the guided sport angler catch to the GHL (74 FR 21194, May 6, 2009). Regulations at § 300.65(c)(1) require that NMFS annually publish a notice in the **Federal Register** to announce the GHLs for Area 2C and Area 3A.

Consistent with § 300.65(c), this notice announces the 2013 GHLs for the guided sport fishery for Pacific halibut in IPHC Areas 2C and 3A. Regulations at § 300.65(c)(1) specify the GHLs based on the total constant exploitation yield (CEY) that is established annually by the IPHC. The total CEYs and resulting GHLs were incorrect as published in the final rule announcing the 2013 IPHC annual management measures for the Pacific halibut fisheries (78 FR 16423, March 15, 2013). This notice announces revised total CEYs and corresponding GHLs for 2013. For Area 2C, the total CEY is 5,020,000 lb (2,277.0 mt) and the corresponding GHL is 788,000 lb (357.4 mt). For Area 3A, the total CEY is 17,070,000 lb (7,742.8 mt) and the corresponding GHL is 2,734,000 lb (1,240.1 mt). The GHLs in Areas 2C and 3A each dropped one step from 2012 levels. NMFS may take action at any time to limit the guided sport halibut harvest to as close to the GHL as practicable (50 CFR 300.65(c)(3)).

**Authority:** 16 U.S.C. 773 *et seq.*

Dated: March 21, 2013.

**Kara Meckley,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–06898 Filed 3–25–13; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m., Friday, April 19, 2013.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Melissa D. Jurgens, 202–418–5516.

**Natise Stowe,**

*Executive Assistant.*

[FR Doc. 2013–07019 Filed 3–22–13; 11:15 am]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m., Friday, April 12, 2013.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Melissa D. Jurgens, 202–418–5516.

**Natise Stowe,**

*Executive Assistant.*

[FR Doc. 2013–07018 Filed 3–22–13; 11:15 am]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m., Friday, April 5, 2013.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Melissa D. Jurgens, 202–418–5516.

**Natise Stowe,**

*Executive Assistant.*

[FR Doc. 2013–07017 Filed 3–22–13; 11:15 am]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m., Friday, April 26, 2013.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Melissa D. Jurgens, 202–418–5516.

**Natise Stowe,**

*Executive Assistant.*

[FR Doc. 2013–07020 Filed 3–22–13; 11:15 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2012–HA–0160]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the

following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by April 25, 2013.

*Title, Associated Form and OMB Number:* Third Party Collection Program/Medical Services Account/ Other Health Insurance; DD Form 2569; OMB Control Number 0720–TBD (previously OMB Control Number 0704–0323).

*Type of Request:* Extension.

*Number of Respondents:* 2,936,905.

*Responses per Respondent:* 1.

*Annual Responses:* 2,936,905.

*Average Burden per Response:* 3 minutes.

*Annual Burden Hours:* 146,845.

*Needs and Uses:* The information collection requirement is necessary to obtain health insurance policy information used for coordination of health care benefits and billing third-party payers. DoD implemented the Third Party Collection Program (TPCP) in FY87 based on the authority granted in 10 U.S.C. 1095 and implemented by 32 CFR part 220 in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) (Pub. L. 99–272, section 2001, April 7, 1986). Under the TPCP, DoD is authorized to collect from third-party payers the cost of inpatient and outpatient services rendered to DoD beneficiaries who have other health insurance. Military treatment facilities are required to make this form available to third-party payers upon request. A third-party payer may not request any other assignment of benefits form from the subscriber.

*Affected Public:* Business or other for-profit; individuals or households.

*Frequency:* Annually or on occasion (when insurance information changes).

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: March 12, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2013–06852 Filed 3–25–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2012–OS–0097]**

### Defense Transportation Regulation, Part IV

**AGENCY:** United States Transportation Command (USTRANSCOM), DoD.

**ACTION:** Announcement.

**SUMMARY:** On September 4, 2012 (77 FR 53873–53874), the Department of Defense published a notice titled Defense Transportation Regulation, Part IV. DoD has completed their review and response to comments received in connection with the Defense Personal Property Program (DP3) Phase III Direct Procurement Method (DPM) business rules. Responses can be found on the Defense Transportation Regulation, Part IV Web site at *http://www.transcom.mil/dtr/part-iv/phaseiii.cfm* (DPM SECTION). All identified changes will be incorporated into the final DPM business rules. The DPM implementation timelines will be based on completion of Defense Personal Property System (DPS) Phase III programming projected for FY17.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Teague, United States Transportation Command, TCJ5/4–PI, 508 Scott Drive, Scott Air Force Base, IL 62225–5357; (618) 256–9605.

**SUPPLEMENTARY INFORMATION:** Any subsequent modification(s) to the business rules beyond the above stated changes will be published in the **Federal Register** and incorporated into the Defense Transportation Regulation (DTR) Part IV (DTR 4500.9R). These program requirements do not impose a legal requirement, obligation, sanction or penalty on the public sector, and will not have an economic impact of $100 million or more.

**Additional Information**

A complete version of the DTR is available via the internet on the USTRANSCOM home page at *http://www.transcom.mil/dtr/part-iv/.*

Dated: March 21, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2013–06854 Filed 3–25–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Intent To Prepare an Environmental Impact Statement (EIS) for the Formal Training Unit (FTU) and Main Operating Base 1 (MOB 1) for the Beddown of KC–46A Tanker Aircraft

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Notice of Intent.

**SUMMARY:** The Air Force is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) for the Formal Training Unit (FTU) and Main Operating Base 1 (MOB 1) for the Beddown of KC–46A Tanker Aircraft. The EIS will assess the potential environmental consequences of bedding down KC–46A tanker. aircraft, associated infrastructure and manpower of the FTU and MOB 1 at existing active duty Air Force installations within the continental United States and the no-action alternative.

The FTU squadron will consist of up to eight KC–46A aircraft with a mission to train personnel to safely and effectively fly, operate, and maintain the KC–46A aircraft. The MOB 1 will consist of 36 KC–46A aircraft with a mission to provide worldwide refueling, cargo, or aeromedical evacuation support.

The proposed basing alternatives for the FTU are:

1. 1. Altus Air Force Base (AFB), Oklahoma
1. 2. McConnell AFB, Kansas

The proposed basing alternatives for MOB 1 are:

1. 1. Altus AFB, Oklahoma
1. 2. Fairchild AFB, Washington
1. 3. Grand Forks AFB, North Dakota
1. 4. McConnell AFB, Kansas

Altus AFB and McConnell AFB are being considered for either the FTU or MOB 1 missions; no base would receive both the FTU and MOB 1 missions.

*Scoping:* In order to effectively define the full range of issues to be evaluated in the EIS, the Air Force is soliciting scoping comments from interested state and federal agencies and interested members of the public. The Air Force will hold a series of scoping meetings to further solicit input regarding the scope of the proposed action and alternatives.

1. Scoping meetings will be held in the local communities near the alternative basing locations. The scheduled dates, times, locations and addresses for the scoping meetings will also be published in local media a minimum of 15 days prior to the scoping meetings.

1. *Dates:* The Air Force intends to hold scoping meetings from 5:00 p.m. to 8:00 p.m. in the following communities on the following dates:

1. 1. Altus Air Force Base—April 9, 2013 at the Southwest Technology Center, 711 West Tamarack Road, Altus, OK
1. 2. McConnell Air Force Base—April 11, 2013 at the Eugene M. Hughes Metropolitan Complex, 5015 East 29th Street N, Wichita, KS
1. 3. Fairchild Air Force Base—April 16, 2013 at the Lincoln Center, 1316 North Lincoln Street, Spokane, WA
1. 4. Grand Forks Air Force Base—April 18, 2013 at the Ramada Inn, 1205 North 43rd Street, Grand Forks, ND

**SUPPLEMENTARY INFORMATION:** The project Web site provides more information on the EIS and can be used to submit scoping comments; scoping comments may also be submitted to the address below. As a convenience for comments submitted by mail, a comment form is available for download on the Web site. Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, scoping comments should be submitted to the Web site or the address listed below by May 17, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jean Reynolds, United States Air Force, AFCEC/CZN Midwest Office, 507 Symington Drive, Scott AFB, Illinois 62225–5022; Phone:

**Henry Williams Jr,**

*Acting Air Force Federal Register Liaison Officer.*

[FR Doc. 2013–06840 Filed 3–25–13; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### U.S. Air Force Scientific Advisory Board; Notice of Meeting

**AGENCY:** Department of the Air Force, U.S. Air Force Scientific Advisory Board.

**ACTION:** Meeting notice.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board (SAB) quarterly meeting will take place on 9 April 2013 at the Enbank Conference Center on Barksdale AFB, LA. The SAB will meet 7:45 a.m.–12:45 p.m. with all sessions closed to the public.

The purpose of this quarterly meeting is to review the status of the FY13 SAB studies directed by the Secretary of the Air Force: countering electro-optical and infrared targeting system threats to our aircraft, disaggregation of satellite mission applications, and communicating in a contested environment. The SAB will receive a presentation on the mission of Air Force Global Strike Command, the host for the SAB's Spring Board Meeting. This board meeting will also include the publication status of the FY12 studies, the latest updates on the ongoing study outbriefs, as well as discussion of the SAB's review of Air Force Research Laboratory (AFRL) science and technology investments. The remaining FY13 Board schedule and internal restructuring options will also be discussed.

In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, this meeting of the United States Air Force Scientific Advisory Board will be closed to the public because it will involve information and matters covered by sections 5 U.S.C. 552b(c)(1) and (2).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

**FOR FURTHER INFORMATION CONTACT:** The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt Col Derek Lincoln, 240–612–5502, United States Air Force Scientific Advisory Board, 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762, *Derek.Lincoln@pentagon.af.mil.*

**Henry Williams Jr,**

*Acting Air Force Federal Register Liaison Officer.*

[FR Doc. 2013–06781 Filed 3–25–13; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2013–ICCD–0037]**

### Agency Information Collection Activities; Comment Request; Upward Bound and Upward Bound Math Science Annual Performance Report

**AGENCY:** The Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before May 28, 2013.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0037 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance

Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarify of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Upward Bound and Upward Bound Math Science Annual Performance Report.

*OMB Control Number:* 1840–NEW.

*Type of Review:* New information collection.

*Respondents/Affected Public:* Private Sector, State, Local, or Tribal Governments.

*Total Estimated Number of Annual Responses:* 992.

*Total Estimated Number of Annual Burden Hours:* 16,864.

*Abstract:* The U.S. Department of Education is requesting a new Annual Performance Report (APR) for grants under the regular Upward Bound (UB) and Upward Bound Math and Science (UBMS) Programs. The Department is requesting a new APR because of the implementation of the Higher Education Opportunity Act revisions to the Higher Education Act of 1965, as amended, the authorizing statute for the programs. The APRs are used to evaluate the performance of grantees prior to awarding continuation funding and to assess a grantee's prior experience at the end of each budget period. The Department will also aggregate the data to provide descriptive information on the programs and to analyze the impact of the program on the academic progress of participating students.

Dated: March 20, 2013.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2013–06798 Filed 3–25–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. RF–024]**

### Decision and Order Granting a Waiver to LG Electronics, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

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

**ACTION:** Decision and Order.

**SUMMARY:** The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF–024) that grants to LG Electronics, Inc. (LG) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for determining the energy consumption of residential refrigerator-freezers for the basic models set forth in its petition for waiver. Under today's decision and order, LG shall be required to test and rate its refrigerator-freezers with dual compressors using an alternate test procedure that takes this technology into account when measuring energy consumption.

**DATES:** This Decision and Order is effective March 26, 2013.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0103, (202) 586–7796, Email: *Elizabeth.Kohl@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:** DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants LG a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures found in 10 CFR part 430, subpart B, appendix A1 for certain basic models of refrigerator-freezers with dual compressors, provided that LG tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits LG from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products.

Issued in Washington, DC, on March 19, 2013.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

### Decision and Order

*In the Matter of:* LG Electronics, Inc. (Case No. RF–024)

### I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures.. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

## II. LG's Petition for Waiver: Assertions and Determinations

On May 10, 2012, LG filed a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, subpart B, appendix A1. On June 28, 2012, LG amended its request by revising the list of particular models covered by its request. The May 2012 request initially covered a number of LG and Kenmore-branded products; the June 2012 request revised this list to include only certain LG models. LG requested a waiver because it is developing new refrigerator-freezers that incorporate a dual compressor design that is not contemplated under DOE's test procedure. In its petition, LG requested a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR Part 430 for LG's dual compressor products. LG stated that its dual compressor products use shared compressor systems that are controlled by a 3-way valve. This type of system, LG argued, differs from the independent, sealed systems that the DOE test procedure is designed to address. In its petition, LG set forth an alternate test procedure and noted in support of its petition that DOE has already granted Sub-Zero a similar waiver pertaining to the use of dual compressor-equipped refrigerators. See 76 FR 71335 (November 17, 2011) (interim waiver) and 77 FR 5784 (February 6, 2012) (Decision and Order). DOE did not receive any comments on the LG petition.

## III. Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the LG petition for waiver. The FTC staff did not have any objections to granting a waiver to LG.

## IV. Conclusion

After careful consideration of all the material that was submitted by LG and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by LG Electronics, Inc. (Case No. RF–024) is hereby granted as set forth in the paragraphs below.

(2) LG shall be required to test and rate the following LG models according to the alternate test procedure set forth in paragraph (3) below.

*LG Brand*

LFX32955**
LFX33955**
LFX34955**
LMX32955**
LMX33955**
LMX34955**

(**Note:** Each "*" represents a letter.)

(3) LG shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A1, except that, for the LG products listed in paragraph (2) only, replace the multiple defrost system, section 5.2.1.4 of appendix A1, with the following:

5.2.1.4 Dual Compressor Systems with Dual Automatic Defrost. The two-part test method in section 4.2.1 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \times T2_i/T1)) \times (12/CT_i)]$$

Where:

1440 = number of minutes in a day;
ET is the test cycle energy (kWh/day);
i is the variable that can equal to 1, 2 or more that identifies the compartment with distinct defrost system;
D is the total number of compartments with distinct defrost systems;
EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);
T1 is the length of time for EP1 (minutes);
EP2i is the total energy consumed during the second (defrost) part of the test being conducted for compartment i (kWh);
T2i is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i; and
CTi is the compressor on time between defrosts for only compartment i. CTi for compartment i with long time automatic defrost system is calculated as per 10 CFR Part 430, subpart B, appendix A1 clause 5.2.1.2. CTi for compartment i with variable defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.3. (hours rounded to the nearest tenth of an hour).

*Stabilization*

The test shall start after a minimum 24 hours stabilization run for each temperature control setting.

*Steady State for EP1*

The temperature average for the first and last compressor cycle of the test period must be within 1.0 [degrees] F (0.6 [degrees] C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments are used for test

period 1, each segment must comply with above requirement.

*Steady State for EP2i*

The second (defrost) part of the test must be preceded and followed by regular compressor cycles. The temperature average for the first and last compressor cycle of the test period must be within 1.0 [degrees] F (0.6 [degrees] C) of the EP1 test period temperature average for each compartment.

*Test Period for EP2i, T2i*

EP2i includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady state run cycles to allow T2i to be at least 24 hours. The test period shall start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or freezer). The test period also includes the target defrost and following regular freezer compressor cycles, ending at the end of a regular freezer compressor on-cycle before the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and EP2i.

Test Measurement Frequency Measurements shall be taken at regular intervals not exceeding 1 minute.

[End of 5.2.1.4]

(4) Representations. LG may make representations about the energy use of its dual compressor refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in LG's May 10, 2012 petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on March 19, 2013.

Kathleen B. Hogan,

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2013–06847 Filed 3–25–13; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP13–96–000; PF12–21–000]**

### Gulf South Pipeline Company, LP; Petal Gas Storage, L.L.C.; Notice of Application

Take notice that on March 8, 2013, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, and Petal Gas Storage, L.L.C. (Petal), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, (collectively, the Applicants) jointly filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for authorization for: (i) Gulf South to construct approximately 70 miles of new natural gas pipeline in Mississippi and Alabama; (ii) Gulf South to construct 34,215 horsepower of compression in Mississippi; (iii) Petal to abandon capacity by lease to Gulf South; and (iv) Gulf South to acquire that lease capacity (Southeast Market Expansion Project). The Applicants state that the Southeast Market Expansion Project will provide 510,500 dekatherms per day of firm transportation capacity. The Applicants estimate the total cost of the Southeast Market Expansion Project to be approximately $283,846,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to J. Kyle Stephens, Vice President of Regulatory Affairs, Boardwalk Pipeline Partners, LP, 9 Greenway Plaza, Houston, Texas 77046, by facsimile at (713) 479–1846, or by email at *kyle.stephens@bwpmlp.com*.

On September 17, 2012, the Commission staff granted the Applicants' request to utilize the Pre-Filing Process and assigned Docket No. PF12–21–000 to staff activities involving the Southeast Market Expansion Project. Now as of the filing the March 8, 2013 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP13–96–000, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors

will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* April 10, 2013.

Dated: March 20, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06834 Filed 3–25–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP13–686–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Negotiated Rate-Tenaska to be effective 3/18/2013.
*Filed Date:* 3/18/13.
*Accession Number:* 20130318–5081.
*Comments Due:* 5 p.m. ET 4/1/13.

*Docket Numbers:* RP13–687–000.
*Applicants:* Cameron Interstate Pipeline, LLC.
*Description:* Cameron Interstate Pipeline LLC Annual Report of Penalty Revenues.
*Filed Date:* 3/18/13.
*Accession Number:* 20130318–5082.
*Comments Due:* 5 p.m. ET 4/1/13.

*Docket Numbers:* RP13–688–000.
*Applicants:* Cameron Interstate Pipeline, LLC.
*Description:* Cameron Interstate Pipeline LLC Annual Report of Interruptible Transportation Revenue Sharing.
*Filed Date:* 3/18/13.
*Accession Number:* 20130318–5083.
*Comments Due:* 5 p.m. ET 4/1/13.

*Docket Numbers:* RP13–689–000.
*Applicants:* Cameron Interstate Pipeline, LLC.
*Description:* Cameron Interstate Pipeline LLC Annual Report of Operational Imbalances and Cash-out Activity.
*Filed Date:* 3/18/13.
*Accession Number:* 20130318–5086.
*Comments Due:* 5 p.m. ET 4/1/13.

*Docket Numbers:* RP13–690–000.
*Applicants:* Cameron Interstate Pipeline, LLC.
*Description:* Cameron Interstate Pipeline LLC Annual Report of Transportation Imbalances and Cash-out Activity.
*Filed Date:* 3/18/13.
*Accession Number:* 20130318–5087.
*Comments Due:* 5 p.m. ET 4/1/13.

*Docket Numbers:* RP13–691–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Tenaska Negotiated Rate Amendment to be effective 3/18/2013.
*Filed Date:* 3/18/13.
*Accession Number:* 20130318–5097.
*Comments Due:* 5 p.m. ET 4/1/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP10–782–002.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* Offsystem Pipeline Capacity Compliance Filing in RP10–782 to be effective 5/1/2010.
*Filed Date:* 3/18/13.
*Accession Number:* 20130318–5100.
*Comments Due:* 5 p.m. ET 4/1/13.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 19, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–06784 Filed 3–25–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following joint stakeholder meeting related to the transmission planning activities of PJM Interconnection, L.L.C. (PJM), Independent System Operator New England, Inc. (ISO–NE), and New York Independent System Operator, Inc. (NYISO):

*Inter-Regional Planning Stakeholder Advisory Committee—New York/New England;*

March 20, 2013, 8:00 a.m.–11:00 a.m., Local Time.

The above-referenced meeting will be held over conference call.

The above-referenced meeting is open to stakeholders.

Further information may be found at *www.pjm.com*.

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER08–1281, *New York Independent System Operator, Inc.*
Docket No. EL05–121, *PJM Interconnection, L.L.C.*
Docket No. EL10–52, *Central Transmission, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. ER10–253 and EL10–14, *Primary Power, L.L.C.*
Docket No. EL12–69, *Primary Power LLC* v. *PJM Interconnection, L.L.C.*
Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1178, *PJM Interconnection, L.L.C.*
Docket No. ER13–90, *Public Service Electric and Gas Company and PJM Interconnection, L.L.C.*

Docket No. ER13–102–000, *New York Independent System Operator, Inc.*
Docket No. ER13–193–000, *ISO New England Inc.*
Docket No. ER13–195, *Indicated PJM Transmission Owners*
Docket No. ER13–196–000, *ISO New England Inc.*
Docket No. ER13–198, *PJM Interconnection, L.L.C*
Docket No. ER13–397, *PJM Interconnection, L.L.C.*
Docket No. ER13–673, *PJM Interconnection, L.L.C*
Docket No. ER13–703, *PJM Interconnection, L.L.C.*
Docket No. ER13–887, *PJM Interconnection, L.L.C.*
Docket No. ER13–1052, *PJM Interconnection, L.L.C. and the Midwest Independent Transmission System Operator, Inc.*

For more information, contact Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6604 or *jonathan.fernandez@ferc.gov*.

Dated: March 19, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06816 Filed 3–25–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PF13–6–000]**

### East Tennessee Natural Gas, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned Kingsport Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Kingsport Expansion Project involving construction and operation of facilities by East Tennessee Natural Gas, LLC (ETNG) in Sullivan County, Tennessee and Washington and Smyth Counties, Virginia. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on April 19, 2013.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

#### Summary of the Planned Project

ETNG plans to construct and operate approximately 9.8 miles of new 16-inch-diameter pipeline along with related appurtenant facilities; replace approximately 5.8 miles of 8-inch-diameter pipeline with 24-inch-diameter pipe; and make modifications at the Glade Spring Compressor Station and Fordtown Compressor Station. The Kingsport Expansion Project would provide about 61,000 dekatherms per day of natural gas to the existing Eastman Chemical Company (Eastman) in Kingsport, Tennessee. According to ETNG, Eastman plans to convert multiple coal-fired boilers at its existing chemical plant to natural gas service.

The Kingsport Expansion Project would consist of the following facilities:

*Sullivan County, Tennessee*

- construction of approximately 6.4 miles of new 16-inch-diameter natural gas pipeline mainline extension, a tee and tap, and related appurtenant facilities along existing ETNG pipeline easements and new right-of-way;
- installation of a new meter facility; and
- modifications at the Fordtown Compressor Station.

*Washington County, Virginia*

- construction of approximately 3.4 miles of 16-inch-diameter loop [1] of the existing Nora Line along existing ETNG pipeline easements; and
- modifications at the Glade Spring Compressor Station.

*Washington and Smyth Counties, Virginia*

- replacement of 8-inch-diameter pipeline with 24-inch-diameter pipeline beginning at the existing Glade Spring Compressor Station in Washington County, Virginia and extending approximately 5.8 miles to Saltville in Smyth County, Virginia.

The general location of the project facilities is shown in appendix 1.[2]

#### Land Requirements for Construction

Construction of the planned facilities would disturb about 224.62 acres of land for the aboveground facilities and the pipeline. Following construction, ETNG would maintain about 28.80 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 30 percent of the planned pipeline route parallels existing pipeline, utility, or road rights-of-way.

#### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- water resources, fisheries, and wetlands;
- vegetation and wildlife;
- endangered and threatened species;
- cultural resources;
- geology and soils;
- land use;
- air quality and noise; and
- public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

**Consultations Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before April 19, 2013. This is not your only public input opportunity; please refer to the Environmental Review Process flowchart in appendix 2.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF13–6–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request.

**Becoming an Intervenor**

Once ETNG files its application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an

[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

intervenor are in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF13–6). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: March 20, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06833 Filed 3–25–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RC11–6–004]**

### North American Electric Reliability Corporation; Notice of Filing

Take notice that on March 15, 2013, the North American Electric Reliability Corporation (NERC) submitted a compliance filing and report in accordance with the Federal Energy Regulatory Commission's Order (FERC or Commission) in *North American Electric Reliability Corporation,* 138 FERC ¶ 61,193 (2012) (March 15 Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on April 15, 2013.

Dated: March 20, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06832 Filed 3–25–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM12–9–000]**

### North American Electric Reliability Corporation; Notice of Filing

Take notice that on March 11, 2013, the North American Electric Reliability Corporation and SERC Reliability Corporation submitted a compliance filing in accordance with the Federal Energy Regulatory Commission's Order (FERC or Commission) in *Regional Reliability Standard PRC–006–SERC–01—Automatic Underfrequency Load Shedding Requirements,* 141 FERC ¶ 61,243 (2012) (December 20 Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on April 10, 2013.

Dated: March 19, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06819 Filed 3–25–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP13–526–000]**

### Gulf South Pipeline Company, LP; Notice of Technical Conference

Take notice that the Commission Staff will convene a technical conference in the above-referenced proceeding on Tuesday, April 9, 2013, at 10:00 a.m. (Eastern Standard Time), in a room to be

designated at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

At the technical conference, the Commission Staff and the parties to the proceeding can discuss all of the issues raised by Gulf South's filing. In particular, as discussed in the Order Establishing Technical Conference [1] in this docket, parties should be prepared to discuss concerns regarding degradation of service, implementation of additional service requirements, routing of nominations, implementation timing, impact on secondary market, expansion-legacy interconnects, and requests for additional information.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Vince Mareino at (202) 502–6167 or email *Vince.Mareino@ferc.gov*.

Dated: March 19, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06815 Filed 3–25–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–1124–000]**

### New York Independent System Operator, Inc.; Notice of Motion for Tariff Waiver and Expedited Action

On March 15, 2013, New York Independent System Operator, Inc. (NYISO) filed a motion for limited tariff waivers of section 5.16.4 and, to the extent necessary, section 5.16.3 of its Market Administration and Control Area Services Tariff (Services Tariff). First, NYISO seeks a limited waiver of section 5.16.4 of its Services Tariff to give it an extra thirty (30) calendar days, i.e., until April 30, 2013, to comply with the requirement that it report on the results of the New Capacity Zone Study and submit tariff revisions to "establish and recognize" one or more New Capacity Zones (NCZ). The filing is presently due on or before March 31, 2013. Second, to the extent necessary, NYISO requests a limited waiver of the Services Tariff section 5.16.3 deadline regarding the establishment of the Indicative NCZ Locational Minimum Installed Capacity Requirement. NYISO also requests a shortened comment period on the requested waiver and expedited consideration of the request.

Any person desiring to intervene or protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on March 25, 2013.

Dated: March 19, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06821 Filed 3–25–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14505–000]**

### JAL Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 12, 2013, JAL Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Natick Pond Dam Hydroelectric Project (Natick Pond Dam Project or project) to be located on the Pawtuxet River, in the towns of Warwick and West Warwick, Kent County, Rhode Island. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing 22.5-foot-high, 265-foot-long earth embankment dam with a 166-foot-long granite masonry block spillway; (2) the existing 26.9-acre Natick Pond with operating elevation of about 48.5 feet above mean sea level (msl); (3) a new 130-foot-long, 20-foot-wide, 6-foot-deep concrete intake channel; (4) a new 10-foot-high, 20-foot-wide sluice gate equipped with a new 10-foot-high, 20-foot-wide trashrack with 6-inch bar spacing; (5) two new 52-foot-long, 9.75-foot-diameter Archimedes screw generator units each rated at 148 kilowatts (kW) for a total installed capacity of 296 kW; (6) a new 10-foot-high, 27-foot-long, 42-foot-wide concrete powerhouse containing a new gearbox and electrical controls; (7) a new above ground 145-foot-long, 35.0-kilovolt transmission line connecting the powerhouse to National Grid's distribution system; and (8) appurtenant facilities. The estimated annual generation of the proposed Natick Pond Dam Project would be about 1500 megawatt-hours. The existing Natick Pond Dam and appurtenant works are owned by the City of Warwick, Rhode Island.

*Applicant Contact:* Mr. Michael C. Kerr, New England Hydropower Company, LLC, P.O. Box 5524, Beverly Farms, Massachusetts 01915; phone: (978) 360–2547.

*FERC Contact:* John Ramer; phone: (202) 502–8969 or email: *john.ramer@ferc.gov*.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

[1] *Gulf South Pipeline Company, LP*, 142 FERC ¶ 61,167 (2013).

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14505) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 19, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06818 Filed 3–25–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14504–000]**

### FFP Project 121, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 1, 2013, FFP Project 121, LLC filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed New Cumberland Locks and Dam Hydroelectric Project No. 14504–000, to be located at the existing New Cumberland Locks and Dam on the Ohio River, near the Town of Stratton, in Jefferson County, Ohio and the Town of New Cumberland, in Hancock County, West Virginia. The New Cumberland Locks and Dam is owned by the United States government and operated by the U.S. Corps of Engineers.

The proposed project would consist of: (1) A new 250-foot-wide by 380-foot-long forebay; (2) a new 220-foot by 250-foot reinforced concrete powerhouse; (3) three new 16.6 megawatt (MW) horizontal bulb turbine-generators having a total combined generating capacity of 49.8 MW; (4) a new 300-foot-long concrete retaining wall downstream of the powerhouse; (5) a new 300-foot-wide by 515-foot-long tailrace area; (6) a new 60-foot-wide by 60-foot-long substation; (7) a new 0.8-mile-long, 36.7-kilovolt transmission line; and (8) appurtenant facilities. The project would have an estimated annual generation of 251,600 megawatt-hours.

*Applicant Contact:* Daniel Lissner, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 252–7111.

*FERC Contact:* Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14504) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 19, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06817 Filed 3–25–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Central Arizona Project-Rate Order No. WAPA–158

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Extension of Transmission Service Rate Schedules.

**SUMMARY:** This action is to extend the rate setting formula for the Central Arizona Project, reflected in Transmission Service Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2, from January 1, 2013, through December 31, 2015. These Transmission Service Rate Schedules contain formula rates recalculated from annual updated financial and load data.

**FOR FURTHER INFORMATION CONTACT:** Mr. Darrick Moe, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2522, email *MOE@wapa.gov,* or Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, email *jmurray@wapa.gov.*

**SUPPLEMENTARY INFORMATION:** By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The existing Rate Schedules CAP–FT2, CAP–NFT2, CAP–NITS2 under Rate Order No. WAPA–124,[1] were approved for a 5-year period beginning on January 1, 2006, and ending December 31, 2010.[2] Rate Order No. WAPA–153[3] extended the approval period for these rate schedules for a 2-year period, beginning January 1, 2011, through December 31, 2012.

The existing Central Arizona Project rate setting formula methodology provides for the calculation of rates to collect sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment thus ensuring repayment of the project within the cost recovery criteria set forth in DOE Order RA 6120.2. The rates are updated annually using new financial and transmission reservation data. For the reasons explained in its Proposed Extension WAPA–158, published in the **Federal Register** on August 7, 2012 (77 FR 47065), Western is not changing the rate formula at this time. Based on financial and contractual information, Western also determined that the existing calculated rate provides sufficient revenue to recover all appropriate costs and will remain in place through

[1] FERC confirmed and approved Rate Order No. WAPA–124 on June 29, 2006, in Docket No. EF06–5111–000. See *Order Confirming and Approving Rate Schedules on a Final Basis, 115 FERC* ¶ 62,326.70 FR 38,130 (July 1, 2005).

[2] FERC confirmed and approved Rate Order No. WAPA–124 on June 29, 2006, in Docket No. EF06–5111–000, 115 FERC ¶ 62,326.

[3] 76 FR 548 (January 5, 2011).

calendar year 2013. Therefore, Western proposed extending the usage of the current transmission service formula rate schedules through calendar year 2015 pursuant to 10 CFR 903.23(a) under Rate Order No. WAPA–158.

As allowed by 10 CFR 903.23(a) Western provided for a consultation and comment period on Proposed Extension WAPA–158, but did not conduct public information forums or public comment forums. The consultation and comment period ended on September 6, 2012. No comments were received.

Following review of Western's proposal within the Department of Energy, I hereby approve Rate Order No. WAPA–158 which extends Transmission Service Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2 on an interim basis effective as of January 1, 2013. This order places the rates schedules into effect without 30 days notice to avoid financial difficulties that may be created by questions concerning the applicable rates. A 30-day delay in effective date is also unnecessary given that the rate setting formulas remain unchanged from the previous formulas in effect until December 31, 2012. Rate Order No. WAPA–158 will be submitted promptly to FERC for confirmation and approval on a final basis.

Dated: March 15, 2013.

**Daniel B. Poneman,**

*Deputy Secretary.*

**Department of Energy Deputy Secretary**

In the Matter of: Western Area Power Administration, Rate Extension for Central Arizona Project Transmission Service Rate Schedules.

Order Confirming and Approving an Extension of the Central Arizona Project Transmission Service Rate Schedules

Section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152) transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This extension of the rate schedules is issued pursuant to the Delegation Order and DOE rate extension procedures at 10 CFR 903.23(a).

**Background**

On June 29, 2006, in Docket No. EF06–5111–000 at 115 FERC 62,326 FERC issued an order confirming, approving, and placing into effect on a final basis the Transmission Service Rate Schedules CAP–FT2, CAP–NFT2 and CAP–NITS2 for the Central Arizona Project (CAP). The Transmission Service Rate Schedules, Rate Order No. WAPA–124,[1] were approved for 5 years beginning December 23, 2005, through December 31, 2010.[2] Rate Order No. WAPA–153[3] extended these rate schedules for a 2-year period, beginning January 1, 2011, and ending December 31, 2012. Western is requesting a further extension of the approval period for the CAP Transmission Service Rate Schedules, incorporated by reference herein, under Rate Order No. WAPA–158, through December 31, 2015.

**Discussion**

Western's existing formula transmission service rates for the Central Arizona Project 115kV and 230kV transmission facilities, which are recalculated annually, are expected to continue to sufficiently recover project expenses (including interest) and capital requirements through December 31, 2015. However, on December 31, 2012, the approval period for rate schedules CAP–FT2, CAP–NFT2 and CAP–NITS2, under which these rates are calculated, ended. This makes it necessary to extend the approval period for the existing rate schedules under 10 CFR 903.23(a).

**Order**

In view of the above and under the authority delegated to me, I hereby extend the existing Transmission Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2 for transmission service for the Central Arizona Project of the Western Area Power Administration on an interim basis. The existing Transmission Rate Schedules CAP–FT2, CAP–NFT2, AND CAP–NITS2 for transmission service for the Central Arizona Project of the Western Area Power Administration, shall remain in effect pending FERC confirmation and approval of their extension or substitute rates on a final basis through December 31, 2015.

Dated: March 15, 2013.

**Daniel B. Poneman,**

*Deputy Secretary.*

[FR Doc. 2013–06851 Filed 3–25–13; 8:45 am]

**BILLING CODE 6450–01–P**

[1] 70 FR 38,130 (July 1, 2005).

[2] 115 FERC ¶ 62,236 (2006).

[3] 76 FR 548 (January 5, 2011).

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9793–9]**

### Public Water System Supervision Program Approval for the State of Michigan

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

**ACTION:** Notice of tentative approval.

**SUMMARY:** Notice is hereby given that the EPA has tentatively approved five revisions to the State of Michigan's public water system supervision program. Michigan has revised several of its rules to comply with the National Primary Drinking Water Regulations, including the Ground Water Rule, the Stage 2 Disinfectants and Disinfection Byproducts Rule, the Long-Term 2 Enhanced Surface Water Treatment Rule, the Lead and Copper Rule Short Term Revisions, and the Lead and Copper Rule Minor Revisions. These rules better protect public health by controlling microbial contaminants and disinfection byproducts, and streamline existing lead and copper rule requirements.

EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these revisions, thereby giving the Michigan Department of Environmental Quality primary enforcement responsibility for these regulations. This approval action does not extend to public water systems in Indian Country, as the term is defined in 18 U.S.C. 1151. By approving these rules, EPA does not intend to affect the rights of federally recognized Indian Tribes in Michigan, nor does it intend to limit existing rights of the State of Michigan.

**DATES:** Any interested person may request a public hearing. A request for a public hearing must be submitted to the Regional Administrator at the EPA Region 5 address shown below by April

25, 2013. If a substantial request for a public hearing is made within the requested timeframe, a public hearing will be held and a notice of such hearing will be given in the **Federal Register** and a newspaper of general circulation. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on April 25, 2013. Any request for a public hearing shall include the following information: the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection at the following offices: Michigan Department of Environmental Quality, Office of Drinking Water and Municipal Assistance, 525 W. Allegan Street P.O. Box 30273, Lansing, Michigan 48909–7773, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, and the United States Environmental Protection Agency, Region 5,

Ground Water and Drinking Water Branch (WG–15J), 77 West Jackson Boulevard, Chicago, Illinois 60604, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Crooks, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone at (312) 886–0244, or at *crooks.jennifer@epa.gov*.

**Authority:** Section 1413 of the Safe Drinking Water Act, 42 U.S.C. 300g–2, and the federal regulations implementing Section 1413 of the Act set forth at 40 CFR 142.

Dated: March 13, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2013–06895 Filed 3–25–13; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required b y the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: 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; the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 25, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0292.

*Title:* Section 90.605, Reporting and Distribution of Pool Access Revenues, Part 69—Access Charges.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 1,250 respondents; 15,000 responses.

*Estimated Time per Response:* .75 hours (45 minutes).

*Frequency of Response:* Monthly and annual reporting requirements and third party disclosure requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154, 201, 202, 203, 205, 218 and 403 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 11,250 hours.

*Total Annual Cost:* N/A.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this comment period to obtain the three year clearance from them. The Commission is requesting approval for an extension (no change in the reporting and/or third party disclosure requirements). There is no change in the Commission's burden estimates.

Section 69.605 requires that access revenues and cost data shall be reported by participants in association tariffs to the association for computation of monthly pool revenues distributions. The association shall submit a report on or before February 1 of each calendar year describing the associations's cost study review process for the preceding calendar year as well as the results of that process. For any revisions to the cost study results made or recommended by the association that would change the respective carrier's calculated annual common line or traffic sensitive revenue requirement by ten percent or more, the report shall include the following information:

(1) Name of the carrier;

(2) A detailed description of the revisions;

(3) The amount of the revisions;

(4) The impact of the revisions on the carrier's calculated common line and traffic sensitive revenue requirements; and

(5) The carrier's total annual common line and traffic sensitive revenue requirement. The information is used to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither process could be implemented without the information.

*OMB Control Number:* 3060–0743.

*Title:* Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities and state, local and tribal government.

*Number of Respondents:* 4,471 respondents; 10,071 responses.

*Estimated Time per Response:* 11.730414 hours.

*Frequency of Response:* On occasion, quarterly and monthly reporting requirements, recordkeeping requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. section 276 of the Telecommunications Act of 1996, as amended.

*Total Annual Burden:* 118,137 hours.

*Total Annual Cost:* N/A.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* The Commission is not requesting that respondents submit confidential information to the FCC. If the Commission requests respondents to submit information which respondents believe is confidential, they may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this comment period to obtain the three year clearance from them. There is no change in the reporting, recordkeeping and/or third party disclosure requirements. There is no change in the Commission's previous burden estimates.

In CC Docket No. 96–128, the Commission promulgated rules and requirements implementing Section 276 of the Telecommunications Act of 1996. Among other things, the rules (1) Establish fair compensation for every completed intrastate and interstate payphone call; (2) discontinue intrastate and interstate access charge payphone service elements and payments, and intrastate and interstate payphone subsidies from basic exchange services; and (3) adopt guidelines for use by the states in establishing public interest payphones to be located where there would otherwise not be a payphone.

The information collected under LEC Provision of Emergency Numbers to Carrier-Payers would able used to ensure that interexchange carriers, payphone service providers ("PSP") LECs, and the states, comply with their obligations under the 1996 Act.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2013–06654 Filed 3–25–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collections Being Reviewed by the Federal Communications Commission, Comments Requested

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 28, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, (202) 418–0214.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1135.

*Title:* Rules Authorizing the Operation of Low Power Auxiliary Stations (Including Wireless Microphones).

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions and state, local or tribal government.

*Number of Respondents and Responses:* 5,100 respondents; 127,500 responses.

*Estimated Time per Response:* .25 hours (15 minutes).

*Frequency of Response:* Third party disclosure requirements (disclosure and labeling requirements).

*Obligation to Respond:* Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 152, 154(i), 154(j), 301, 302(a), 303, 304, 307, 308, 309, 316, 332, 336 and 337 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 31,875 hours.

*Total Annual Cost:* $1,625,000.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality since these are third party disclosure and labeling requirements.

*Needs and Uses:* The Commission will submit this expiring information collection during this comment period to obtain the full three year clearance from the Office of Management and Budget (OMB). The Commission is requesting approval for an extension (no change in the third party disclosure and labeling requirements). There are no changes to the Commission's previous burden estimates. The point-of-sale disclosure requirement is necessary for a successful transition of wireless microphones out of the 700 MHz band, and to address concerns regarding the lack of consumer awareness of the Commission's rules to best ensure the

operation of wireless microphones in the core TV spectrum in conformance with the rules. The Commission anticipates that some wireless microphone users that previously operated in the 700 MHz band will have to purchase or lease new equipment capable of operating in the core TV spectrum. The point-of-sale disclosure requirement will help these consumers make an educated decision as they obtain new microphones, and it will help them operate in the core TV spectrum without causing harmful interference to other services in the spectrum. Further, a label on 700 MHz band wireless microphones bound for export will help to ensure that these wireless microphones are not made available for use in the United States, in contravention of our efforts to remove them from the 700 MHz band.

*OMB Control Number:* 3060–1181.

*Title:* Study Area boundary Maps Reported in Esri Shapefile Format, DA 12–1777.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 1,443 respondents; 1,443 responses.

*Estimated Time per Response:* 26 hours.

*Frequency of Response:* On occasion and biennial reporting requirements.

*Obligation to Respond:* Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. section 254(b) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 7,924 hours.

*Total Annual Cost:* $705,935.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* No questions of a confidential nature are asked.

*Needs and Uses:* The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them.

The Commission requires all incumbent local exchange carriers (ILECs) to file shapefile maps of their service territories in a state (study area) and allows state public utility commissions to file voluntarily such data on the behalf of ILECs. Shapefiles are a commonly used, digitized, geographic information system (GIS) format. Accurate and accessible maps are essential to the legitimate distribution of universal service support to rural, high cost carriers. After the shapefiles are uploaded into a web interface provided by the Commission, each ILEC or state commission must certify the accuracy of its study area maps. ILECs or state commissions also must submit updated shapefile maps if the study area boundaries change, and must recertify the accuracy of the map every two years.

*OMB Control Number:* 3060–0975.

*Title:* Sections 68.105 and 1.4000, Promotion of Competitive Networks in Local Telecommunications Markets Multiple Tenant Environments (MTEs).

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions, Federal Government, and state, local or tribal government.

*Number of Respondents:* 7,367 respondents; 7,367 responses.

*Estimated Time per Response:* 26.3109814 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151 and 224 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 193,833 hours.

*Total Annual Cost:* N/A.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* The Commission will submit this expiring information collection after this comment period to obtain the full, three year clearance from the Office of Management and Budget (OMB). The Commission is requesting approval for an extension (no change in the reporting and/or third party disclosure requirements). The Commission is reporting a 451 hour decrease in burden which is due to adjustments over time because requests for location information would have already been made at most buildings.

This collection involves information regarding the location of the demarcation point, antennas placed on subscriber premises, and the state of the market. In an October 2001 Order (FCC 00–366), the Commission adopted the following:

(1) Prohibited carriers from entering into contracts that restrict or effectively restrict a property owner's ability to permit entry by competing carriers;

(2) established procedures to facilitate moving the demarcation point to the minimum point of entry ("MPOE") at the building owner's request, and requires incumbent local exchange carriers (LECs) to timely disclose the location of existing demarcation points where they are not located at the MPOE;

(3) determined that, under section 224 of the Communications Act of 1934, as amended, utilities, including LECs, must afford telecommunications carriers and cable service providers reasonable and nondiscriminatory access to conduits and rights-of-way located in customer buildings and campuses, to the extent such conduits and rights-of-way are owned or controlled by the utility; and

(4) extended to antennas that receive and transmit telecommunications and other fixed wireless signals the existing prohibition of restrictions that impair the installation, maintenance or use of certain video antennas on property within the exclusive use or control of the antenna user, where the user has a direct or indirect ownership or leasehold interest in the property.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2013–06892 Filed 3–25–13; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *William E. Blomster 2011 Irrevocable Trust*, Fairmont, Minnesota, and Mark C. Hooper, Fairmont, Minnesota, as trustee of the Trust, to retain voting shares of WEB, Inc., and thereby indirectly retain control of State Bank of Fairmont, both of Fairmont, Minnesota.

Board of Governors of the Federal Reserve System, March 21, 2013.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2013–06912 Filed 3–25–13; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Change In Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 9, 2013.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Gordon A. Baird,* Darien, Connecticut; individually and as part of a group acting in concert with Alvin G. Hageman, Westport, Connecticut, and Baird Hageman & Co., LLC, Darien, Connecticut, to acquire voting shares of Independence Bancshares, Inc., and thereby indirectly acquire voting shares of Independence National Bank, both in Greenville, South Carolina.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Jack W. Steele Irrevocable Trust and the 2012 Donna D. Steele Irrevocable Trust ("Trusts"),* both of Huron, South Dakota; Preston B. Steele, and Tasha J. Lee, individually and as co-trustees of Trusts, both of Huron, South Dakota; and American Bank & Trust, Wessington Springs, South Dakota, as trustee of Trusts, to retain or acquire voting shares of Leackco Bank Holding Company, Inc., Wolsey, South Dakota, and thereby indirectly retain and acquire voting shares of American Bank & Trust, Wessington Springs, South Dakota, and American State Bank of Pierre, Pierre, South Dakota.

C. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Victor Abraham,* Irving, Texas; to acquire voting shares of Providence Bancshares Corporation, and thereby acquire voting shares of Providence Bank of Texas, SSB, both in Southlake, Texas.

Board of Governors of the Federal Reserve System, March 20, 2013.

**Michael J. Lewandowski,**

*Assistant Secretary of the Board.*

[FR Doc. 2013–06775 Filed 3–25–13; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The 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 April 18, 2013.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Midland States Bancorp, Inc.,* Effingham, Illinois, to acquire through merger, Grant Park Bancshares, Inc., Grant Park, Illinois, and thereby indirectly acquire The First National Bank of Grant Park, Grant Park, Illinois.

Board of Governors of the Federal Reserve System, March 18, 2013.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2013–06839 Filed 3–25–13; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

**[Files No. 082 3199, 122 3063, 122 3065]**

### The Neiman Marcus Group, Inc.; Dr.Jays.com, Inc., Eminent, Inc.; Analysis of Proposed Consent Orders To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreements.

**SUMMARY:** The consent agreements in this matter settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

**DATES:** Comments must be received on or before April 18, 2013.

**ADDRESSES:** Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/neimanmarcusconsent*; *https://ftcpublic.commentworks.com/ftc/drjaysconsent*; or *https://ftcpublic.commentworks.com/ftc/eminentconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Neiman Marcus, File No. 082 3199" or "Dr.Jays.com, File No. 122 3063" or "Eminent, File No. 122 3065" on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/neimanmarcusconsent*; *https://ftcpublic.commentworks.com/ftc/drjaysconsent*; or *https://ftcpublic.commentworks.com/ftc/eminentconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Matt Wilshire (202–326–2976), FTC, Bureau of Consumer Protection, 600

Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreement packages can be obtained from the FTC Home Page (for March 19, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm*. Paper copies can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 18, 2013. Write "Neiman Marcus, File No. 082 3199" or "Dr.Jays.com, File No. 122 3063" or "Eminent, File No. 122 3065" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm*. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which * * * is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/neimanmarcusconsent*; *https://ftcpublic.commentworks.com/ftc/drjaysconsent*; or *https://ftcpublic.commentworks.com/ftc/eminentconsent* 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 "Neiman Marcus, File No. 082 3199" or "Dr.Jays.com, File No. 122 3063" or "Eminent, File No. 122 3065" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 18, 2013. 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*.

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

**Analysis of Agreement Containing Consent Orders To Aid Public Comment**

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, agreements containing consent orders from The Neiman Marcus Group, Inc. ("Neiman Marcus"), DrJays.com, Inc. ("DrJays"), and Eminent, Inc., doing business as Revolve Clothing ("Revolve").

The proposed consent orders have been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreements and the comments received, and decide whether it should withdraw from the agreements or make the proposed orders final.

**Proposed Complaints**

These matters involve violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a) ("FTC Act"), Section 5(a)(5) of the Fur Products Labeling Act, 15 U.S.C. 69c(a)(5) ("Fur Act"), and Sections 301.2(c) and 301.49 of the Rules and Regulations Under Fur Products Labeling Act, 16 CFR 301.2(c) and 301.49 ("Fur Rules"). In 2010, Congress enacted the Truth in Fur Labeling Act, which amended the Fur Act by, among other things, eliminating an exemption for items containing fur valued at no more than $150. As a result, the Fur Act now requires disclosure of any fur content in wearing apparel.

The proposed complaints allege that Neiman Marcus, DrJays, and Revolve each advertised products containing real fur as containing "faux fur" on its Internet site. The proposed complaints further allege that the advertisements failed to disclose the names, as set forth in the Fur Products Name Guide, 16 CFR 301.0, of the animals that produced the fur in each product. They also allege that most of the products had labels correctly identifying the fur content.

The proposed complaint against Neiman Marcus alleges that the company's Web site misrepresented the fur content and failed to disclose the animal name for three products: an Outerwear Jacket, a Ballerina Flat by Stuart Weitzman, and a Kyah Faux Fur-Collar Coat. In addition to falsely advertising the Ballerina Flat online as "faux" fur, Neiman Marcus' catalog and mail advertising falsely represented that the product's fur was mink when it was in fact rabbit. The proposed complaint further alleges that Neiman Marcus sold at least 316 units of the three products. Finally, it alleges that Neiman Marcus

failed to disclose the country of origin of each product.

The proposed complaint against DrJays alleges that the company misrepresented the fur content and failed to disclose the animal name for three products: a Snorkel Jacket by Crown Holder; a Fur/Leather Vest by Knoles & Carter; and a New York Subway Leather Bomber Jacket by United Face. It further alleges that DrJays sold at least 241 units.

The proposed complaint against Revolve alleges that the company misrepresented the fur content and failed to disclose the animal name for four products: an Australia Luxe Collective Nordic Angel Short Boot; a Marc Jacobs Runway Roebling Coat; a Dakota Xan Fur Poncho; and an Eryn Brinie Belted Faux Fur Vest. It further alleges that Revolve sold at least 158 units of the products.

**Proposed Orders**

The proposed orders are designed to prevent Neiman Marcus, DrJays, and Revolve from engaging in similar acts and practices in the future.

Paragraph I bars each proposed respondent from violating the Fur Act and Rules by, among other things, misrepresenting in mail, catalog, or Internet advertisements that the fur in any product is faux or fake or misrepresenting the type of fur. Paragraph I also contains a proviso incorporating the Enforcement Policy Statement that the Commission announced on January 3, 2013. The proviso and Statement provide a safe harbor when a retailer cannot legally obtain a guaranty, as long as the retailer meets certain requirements, including that it neither knew nor should have known of the violation.

Paragraphs II though IV will help the Commission ensure that the proposed respondents comply with Part I by requiring them to keep copies of advertisements and materials relied upon in disseminating any representation covered by the orders (Paragraph II); provide copies of the orders to certain personnel having responsibility for the advertising or sale of fur and fake fur products (Paragraph III); and provide certain notices and compliance reports to the Commission (Paragraph IV).

Finally, Part V provides that the orders will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the complaints or the proposed orders, or to modify the proposed orders' terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2013–06785 Filed 3–25–13; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0026; Docket 2012–0076; Sequence 18]**

### Federal Acquisition Regulation; Submission for OMB Review; Change Order Accounting

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning change order accounting. A notice was published in the **Federal Register** at 77 FR 51804, on August 27, 2012. One comment was received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before April 25, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0026, Change Order Accounting, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0026, Change Order Accounting" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information 9000–0026, Change Order Accounting". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0026, Change Order Accounting" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0026, Change Order Accounting.

*Instructions:* Please submit comments only and cite Information Collection 9000–0026, Change Order Accounting, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, (202) 208–4949, or email at *michaelo.jackson@gsa.gov*.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

FAR 43.205 allows a contracting officer, whenever the estimated cost of a change or series of related changes under a contract exceeds $100,000, to assert the right in the clause at FAR 52.243–6, Change Order Accounting, to require the contractor to maintain separate accounts for each change or series of related changes. Each account shall record all incurred segregable, direct costs (less allocable credits) of work, changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

**B. Discussion and Analysis**

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

*Comment:* The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information. The respondent opposes granting the extension of the information collection requirement.

*Response:* In accordance with the Paperwork Reduction Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR 43.205 which allows a contracting officer, whenever the estimated cost of a change or series of related changes under a contract exceeds $100,000, to assert the right in the clause at FAR 52.243–6, Change Order Accounting, to require the contractor to maintain separate accounts for each change or a series of related changes. Each account shall record all incurred segregable, direct costs (less allocable credits) of work, changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. Not granting this extension would consequently eliminate FAR clauses that provide a benefit to the public and the agency collecting the information.

*Comment:* The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. For this reason, the respondent provided that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006. The same respondent also provided that the burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

*Response:* Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the burden for this collection and adjustments were made. However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

**C. Annual Reporting Burden**

The estimated number of respondents has increased from 200 to 10,636, based on information retrieved from the Federal Procurement Data System—Next Generation (FPDS–NG). For Fiscal Year 2012, 21,272 contractors were awarded modifications over $100,000 on fixed-price type contracts, which are applicable to this information collection. It is estimated that only about half of these contractors would be required to submit the information under this collection, or 10,636 because of the improvement in Generally Accepted Accounting Principles (GAAP), the use of FAR cost principles (FAR subpart 31.2), and expanded use of Cost Accounting Standards (CAS). These procedures, in most cases, enable the Government to account for the cost of changes without having to resort to change order accounting. Submission to the Government remains the same at 12, based on an estimated monthly submission, or 12 times a year. The estimated hours per response time of .5, or 30 minutes, is increased to 1 hour. This change is based on a reassessment of the estimated time required to gather and report the accounting information in the format specific to this information collection.

*Respondents:* 10,636.
*Responses per Respondent:* 12.
*Annual Responses:* 127,632.
*Hours per Response:* 1.
*Total Burden Hours:* 127,632.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: March 21, 2013.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–06919 Filed 3–25–13; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0097; Docket 2012–0076; Sequence 22]**

## Federal Acquisition Regulation; Submission for OMB Review; Taxpayer Identification Number Information

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Taxpayer Identification Number Information. A notice was published in the **Federal Register** at 77 FR 51782, on

August 27, 2012. No comments were received.

**DATES:** Submit comments on or before April 25, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0097, Taxpayer Identification Number Information, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0097, Taxpayer Identification Number Information". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0097, Taxpayer Identification Number Information" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0097, Taxpayer Identification Number Information.

*Instructions:* Please submit comments only and cite Information Collection 9000–0097, Taxpayer Identification Number Information, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis E. Glover, Sr., Procurement Analyst, Contract Policy Division, GSA, (202) 501–1448 or email at *curtis.glover@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

In accordance with 31 U.S.C. 7701(c), a contractor doing business with a Government agency is required to furnish its Tax Identification Number (TIN) to that agency. 31 U.S.C. 3325(d) requires the Government to include, with each certified voucher prepared by the Government payment office and submitted to a disbursing official, the TIN of the contractor receiving payment under the voucher. 26 U.S.C. 6050M, as implemented in the Department of Treasury, Internal Revenue Service (IRS) regulations at Title 26 of the Code of Federal Regulations (CFR), requires heads of Federal executive agencies to report certain information to the IRS. 26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, requires payors, including Government agencies, to report to the IRS, on form 1099, payments made to certain contractors.

To comply with the requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS in 26 CFR, FAR clause 52.204–3, Taxpayer Identification, requires a potential Government contractor to submit, among other information, its TIN. The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government. A contractor is not required to provide its TIN on each contract in accordance with FAR clause 52.204–3, Taxpayer Identification, when FAR clause 52.204–7, Central Contractor Registration, is inserted in contracts. FAR clause 52.204–7 requires a potential Federal contractor to provide its TIN in the Central Contractor Registration (CCR) system.

**B. Annual Reporting Burden**

The annual reporting burden decreased from what was published in the **Federal Register** at 73 FR 20613, on April 16, 2008. The decrease is attributed to a revised estimate of the respondents and hours per response. A potential federal contractor is required to complete a one-time registration in CCR to provide basic information in order to be awarded a Federal Government contract. Part of a potential Federal contractor's CCR registration includes providing its TIN in accordance with FAR 52.204–7. It is estimated that a significant number of Federal contractors will not be required to submit their TIN under this collection at FAR 52.204–3, due to the requirement to submit their TIN during the registration process. Based on Federal procurement Data Systems (FPDS) data, 193,397 unique contractors were awarded Federal Government contracts in Fiscal Year 2011 (FY11). We estimate that fifteen percent of the FY11 unique vendors, responding on average to three solicitations per year, are required to provide their TIN in accordance with FAR 52.204–3. In addition, based on the TIN being readily available business information within contractor's system, the estimated hours per response is decreased to .10. The revised estimate of the annual reporting burden requirements is reflected below.

*Respondents:* 29,010.
*Responses per Respondent:* 3.
*Total Responses:* 87,030.
*Hours per Response:* .10.
*Total Burden Hours:* 8,703.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0097, Taxpayer Identification Number Information, in all correspondence.

Dated: March 20, 2013.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–06859 Filed 3–25–13; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0130; Docket 2012–0076; Sequence 14]**

## Federal Acquisition Regulation; Submission for OMB Review; Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. A notice was published in the **Federal Register** at 77 FR 43081, on July 23, 2012. One comment was received.

**DATES:** Submit comments on or before April 25, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0130, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by

searching "Information Collection 9000–0130, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0130, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0130, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0130, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

*Instructions:* Please submit comments only and cite Information Collection 9000–0130. Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cecelia L. Davis, Procurement Analyst, Contract Policy Division, GSA, (202) 219–0202 or via email at *cecelia.davis@gsa.gov*.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Under the Free Trade Agreements Act of 1979, unless specifically exempted by statute or regulation, agencies are required to evaluate offers, over a certain dollar limitation, to supply an eligible product without regard to the restrictions of the Buy American Act. FAR provision 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, requires an offeror to certify that the offered products are, domestic end products and Free Trade Agreement (FTA) end products. The provision also requires an offeror to identify foreign end products.

Contracting officers use the information to give domestic and FTA country end products a preference during the evaluation of offers. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

**B. Analysis of Public Comments**

A notice was published in the **Federal Register** at 77 FR 43081, on July 23, 2012. One respondent submitted public comments on the extension of the previously approved information collection. The analysis of public comments is summarized as follows:

*Comment:* The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

*Response:* In accordance with the Paperwork Required Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to implementation of FAR 25.406 and the provision at FAR 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in accordance with the terms of the Free Trade Agreements Act of 1979. Under the Free Trade Agreements Act of 1979, unless specifically exempted by statute or regulation, agencies are required to evaluate offers (over a certain dollar limitation) to supply an eligible product, without regard to restrictions of the Buy American Act. Offerors identify covered Free Trade Agreement (FTA) country end products and other foreign end products on this certificate in accordance with the FAR provision at 52.225–4. The contracting officer uses the information to identify covered FTA country end products. Offers are evaluated by giving a preference to domestic and covered FTA country end products over other products, as provided for by law and treaty.

*Comment:* The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. For this reason, the respondent provided that the agency should reassess the total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006. The same respondent also provided that the burden of compliance with the agency's information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

*Response:* Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business.

Careful consideration went into assessing the estimated burden hours for this collection, and it is determined that an upward adjustment is not required at this time related to the responses per respondent. The revised estimate of two responses per respondent is based upon contractor use of the Online Representation and Certifications Application (ORCA) function in the System for Award Management (SAM) rather than the completion of representations and certifications for each solicitation/contract for which a vendor submits an offer. The ORCA function was developed to eliminate the administrative burden for contractors of submitting the same information to various contracting offices, and to establish a common source for this information to procurement offices across the Government. Prior to the ORCA function's implementation, prospective contractors were required to submit representations and certifications in paper form for each individual contract award. Under these conditions, a higher response rate per

year per contractor as suggested by the respondent may have been necessary. However, using the ORCA function in SAM, a contractor can enter their representations and certification information once for use on all Federal contracts and solicitations. FAR 4.1201(a) requires prospective contractors to complete electronic annual representations and certifications in conjunction with required registration in the Central Contractor Registration (CCR). These requirements are met through functionality in SAM. The representations and certifications are effective until one year from the date of submission or update to the ORCA function in SAM. For purposes of this information collection, initial data entry plus one update per year was considered reasonable and was used to estimate the number of responses per respondent per year, i.e., 2 responses per respondent.

We have reassessed the hours of burden per response based on the respondent's comment, and have determined that an upward estimate of thirty minutes would provide a more accurate measure of the time required to complete or update the initial certification.

However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

**B. Annual Reporting Burden**

*Respondents:* 162,000.

*Responses per Respondent:* 2.

*Annual Responses:* 324,000.

*Hours per Response:* .5.

*Total Burden Hours:* 162,000.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0130, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in all correspondence.

Dated: March 21, 2013.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–06927 Filed 3–25–13; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[OMB Control No. 9000–0145; Docket 2012–0076; Sequence 23]**

## Federal Acquisition Regulation; Submission for OMB Review; Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning use of the Data Universal Numbering System (DUNS) as primary contractor identification. The DUNS number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. A notice was published in the **Federal Register** at 77 FR 56212, on September 12, 2012. Three respondents submitted comments.

**DATES:** Submit comments on or before April 25, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching "Information Collection 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0145, Transportation Requirements.

*Instructions:* Please submit comments only and cite Information Collection 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA (202) 501–1448 or via email at *curtis.glover@gsa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Purpose**

The Data Universal Numbering System (DUNS) number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. The Government uses the DUNS number to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data on all contracts in excess of the micro-purchase threshold to the Federal Procurement Data Center which collects, processes, and disseminates official statistical data on Federal contracting. Contracting officers insert the Federal Acquisition Regulation (FAR) provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations they expect will result in contracts in excess of the micro-purchase threshold and do not contain FAR 52.204–7, Central Contractor Registration. The majority of offerors submit their DUNS through CCR as required by FAR 52.204–7, and not under the FAR provision at 52.204–6.

**II. Discussion and Analysis**

Three respondents submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

*Comment:* Three respondents commented that they supported the continued use of the Data Universal

Numbering System as the primary contractor identification.

*Response:* The comments are noted.

*Comment:* One respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

*Response:* In accordance with the Paperwork Required Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR Subpart 4.6, Contract Reporting. The contracting officer must identify and report a DUNS number (Contractor Identification Number) for the successful offeror on a contract action in the Federal Procurement Data System (FPDS). The DUNS number reported must identify the successful offer's name and address as stated in the offer and resultant contract. Not granting this extension would consequently eliminate the Government's ability to use the DUNS number to report information on federal contract awards.

*Comment:* One respondent commented that the Agency did not accurately estimate the public burden an extension of the information collection requirement would create.

*Response:* The DUNS number is a widely used number for identifying companies conducting business in the private sector. It is anticipated that the DUNS number is readily available, so the estimated average of 1.5 minutes to comply with providing the DUNS number appears reasonable for this collection, however; based on a reassessment, an adjustment has been made to increase the average estimate to 10 minutes. The number of estimated respondents remains at 38,679. The number of unique large and small business contractors who received new awards or orders of $3K or more in the Federal Procurement Data System database for Fiscal Year (FY) 2011 is 193,397. It is estimated that twenty percent (or 38,679) of the contractors would have been required to submit their DUNS number under FAR provision 52.204–6 on an average of three solicitations in FY11. The majority of contractors will not be required to submit their DUNS under FAR provision 52.204–6. This is due to the fact that FAR Clause 52.204–7, Central Contractor Registration (CCR), is required to be inserted in the majority of solicitations and contracts except as provided in 4.1102(a). FAR Clause 52.204–7 requires vendors to provide their DUNS number in CCR.

*Comment:* One respondent commented that the collective burden of compliance with the information collection requirement greatly exceeds the Agencies estimate and outweighs any potential utility of the extension.

*Response:* The Paperwork Reduction Act (PRA) was designed to improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in government and society. Central to this process is the solicitation of comments from the public. This process incorporates an enumerated specification of targeted information and provides interested parties a meaningful opportunity for comment on the relevant compliance cost. This process has led to decreases in the overall collective burden of compliance for the information collection requirement in regards to the public. Based on OMB estimates, in FY 2010, the public spent 8.8 billion hours responding to information collections. This was a decrease of one billion hours, or ten percent from the previous fiscal year. In effect, the collective burden of compliance for the public is going down as the Government publishes rules that make the process less complex, more transparent, and reduces the cost of federal regulations to both the Contractor community and Government.

*Comment:* One respondent commented that the Government's response to the Paperwork Reduction Act waiver for Far Case 2007–006 is instructive on the total burden for respondents.

*Response:* Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection, however, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

**III. Annual Reporting Burden**

The estimated annual reporting burden has been adjusted since published in the **Federal Register** at 74 FR 37991, on July 30, 2009. The adjustment is based on use of Fiscal Year 2011 Federal Procurement Data System data, consideration for the fact that the majority of vendors are required to report their DUNS number into the Central Contractor Registration per FAR 52.204–7, and not FAR.204–6, as required by this information collection, and reassessment of the estimated response time.

*Respondents:* 38,679.

*Responses per Respondent:* 3.

*Annual Responses:* 116,037.

*Hours per Response:* .1666.

*Total Burden Hours:* 19.332.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control Number 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: March 21, 2013.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–06921 Filed 3–25–13; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[OMB Control No. 9000–0175; Docket 2012–0076, Sequence 65]**

## Submission for OMB Review; Use of Project Labor Agreements for Federal Construction Projects

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension of an existing OMB information clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of an existing information collection requirement regarding Use of Project Labor Agreements for Federal Construction Projects. A notice was published in the **Federal Register** at 13057, on February 26, 2013. One comment was received.

**DATES:** Submit comments on or before April 25, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0175, Use of Project Labor Agreements for Federal Construction Projects, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0175, Use of Project Labor Agreements for Federal Construction Projects". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0175, Use of Project Labor Agreements for Federal Construction Projects" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0175, Use of Project Labor Agreements for Federal Construction Projects.

*Instructions:* Please submit comments only and cite Information Collection 9000–0175, Use of Project Labor Agreements for Federal Construction Projects, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Loeb, Procurement Analyst, Office of Governmentwide Acquisition Policy, at telephone (202) 501–0650 or via email to *Edward.loeb@gsa.gov*.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

FAR 22.501 prescribes policies and procedures to implement Executive Order 13502, February 6, 2009, which encourages Federal agencies to consider the use of a project labor agreement (PLA), as they may decide appropriate, on large-scale construction projects, where the total cost to the Government is more than $25 million, in order to promote economy and efficiency in Federal procurement. A PLA is a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project. FAR 22.503(b) provides that an agency may, if appropriate, require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations if the agency decides that the use of project labor agreements will—

(1) Advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(2) Be consistent with law.

### B. Discussion and Analysis

One public comment was received.

*Comment:* The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act.

*Response:* In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval on an existing information collection. PRA requires that agencies use the **Federal Register** notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to the requirement to submit a project labor agreement to the Government when such an agreement is deemed needed. Absent this information the Government would not be in a position to carry out the FAR prescribed policies and procedures to implement Executive Order 13502, which encourages Federal agencies to consider the use of a project labor agreement (PLA), as they may decide appropriate, on large-scale construction projects, where the total cost to the Government is more than $25 million.

*Comment:* The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. Specifically, the respondent challenged the estimated 70 respondents, the one response per respondent and the estimated one hour of burden to meet information collection requirement. The respondent recommend the use of the actual number of responses received and suggested that one hour of burden is understated.

*Response:* There is no existing Governmentwide data base that collects PLAs and specifically the number submitted under the various options included in the existing FAR policies and procedures. For FY 2010 and 2011, a two year average of 258 large-scale construction contracts, were awarded. The estimated number of 70 responses per year represents about thirty percent of the two year average, which is believed to be a valid estimate. As stated in the final rule in the **Federal Register** at 75 FR 19169 on April 10, 2010, Project Labor Agreements are mandated by an Executive order, not by the FAR. Therefore, the time required to negotiate a Project Labor Agreement was never intended to be included in this renewal request. Further, the FAR requires only that a Project Labor Agreement be submitted to the Government on an exception basis and only in order to confirm the existence of a negotiated Project Labor Agreement when someone or some circumstance has cast doubt on whether there is a Project Labor Agreement on a particular Federal construction project. The allotted hour is the time required to copy an existing document and mail it to the Government, essentially a clerical task, as such the one hour per response is retained in this information collection renewal request.

*Comment:* The respondent provided that the burden of compliance with the information collection requirement greatly exceeds the agency's estimate

and outweighs any potential utility of the extension.

*Response:* The Paperwork Reduction Act (PRA) was designed to improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in government and society. Central to this process is the solicitation of comments from the public. This process incorporates and enumerated specification of targeted information and provides interested parties a meaningful opportunity for comment on the relevant compliance cost. This process has led to decreases in the overall collection requirement in regards to the public. Based on OMB estimates, in FY 2010, the public spent 8.8 billion hours responding to information collections. This was a decrease of one billion hours, or ten percent from the previous fiscal year. In effect, the collective burden of compliance for the public is going down as the Government publishes rule that make the process less complex, more transparent, and reduces the cost of federal regulations to both the Contractor community and Government.

*Comment:* The respondent provided that agency should reassess the estimated total burden hours and revise the estimate, as was done in FAR Case 2007–006.

*Response:* Serions consideration given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company prior to release to the Government. The burden is prepared taking into consideration the necessary criteria OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business.

Careful consideration went into assessing the estimated burden hours for this collection. However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

**C. Annual Reporting Burden**

*Respondents:* 70.
*Responses per Respondent:* 1.
*Annual Responses:* 70.
*Hours per Response:* 1.
*Total Burden Hours:* 70.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0175, Use of Project Labor Agreements for Federal Construction Projects, in all correspondence.

Dated: March 21, 2013.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–06924 Filed 3–25–13; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0136; Docket 2012–0076; Sequence 63]**

### Federal Acquisition Regulation; Information Collection; Commercial Item Acquisitions

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the clauses and provisions required for use in commercial item acquisitions.

**DATES:** Submit comments on or before May 28, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0136, Commercial Item Acquisitions, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0136, Commercial Item Acquisitions". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0136, Commercial Item Acquisitions" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0136, Commercial Item Acquisitions.

*Instructions:* Please submit comments only and cite Information Collection 9000–0136, Commercial Item Acquisitions, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA (202) 208–4949 or email at *michaelo.jackson@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

To implement these changes, DoD, NASA, and GSA amended the Federal Acquisition Regulation (FAR) to include several streamlined and simplified clauses and provisions to be used in place of existing clauses and provisions. They were designed to simplify solicitations and contracts for commercial items. Information is used by Federal agencies to facilitate the

acquisition of commercial items and services.

Pertinent to this information collection is the FAR provision at 52.212–3, Offeror Representations and Certifications-Commercial Items. The provision is among the representations and certifications that are available for completion in the On-line Representation and Certification Application (ORCA) function of the System for Award Management (SAM) database. Because an offeror only has to complete representations and certifications once on an annual basis, with periodic updates, use of the ORCA function by prospective contractors decreases the number of responses per respondent per year for purposes of this information collection. ORCA was developed to eliminate the administrative burden for contractors of submitting the same information to various contracting offices, and to establish a common source for this information to procurement offices across the Government. Prior to ORCA's implementation, prospective contractors were required to submit representations and certifications in paper form for each individual contract award. Using the ORCA function in SAM, a contractor can enter their representations and certification information once for use on all Federal contracts. FAR 4.1201(a) requires prospective contractors to complete electronic annual representations and certifications in conjunction with required registration in the Central Contractor Registration (CCR). These requirements are met through functionality in SAM. The ORCA function reuses data pulled from the CCR function and, in many cases, pre-populates several of the required representations and certifications with CCR data. The representations and certifications are effective until one year from the date of submission or update to the ORCA function in SAM.

**B. Annual Reporting Burden**

Because ORCA allows for multiple uses from one entry, i.e., a contractor can enter their representations and certification information once a year (with any needed updates) for use on all Federal contracts, the number of responses per respondent has decreased from the currently approved number 34 to 4. For purposes of this information collection, initial entry plus three updates are estimated as the number of responses per respondent per year, i.e., 4 responses per respondent. As of May 2012, there were 162,000 vendors registered in the ORCA function of SAM. For purposes of estimation, the number of vendors registered in the ORCA function of SAM will serve as the number of respondents. Data entry by contractors is estimated at 30 minutes per response. As a result, a downward adjustment is being made to the estimated annual reporting burden since the notice regarding an extension to this clearance published in the **Federal Register** at 75 FR 6668, on February 10, 2010.

*Respondents:* 162,000.
*Responses per Respondent:* 4.
*Total Responses:* 648,000.
*Hours per Response:* .5.
*Total Burden Hours:* 324,000.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0136 regarding Commercial Item Acquisitions in all correspondence.

Dated: March 20, 2013.

**William Clark,**

*Acting Director, Federal Acquisition Policy, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–06856 Filed 3–25–13; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Designation of a Class of Employees for Addition to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice of a decision to designate a class of employees from the Joslyn Manufacturing and Supply Company in Fort Wayne, Indiana, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On March 6, 2013, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked for Joslyn Manufacturing and Supply Company at the covered facility in Fort Wayne, Indiana, from March 1, 1943, through December 31, 1947, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on April 5, 2013, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2013–06842 Filed 3–25–13; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Designation of a Class of Employees for Addition to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice of a decision to designate a class of employees from the Baker Brothers site in Toledo, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On March 6, 2013, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at the Baker Brothers site in Toledo, Ohio, during the period from June 1, 1943, through December 31, 1944, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on April 5, 2013, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of

any provision by Congress regarding the decision by HHS to add the class to the SEC.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2013–06844 Filed 3–25–13; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Designation of a Class of Employees for Addition to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice of a decision to designate a class of employees from the Battelle Laboratories King Avenue facility in Columbus, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On March 6, 2013, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at the King Avenue facility owned by Battelle Laboratories in Columbus, Ohio, during the period from April 16, 1943, through June 30, 1956, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on April 5, 2013, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2013–06846 Filed 3–25–13; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Determination Concerning a Petition To Add a Class of Employees to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice of a determination concerning a petition to add a class of employees from the Hanford site in Richland, Washington, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384q. On March 6, 2013, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

All personnel who were internally monitored (urine or fecal), who worked at the Plutonium Finishing Plant in the 200 Area at the Hanford site, from January 1, 1987, through December 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2013–06849 Filed 3–25–13; 8:45 am]

**BILLING CODE 4150–28–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Determination Concerning a Petition To Add a Class of Employees to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice of a determination concerning a petition to add a class of employees from General Steel Industries in Granite City, Illinois, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384q. On March 6, 2013, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

All individuals who worked in any location at the General Steel Industries site, located at 1417 State Street, Granite City, Illinois, from January 1, 1953, through June 30, 1966, and/or during the residual radiation period from July 1, 1966, through December 31, 1992.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2013–06845 Filed 3–25–13; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0032]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by April 25, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0331. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5733, *domini.bean@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR 101.93 (OMB Control Number 0910–0331)—Extension**

Section 403(r)(6) of the FD&C Act (21 U.S.C. 343(r)(6)) requires that FDA be notified by manufacturers, packers, and distributors of dietary supplements that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in section 403(r)(6). Section 403(r)(6) of the FD&C Act requires that FDA be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) a signature of a responsible individual who can certify the accuracy of the information presented, and who must certify that the information contained in the notice is complete and accurate, and that the notifying firm has substantiation that the statement is truthful and not misleading.

The procedural regulation for this program is codified at 21 CFR 101.93. Section 101.93 provides submission procedures and identifies the information that must be included in order to meet the requirements of section 403 of the FD&C Act.

*Description of Respondents:* Respondents to this collection of information include manufacturers, packers, or distributors of dietary supplements that bear section 403(r)(6) of the FD&C Act statements on their labels or labeling.

In the **Federal Register** of January 18, 2013 (78 FR 4153), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one letter in response to the notice. One comment in the letter suggested that electronic submission could potentially decrease the reporting burden. FDA agrees and is in the process of developing a method of receiving submissions electronically.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 101.93 | 2,200 | 1 | 2,200 | 0.75 | 1,650 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We believe that there will be minimal burden on the industry to generate information to meet the requirements of section 403 of the FD&C Act in submitting information regarding section 403(r)(6) statements on labels or in labeling of dietary supplements. We are requesting only information that is immediately available to the manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its label or in its labeling. We estimate that, each year, approximately 2,200 firms will submit the information required by section 403 of the FD&C Act. We estimate that a firm will require 0.75 hours to gather the information needed and prepare a submission, for a total of 1,650 hours (2,200 × 0.75). This estimate is based on the average number of notification submissions received by us in the preceding 3 years.

Dated: March 20, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–06823 Filed 3–25–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–P–0649]**

### Determination That QUESTRAN (Cholestyramine for Oral Suspension, USP), Equivalent to 4 Grams, and QUESTRAN LIGHT (Cholestyramine for Oral Suspension, USP), Equivalent to 4 Grams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that QUESTRAN (cholestyramine for oral suspension, USP), equivalent to (EQ) 4 grams (g), and QUESTRAN LIGHT (cholestyramine for oral suspension, USP), EQ 4 g, were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of the abbreviated new drug applications (ANDAs) that refer to these drugs, and it will allow FDA to approve ANDAs that refer to these drugs as long as they meet relevant legal and regulatory requirements.

**FOR FURTHER INFORMATION CONTACT:** Carolina M. Wirth, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6282, Silver Spring, MD 20993–0002, 301–796–3602.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417)

(the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

QUESTRAN (cholestyramine for oral suspension, USP), EQ 4 g, is the subject of NDA 16–640, held by Bristol-Myers Squibb, and initially approved on August 3, 1973. QUESTRAN LIGHT (cholestyramine for oral suspension, USP), EQ 4 g, is the subject of NDA 19–669, also held by Bristol-Myers Squibb, and initially approved on December 5, 1988. QUESTRAN and QUESTRAN LIGHT are indicated as adjunctive therapy for the reduction of elevated serum cholesterol in patients with primary hypercholesterolemia (elevated low-density lipoprotein cholesterol) who do not respond adequately to diet.

In a letter dated May 31, 2012, Bristol-Myers Squibb notified FDA that QUESTRAN (cholestyramine for oral suspension, USP), EQ 4 g, and QUESTRAN LIGHT (cholestyramine for oral suspension, USP), EQ 4 g, were being discontinued, and FDA moved the drug products to the "Discontinued Drug Product List" section of the Orange Book. Lachman Consultant Services, Inc., submitted a citizen petition dated June 19, 2012 (Docket No. FDA–2012–P–0649), under 21 CFR 10.30, requesting that the Agency determine whether QUESTRAN (cholestyramine for oral suspension, USP), EQ 4 g, was withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address QUESTRAN LIGHT, that version of the drug product has also been discontinued. On our own initiative, we have also determined whether QUESTRAN LIGHT was withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that QUESTRAN (cholestyramine for oral suspension, USP), EQ 4 g, and QUESTRAN LIGHT (cholestyramine for oral suspension, USP), EQ 4 g, were not withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of QUESTRAN (cholestyramine for oral suspension, USP), EQ 4 g, and QUESTRAN LIGHT (cholestyramine for oral suspension, USP), EQ 4 g, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that either product was withdrawn from sale for reasons of safety or effectiveness. Moreover, the petitioner has identified no data or other information suggesting that QUESTRAN (cholestyramine for oral suspension, USP), EQ 4 g, was withdrawn for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list QUESTRAN (cholestyramine for oral suspension, USP), EQ 4 g, and QUESTRAN LIGHT (cholestyramine for oral suspension, USP), EQ 4 g, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of the approved ANDAs that refer to QUESTRAN or QUESTRAN LIGHT. Additional ANDAs for cholestyramine and cholestyramine light for oral suspension, USP, EQ 4 g, may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: March 20, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–06825 Filed 3–25–13; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2007–D–0069; (Formerly FDA–2007D–0393)]**

### Guidance for Industry: Blood Establishment Computer System Validation in the User's Facility; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Blood Establishment Computer System Validation in the User's Facility" dated April 2013. The guidance document provides assistance to blood establishments in developing a blood establishment computer system validation program, consistent with recognized principles of software validation, quality assurance, and current good software engineering practices. The guidance announced in this document finalizes the draft guidance of the same title dated October 2007.

**DATES:** Submit either electronic or written comments on Agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–

305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Melissa Reisman, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Blood Establishment Computer System Validation in the User's Facility " dated April 2013. The guidance document provides assistance to blood establishments in developing a blood establishment computer system validation program, consistent with recognized principles of software validation, quality assurance, and current good software engineering practices. The guidance document describes the requirements in Title 21 Code of Federal Regulations that apply to blood establishment validation of systems, and FDA's recommendations for the validation of systems. While the guidance may provide manufacturers of blood establishment computer software (BECS) with information about validation of computer systems in the user's facility, the guidance does not address the software manufacturer's validation responsibilities or the submission of a 510(k) premarket notification for BECS.

In the **Federal Register** of October 29, 2007 (72 FR 61171), FDA announced the availability of the draft guidance of the same title dated October 2007. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated October 2007.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 606.100(b) and 606.160 have been approved under OMB control number 0910–0116. The collections of information in 21 CFR 211.68 and 211.100 have been approved under OMB control number 0910–0139.

## III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*

## IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: March 21, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–06865 Filed 3–25–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Infectious Hepatitis E Virus Genotype 3 Recombinants—Prospective Vaccine Candidates and Vector System**

*Description of Technology:* This technology is a recombinant, infectious genotype 3 Hepatitis E virus (HEV) that has been adapted to grow in cell culture and can potentially be used to develop vaccines against HEV or as a vector system to insert exogenous sequences into HEV. The virus (strain Kernow-C1, genotype 3) originated from a chronically infected human subject and was adapted to grow in human hepatoma cells. The adapted virus is unique in that it contains an insertion of a portion of a human ribosomal protein in Open Reading Frame 1 of the virus. Desired exogenous sequences can potentially be placed in lieu of the insert without inactivating the virus.

Infection by HEV is a relevant health issue in a number of developing countries and is also an emerging food-borne disease of industrialized countries. Genotype 1 and 2 infections are found exclusively in humans while genotype 3 and 4 viruses have been found not only in humans, but also swine, deer, mongoose, cattle, and rabbits. In particular, genotype 3 and 4 viruses are ubiquitously found in swine and undercooked pork is thought to be one of the sources of infection for cases of human infections in industrialized countries.

*Potential Commercial Applications:*

- An infectious, recombinant HEV genotype 3 cDNA clone that could potentially be developed into a vaccine candidate.
- HEV Vector Platform—Desired exogenous sequences can be inserted into the viral genome without inactivating the virus.

*Competitive Advantages:*

- Most of the HEV vaccines under development are subunit based while the subject technology could potentially be developed into a live, attenuated virus based vaccine.
- Ability to insert exogenous sequences into the viral genome without inactivating the virus makes this subject technology a potential HEV based vector platform.

*Development Stage:*

- Early stage.

- Pre-clinical.
- In vitro data available.

*Inventors:* Suzanne U. Emerson, Priyanka Shukla, Hanh T. Nguyen, and Robert H. Purcell (NIAID).

*Publication:* Shukla P, et al. Cross-species infections of cultured cells by hepatitis E virus and discovery of an infectious virus-host recombinant. Proc Natl Acad Sci U S A. 2011 Feb 8;108(6):2438–2443. [PMID 21262830].

*Intellectual Property:* HHS Reference No. E–074–2011/2—PCT Application PCT/US2012/020830 filed 10 Jan 2012.

*Licensing Contact:* Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*.

*Collaborative Research Opportunity:* The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize hepatitis E virus vaccines. For collaboration opportunities, please contact Maryann Puglielli, Ph.D., J.D. at 301–451–6863 or *maryann.puglielli@nih.gov*.

**Composite Probes and Use Thereof in Super Resolution Microscopy**

*Description of Technology:* The technology is in the field of fluorescence microscopy. More specifically, the invention describes and claims the compo site probes for super resolution optical techniques using super resolution via transiently activated quenchers (STAQ). The compo site probes include a donor moiety and an acceptor moiety joined by a linker. The acceptor moiety, when excited by incident radiation, is excited to a state which, for example, absorbs in the donor emission region, such that the acceptor moiety in its excited state quenches at least a portion of the donor moiety emission. Other transiently activated quenching mechanisms and moieties could accomplish the same task by reducing donor population. Also disclosed are methods for irradiating a selected region of a target material including the compo site probe, wherein the compo site probe enables improved resolution by point spread function modification.

*Potential Commercial Applications:*

- Ultrafine imaging for biomolecules, vesicles and organelles, particularly of living biological samples, in biomedical research.
- Potential applications in clinical diagnostics.
- Nanoscopic Lithography—STAQ compo sites could, in principle, control polymerization of photoresist masks to make feature sizes below 20nm.

*Competitive Advantages:* Improved ultrafine imaging—

- Imaging objects as small as 10 nm.
- Narrow the point spread function.
- STAQ uses less power, making live cell study practical at theoretically high resolution.

*Development Stage:*

- The invention is fully developed.
- Need to build multicolor palette that can be integrated into a commercial microscope.
- May need to make certain protein chimeras and photoinitiators for validation.

*Inventors:* Jay R Knutson and Gary L. Griffiths (NHLBI).

*Publications:*

1. Doose S, et al. Probing polyproline structure and dynamics by photoinduced electron transfer provides evidence for deviations from a regular polyproline type II helix. Proc Natl Acad Sci USA. 2007 Oct 30;104(44):17400–5. [PMID 17956989]

2. Schuler B, et al. Polyproline and the "spectroscopic ruler" revi sited with single-molecule fluorescence. Proc Natl Acad Sci USA. 2005 Feb 22;102(8):2754–9. [PMID 15699337]

3. Best RB, et al. Effect of flexibility and cis residues in single-molecule FRET studies of polyproline. Proc Natl Acad Sci USA. 2007 Nov 27;104(48):18964–9. [PMID 18029448]

4. Sahoo H, et al. A 10–A spectroscopic ruler applied to short polyprolines. J Am Chem Soc. 2007 Aug 8;129(31):9762–72. [PMID 17629273]

5. Li L, et al. Achieving lambda/20 resolution by one-color initiation and deactivation of polymerization. Science. 2009 May 15;324(5929):892–3. [PMID 19359543]

6. Hell SW. Far-field optical nanoscopy. Science. 2007 May 25;316(5828):1153–8. [PMID 19525330]

7. Masia F, et al. Resonant four-wave mixing of gold nanoparticles for three-dimensional cell microscopy. Opt Lett. 2009 Jun 15;34(12):1816–8. [PMID 19529713]

8. Schmidt R, et al. Mitochondrial cristae revealed with focused light. Nano Lett. 2009 Jun;9(6):2508–10. [PMID 19459703]

*Intellectual Property:* HHS Reference No. E–253–2009/0—U.S. Patent Application No. 13/519,737 filed 28 Jun 2012

*Licensing Contact:* Michael A. Shmilovich, Esq., CLP; 301–435–5019, *shmilovm@mail.nih.gov*

*Collaborative Research Opportunity:* The National Heart, Lung and Blood Institute, Laboratory of Molecular Biophysics, is also seeking statements of capability or interest from parties interested in collaborative partnerships to further develop, evaluate, or commercialize this technology. Please contact Brian Bailey, Ph.D. at *bbailey@mail.nih.gov* for more information.

Dated: March 18, 2013.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2013–06836 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Operation of a Facility for Testing Malaria Vaccine in Human Subjects.

*Date:* April 19, 2013.

*Time:* 11:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Jay R. Radke, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *jay.radke@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 20, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06803 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; 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 Literature Selection Technical Review Committee.

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 portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

*Name of Committee:* Literature Selection Technical Review Committee.

*Date:* June 20–21, 2013.

*Open:* June 20, 2013, 8:30 a.m. to 10:45 a.m.

*Agenda:* Administrative.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Closed:* June 20, 2013, 10:45 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Closed:* June 21, 2013, 8:30 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Contact Person:* Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04, Bethesda, MD 20892, 301–496–6921, *backusj@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 No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: March 20, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06810 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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:* Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

*Date:* May 20, 2013.

*Closed:* 2:30 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A. B. Lindberg, M.D., Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov.*

*Name of Committee:* Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information.

*Date:* May 21, 2013.

*Open:* 7:45 a.m. to 8:45 a.m.

*Agenda:* To review and discuss outreach activities.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A. B. Lindberg, M.D., Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov.*

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* May 21–22, 2013.

*Open:* May 21, 2013, 9:00 a.m. to 4:15 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* May 21, 2013, 4:15 p.m. to 4:45 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* May 22, 2013, 9:00 a.m. to 12:00 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A. B. Lindberg, M.D., Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: *March 20, 2013.*

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06807 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

*Date:* April 3, 2013.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046B, MSC 7892, Bethesda, MD 20892, 301–408–9655, *gubina@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 20, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06806 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group Subcommittee J—Career Development.

*Date:* July 1–2, 2013.

*Time:* 4:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203.

*Contact Person:* Ilda F.S. Melo, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892–8328, 301–496–7481, *mckennai@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 20, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06805 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Neurobiobank.

*Date:* April 9, 2013.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 20, 2013.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06811 Filed 3–25–13; 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 Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS Loan Repayment Program Review.

*Date:* April 15, 2013.

*Time:* 9:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 20, 2013.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06801 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the meetings.

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 materials, 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:* Biomedical Library and Informatics Review Committee.

*Date:* June 6–7, 2013.

*Time:* June 6, 2013, 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Time:* June 7, 2013, 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Contact Person:* Arthur A. Petrosian, Ph.D., Chief Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 20, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06808 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

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.

*Name of Committee:* PubMed Central National Advisory Committee.

*Date:* June 27, 2013.

*Time:* 9:30 a.m. to 3:00 p.m.

*Agenda:* Review and Analysis of Systems.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* David J. Lipman, MD, Director, National Center for Biotechnology Information, National Library of Medicine, Building 38, Room 8N805, Bethesda, MD 20894, 301–435–5985, *dlipman@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the Interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.pubmed.central.nih.gov/about/nac/html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: March 20, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06809 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Review of U34 Clinical Trial Planning Grant.

*Date:* April 9, 2013.

*Time:* 6:00 p.m. to 7:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* John F. Connaughton, Ph.D., Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Biomarkers in Type 1 Diabetes.

*Date:* April 10, 2013.

*Time:* 4:30 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Review of U34 Clinical Trial Planning Grant.

*Date:* April 12, 2013.

*Time:* 3:00 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* John F. Connaughton, Ph.D., Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 20, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06804 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Loan Repayment Program.

*Date:* April 25, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* NIEHS, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709, (Virtual Meeting).

*Contact Person:* RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov*.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Research Careers in Emerging Technologies.

*Date:* April 30, 2013.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Nat. Inst. of Environmental Health Sciences, Keystone, 530 Davis Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

*Contact Person:* Linda K Bass, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P. O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov*.

(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: March 20, 2013.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06812 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: Papilloma Pseudovirus and Virus-Like Particles as a Delivery System for Human Cancer Therapeutics and Diagnostics

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to Aura BioSciences to practice the inventions embodied in U.S. Provisional Patent Application No. 60/928,495 entitled, "Papillomavirus Pseudoviruses for Detection and Therapy of Tumors" filed May 8, 2007 [HHS Ref. No. E–186–2007/0–US–01], U.S. Provisional Patent Application No. 61/065,897 entitled "Papillomavirus Pseudoviruses for Detection and Therapy of Tumors" filed February 14, 2008 [HHS Ref. No. E–186–2007/1–US–01], PCT Application No. PCT/US2008/062296 "Papillomavirus Pseudoviruses for Detection and Therapy of Tumors" filed May 1, 2008 [HHS Ref. No. E–186–2007/2–PCT–01], Australian Patent Application No. 2008251615 entitled "Papillomavirus Pseudoviruses for Detection and Therapy of Tumors" filed May 1, 2008 [HHS Ref. No. E–186–2007/2–AU–02], Canadian Patent Application No. 2,686,990 entitled "Papillomavirus Pseudoviruses for Detection and Therapy of Tumors" filed May 1, 2008 [HHS Ref. No. E–186–2007/2–CA–03], European Patent Application No. 08747407.8 entitled "Papillomavirus Pseudoviruses for Detection and Therapy of Tumors" filed May 1, 2008 [HHS Ref. No. E–186–2007/2–EP–04], U.S. Patent Application No. 12/598,684 entitled, "Papillomavirus Pseudoviruses for Detection and Therapy of Tumors" filed February 8, 2010 [HHS Ref. No. E–186–2007/2–US–05], and US Patent Application No. 13/763,365 entitled, "Papilloma Pseudovirus for Detection and Therapy of Tumors" filed February 8, 2013 [HHS Ref. No. E–186–2007/2–US–06] and all continuing applications and foreign counterparts. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the

development and use of the Licensed Patent Rights in combination with Licensee's proprietary nanosphere encapsulation technology for the treatment, diagnosis and imaging of cancer tumors and metastases as well as their respective pre-cursor dysplasia states. Licensee's proprietary nanosphere encapsulation technology is understood to consist of: (1) Methods for manipulating the outer proteins of human papillomavirus-derived nanoparticles to create particles targeted to solid tumors and distant metastases; and (2) enhancements for the delivery of particles created by Licensee's proprietary technology.

**DATES:** Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 25, 2013 will be considered.

**ADDRESSES:** Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Jennifer Wong, M.S., Senior Licensing and Patenting Manager, Cancer Branch, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4633; Facsimile: (301) 402–0220; Email: *wongje@mail.nih.gov*.

**SUPPLEMENTARY INFORMATION:** There is extensive literature on the use of viral vectors, particularly those based on the adenovirus, to increase the potency of anti-tumor gene therapy. However, these approaches have had limited success because of limited anti-tumor effects and unacceptable toxicity. This invention describes the use of human papillomavirus pseudoviruses (PsV) as a cancer diagnostic and therapeutic. Preliminary studies showed that PsVs bind to ovarian tumor cells while normal tissues were not affected. PsVs does not infect several other normal intact tissues but continues to selectively infect additional cancer cells. This technology could be an effective anti-tumor therapy because it has shown increased infection of cancer cells with an inability to infect normal cells thereby reducing potential toxicity to patients. In addition to a potential anti-cancer therapeutic, this technology could also be used as a diagnostic tool in the detection of tumor masses. Detection can be achieved through the use of fluorescent dye coupled particles of PsVs that have preferential binding to tumor tissues and not normal tissues.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 18, 2013.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2013–06837 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Start-Up Exclusive License: Manual Device for Constructing Tissue Micro Arrays and Methods for Making Cryo Arrays for Use in Association With the Device

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice; in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a start-up exclusive license to practice the inventions embodied in U.S. Patent No. 7,854,899, (E–098–2004/0) filed 08/26/2004 and issued 12/20/2010 entitled "Template Methods and Device for Preparing Sample Arrays"; by Hewitt et al. (NCI); and U.S. Patent No. 6,951,761 9 (E–064–2001/0) filed 08/30/2002 and issued 11/04/2005 "Measurements of Multiple Molecules Using a Cryoarray" by Star et al. (NIDDK) to Micatu, Inc. having a place of business at 231 West Water Street, Elmira, NY 14901. The patent rights in this invention have been assigned to the United States of America.

**DATES:** Only written comments and/or application for a license that are received by the NIH Office of Technology Transfer on or before April 10, 2013 will be considered.

**ADDRESSES:** Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Tedd Fenn, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: *fennea@mail.nih.gov*; Telephone: 301–435–5031; Facsimile: 301–402–0220.

**SUPPLEMENTARY INFORMATION:** The prospective worldwide exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patents relate to a device for tissue microarray construction having a block of embedding medium, a platform configured to retain the block, a templates secured to the platform and aligned to guide needles into the embedding block; and methods of making a block containing liquid biological samples that can be frozen and sectioned to make tissue microarray.

The field of use may be limited to the field of devices for construction of tissue microarrays.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 18, 2013.

**Richard U. Rodriguez,**

*Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2013–06835 Filed 3–25–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Fiscal Year (FY) 2013 Funding Opportunity

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of intent to award a single source grant to the state of Idaho for a Strategic Prevention Framework State Incentive Grant.

**SUMMARY:** This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award $1.5 million (total costs) for up to five years to the state of Idaho for a Strategic Prevention Framework State Incentive Grant. This is not a formal request for applications. Assistance will be provided only to the state of Idaho based on the receipt of a satisfactory application that is approved by an independent review group.

*Funding Opportunity Title:* SP–13–005.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 93.243.

*Authority:* Section 516 of the Public Health Service Act, as amended .

*Justification:* Eligibility for this SPF SIG award is limited to the state of Idaho, the only state receiving a Substance Abuse Prevention and Treatment Block Grant (SABG) that has never been awarded a SPF SIG grant from SAMHSA. The SPF SIG grant has already allowed 49 states to strengthen and consolidate their prevention systems and build greater capacity in their communities. SAMHSA/CSAP believes that every state must build prevention capacity and infrastructure to prevent the onset and reduce the progression of substance abuse, including childhood and underage drinking, and to reduce substance abuse-related problems across the nation. Following the SPF five-step process, the state of Idaho will have the opportunity to use SPF SIG funds to develop a comprehensive prevention plan at the state level and support a broad range of sub-recipient communities to implement effective programs, policies and practices to reduce substance abuse and its related problems. By giving a SPF SIG to every state, including Idaho, SAMHSA will have effected nationwide, systemic change in preventing the onset and reducing the progression of substance abuse and substance abuse-related problems nationwide.

*Contact:* Cathy Friedman, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1097, Rockville, MD 20857; telephone: (240) 276–2316; email: *cathy.friedman@samhsa.hhs.gov.*

**Cathy Friedman,**

*SAMHSA Public Health Analyst.*

[FR Doc. 2013–06897 Filed 3–25–13; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0010]**

### Agency Information Collection Activities: Nonimmigrant Petition Based on Blanket L Petition; Form I–129S; Revision of a Currently Approved Collection

**ACTION:** 30-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on January 8, 2013, at 78 FR 1218, allowing for a 60-day public comment period. USCIS did not receive any comment in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 25, 2013. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0050 or via email at *uscisfrcomment@uscis.dhs.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0010.

**SUPPLEMENTARY INFORMATION:**

#### Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Nonimmigrant Petition Based on Blanket L Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129S; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or others for profit. This form is used by an employer to classify employees as L–1 nonimmigrant intracompany transferees under a blanket L petition approval. USCIS will use the data on this form to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 1.5 hours (1 hour and 30 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 112,500 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone 202–272–8377.

Dated: March 20, 2013.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2013–06855 Filed 3–25–13; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Amspec Services, LLC, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of AmSpec Services, LLC, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of September 21, 2012.

**DATES:** *Effective Dates:* The accreditation and approval of AmSpec Services, LLC, as commercial gauger became effective on January 26, 2011 and as a commercial laboratory on September 21, 2012. The next triennial inspection date will be scheduled for January 2014.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, AmSpec Services, LLC, 1906 Suntide Rd, Corpus Christi, TX 78409, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR t51.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: March 18, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–06831 Filed 3–25–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5690–N–05]**

### Proposed Information Collection for Public Comment: Enterprise Income Verification (EIV) Systems—Access Authorization Form and Rules of Behavior and User Agreement

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of proposed information collection.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

The Federal Privacy Act, 5 U.S.C. 552a, as amended, requires HUD to identify all individuals who access and use personally identifiable information (PII) maintained in HUD systems. This information collection identifies the individuals at public housing agencies that will access PII from HUD's Public and Indian Housing EIV System.

**DATES:** *Comments Due Date:* May 28, 2013.

**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 sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4178, Washington, DC 20410–5000; telephone (202) 402–3400 (this is not a toll-free number) or email Ms. Pollard at *Collette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC; telephone (202) 402–4109, for copies of other available documents (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to the Office of Management and Budget (OMB) for review, as required by the Paper Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Enterprise Income Verification (EIV) System Access Authorization Form and Rules of Behavior and User Agreement.

*OMB Control Number:* 2577–0267.

*Description of the need for the information and proposed use:* In

accordance with statutory requirements at 5 U.S.C. 552a, as amended (most commonly known as the Federal Privacy Act of 1974), the Department is required to account for all disclosures of information contained in a system of records. Specifically, the Department is required to keep an accurate accounting of the name and address of the person or agency to which the disclosure is made. The Enterprise Income Verification (EIV) System (HUD/PIH–5) is classified as a System of Records, as initially published on July 20, 2005, in the **Federal Register** at page 41780 (70 FR 41780) and amended and published on August 8, 2006, in the **Federal Register** at page 45066 (71 FR 45066).

As a condition of granting HUD staff and staff of processing entities with access to the EIV system, each prospective user of the system must (1) request access to the system; (2) agree to comply with HUD's established rules of behavior; and (3) review and signify their understanding of their responsibilities of protecting data protected under the Federal Privacy Act (5 U.S.C. 552a, as amended). As such, the collection of information about the user and the type of system access required by the prospective user is required by HUD to: (1) Identify the user; (2) determine if the prospective user in fact requires access to the EIV system and in what capacity; (3) provide the prospective user with information related to the Rules of Behavior for system usage and the user's responsibilities to safeguard data accessed in the system once access is granted; and (4) obtain the signature of the prospective user to certify the user's understanding of the Rules of Behavior and responsibilities associated with his/her use of the EIV system.

HUD collects the following information from each prospective user: Public Housing Agency (PHA) code, organization name, address, prospective user's full name, HUD-assigned user ID, position title, telephone number, facsimile number, type of work which involves the use of the EIV system, type of system action requested, requested access roles to be assigned to prospective user, public housing development numbers to be assigned to prospective PHA user, and prospective user's signature and date of request. The information is collected electronically and manually (for those who are unable to transmit electronically) via a PDF-fillable or Word-fillable document, which can be emailed, faxed or mailed to HUD.

If this information is not collected, the Department will not be in compliance with the Federal Privacy Act and be subject to civil penalties.

*Agency Form Numbers: Form HUD* 52676 and 52676–I.

*Members of Affected Public:* Employees of state or local government, public housing agencies (PHAs), and staff of PHA-hired management agents.

*Estimation of the Total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents annually is 13,107, including respondents who are new users of the EIV system, those who will be users of EIV data only, and respondents who are changing user roles in the EIV system. The average time for each respondent who is new user of the system or user of the data only is 1 hour per response and the average time for each respondent who is changing roles in the system is .25 hours, for a total burden of 10,736 hours.

*Status of the Proposed Information Collection:* Renewal.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 19, 2013.

**Merrie Nichols-Dixon,**

*Deputy Director for Policy, Program and Legislative Initiatives.*

[FR Doc. 2013–06830 Filed 3–25–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Proposed Appointment to the National Indian Gaming Commission

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice.

**SUMMARY:** Before appointing a member to the National Indian Gaming Commission, the Secretary must provide public notice and allow a comment period. Notice is hereby given of the proposed appointment of Daniel J. Little as an associate member of the National Indian Gaming Commission for a term of 3 years.

**DATES:** Comments must be received before April 25, 2013.

**ADDRESSES:** Submit comments to the Director, Office of the Executive Secretariat, United States Department of the Interior, 1849 C Street NW., Mail Stop 7229, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** John A. Strylowski, Office of the Executive Secretariat, United States Department of the Interior, 1849 C Street NW., Mail Stop 7229, Washington, DC 20240; telephone 202–208–3181.

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) established the National Indian Gaming Commission, composed of three full-time members. Under the provisions of the Act, Commission members serve for a term of 3 years. The Chair is appointed by the President with the advice and consent of the Senate and the two associate members are appointed by the Secretary of the Interior. Before appointing an associate member to the Commission, the Secretary is required to "publish in the **Federal Register** the name and other information the Secretary deems pertinent regarding a nominee for membership on the commission and * * * allow a period of not less than thirty days for receipt of public comments." 25 U.S.C. 2704(b)(2)(B).

The Secretary proposes to reappoint Daniel J. Little as an associate member of the Commission for a term of 3 years. Daniel J. Little has served as an associate member of the Commission for the past 3 years. In this capacity, Daniel J. Little worked closely with the Tribal Advisory Committee to review changes to part 543 of the Commission's regulations regarding Class II Minimum Internal Controls, which successfully resulted in a final rule issued on September 21, 2012. Mr. Little has also been instrumental in undertaking a top priority of the Commission—a critical review of internal operations, including a review of all internal policies and procedures. In short, Mr. Little's accomplishments are invaluable contributions to the Commission, and his proposed reappointment seeks to ensure continuity for this good and valuable work.

During more than a decade of experience working for tribal and state governments, Mr. Little developed an in-depth knowledge of the Indian Gaming Regulatory Act and the regulatory process governing casino operations. This experience has given Mr. Little a thorough knowledge of the laws and regulations governing Class II and Class III gaming and casinos. By virtue of his work on gaming issues and his extensive knowledge of relevant laws and regulations, Daniel J. Little is eminently qualified to serve as a member of the National Indian Gaming Commission.

Mr. Little does not have any financial interests that would make him ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B) or (C).

Any person wishing to submit comments on this proposed

reappointment of Daniel J. Little may submit written comments to the address listed above. Comments must be received by April 25, 2013.

Dated: March 20, 2013.

**Ken Salazar,**

*Secretary.*

[FR Doc. 2013–06853 Filed 3–25–13; 8:45 am]

**BILLING CODE 4310–10–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0004]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested: Interstate Firearms Shipment Report of Theft/Loss

**ACTION:** 60-Day notice.

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. Comments are encouraged and will be accepted for "sixty days" until [insert the date 60 days from the date this notice is published in the **Federal Register**]. This process is conducted in accordance with 5 CFR 1320.10.

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 Ben Hayes, *Benjamin.Hayes@atf.gov,* ATF National Tracing Center, 244 Needy Road, Martinsburg, WV 25405.

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.

**Summary of Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Interstate Firearms Shipment Report of Theft/Loss.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.6. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(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.

**Need for Collection**

The form is part of a voluntary program in which the common carrier and/or shipper report losses or thefts of firearms from interstate shipments. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center to initiate investigations and to perfect criminal cases.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 550 respondents will complete a 20 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 182 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: March 20, 2013.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2013–06779 Filed 3–25–13; 8:45 am]

**BILLING CODE 4810–FY–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–364]**

### Electronic Prescriptions for Controlled Substances Notice of Approved Certification Process

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Notice.

**SUMMARY:** DEA is announcing two new DEA-approved certification processes for providers of Electronic Prescriptions for Controlled Substances (EPCS) applications. Certifying organizations with a certification process approved by DEA pursuant to 21 Code of Federal Regulations (CFR) 1311.300(e) are posted on DEA's Web site upon approval.

**FOR FURTHER INFORMATION CONTACT:** John W. Partridge, Executive Assistant, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 307–7165.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Drug Enforcement Administration (DEA) implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended, and referred to as the Controlled Substances Act (CSA).[1] DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to 1321. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring a sufficient supply of controlled substances and listed chemicals for legitimate medical, scientific, research, and industrial purposes.

The CSA and DEA's implementing regulations establish the legal requirements for possessing and dispensing controlled substances, including the issuance of a prescription for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. "The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but

[1] The Attorney General's delegation of authority to DEA may be found at 28 CFR 0.100.

a corresponding responsibility rests with the pharmacist who fills the prescription." 21 CFR 1306.04(a). A prescription serves both as a record of the practitioner's determination of the legitimate medical need for the drug to be dispensed, and as a record of the dispensing. The prescription also provides a record of the actual dispensing of the controlled substance to the ultimate user (the patient) and, therefore, is critical to documenting that controlled substances held by a pharmacy have been properly dispensed. The maintenance of complete and accurate prescription records is an essential part of the overall CSA regulatory scheme established by Congress.

**Electronic Prescriptions for Controlled Substances (EPCS)**

Historically, where federal law required that a prescription for a controlled substance be issued in writing, that requirement could only be satisfied through the issuance of a paper prescription. Given advancements in technology and security capabilities for electronic applications, DEA amended its regulations to provide practitioners with the option of issuing electronic prescriptions for controlled substances in lieu of paper prescriptions. Efforts to develop EPCS capabilities have been underway for a number of years. DEA's Interim Final Rule for Electronic Prescriptions for Controlled Substances was published on March 31, 2010, at 75 FR 16236–16319, and became effective on June 1, 2010.

**Update**

*Certifying Organizations With a Certification Process Approved by DEA Pursuant to 21 CFR 1311.300(e)*

As noted above, the Interim Final Rule provides that, as an alternative to the audit requirements of 21 CFR 1311.300(a) through (d), an electronic prescription or pharmacy application may be verified and certified as meeting the requirements of 21 CFR Part 1311 by a certifying organization whose certification process has been approved by DEA. The preamble to the Interim Final Rule further indicated that, once a qualified certifying organization's certification process has been approved by DEA in accordance with 21 CFR 1311.300(e), such information will be posted on DEA's Web site. 75 FR 16243 (March 31, 2010). On January 18, 2013, DEA approved the certification processes developed by Global Sage Group, LLC, and by iBeta, LLC. iBeta's certification process was previously approved by DEA but only with regard to the certification of the application's biometrics subsystem, including its interfaces. 77 FR 45688 (August 1, 2012). This approval for iBeta's certification process is expanded to include the entire certification process. Relevant information has been posted on DEA's Web site at *http://www.DEAdiversion.usdoj.gov.*

Dated: March 20, 2013.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 2013–06918 Filed 3–25–13; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

### Commencement of Iraq Claims Adjudication Program

**AGENCY:** Foreign Claims Settlement Commission of the United States.

**ACTION:** Notice.

**SUMMARY:** This notice announces the commencement by the Foreign Claims Settlement Commission ("Commission") of a program for adjudication of a certain category of claims of United States nationals against the Government of Iraq, as defined below, which were settled under the "Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq," dated September 2, 2010 ("Claims Settlement Agreement").

**DATES:** These claims can now be filed with the Commission and the deadline for filing will be June 26, 2013. The deadline for completion of this claims adjudication program will be March 26, 2014.

**FOR FURTHER INFORMATION CONTACT:** Brian M. Simkin, Chief Counsel, Foreign Claims Settlement Commission, 600 E Street NW., Room 6002, Washington, DC 20579, Tel. (202) 616–6975, FAX (202) 616–6993.

**Notice of Commencement of Claims Adjudication Program, and of Program Completion Date**

Pursuant to the authority conferred upon the Secretary of State and the Commission under section 4(a)(1)(C) of Title I of the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1623(a)(1)(C)), the Foreign Claims Settlement Commission hereby gives notice of the commencement of a program for adjudication of a category of claims of United States nationals against the Government of Iraq. These claims, which have been referred to the Commission by the Department of State by letter dated November 14, 2012, are defined as:

claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq[1] in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking[2] provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State[3] for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For purposes of this referral, "serious personal injury" may include instances of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault.

In conformity with the terms of the referral, the Commission will determine the claims in accordance with the provisions of Title I of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. 1621 *et seq.* The Commission will then certify to the Secretary of the Treasury those claims that it finds to be valid, for payment out of the claims fund established under the Claims Settlement Agreement.

The Commission will administer this claims adjudication program in accordance with its regulations, which are published in Chapter V of Title 45, Code of Federal Regulations (45 CFR 500 *et seq.*). In particular, attention is directed to 45 CFR 500.3(a), which limits the amount of attorney's fees that may be charged for legal representation before the Commission pursuant to 22 U.S.C. 1623(f). These regulations are also available at *http://www.gpoaccess.gov/cfr/index.html.*

Approval has been obtained from the Office of Management and Budget for the collection of this information.

[1] For purposes of this referral, "Iraq" shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

[2] Hostage-taking, in this instance, would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

[3] The payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.

Approval No. 1105–0098, expiration date March 31, 2016.

**Brian M. Simkin,**

*Chief Counsel.*

[FR Doc. 2013–06874 Filed 3–25–13; 8:45 am]

BILLING CODE 4410–BA–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–80,317]**

### Baldwin Hardware Corporation, a Subsidiary of Spectrum Brands, Formerly Known as a Subsidiary of Stanley Black & Decker Including On-Site Leased Workers From Gage Personnel, Adecco, Mack Employment and John Galt Staffing, Reading, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 10, 2011, applicable to workers of Baldwin Hardware Corporation, a Subsidiary of Stanley Black & Decker, including on-site leased workers from Gage personnel, Adecco, Mack Employment and John Galt Staffing, Reading, Pennsylvania. The workers are engaged in the production of decorative hardware. The Notice was published in the **Federal Register** on September 2, 2011 (76 FR 54796).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that on December 17, 2012, Spectrum Brands purchased Baldwin Hardware, and that the subject firm is now known as Baldwin Hardware Corporation, a Subsidiary of Spectrum Brands, formerly known as a Subsidiary of Stanley Black & Decker.

Some workers separated from employment at the subject firm had wages reported under a separate unemployment insurance (UI) tax account under "Spectrum Brands." Accordingly, the Department is amending this certification to include workers of the subject firm whose UI wages are reported under Spectrum Brands.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in the production of decorative hardware to Mexico.

The amended notice applicable to TA–W–80,317 is hereby issued as follows:

All workers of Baldwin Hardware Corporation, a Subsidiary of Spectrum Brands, formerly known as a Subsidiary of Stanley Black & Decker, including on-site leased workers from Gage Personnel, Adecco, Mack Employment, and John Galt Staffing, Reading, Pennsylvania, who became totally or partially separated from employment on or after July 25, 2010, through August 10, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 12th day of March, 2013.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–06887 Filed 3–25–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *February 25, 2013 through March 1, 2013.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such

workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,211 | AGY Huntingdon, AGY Holding Corporation | Huntingdon, PA | October 8, 2012. |
| 82,264 | American Cotton Growers, Plains Cotton Cooperative Association | Littlefield, TX | December 14, 2011. |
| 82,270 | Trim Masters, Inc., Toyota Boshuko American and Johnson Controls Automotive, Nesco Resources. | Nicholasville, KY | October 23, 2012. |
| 82,303 | O. Mustad & Son, Inc., Kelly Services | Auburn, NY | December 26, 2011. |
| 82,331 | Harte-Hanks Response Management/Austin, Inc., Technisource and Adecco. | Austin, TX | January 9, 2012. |
| 82,337 | Grede II, LLC, Key Staff Source | Marion, AL | January 11, 2012. |
| 82,338 | Hampton Capital Partners, LLC, Gulistan Carpet Division, Ronile, Mega Force Staffing Group. | Aberdeen, NC | January 12, 2012. |
| 82,338A | Hampton Capital Partners, LLC, Gulistan Carpet Division, Ronile, Inc. | Wagram, NC | January 12, 2012. |
| 82,352 | Versalogic Corporation, Quantum Recruiters and VanderHouwen & Associates. | Eugene, OR | January 14, 2012. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,361 | General Electric, Energy Division | San German, PR | January 22, 2012. |
| 82,368 | Imation Corporation, Research and Development and Engineering Organization. | Oakdale, MN | February 5, 2013 |
| 82,369 | Energizer Holdings, Inc., Staff Management/SMX, Seaton Companies | Maryville, MO | January 17, 2012. |
| 82,369A | Energizer Holdings, Inc., Staff Management/SMX, Seaton Companies | St. Albans, VT | January 17, 2012. |
| 82,375 | Apex Tool Group, LLC, Gastonia Operation Division, Adecco USA and Aerotek Commercial Staffing. | Gastonia, NC | January 25, 2012. |
| 82,384 | Schawk, Atlanta | Atlanta, GA | January 30, 2012. |
| 82,419 | ZF Marine Propulsion Systems LLC, Northwest Staffing, UI Wages Though ZF Marine Electronics LLC. | Mukilteo, WA | February 4, 2012. |
| 82,443 | NXP Semiconductors, U.S. Automotive Design, Randstad General Partner LLC and Targetcw. | San Jose, CA | February 11, 2012. |
| 82,445 | Mersen USA Newburyport MA LLC, Mersen USA BN Corporation, Aerotek, Accountemps & Office Team, etc. | Newburyport, MA | February 11, 2012. |
| 82,449 | Entegris, Inc., Volt Workforce Solutions | Billerica, MA | February 5, 2012. |

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,454 | Laserwords US, Inc., Madison Division, Laserwords Private Limited | Madison, WI | September 17, 2012. |
| 82,471 | Amantea Nonwovens, Express Employment Professionals and The Job Store. | Cincinnati, OH | February 18, 2012. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,044 | International Paper Company | Albany, OR. | |

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,004 | TRG Customer Solutions, Inc., TRG Holdings, Inc | Oil City, PA. | |
| 82,345 | Connextions Olympus Program, Connextions, Inc | Concord, NC. | |
| 82,365 | Siwel Consulting, Inc., Working on Site at Verizon | Tulsa, OK. | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 USC 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,082 | Manpower, The Evercare Company | Waynesboro, GA. | |

I hereby certify that the aforementioned determinations were issued during the period of *February 25, 2013 through March 1, 2013.* These determinations are available on the Department's Web site *tradeact/taa/taa search form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: March 5, 2013.

**Elliott S. Kushner,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–06889 Filed 3–25–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of March 4, 2013 through March 8, 2013.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm

have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,370 | Mega Life & Health Insurance Company (The), Healthmarkets, Perot Systems. | North Richland Hills, TX | December 4, 2012. |
| 82,376 | Schneider Electric, Global Supply Chain, North America Division, Volt Workforce, etc.. | Columbia, MO | May 27, 2012. |
| 82,383 | Sysco Boston LLC, Sysco Corporation | Plympton, MA | January 28, 2012. |
| 82,390 | Plantronics, Inc., Order Management Department, Workforce Logic. | Santa Cruz, CA | January 29, 2012. |
| 82,400 | Invesco Management Group, Inc., IT Service Desk Support, Invesco Ltd., wages Invesco Group Services. | Houston, TX | January 30, 2012. |
| 82,444 | NAPP Systems, Inc., D/B/A MacDermid Printing Solutions LLC, Aerotek Staffing. | San Marcos, CA | February 11, 2012. |
| 82,512 | Bharat Forge America, Inc., Bharat Forge Limited | Lansing, MI | February 22, 2012. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,775 | Vertis, Inc., Portland Division, Vertis Holdings, Select Temp and Tri-State. | Portland, OR. | |
| 82,288 | Gamesa Technology Corporation, A&A Wind Pros, ABB, Airway Services, Amerisafe Consultin 7, etc. | Trevose, PA. | |
| 82,288A | Gamesa Technology Corporation | Fairless Hills, PA. | |
| 82,288B | Gamesa Technology Corporation | Ebensburg, PA. | |
| 82,288C | Gamesa Technology Corporation | Bristol, PA. | |
| 82,289 | American Airlines, AMR Corporation, Tulsa Int'l Airport, Fleet Services Clerks. | Tulsa, OK. | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,307 | Thomas Jefferson University Hospital, Medical Transcription | Philadelphia, PA. | |
| 82,510 | Gerber Products Company, Nestle Group | Freemont, MI. | |

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,357 | American Airlines, AMR Corporation, Tulsa Int'l Airport, Aircraft Maintenance and Related. | Tulsa, OK. | |
| 82,357A | Amencan Airlines, AMR Corporation, Tulsa Int'l Airport, Fleet Services Clerks. | Tulsa, OK. | |
| 82,520 | Interstate Brands Corpbration (IBC), Hostess Brands, Wayne-Drake's/Hostess Plant. | Wayne, NJ. | |

I hereby certify that the aforementioned determinations were issued during the period of March 4, 2013 through March 8, 2013. These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: March 13, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–06886 Filed 3–25–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 5, 2013.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 5, 2013.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 14th day of March 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

APPENDIX

[29 TAA petitions instituted between 3/4/13 and 3/8/13]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 82517 | Johnson Control (State/One-Stop) | Louisville, KY | 03/04/13 | 03/01/13 |
| 82518 | Pfizer Pharmaceuticals (State/One-Stop) | Groton, CT | 03/04/13 | 03/01/13 |
| 82519 | Allegheny Ludlum (Workers) | Walterboro, SC | 03/04/13 | 03/01/13 |
| 82520 | Interstate Brands Corporation (IBC) (Workers) | Wayne, NJ | 03/04/13 | 03/02/13 |
| 82521 | NewPage Duluth Paper Mill (State/One-Stop) | Duluth, MN | 03/04/13 | 03/01/13 |
| 82522 | United Technologies Corporation (State/One-Stop) | Ithaca, NY | 03/05/13 | 02/28/13 |
| 82523 | CEMEX (State/One-Stop) | West Palm Beach, FL | 03/05/13 | 03/04/13 |
| 82524 | Level 3 Communications (State/One-Stop) | Coudersport, PA | 03/05/13 | 03/04/13 |
| 82525 | Assurant (State/One-Stop) | Miami, FL | 03/07/13 | 03/05/13 |
| 82526 | Elopak, Inc. (Company) | Wixom, MI | 03/07/13 | 03/05/13 |
| 82527 | ArjoHuntleigh (Company) | San Antonio, TX | 03/07/13 | 03/05/13 |
| 82528 | The Nielsen Company (Workers) | Shelton, CT | 03/07/13 | 02/25/13 |
| 82529 | Nuance Transcription Services (State/One-Stop) | Burlington, MA | 03/07/13 | 03/06/13 |
| 82530 | Sherwood Valve LLC (Union) | Washington, PA | 03/07/13 | 03/05/13 |
| 82531 | Apex Tool Group (State/One-Stop) | Springdale, AR | 03/07/13 | 03/06/13 |
| 82532 | U.S. Casting LLC (State/One-Stop) | Entiat, WA | 03/07/13 | 03/05/13 |
| 82533 | PCI Sun Chemical (Union) | Wurtland, KY | 03/07/13 | 03/05/13 |
| 82534 | VF Jeanswear (Company) | Saltillo, MS | 03/07/13 | 03/06/13 |
| 82535 | Asteelflash US East Corp (Company) | Owego, NY | 03/07/13 | 03/06/13 |
| 82536 | IBM (State/One-Stop) | Boulder, CO | 03/07/13 | 03/05/13 |
| 82537 | MontaVista Software LLC, subsidiary of Cavium Networks (State/One-Stop) | Tempe, AZ | 03/07/13 | 03/05/13 |
| 82538 | Zebra Technologies (Company) | Lincoln, RI | 03/08/13 | 03/07/13 |
| 82539 | Elster Solutions (Company) | Raleigh, NC | 03/08/13 | 03/07/13 |
| 82540 | Judith Leiber (Workers) | New York, NY | 03/08/13 | 03/07/13 |
| 82541 | Rosebud Mining Company (State/One-Stop) | Windber & Kittanning, PA | 03/08/13 | 03/07/13 |
| 82542 | Hemlock Semiconductor, L.L.C. (Company) | Clarksville, TN | 03/08/13 | 03/07/13 |
| 82543 | Zebra Technologies (Company) | Vernon Hills, IL | 03/08/13 | 03/07/13 |
| 82544 | Citigroup Technologies (Workers) | Irving, TX | 03/08/13 | 03/07/13 |
| 82545 | Derlikon Fairfield Manufacturing Inc. (Union) | Lafayette, IN | 03/08/13 | 03/07/13 |

[FR Doc. 2013–06888 Filed 3–25–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 5, 2013.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 5, 2013.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 7th day of March 2013.

**Elliott S. Kushner,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

APPENDIX

[23 TAA petitions instituted between 2/25/13 and 3/1/13]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 82494 | UPS—Des Moines Billing Site (State/One-Stop) | Des Moines, IA | 02/25/13 | 02/22/13 |
| 82495 | YP Texas Region Yellow Pages LLC (Workers) | Des Peres, MO | 02/25/13 | 02/22/13 |
| 82496 | NewPage Corporation (Union) | Miamisburg, OH | 02/25/13 | 02/22/13 |
| 82497 | Trans Union (State/One-Stop) | Chicago, IL | 02/25/13 | 02/22/13 |
| 82498 | Alorica, Inc. (State/One-Stop) | Ames, IA | 02/25/13 | 02/22/13 |
| 82499 | RR Donnelley (Workers) | Willard, OH | 02/26/13 | 02/25/13 |
| 82500 | Mondelez International (Workers) | Philadelphia, PA | 02/26/13 | 02/23/13 |

APPENDIX—Continued

[23 TAA petitions instituted between 2/25/13 and 3/1/13]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 82501 | CPS Ventures/ECOeverywhere/Livgeiger/Geiger Bros. (State/One-Stop). | Lewiston, ME | 02/26/13 | 02/25/13 |
| 82502 | Pfizer (Company) | Rouses Point, NY | 02/26/13 | 02/12/13 |
| 82503 | GMAC Mortgage/Residential Capital LLC (State/One-Stop) | Waterloo, IA | 02/26/13 | 02/25/13 |
| 82504 | Cardinal Health (State/One-Stop) | McGaw Park, IL | 02/26/13 | 02/25/13 |
| 82505 | Oberdorfer, LLC (Union) | Syracuse, NY | 02/26/13 | 02/22/13 |
| 82506 | Experian (Company) | Costa Mesa, CA | 02/27/13 | 02/26/13 |
| 82507 | Clover Industries (Workers) | Wausau, WI | 02/27/13 | 02/25/13 |
| 82508 | JP Morgan Chase Bank, NA (Workers) | Louisville, KY | 02/27/13 | 02/27/13 |
| 82509 | Hemlock Semi Conductor (State/One-Stop) | Helomck, MI | 02/28/13 | 02/27/13 |
| 82510 | Gerber Products Company (State/One-Stop) | Freemont, MI | 02/28/13 | 02/27/13 |
| 82511 | Dow Kokam Advanced Battery Group (State/One-Stop) | Midland, MI | 02/28/13 | 02/27/13 |
| 82512 | Bharat Forge America, Inc. (Union) | Lansing, MI | 02/28/13 | 02/22/13 |
| 82513 | Veyance Technologies (State/One-Stop) | Lincoln, NE | 03/01/13 | 02/28/13 |
| 82514 | NRG Energy/GenOn Energy (State/One-Stop) | Houston, TX | 03/01/13 | 02/28/13 |
| 82515 | DuPont Teijin Films (Company) | Fayetteville, NC | 03/01/13 | 02/28/13 |
| 82516 | Micro Contacts, Inc. (State/One-Stop) | Hicksville, NY | 03/01/13 | 02/18/13 |

[FR Doc. 2013–06890 Filed 3–25–13; 8:45 am]
BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0042]**

### TUV Rheinland of North America, Inc.; Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Occupational Safety and Health Administration's final decision expanding the recognition of TUV Rheinland of North America, Inc., as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

**DATES:** The expansion of recognition becomes effective on March 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** David W. Johnson, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or phone (202) 693–1973.

**SUPPLEMENTARY INFORMATION:**

#### Notice of Final Decision

The Occupational Safety and Health Administration ("OSHA" or "Agency") hereby gives notice of the expansion of recognition of TUV Rheinland of North America, Inc. ("TUV"), as a Nationally Recognized Testing Laboratory ("NRTL"). TUV's expansion covers the addition of a new site and the use one additional test standard. OSHA's current scope of recognition for TUV is available at the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/tuv.html.*

OSHA recognition of an NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from our Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUV submitted an application, dated February 24, 2006 (see Exhibit 1, TUV Application, as cited in the preliminary notice), to expand its recognition to include one additional site, located at 2324 Ridgepoint Drive, Suite E, Austin, Texas 78754, and one additional test standard. In response to OSHA's requests for clarification, TUV amended its application to provide additional technical details, and then provided further details in a later update (Ex. 2: TUV Amended Application dated 8/22/2007 and 2/10/2009, as cited in the preliminary notice). The NRTL Program staff determined that the additional test standard is an "appropriate test standard" within the meaning of 29 CFR 1910.7(c). In connection with this request, OSHA performed an on-site review of TUV's NRTL testing facility in August 2010 and recommended expansion of TUV's recognition to include the one additional facility listed above, and recommended expansion of TUV's recognition to include the one additional test standards listed below (Ex. 2).

OSHA published the preliminary notice announcing TUV's expansion application in the **Federal Register** on July 24, 2012 (77 FR 43370). The Agency requested comments by August 8, 2012, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant TUV's expansion application.

You may obtain or review copies of all public documents pertaining to the TUV application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2007–0042 contains all materials in the record concerning TUV's recognition.

The current address of the TUV facility (site) already recognized by OSHA is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newton, CT 06470.

**Final Decision and Order**

The NRTL Program staff examined TUV's expansion application, the assessor's recommendation, and other pertinent information. Based on its review of this evidence, OSHA finds that TUV meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of TUV, subject to this limitation and these conditions.

*Limitation*

OSHA limits the expansion of TUV's recognition to testing and certification of products for demonstration of conformance to the following test standard, which OSHA determined is an appropriate test standard, within the meaning of 29 CFR 1910.7(c):

UL 913: Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous Locations

The designation and title of the above-mentioned test standard was current at the time of the preparation of the preliminary notice.

OSHA limits recognition of TUV, or any NRTL, for a particular test standard to equipment or materials (i.e., products) for which OSHA standards require third-party testing and certification before use of the products in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

The American National Standards Institute (ANSI) may approve the test standard listed above as American National Standards. However, for convenience, we use the designation of the standards-developing organization for the standard, as opposed to the ANSI designation. Under OSHA's NRTL procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. Interested parties may contact ANSI to determine whether or not a test standard is currently ANSI approved.

*Conditions*

TUV also must abide by the following conditions of the recognition, in addition to those conditions already required by 29 CFR 1910.7:

1. TUV must allow OSHA access to TUV's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition, and to conduct investigations that OSHA deems necessary;

2. If TUV has reason to doubt the efficacy of any test standard it is using under the NRTL Program, it must promptly inform the test standard-developing organization of this concern and provide that organization with appropriate relevant information upon which it bases its concern;

3. TUV must not engage in, or permit others to engage in, any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUV agrees that it will allow no representation that it is either a recognized or an accredited NRTL without clearly indicating the specific equipment or material for which it has recognition, or that its recognition is limited to specific products;

4. TUV must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

5. TUV must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

6. TUV must continue to meet the requirements for recognition in all areas for which it has recognition.

**Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Section 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on March 20, 2013.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2013–06791 Filed 3–25–13; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–031]**

### NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Thursday, April 11, 2013, 12:30 p.m. to 3:00 p.m., Local Time.

**ADDRESSES:** This meeting will take place telephonically. Any interested person may call the USA toll free conference call number 800–857–7040, pass code ESS, to participate in this meeting by telephone.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–3094, or *mnorris@nasa.gov*.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting includes the following topics:

—Review of Earth Science Division Goals and Objectives

—Discussion of the NASA Data Center Study

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2013–06822 Filed 3–25–13; 8:45 am]

**BILLING CODE 7510–13–P**

## OFFICE OF NATIONAL DRUG CONTROL POLICY

### Paperwork Reduction Act; 30-Day Notice

**AGENCY:** Office of National Drug Control Policy.

The Office of National Drug Control Policy (ONDCP) proposes the collection of information concerning arrestee drug use. ONDCP hereby invites interested persons to submit comments to the Office of Management and Budget (OMB) regarding any aspect of this proposed effort.

*Type of Information Collection:* New collection.

*Title:* Arrestee Drug Abuse Monitoring (ADAM II) Program Questionnaire.

*Use:* The information will support statistical trend analysis.

*Frequency:* Five sites will each conduct one cycle of surveys from 350 arrestees per cycle.

*Annual Number of Respondents:* 1750.

*Total Annual Responses:* 1750.

*Average Burden per Response:* 26 minutes.

*Total Annual Hours:* 765.

Send comments to: Fe Caces, COTR, ADAM II, Executive Office of the President, Office of National Drug Control Policy, Research & Data Analysis, Washington, DC 20503 or by email at *Maria_Fe_Caces@ONDCP.EOP.GOV*.

Comments must be received within 30 days. Request additional information by facsimile transmission to (202) 395–6562, attention: Fe Caces, ONDCP, Office of Research & Data Analysis.

Dated: February 20, 2013.

**Daniel R. Petersen,**

*Deputy General Counsel.*

[FR Doc. 2013–06792 Filed 3–25–13; 8:45 am]

BILLING CODE 3180–02–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On February 7, 2013, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on March 11, 2013 to: John H. Postlethwait, Permit No. 2013–028.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 2013–06863 Filed 3–25–13; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Promoting Economic Efficiency in Spectrum Use: WSRD SSG Workshop IV

**AGENCY:** The National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

**ACTION:** Notice.

**FOR FURTHER INFORMATION, CONTACT:** Wendy Wigen at 703–292–4873 or *wigen@nitrd.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**DATES:** April 23–24, 2013.

**SUMMARY:** Representatives from Federal research agencies, private industry, and academia will identify economic and policy R&D that will promote progress toward more efficient spectrum utilization and sharing.

**SUPPLEMENTARY INFORMATION:**

*Overview:* This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program. Agencies of the NITRD Program are holding the fourth in a series of workshops to bring together experts from private industry and academia to help identify economic and policy research that will accelerate the progress toward more efficient spectrum utilization and sharing. The workshop will take place on April 23–24, from 9:30 a.m. to 5:30 p.m. ET (both days), at the MIT Patil Conference Room/Kiva, 32 Vassar Street, Cambridge, MA 02139. This event will be webcast. The event agenda and information about the webcast will be available the week of the event at: *http://www.nitrd.gov/Subcommittee/wirelessspectrumrd.aspx*.

*Background:* The Presidential Memorandum on Unleashing the Wireless Broadband Revolution, released on June 28, 2010, directed the federal agencies to work together and with the non-federal community, including the academic, commercial, and public safety sectors, to create and implement a plan that "facilitates research, development, experimentation, and testing by researchers to explore innovative spectrum-sharing technologies."

The WSRD has held three workshops that addressed the challenge defined in that Presidential Memorandum. During WSRD's first Workshop held at Boulder, CO, in July, 2011, the participants indicated that a national-level testing environment is critical for validating spectrum sharing technology under realistic conditions; they also emphasized the value of a spectrum sharing testing environment for a diversity of users. At a second workshop, held in Berkeley, CA, in January, 2012, key concepts and criteria were established for spectrum sharing test and evaluation capabilities. The third workshop, held in Boulder, CO. in July 2012, identified realistic projects whose implementation will significantly support the plan to meet the Presidential Memorandum's goals. This fourth workshop will gather diverse, knowledgeable, and forward thinking stakeholders to advise us on the important next step, the economic and policy research that is needed to promote an efficient and shared spectrum environment.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on March 20, 2013.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2013–06780 Filed 3–25–13; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, April 9, 2013.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

**STATUS:** The two items are open to the public.

**Matter To Be Considered**

8479 Aircraft Accident Report—Crash Following Loss of Engine Power Due to Fuel Exhaustion, Air Methods Corporation, Eurocopter AS350 B2, N352LN, Near Mosby, Missouri, August 26, 2011 and Safety Alert—Distracting Devices? Turn Them Off!

8478 Marine Accident Report—Personnel Abandonment of

Weather-Damaged US Liftboat *Trinity II*, with Loss of Life, Bay of Campeche, Gulf of Mexico, September 8, 2011

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Friday, April 5, 2013.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home Web page at *www.ntsb.gov*.

Schedule updates including weather-related cancellations are also available at *www.ntsb.gov*.

**FOR MORE INFORMATION CONTACT:** Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov*.

**FOR MEDIA INFORMATION CONTACT:** Keith Holloway, (202) 314–6100 or by email at *Hollowk@ntsb.gov*, for the Marine Accident Report: Trinity II, or Peter Knudson, (202) 314–6100 or by email at *peter.knudson@ntsb.gov* for the Aircraft Accident Report: Mosby, MO and the Safety Alert.

Dated: Friday, March 22, 2013.

**Candi R. Bing,**

*Federal Register Liaison Officer.*

[FR Doc. 2013–07099 Filed 3–22–13; 4:15 pm]

**BILLING CODE 7533–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 11–12, 2013, 11545 Rockville Pike, Rockville, Maryland.

**Thursday, April 11, 2013, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10:30 a.m.: WCAP–17116–P, "Westinghouse BWR ECCS Evaluation Model: Supplement 5—Application to the ABWR," Revision 0* (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, Nuclear Innovation North America (NINA), and Westinghouse Electric Company regarding the proposed Topical Report WCAP–17116–P, "Westinghouse BWR Emergency Core Coolant System (ECCS) Evaluation Model: Supplement 5," and its application to the Advanced Boiling Water Reactor (ABWR) Core Design. **Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).

*10:45 a.m.–12:15 p.m.: Update on the Electric Power Research Institute (EPRI) Ground Motion Model Project* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, EPRI, and the Nuclear Energy Institute (NEI) regarding the project to update the current EPRI Ground Motion Model.

*1:15 p.m.–3:15 p.m.: Selected Chapters of the Safety Evaluation Reports (SERs) With Open Items Associated With the US Advanced Pressurized Water Reactor (US–APWR) Design Certification and the Comanche Peak Combined License Application (COLA)* (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, Mitsubishi Heavy Industries, and Luminant Generation Company regarding selected chapters of the Safety Evaluation Report (SER) with Open Items associated with the US–APWR Design Certification and the Comanche Peak Combined License Application (COLA). **Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).

*3:30 p.m.–7:00 p.m.: Preparation of ACRS Reports* (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. **Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).

**Friday, April 12, 2013, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee* (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. **Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

*10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

*10:30 a.m.–7:00 p.m.: Preparation of ACRS Reports* (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. **Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (76 FR 64146–64147). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Antonio Dias, Cognizant ACRS Staff (Telephone: 301–415–6805, Email: *Antonio.Dias@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting

may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: March 20, 2013.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 2013–06883 Filed 3–25–13; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission, [NRC–2013–0001].

**DATES:** Weeks of March 25, April 1, 8, 15, 22, 29, 2013.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of March 25, 2013**

There are no meetings scheduled for the week of March 25, 2013.

**Week of April 1, 2013—Tentative**

*Tuesday April 2, 2013*

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Cindy Flannery, 301–415–0223).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

**Week of April 8, 2013—Tentative**

There are no meetings scheduled for the week of April 8, 2013.

**Week of April 15, 2013—Tentative**

There are no meetings scheduled for the week of April 15, 2013.

**Week of April 22, 2013—Tentative**

*Monday April 22, 2013*

9:00 a.m. Meeting with the Department of Energy Office of Nuclear Energy (Public Meeting) (Contact: Brett Rini, 301–251–7615).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

2:30 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6).

*Tuesday April 23, 2013*

9:00 a.m. Briefing on the Status of Lessons Learned from the Fukushima Dai'ichi Accident (Public Meeting) (Contact: William D. Reckley, 301–415–7490).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

**Week of April 29, 2013—Tentative**

There are no meetings scheduled for the week of April 29, 2013.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: March 21, 2013.

**Richard J. Laufer,**

*Technical Coordinator, Office of the Secretary.*

[FR Doc. 2013–07033 Filed 3–22–13; 4:15 pm]

BILLING CODE 7590–01–P

## POSTAL SERVICE

### Promotional Rates for Global Express Guaranteed Service

**AGENCY:** Postal Service™.

**ACTION:** Notice of Promotional Rates.

**SUMMARY:** The Postal Service gives notice of promotional rates for Global Express Guaranteed® (GXG®) service consistent with Governors' Decision No. 12–02.

**DATES:** *Effective date:* April 29, 2013.

**FOR FURTHER INFORMATION CONTACT:** April Cosgrove at 202–268–3286.

**SUPPLEMENTARY INFORMATION:** On September 13, 2012, the Governors of the Postal Service (Governors) issued Decision No. 12–02, which stated that, "the Postal Service may offer one or more promotions in the form of a discount or rebate on certain GXG and EMI [Express Mail International®] items, during an established promotional program period, to mailers that comply with the eligibility requirements of the promotional program." Subsequently, on November 8, 2012, the Postal Regulatory Commission (Commission) acknowledged that the Postal Service would be filing "potential promotions with the Commission for review and approval when they are developed," and that such promotional rates might concern GXG, EMI, and/or Priority Mail International® (PMI). Commission Order No. 1536 at 5, 15. The Commission further noted that "Accordingly, appropriate language regarding these promotions will be added to the draft MCS once the Commission reviews and approves particular promotions." Commission Order No. 1536 at 15. Consistent with Governors' Decision 12–02, the Postal Service intends to offer promotional rate incentives for GXG service for a limited time, beginning on April 29, 2013, and has

furnished appropriate notice to the Commission. Information concerning eligibility for the promotional rates is available on the Postal Regulatory Commission's Web site, *www.prc.gov* by following the links to Docket No. CP2013–54.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2013–06906 Filed 3–25–13; 8:45 am]

BILLING CODE 7710–12–P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 19b–4(e) and Form 19b–4(e), SEC File No. 270–447, OMB Control No. 3235–0504.

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 19b–4(e) (17 CFR 240.19b–4(e)) under the Securities Exchange Act of 1934 (15 U.S.C 78a *et seq.*) (the "Act"). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 19b–4(e) permits a self-regulatory organization ("SRO") to list and trade a new derivative securities product without submitting a proposed rule change pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), so long as such product meets the criteria of Rule 19b–4(e) under the Act. However, in order for the Commission to maintain an accurate record of all new derivative securities products traded on the SROs, Rule 19b–4(e) requires an SRO to file a summary form, Form 19b–4(e), to notify the Commission when the SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change to the Commission. Form 19b–4(e) should be submitted within five business days after an SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change. In addition, Rule 19b–4(e) requires an SRO to maintain, on-site, a copy of Form 19b–4(e) for a prescribed period of time.

This collection of information is designed to allow the Commission to maintain an accurate record of all new derivative securities products traded on the SROs that are not deemed to be proposed rule changes and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b–4(e). The Commission reviews SRO compliance with Rule 19b–4(e) through its routine inspections of the SROs.

The respondents to the collection of information are SROs (as defined by the Act), all of which are national securities exchanges. As of March 2013, there are seventeen entities registered as national securities exchanges with the Commission. The Commission receives an average total of 3,879 responses per year, which corresponds to an estimated annual response burden of 3,879 hours. At an average hourly cost of $63, the aggregate related cost of compliance with Rule 19b–4(e) is $244,377 (3,879 burden hours multiplied by $63/hour).

Compliance with Rule 19b–4(e) is mandatory. Information received in response to Rule 19b–4(e) shall not be kept confidential; the information collected is public information.

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 estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 21, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06885 Filed 3–25–13; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69183; File No. SR–NSX–2013–02]**

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Adopt a New Order Type Called the "Auto-Ex Only" Order

March 19, 2013.

On January 23, 2013, National Stock Exchange, Inc. ("NSX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new order type called the "Auto-Ex Only" Order. The proposed rule change was published for comment in the **Federal Register** on February 7, 2013.[3] The Commission received two comment letters on this proposal.[4] On March 14, 2013, NSX submitted a response to the comment letters.[5]

Section 19(b)(2) of the Act[6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 24, 2013. The Commission is extending this 45-day time period.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* Securities Exchange Act Release No. 68807 (February 1, 2013), 78 FR 9094

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Peter J. Driscoll, Investment Professional, dated February 14, 2013; and Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated March 6, 2013 (collectively "Comment Letters").

[5] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Christopher Solgan, Senior Regulatory Counsel, NSX, dated March 14, 2013 ("Response").

[6] 15 U.S.C. 78s(b)(2).

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which relates to a new order type—the Auto-Ex Only Order-, the Comment Letters that have been submitted in connection with this proposed rule change, and NSX's Response to the Comment Letters.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates May 8, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NSX–2013–02).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06789 Filed 3–25–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69182; File No. SR–Phlx–2013–28]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Establishing a Program for PSX Managed Data Solutions (MDS)

March 19, 2013.

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 March 13, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a 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 a rule change in Section VIII (NASDAQ OMX PSX Fees) of the NASDAQ OMX PHLX Pricing Schedule,[3] to establish a program for Managed Data Solutions ("MDS") in a new section entitled PSX Managed Data Solution Fees ("PSX MDS Fees"). The text of the proposed rule change is provided in *Exhibit 5*. The text of the proposed rule change is also 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.

### 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

PSX is now proposing to create a new data distribution model known as MDS in MDS Fees to further the distribution of PSX TotalView.[4] This offers a new pricing and administrative option available to firms seeking simplified market data administration for MDS products containing PSX TotalView ("PSX Depth Data").

Proposed PSX MDS Fees is similar to The NASDAQ Stock Market LLC ("NASDAQ") Rule 7026 and NASDAQ OMX BX, Inc. ("BX") Rule 7026 in terms of offering MDS for a fee to members of the Exchange.[5] MDS may be offered by members of the Exchange as well as Distributors[6] to clients and/or client organizations that are using the PSX Depth Data internally in a non-display manner. This new pricing and administrative option is in response to industry demand, as well as due to improvements in the contractual administration and the technology used to distribute market data. Distributors offering MDS continue to be fee liable for the applicable distributor fees for the receipt and distribution of the PSX Depth Data such as PSX TotalView.[7]

MDS is a pricing and administrative option that will assess a new fee schedule to Distributors of PSX Depth Data that provide datafeed solutions such as an Application Programming Interface (API) or similar automated delivery solutions to recipients with limited entitlement controls (e.g., usernames and/or passwords) ("Managed Data Recipients"). However, the Distributor must first agree to reformat, redisplay and/or alter the PSX Depth Data prior to retransmission, but not to affect the integrity of the PSX Depth Data and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. MDS is any retransmission datafeed product containing PSX Depth Data offered by a Distributor where the Distributor manages and monitors, but does not necessarily control, the information. However, the Distributor does maintain contracts with the Managed Data Recipients and is liable for any unauthorized use by the Managed Data Recipients. The Managed Data Recipients may only use the information for internal, non-display purposes and may not distribute the information outside of their organization.

In the past, retransmissions were considered to be an uncontrolled data product if the Distributor did not

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[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Phlx is the self-regulatory organization ("SRO") that operates PSX as an equity market on which members of the Exchange may trade. Fees related specifically to PSX are listed in Section VIII of the NASDAQ OMX PHLX Pricing Schedule.

[4] Proposed subsection (b) of PSX MDS Fees states that the term "PSX TotalView" shall have the same meaning as set forth in Section VIII. Section VIII, PSX TotalView states that the PSX TotalView entitlement allows a subscriber to see all individual NASDAQ OMX PSX participant orders displayed in NASDAQ OMX PSX, the aggregate size of such orders at each price level, and the trade data for executions that occur within NASDAQ OMX PSX.

[5] *See* Securities Exchange Release Nos. 63276 (November 8, 2010), 75 FR 69717 (November 15, 2010) (SR–NASDAQ–2010–138) (notice of filing and immediate effectiveness implementing MDS on NASDAQ) (the "NASDAQ MDS filing"); and 69041 (March 5, 2013) (SR–BX–2013–018) (notice of filing and immediate effectiveness implementing MDS on BX) (the "BX MDS filing"). Other options markets have also implemented a managed data solution. *See, e.g.*, Securities Exchange Release No. 65678 (November 3, 2011), 76 FR 70178 (November 10, 2011) (SR–ISE–2011–67) (notice of filing and immediate effectiveness implementing a managed data solution on ISE).

[6] Proposed subsection (b) of PSX MDS Fees states that the term "Distributor" shall have the same meaning as set forth in Section VIII. Section VIII. Market Data Distributor Fees states that a "Distributor" of Exchange data is any entity that receives a feed or data file of Exchange data directly from the Exchange or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute an Exchange distributor agreement. The Exchange itself is a vendor of its data feed(s) and has executed an Exchange distributor agreement and pays the distributor charge.

[7] *See, e.g.*, Section VIII, PSX TotalView.

control both the entitlements and the display of the information. Over the last ten years, however, Distributors have improved the technical delivery and monitoring of data, and the MDS offering responds to an industry need to offer new pricing and administrative options.

The Exchange notes that some Distributors believe that MDS is a better controlled datafeed product and as such should not be subject to the same rates as a datafeed. However, the Distributors may only have contractual control over the data and may not be able to verify how Managed Data Recipients are actually using the data at least without involvement of the Managed Data Recipient.[8] The proposal to offer MDS to Distributors would assist in the management of the uncontrolled data product on behalf of their Managed Data Recipients by contractually restricting the data flow and monitoring the delivery. Thus, offering MDS on PSX per proposed Section VIII, PSX MDS Fees would allow Distributors to deliver MDS to their clients and would allow Professional and Non-Professional [9] Subscribers [10] to use PSX Depth Data for their own non-display use.[11]

Finally, proposed Section VIII, PSX MDS Fees establishes a fee schedule for Distributors and Subscribers of MDS products containing PSX Depth Data for non-display use only. Specifically, Distributors would be assessed $750/month per Distributor for the right to offer MDS to client organizations. Non-Professional Subscribers would be assessed $20/month per Subscriber for the right to obtain PSX Depth Data (which includes TotalView) for internal non-display use only. And Professional Subscribers would be assessed $100/month per Subscriber for the right to receive PSX Depth Data (TotalView) for internal non-display use only.[12]

This new fee is meant to lower the fee for current and potential future recipients of datafeed products by offering a new pricing option. No recipients will have an increased fee due to this filing.

Accordingly, the Exchange believes that the proposed rule establishes a program that allows all Exchange Members and Distributors a practicable methodology to access and receive MDS, similarly to other exchanges.

2. Statutory Basis

PSX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Section 6(b)(4) of the Act,[14] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of PSX data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[15]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or not the person is a member of the self-regulatory organization" after "due, fee or other charge imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, "At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved."

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC*, No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system evolve through

[8] In the NASDAQ MDS filing and BX MDS filing, for example, it was noted that some Distributors have even held off on deployment of new product offerings, pending the resolution to this issue. *See* supra note 5.

[9] Proposed subsection (b) of PSX MDS Fees states that the term "Non-Professional" shall have the same meaning as set forth in Section VIII. Section VIII, PSX TotalView states that a "Non-Professional" is a natural person who is neither: (A) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (B) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

[10] Proposed subsection (b) of PSX MDS Fees states that the term "Subscriber" shall have the same meaning as set forth in Section VIII. Section VIII, PSX TotalView states that a "Subscriber" is any access that a distributor of the data entitlement package(s) provides to: (1) Access the information in the data entitlement package(s); or (2) communicate with the distributor so as to cause the distributor to access the information in the data entitlement package(s). If a Subscriber is part of an electronic network between computers used for investment, trading or order routing activities, the burden shall be on the distributor to demonstrate that the particular Subscriber should not have to pay for an entitlement.

[11] Downstream recipients are not allowed to redistribute the MDS products.

[12] Each of the fees for MDS on PSX is initially set to be significantly lower than the fees for similar MDS on NASDAQ. *See* NASDAQ Rule 7026. The Exchange will, pursuant to this proposal, impose monthly fees on a Distributor or Subscriber for each month in which such Distributor or Subscriber accesses MDS products containing PSX Depth Data.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power in those situations where competition may not be sufficient, 'such as in the creation of a consolidated transactional reporting system.' " *NetCoalition*, at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

PSX believes that the proposed fees are fair and equitable, and not unreasonably discriminatory. The proposed fees are based on pricing conventions and distinctions that currently exist in the fee schedules of other exchanges, namely NASDAQ and BX. These distinctions (e.g. Distributor versus Subscriber, Professional versus Non-Professional, internal versus external distribution, controlled versus uncontrolled datafeed) are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal. PSX believes that the MDS offering promotes broader distribution of controlled data, while offering a fee reduction in the form of a pricing option resulting in lower fees for Subscribers. The MDS proposal is reasonable in that it offers a methodology to get MDS data for less. It is equitable in that it provides an opportunity for all Distributors and Subscribers, Professional and Non-Professional, to get MDS data without unfairly discriminating against any.

Thus, if PSX has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can diminish or discontinue the use of their data because the proposed fees are entirely optional to all parties. Firms are not required to choose to purchase MDS or to utilize any specific pricing alternative. PSX is not required to make MDS available or to offer specific pricing alternatives for potential purchases. PSX can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. PSX continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

PSX 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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. PSX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

The proposal is, as described below pro-competitive. The proposal offers an overall fee reduction, which is, by its nature, pro-competitive. Moreover, there is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without orders entered and trades executed, exchange data products cannot exist. Data products are valuable to many end Subscribers insofar as they provide information that end Subscribers expect will assist them in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

"No one disputes that competition for order flow is fierce." *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the

aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including more than ten SRO markets, as well as internalizing BDs and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two Financial Industry Regulatory Authority, Inc. ("FINRA") regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex (now NYSE MKT), NYSEArca, DirectEdge and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products as, for example, BATS and Arca did before registering as exchanges by publishing Depth-of-Book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end Subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end Subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. PSX and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

Competition among platforms has driven PSX continually to improve its platform data offerings and to cater to customers' data needs. For example, PSX has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. PSX has created new products like TotalView, because offering data in multiple formatting allows PSX to better fit customer needs. PSX offers data via multiple extranet and telecommunication providers such as Verizon, BT Radianz, and Savvis, among others, thereby helping to reduce network and total cost for its data products. PSX has an online administrative system to provide customers transparency into their datafeed requests and streamline data usage reporting. PSX has also implemented an Enterprise License option (for non-display use) to reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and ever increasing message traffic, PSX's fees for market data have remained flat. Moreover, platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for PSX data is significant and the Exchange believes that this proposal itself clearly evidences such competition. PSX is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. This pricing option is entirely optional and is

geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. PSX continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with PSX or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for the proposed data is highly competitive and continually evolves as products develop and change.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**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.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2013–28 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–Phlx–2013–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–2013–28 and should be submitted on or before April 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06788 Filed 3–25–13; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69188; File No. SR–OCC–2013–03]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Add Provisions to the By-Laws To Facilitate the Use of the Stock Loan/Hedge Program by Canadian Clearing Members

March 20, 2013.

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 March 8, 2013, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. 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**

OCC proposes to add provisions to the By-Laws to facilitate the use of the Stock Loan/Hedge Program by Canadian Clearing Members.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to add provisions to the By-Laws governing the OCC's Stock Loan/Hedge Program to facilitate the use of the Stock Loan/Hedge Program by Canadian Clearing Members.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by OCC.

Background

OCC's Stock Loan/Hedge Program is provided for in Article XXI of the By-Laws and Chapter XXII of the Rules, and provides a means for OCC clearing members to submit broker-to-broker stock loan transactions to OCC for clearance. Broker-to-broker transactions are independently-executed stock loan transactions that are negotiated directly between two OCC clearing members.

Where a stock loan transaction is submitted to, and accepted by, OCC for clearance, OCC substitutes itself as the lender to the borrower and the borrower to the lender, thus serving a function for the stock loan market similar to the one it serves within the listed options market. OCC thereby guarantees the future daily mark-to-market payments between the lending clearing member and borrowing clearing member, which are effected through OCC's cash settlement system, and the return of the loaned stock to the lending clearing member and the collateral to the borrowing clearing member, upon close-out of the stock loan transaction. OCC leverages the infrastructure of the Depository Trust Company ("DTC") to transfer loaned stock and collateral between OCC clearing members.

Description of Proposed Rule Change

Currently, for OCC clearing members to participate in OCC's Stock Loan/Hedge Program, they must be members of DTC and maintain accounts to facilitate Delivery Orders ("DOs") to approved counterparties for stock loan transactions. Canadian Clearing Members [4] (who are otherwise eligible to participate in the Stock Loan/Hedge Program) are not participants of DTC. For purposes of settling transactions in U.S. equity securities, Canadian Clearing Members ordinarily rely on the services of CDS Clearing and Depository Services Inc. ("CDS").[5] which provides a cross-border service to clear and settle trades with U.S. counterparties.[6] CDS is Canada's national securities depository, processing over 413 million trades annually. One of CDS's services enable its Canadian participants to clear and settle trades (which would include stock loan and borrow transactions) with U.S. counterparties through affiliations with DTC and the National Securities Clearing Corporation ("NSCC").

Under current OCC Rules 901(a) and (g), Canadian Clearing Members are able to effect settlement of deliver/receive obligations arising from exercised or assigned stock options and matured stock futures by appointing CDS to act as their agent through the arrangements with DTC and NSCC described above.[7] OCC is now proposing to amend Interpretation .07 to Section 1 of Article V of the By-Laws to allow participation by Canadian Clearing Members in the Stock Loan/Hedge Program by permitting them to appoint CDS to act as their agent in effecting DOs for stock loan transactions through DTC under arrangements similar to those used for deliveries under options and futures.[8] Upon such an appointment, a sponsored sub-account would be established on behalf of the Canadian Clearing Member in a CDS participant account at DTC, through which the Canadian Clearing Member could obtain access to similar DTC services used by U.S. clearing members who maintain participant accounts at DTC in respect to stock loan transactions. Through their identified sub-accounts within a CDS participant account at DTC, Canadian Clearing Members would be able to effect DOs for stock loan transactions to other DTC participants in the same manner as U.S. clearing members. The cross-border service offered by DTC and CDS would enable Canadian Clearing Members to transfer securities between their accounts held at CDS and the identified sub-accounts carried on their behalf in CDS participant accounts held at DTC to effect DOs for stock loan transactions. DTC would continue to play the same role in connection with such transactions as it does with respect to stock loan transactions of all other clearing members, except that DOs would be effected in the identifiable sub-account of the Canadian Clearing Member maintained in a CDS participant account at DTC.

Similar to appointments of CDS under Rules 901(a) and (g), under the amended Interpretation .07 to Section 1 of Article V of the By-Laws, a Canadian Clearing Member that appoints CDS to act for it in connection with the Stock Loan/Hedge Program would be required to agree with OCC that the clearing member remains responsible to OCC in respect of its stock loan and borrow positions regardless of any non-performance by CDS, that OCC may treat any failure of CDS to complete delivery or payment required to close an open stock loan or borrow position as a failure by such Canadian Clearing Member, thereby triggering OCC's buy-in and sell-out procedures and such other procedures and remedies as are provided under OCC's Rules, including recourse to the collateral deposited by the clearing member. Accordingly, OCC would have no credit exposure to CDS as the result of a failure by CDS to perform. Also consistent with precedent under Rules 901(a) and (g), in amended Interpretation .07 to Section 1 of Article V of the By-Laws, OCC would seek acknowledgement of CDS and DTC with respect to these arrangements. If, for any reason, CDS ceased to act for one or more Canadian Clearing Members,[9] OCC would have authority to require clearing members to close out open stock loan and borrow positions through buy-in and sell-out procedures, or any other procedures provided in the By-Laws or Rules, if necessary. A copy of the proposed agreement through which a Canadian Clearing Member would appoint CDS to act on the Canadian Clearing Member's behalf, and CDS and DTC would acknowledge this appointment, is included as Exhibit 3A.[10]

As part of the application process to become a clearing member of OCC, any non-U.S. applicant must execute a copy of OCC's Non-U.S. Clearing Member Agreement. In the agreement, the applicant makes certain representations with respect to, among other things, the types of transactions it will engage in as

[4] OCC By-Laws define a Canadian Clearing Member as a Non-U.S. Clearing Member formed and operating under the laws of Canada or a province thereof with its principal place of business in Canada.

[5] CDS is Canada's national securities depository, processing over 413 million trades annually. One of CDS's services enables its Canadian participants to clear and settle trades (including stock loan and borrow transactions) with U.S. counterparties through affiliations with DTC and the National Securities Clearing Corporation ("NSCC").

[6] OCC is not a party to such cross-border service arrangements.

[7] In January 1994, OCC adopted Rule 913(h) whereby Canadian Clearing Members that settle through the CDS were required to execute a new agreement appointing CDS to act on its behalf, and for which CDS and NSCC would acknowledge such appointment. See Securities Exchange Act Release No. 33543 (January 28, 1994), 59 FR 5639 (February 7, 1994) (SR–OCC–1992–05). In March 2004, OCC restructured Chapter IX of its rules applicable to physical settlement of exercised stock options and matured stock futures, and as part of this rule filing, re-designated Rule 913 as Rule 901. See Securities Exchange Act Release No. 49420 (March 16, 2004), 69 FR 13345 (March 22, 2004) (SR–OCC–2003–08).

[8] Unlike settlement of deliver/receive obligations in respect of stock options and stock futures, stock loan and borrow transactions do not involve NSCC.

[9] A Canadian Clearing Member would be obligated, under amended Interpretation .07 to Section 1 of Article V of the By-Laws, to promptly notify OCC in writing if it knew or reasonably expected CDS to cease acting on its behalf, or if CDS had ceased acting on its behalf, with respect to effecting DOs for stock loan and stock borrow transactions.

[10] Both CDS and DTC have reviewed and signed off on this Form of Appointment and Acknowledgement, which is included as Exhibit 3A.

a Non-U.S. Clearing Member.[11] In order to accommodate the participation by Canadian Clearing Members in the Stock Loan/Hedge Program as provided in this proposed rule change, OCC proposes to make certain conforming changes to its Non-U.S. Clearing Member Agreement. OCC also proposes to make certain technical changes to its Non-U.S. Clearing Member Agreement for clarity and consistency with its U.S. Clearing Member Agreement.

Finally, for ease of reference throughout the proposed addition to Interpretation .07 to Section 1 of Article V of the By-Laws, OCC proposes to define a Canadian Clearing Member approved to participate in the Stock Loan/Hedge Program as a "Canadian Hedge Clearing Member" for purposes of its By-Laws and Rules.

OCC believes that the proposed changes to OCC By-Laws are consistent with the purposes and requirements of Section 17A of the Act,[12] and the rules and regulations thereunder, because they are designed to promote the prompt and accurate clearance and settlement of stock loan and borrow transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, protect investors and the public interest.[13] OCC believes that the proposed changes to OCC By-Laws achieve this by facilitating participation by Canadian Clearing Members in OCC's Stock Loan/Hedge Program in a manner that protects the clearing system against risk through the same or equivalent mechanisms used with respect to domestic clearing members. OCC also believes that the proposed rule change is not inconsistent with the existing OCC By-Laws, including any By-Laws proposed to be amended.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC 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.

[11] OCC's By-Laws define "Non-U.S. Clearing Member" as a Non-U.S. Securities Firm that has been admitted to membership in OCC pursuant to the provisions of OCC's By-Laws and Rules.

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78q–1(b)(3)(F).

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The proposed rule change shall not take effect until all regulatory actions required with respect to the proposed rule change are completed.

**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 Commissions Internet comment form *(http://www.sec.gov/rules/sro.shtml)* or Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2013–03 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2013–03. 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 the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_03.pdf*.

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–OCC–2013–03 and should be submitted on or before April 16, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06878 Filed 3–25–13; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69190; File No. SR–BATS–2013–005]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change To Modify the Competitive Liquidity Provider Program to, Among Other Things, Modify the Calculation of Size Event Tests

March 20, 2013.

**I. Introduction**

On January 18, 2013, BATS Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b–4 thereunder, a proposed rule change to modify the Exchange's competitive liquidity provider program, to among other things, modify the calculation of size event tests. The proposed rule change was published in the **Federal**

[14] 17 CFR 200.30–3(a)(12).

**Register** on February 6, 2013.[1] The Commission received no comments on the proposal. This order approves the proposal.

## II. Description of the Proposal

The Exchange operates a competitive liquidity provider program that provides incentives to certain Exchange market makers to provide additional liquidity in Exchange listed securities.[2] The Exchange proposes to modify certain aspects of the competitive liquidity provider program.

### *A. Calculation of Size Event Tests*

Currently, a market maker participating in the competitive liquidity provider program would be eligible for a financial rebate based on the size of the liquidity provided by the market maker. The Exchange calculates the rebate by examining, at least once per second, the quoted size at the national best bid and national best offer ("Size Event Test"). The market maker with the greatest aggregative size would be considered the winner of the Size Event Test.

The Exchange proposes to bifurcate the calculation of the Size Event Test by the bid and the offer. Thus, instead of having one winner, the Exchange proposes to have two separate winners—one winner at the bid and one winner at the offer. As proposed, the market maker with the greatest aggregated size at the national best bid (excluding odd lots) would be considered the winner of the bid test and the market maker with the greatest aggregative size at the national best offer (excluding odd lots) would be considered the winner of the offer test.

### *B. Financial Rebates for the Bid Winner and the Offer Winner*

In connection with the proposal to bifurcate the Size Event Test winners into the bid test winner and the offer test winner, the Exchange proposes to provide financial rebates separately. Currently, a market maker must have at least 10% of the winning Size Event Tests in order to meet its daily quoting requirements and qualify for the financial rebate. The Exchange proposes to allocate the rebate to both the bid test winner and the offer test winner.

### *C. Allocation of Financial Rebates*

The competitive liquidity provider program assigns only one market maker for the first six months of a security's initial listing. Thereafter, multiple market makers may qualify to quote and to receive the financial rebates. Currently, for Tier I securities and exchange traded products, 80% of the rewards would go to the market maker with the highest number of winning tests and 20% of the total rewards would go to the market maker with the second highest number of winning tests.[3] The Exchange proposes to allocate the rewards differently. Instead of a fixed dollar amount, the Exchange would reward the two winning market makers based on a pro rata amount, calculated on the combined sum of their winning tests.

### *D. Quoting Requirements*

Currently, the Exchange requires each market maker to quote at least one round lot. The Exchange proposes to increase the minimum quoting requirement to five round lots in order for market makers to qualify for the winning tests.

The Exchange also proposes to add an additional quoting requirement for market makers to qualify for the winning tests. In order to qualify for the winning bid test, the Exchange is proposing for market makers to quote at least a displayed round lot offer at a price at or within 1.2% of the market maker's bid. Conversely, in order to qualify for the winning offer test, the market makers must quote at least a displayed round lot bid at a price at or within 1.2% of the market maker's offer.

### *E. Time of Operation*

Currently, the competitive liquidity provider program measures participants in assigned securities during Exchange regular trading hours, from 9:30 a.m. to 4:00 p.m. The Exchange proposes to extend the time by 10 total minutes, from 9:25 a.m. to 4:05 p.m.[4]

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is consistent with the requirements of the Act and should benefit investors by providing additional liquidity in the securities that participate in the competitive liquidity provider program. The Commission believes that bifurcating the Size Event Tests could incentivize market makers to provide two-sided quotes that could enhance the liquidity of the security. Moreover, the Exchange's proposal to provide the rebate to the winner of the bid test and the winner of the offer test could provide a stimulus to market makers to increase quoting size on both sides of the market. The Commission believes that the allocation, on a pro rata basis, of the financial rebate should provide a more equitable distribution of the rebate to the winning market makers. The Commission believes that the proposed quoting requirements should enhance the market size and could lead to tighter spreads. Finally, the Commission believes the extended time period could entice market makers to provide more quotes in the opening auctions and closing auctions.

For the reasons stated above, the Commission believes that the proposal is consistent with the requirements of the Act and is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–BATS–2013–005), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06876 Filed 3–25–13; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Securities Exchange Act Release No. 68789 (January 31, 2013), 78 FR 8655.

[2] *See* Exchange Rule 11.8.02.

[3] For Tier II securities, there is only one rebate for the winner.

[4] *See* proposed Exchange Rule 11.8.02(g)(1).

[5] In approving the 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).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69194; File No. SR–Phlx–2013–24]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Adopt a Price/Display/Time Priority Algorithm, Permit the Registration of Market Makers, and Amend the Order Types Available on PSX

March 20, 2013.

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 March 8, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, which filing was amended and replaced in its entirety by Amendment No. 1 thereto on March 18, 2013, 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 Substance of the Proposed Rule Change

The Exchange proposes to modify certain aspects of the operation of NASDAQ OMX PSX ("PSX"). The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/*, at the Exchange's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In 2010, Phlx launched PSX as a new platform for trading NMS stocks,[3] using a novel price/size pro rata model for allocating the execution of incoming orders against orders resting on the PSX book.[4] Phlx anticipated that this market model would gain traction as an alternative to a national market structure in which the prevailing price/time model places an emphasis on the speed with which market participants can route and cancel orders as the means to optimize their executions. Unfortunately, the price/size execution model has been only marginally successful in garnering market share, primarily due to the risk of a large execution at a stale price that a market participant would face if unable to adjust the prices of its posted orders quickly. Accordingly, Phlx has decided to adopt a price/time model for PSX. In addition, Phlx is proposing to allow member organizations to register as market makers on PSX, provided they satisfy two-sided quoting and market quality requirements associated with that status. Finally, Phlx is proposing to introduce midpoint peg post-only orders, and price to comply post orders; to adjust the operation of minimum quantity orders and post-only orders; and to eliminate minimum life orders. In all material respects, the rules as adjusted by this proposed rule change will be identical to rules in effect at The NASDAQ Stock Market ("NASDAQ") and/or NASDAQ OMX BX, Inc. ("BX"). Phlx proposes to implement the change as soon as practicable following Commission approval. This Amendment No. 1 to the original filing corrects several minor typographical errors in the original filing and provides additional explanation with respect to the purpose and effect of some of the proposed rule changes.

Order Processing Algorithm

The order processing algorithm currently in use at PSX allocates the execution of incoming orders against posted liquidity in following order:

(1) Price. Better priced orders are executed first.

[3] Defined in SEC Rule 600 under Regulation NMS, 17 CFR 242.600, to mean any security or class of securities (other than an option) for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan.

[4] Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–Phlx–2010–79).

(2) Pro-Rata Allocation to Size Among Displayed Orders with a Size of One Round Lot or More. As among equally priced Displayed Orders with a size of at least one round lot, PSX allocates the round lot portions of incoming executable orders pro rata based on the size of the Displayed Orders. Portions of an order that would be executed in a size other than a round lot if they were allocated pro rata are allocated on the basis of a random function that assigns probability of execution based on the size of displayed interest.

(3) Displayed Odd-Lot Orders. As among equally priced Displayed Orders with a size of less than one round lot, PSX allocates incoming orders based on the size of the Displayed Orders, but not in pro rata fashion. If there are two or more such orders of equal size, PSX determines the order of execution on the basis of a random function that assigns each order an equal probability of execution.

(4) Pro-Rata Allocation to Size Among Non-Displayed Interest with a Size of One Round Lot or More. As among equally priced Non-Displayed Orders and the reserve portion of Reserve Orders (collectively, "Non-Displayed Interest") with a size of at least one round lot, PSX allocates round lot portions of incoming executable orders to Non-Displayed Interest pro rata based on the size of the Non-Displayed Interest. Portions of an order that would be executed in a size other than a round lot if they were allocated pro rata are allocated on the basis of a random function that assigns probability of execution based on the size of Non-Displayed Interest.

(5) Minimum Quantity Orders. As among equally priced Minimum Quantity Orders, PSX allocates incoming executable orders in the ascending order of the size of the minimum quantity conditions assigned to the orders. If there are two or more Minimum Quantity Orders with an equal minimum quantity condition, the System will determine the order of execution on the basis of a random function that assigns each order an equal probability of execution.

(6) Non-Displayed Odd-Lot Orders. As among equally priced Non-Displayed Interest with a size of less than one round lot, PSX allocates incoming orders based on the size of the Non-Displayed Interest, but not in pro rata fashion. If there are two or more such orders of equal size, PSX determines the order of execution on the basis of a random functions that assigns each order an equal probability of execution.

Phlx is amending Rule 3307, and making conforming changes to Rule

3306, to replace this algorithm with a straightforward price/display/time priority algorithm that is substantively identical to corresponding rules in effect at NASDAQ and BX. The modified algorithm is as follows:

(1) Price. Better priced orders are executed first.

(2) Displayed Orders. As among equally priced Displayed Orders, the first to arrive on the book is executed first.

(3) Non-Displayed Orders and the Reserve Portion of Quotes [5] and Reserve Orders. As among equally priced Non-Displayed Orders and the reserve portion of Quotes and Reserve Orders, the first to arrive on the books is executed first.

PSX rules currently provide for an anti-internalization exception to the algorithm, designed to allow a PSX Participant to prevent its own orders from interacting with each other. Phlx is modifying this exception so that it conforms to a similar exception in effect at NASDAQ and BX. Specifically, the rules of all three exchanges currently provide that a market participant may direct that orders not execute against orders entered under the same market participant identifier ("MPID"), or under the same MPID and with a unique group identification modifier (for example, by grouping all orders entered through a particular order entry port). In other words, the market participant may limit interaction among all orders under the MPID, or only an identified subset of orders. Under current PSX rules, if two orders that are not permitted to interact with each other are matched through the order execution algorithm, the orders are decremented by share amounts equal to the size of the portion of the incoming order that is designated to interact with a posted order. Thus, if 100 shares of an incoming order to buy 200 shares are designated to execute against a posted order to sell 1,000 shares, and the two orders have been marked not to execute against each other, the incoming order and the posted order will each by decremented by 100 shares. The orders are decremented to reflect that the Participant, having adopted anti-internalization protection, does not intend to buy shares that it is simultaneously selling. The revisions to the rule retain this logic, but give the Participant additional choice as to how the conflict should be resolved. First, the Participant may opt for the same treatment as currently provided by PSX, although the revised rule text reflects the change in order execution algorithm by providing that if the two orders are the same size, they will both be cancelled, while if one is larger, the smaller of the two is cancelled and the larger is decremented and retained. This changed language reflects the fact that in a price/time algorithm, an incoming order will be executed to the maximum extent possible against orders on the book in price/time sequence, whereas under the current algorithm, an incoming order may be allocated across multiple resting orders based on their size. Alternatively, a Participant may opt to have the oldest of the two orders cancelled in full, regardless of the respective sizes of the orders. The Participant may make this election across an entire MPID, or may differentiate among order entry ports associated with the MPID.

[5] As discussed below, PSX will introduce quoting functionality in support of the introduction of market makers.

Market Making

Phlx is proposing to adopt rules that are already in effect at NASDAQ and/or BX to allow member organizations that are PSX Participants to register and act as market makers. Following the effectiveness of the proposed changes, Phlx plans to introduce programs designed to encourage PSX Participants to register as market makers, with the goal of enhancing the liquidity and market quality of trading on PSX.

Proposed Rule 3212 provides that quotations and quotation sizes may be entered into PSX only by a member organization registered as a PSX Market Maker or other entity approved by the Exchange to function in a market-making capacity. A PSX Market Maker may become registered in an issue by entering a registration request via an Exchange approved electronic interface with PSX's systems or by contacting PSX Market Operations. Registration shall become effective on the day the registration request is entered. A PSX Market Maker's registration in an issue shall be terminated by the Exchange if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective. The rule is intended to provide a flexible means by which member organizations may register as market makers, while ensuring that they make prompt use of such registration.

Proposed amendments to Rule 3217 provide that all PSX Market Makers must be open during regular market hours (9:30 a.m. through 4:00 p.m.).[6] PSX Market Makers are also permitted to operate during pre-market (8:00 a.m. through 9:30 a.m.) and post-market (4:00 p.m. to 5:00 p.m.) hours. PSX Market Makers must comply with rules governing quotations at all times that their quotes are open, unless a rule is inapplicable to pre-market or post-market hours.

Proposed amendments to Rule 3213 impose quoting obligations on PSX Market Makers identical to those in effect at NASDAQ and BX. Under the amended rule, a member organization registered as a Market Maker is required to engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule. In accordance with the requirement, the rule specifically requires a member organization registered as a Market Maker in a particular security to be willing to buy and sell such security for its own account on a continuous basis during regular market hours and to enter and maintain a two-sided trading interest ("Two-Sided Obligation") that is identified to the Exchange as the interest meeting the obligation and is displayed in PSX's quotation montage at all times. Interest eligible to be considered as part of a Market Maker's Two-Sided Obligation must have a displayed quotation size of at least one normal unit of trading [7] (or a larger multiple thereof); provided, however, that a Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in PSX to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the PSX book that will satisfy this obligation.

For NMS stocks a Market Maker shall adhere to certain pricing obligations established by the rule, which are premised on entering quotation prices that are not more than a "Designated Percentage" [8] away from the National

[6] All times are Eastern Time.

[7] Unless otherwise designated, 100 shares.

[8] The "Designated Percentage" is: (i) 8% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products ("Tier 1 Securities"); (ii) 28% for all NMS stocks that are not Tier 1 Securities with a price equal to or greater than $1 ("Tier 2 Securities"); (iii) 30% for all NMS stocks that are not Tier 1 Securities with a price less than $1 ("Tier 3 Securities"), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Designated Percentage is 20% for Tier 1 Securities, 28% for Tier 2 Securities, and 30% for

Continued

Best Bid or Best Offer[9] (as applicable), and that must be refreshed if a change in the National Best Bid or Best Offer causes the quotation price to be more than a "Defined Limit"[10] away from the National Best Bid or Best Offer.[11] As described below, the applicable Designated Percentage and Defined Limit depends [sic] on the specific security traded and the time of day. For bid quotations, at the time of entry of bid interest satisfying the Two-Sided Obligation, the price of the bid interest may not be more than the applicable Designated Percentage away from the then current National Best Bid, or if no National Best Bid, not more than the Designated Percentage away from the last reported sale from the responsible single plan securities information processor. In the event that the National Best Bid (or if no National Best Bid, the last reported sale) increases to a level that would cause the bid interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (or if no National Best Bid, the last reported sale), or if the bid is executed or cancelled, the Market Maker shall enter new bid interest at a price not more than the Designated Percentage away from the then current National Best Bid (or if no National Best Bid, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation. Similarly, for offer quotations, at the time of entry of offer interest satisfying the Two-Sided Obligation, the price of the offer interest may not be more than the Designated Percentage away from the then current National Best Offer, or if no National Best Offer, not more than the Designated Percentage away from the last reported sale received from the responsible single plan securities information processor. In the event that the National Best Offer (or if no National Best Offer, the last reported sale) decreases to a level that would cause the offer interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Offer (or if no National Best Offer, the last reported sale), or if the offer is executed or cancelled, the Market Maker shall enter new offer interest at a price not more than the Designated Percentage away from the then current National Best Offer (or if no National Best Offer, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

The pricing obligations established by the Rule apply during regular trading hours (*i.e.*, 9:30 a.m. to 4:00 p.m.); but do not commence during any trading day until after the first regular way transaction on the primary listing market in the security. Moreover, the obligations are suspended during a trading halt, suspension, or pause, and do not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

The individual MPID assigned to a member organization to meet its Two-Sided Obligation pursuant to the Rule, or Rule 3223,[12] is referred to as the member organization's "Primary MPID." Market Makers and ECNs may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." A Market Maker may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders[13] in the PSX Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the PSX Quotation Montage for any security in which it meets the obligations set forth in Rule 3223. A Market Maker or ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.[14]

As provided in new Rule 3213(c), if a PSX Market Maker's ability to enter or update quotations is impaired, the market maker must immediately contact PSX Market Operations to request a withdrawal of its quotations. If the market maker elects to remain in PSX when its ability to update quotations is impaired, it must nevertheless execute orders presented for execution against its disseminated quotations.

The procedures for withdrawal of quotations are governed by proposed new Rule 3219. In general, a market maker that wishes to withdraw quotations in a security must contact the Exchange's MarketWatch Department to obtain excused withdrawal status *prior* to withdrawing its quotations. Withdrawals of quotations shall be granted by MarketWatch only upon satisfying one of the conditions specified in this Rule. An exception to the requirement for prior approval will exist for withdrawal based on a PSX Market Maker's systemic equipment problems, such as defects in software or hardware systems or connectivity problems associated with the circuits connecting PSX systems with the PSX Market Maker's systems. In that case, the market maker must promptly contact Exchange Market Operations and may receive excused withdrawal status for up to five (5) business days (unless extended by Exchange Market Operations).

For other circumstances beyond the market maker's control, a PSX Market Maker that wishes to withdraw quotations must contact the Exchange's MarketWatch Department to obtain excused withdrawal status prior to withdrawing its quotations.[15] Excused withdrawal status based on illness, vacations or physical circumstances beyond the PSX Market Maker's control may be granted for up to five (5) business days, unless extended by MarketWatch. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless the Exchange has initiated a

Tier 3 Securities. The Designated Percentage for rights and warrants is 30%. The pilot list of Exchange Traded Products for Tier 1 Securities is attached as Exhibit 3 to this filing.

[9] Determined by the Exchange in accordance with its procedures for determining Protected Quotations under SEC Rule 600 under Regulation NMS.

[10] The "Defined Limit" is 9.5% for Tier 1 Securities, 29.5% for Tier 2 Securities, and 31.5% for Tier 3 Securities, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Defined Limit is 21.5% for Tier 1 Securities, 29.5% for Tier 2 Securities, and 31.5% for Tier 3 Securities.

[11] Nothing in the rule precludes a PSX Market Maker from quoting at price levels that are closer to the National Best Bid and Offer than the levels required by the rule

[12] An existing rule governing the use of PSX by electronic communications networks ("ECNs") and other forms of alternative trading systems to display orders.

[13] A Quote/Order whose price and size is displayed next to the Market Maker's MPID in the publicly disseminated quotation montage.

[14] Market Makers and ECNs that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders are subject to the same rules applicable to their first quotation, with two exceptions: (a) The continuous two-sided quote requirement and excused withdrawal procedures do not apply to Market Makers' Supplemental MPIDs; and (b) Supplemental MPIDs may not be used by Market Makers to enter stabilizing bids pursuant to Rule 3214.

[15] It should be noted that because PSX does not currently, and does not at this time propose to list securities, the applicable rule does not establish different standards for excused withdrawals depending the listing venue of the security in question. *Cf.* NASDAQ Stock Market Rule 4619 (imposing different standards for excused withdrawal of quotations in NASDAQ-listed securities and securities listed on other exchanges).

trading halt for market makers in the security, pursuant to Rule 3100.

Excused withdrawal status may also be granted to a PSX Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the trade reporting service of PSX, thereby terminating its registration as a PSX Market Maker; provided, however, that if the Exchange finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused. PSX Market Makers that fail to maintain a clearing relationship will have their PSX system status set to "suspend" and be thereby prevented from entering, or executing against, any quotes/orders in the system.

Proposed Rule 3220 will govern voluntary termination of a PSX Market Maker's registration. A market maker may voluntarily terminate its registration in a security by withdrawing its two-sided quotation from PSX. A PSX Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker for one (1) business day.[16]

Notwithstanding the above, a PSX Market Maker that accidentally withdraws as a PSX Market Maker may be reinstated immediately if:

- The PSX Market Maker notified the Exchange's MarketWatch Department of the accidental withdrawal as soon as practicable under the circumstances, but within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;
- It is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and
- The PSX Market Maker's firm would not exceed the following reinstatement limitations: (i) For firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than two (2) reinstatements per year; (ii) for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than three (3) reinstatements per year; and (iii) for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year.

Factors that the Exchange will consider in granting a reinstatement under the rule include, but are not limited to: The number of accidental withdrawals by the PSX Market Maker in the past, as compared with PSX Market Makers making markets in a comparable number of stocks; the similarity between the symbol of the stock that the PSX Market Maker intended to withdraw from and the symbol of the stock that the PSX Market Maker actually withdrew from; market conditions at the time of the withdrawal; whether, given the market conditions at the time of the withdrawal, the withdrawal served to reduce the exposure of the market maker's position in the security at the time of the withdrawal to market risk; and the timeliness with which the PSX Market Maker notified MarketWatch of the error.

A market maker will not be deemed to have voluntarily terminated its registration in a security by voluntarily withdrawing its two-sided quotation from PSX if the PSX Market Maker's two-sided quotation in the subject security is withdrawn by the Exchange's systems due to issuer corporate action related to a dividend, payment or distribution, or due to a trading halt, and one of the following conditions is satisfied: The PSX Market Maker enters a new two-sided quotation prior to the close of the regular market session on the same day when the Exchange's systems withdrew such a quotation; the PSX Market Maker enters a new two-sided quotation on the day when trading resumes following a trading halt, or, if the resumption of trading occurs when the market is not in regular session, the PSX Market Maker enters a new two-sided quotation prior to the opening of the next regular market session; or upon request from the market maker, MarketWatch authorizes the market maker to enter a new two-sided quotation, provided that MarketWatch receives the market maker's request prior to the close of the regular market session on the next regular trading day after the day on which the market maker became eligible to re-enter a quotation and determines that the market maker was not attempting to avoid its market making obligations by failing to re-enter such a quotation earlier.

Under Rule [sic] 3219 and 3220, the Market Operations Review Committee will have jurisdiction over proceedings brought by market makers seeking review of the denial of an excused withdrawal, the conditions imposed upon a market maker's re-entry, and the denial of a reinstatement following an unexcused withdrawal.

With respect to securities that are the subject of offerings governed by SEC Regulation M,[17] the Exchange is also proposing to adopt several rules. Proposed Rule 3214 governs the entry of stabilizing bids, providing that a PSX Market Maker that intends to stabilize the price of a security that is a subject or reference security under SEC Rule 101 under Regulation M[18] must submit a request to the Exchange's MarketWatch Department for entry of a one-sided bid identified as a stabilizing bid. Proposed Rule 3219(e) governs excused withdrawals based on status as a distribution participant or affiliated purchaser within the meaning of Regulation M. The rule provides that a PSX Market Maker may be excused from two-sided quoting obligations in circumstances where a withdrawal of its quotations is necessary to comply with Regulation M by providing appropriate notice to the Exchange's MarketWatch Department. Proposed Rule 3224 governs imposition of penalty bids or engaging in syndicate covering transactions, providing that a PSX Market Maker acting as a manager (or in a similar capacity) of a distribution of a security that is a subject or reference security under SEC Rule 101 under Regulation M[19] must provide appropriate notice to the Corporate Financing Department of the Financial Industry Regulatory Authority ("FINRA") of its transactions pursuant to SEC Rule 104 under Regulation M[20] prior to imposing the penalty bid or engaging in the first covering transaction. Proposed Rule 3203 adopts associated definitions of terms used in, or in reference to, Regulation M. Although the Exchange expects these rules to be used rarely, if at all, given the fact that the Exchange does not intend to list securities, the rules may have applicability in limited circumstances where an Exchange member organization is acting in support of an offering on another exchange or is affiliated with a member of another exchange that is participating in an offering. Accordingly, the Exchange is adopting rules on these topics that are materially identical to

[16] By contrast, under the NASDAQ Stock Market's corresponding rule (NASDAQ Rule 4620), a market maker withdrawing from a NASDAQ-listed security may not re-register in that security for a period of 20 days, but is subject to a one-day exclusion for securities not listed on NASDAQ. Because PSX does not currently, and does not at this time propose to list securities, the proposed one-day exclusion period is comparable to the rule in effect at NASDAQ for securities traded on an unlisted trading privileges basis.

[17] SEC Rules 100–105 under Regulation M, 17 CFR 242.100–242.105.

[18] 17 CFR 242.101.

[19] *Id.*

[20] 17 CFR 242.104.

corresponding rules on NASDAQ and BX, with the exception of rules pertaining to compliance with SEC Rule 103 under Regulation M,[21] which, by its terms, applies exclusively to the NASDAQ Stock Market.

Phlx is also amending Rule 3230, which governs trading in Commodity-Related Securities,[22] to adopt provisions governing the activities of marker [sic] makers in Commodity-Related Securities. The rule is designed to ensure that trading in a Commodity-Related Security by a market maker is not improperly influenced by information about trading in the underlying commodity from within the market maker's firm. Under the rule, which is identical to rules in effect [sic] NASDAQ and BX, a member organization acting as a registered market maker in a Commodity-Related Security must establish adequate information barriers when such market maker engages in inter-departmental communications.[23] For purposes of a Commodity-Related Security only, "inter-departmental communications" include communications to other departments within the same firm or the firm's affiliates that involve trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

A member organization acting as a registered market maker in a Commodity-Related Security must file with the Exchange's Regulation Department in a manner prescribed by such Department and keep current a list identifying all accounts for trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, in which the market maker holds an interest, over which it may exercise investment discretion, or in which it shares in the profits and losses. Moreover, a member organization acting as a registered market maker in a Commodity-Related Security may not act or register as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

A member organization acting as a registered market maker in a Commodity-Related Security must make available to the Exchange's Regulation Department such books, records or other information pertaining to transactions by such entity or registered or non-registered employees affiliated with such entity for its or their own accounts for trading commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, as may be requested by the Regulation Department. Finally, in connection with trading a Commodity-Related Security or commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying a Commodity-Related Security, the member organization acting as a market maker in a Commodity-Related Security may not use any material nonpublic information received from any person associated with the member organization or employee of such person regarding trading by such person or employee in the commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

In furtherance of allowing market making on PSX, Phlx is also amending Rule 3301 to provide for attributable quotes and orders (*i.e.*, trading interest displayed with price and size next to a market maker's MPID); to specify that quotations may include a non-displayed reserve size in order to replenish the displayed portion of a quotation when it is reduced to a size of less than one round lot;[24] to add definitions of "PSX Market Maker" and "Quote"; and to provide that attributable trading interest will be displayed via PSX data feeds, with attribution to the Participant's MPID, along with non-attributable interest. As provided in proposed new Rule 3306(b), PSX Market Makers and Equities ECNs will be permitted to enter Quotes from 8:00 a.m. to 5 p.m. When open, Quotes will be processed as System Hours Day Orders (*i.e.*, orders that remain open while the PSX System is open, but do not remain on the book overnight). Phlx is also making conforming changes to the following existing rules by adding references to quotations, quotes/orders, market makers, and/or certain activities or market makers, as appropriate to reflect the scope of PSX's rules to embrace market making and quoting activity in addition to order entry: Rule 3100 (Trading Halts on PSX); Rule 3201 (Scope); Rule 3213(b) (Firm Orders and Quotations); Rule 3221 (Suspension and Termination of Quotations and Order Entry); Rule 3225 (Obligation to Provide Information); Rule 3226 (Limitation of Liability); Rule 3301(g) (Order Size); Rule 3306 (Entry and Display of Quotes and Orders); and Rule 3310 (Anonymity).

Minimum Quantity Orders

Phlx is proposing minor modifications to the operation of PSX's Minimum Quantity Order, such that it will be fully consistent with the comparable orders of NASDAQ and BX. "Minimum Quantity Orders" are orders that will not execute unless a specified minimum quantity of shares can be obtained. A Minimum Quantity Order provides a means by which a market participant may avoid partial executions of orders at sizes that it considers inadequate to achieve its purposes. For example, a market participant seeking to sell a large position in a trading session with high volatility may use the order type to avoid selling only a small portion of the order at the price it considers acceptable. A Minimum Quantity Order that posts to [sic] PSX book will be a Non-Displayed Order, and upon entry must have a size and a minimum quantity condition of at least one round lot. In the event that the shares remaining in the size of the order following a partial execution thereof are less than the minimum quantity specified by the market participant entering the order, the minimum quantity value of the order will be reduced to the number of shares remaining.

Thus, for example, if a market participant entered a Minimum Quantity Order with a size of 1,000 and a minimum quantity of 500, and the order was marketable against a 600 share order on the book, the remaining 400 shares of the Minimum Quantity Order would post to the book with a minimum quantity restriction of 400 shares. Under current PSX rules, if the size of a Minimum Quantity Order is reduced to less than one round lot due to a partial execution, the minimum quantity condition on the order will be removed. PSX proposes to delete this condition, which was formerly necessary to ensure that the order would

[21] 17 CFR 242.103.

[22] A "Commodity-Related Security" is a security that is issued by a trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in an combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives.

[23] Member organizations should refer to NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures (NASD Notice to Members 91–45) for guidance on the "'minimum elements' of adequate Chinese Wall policy and procedures."

[24] A new timestamp is applied when the order is replenished from reserve size.

not have a higher execution priority under PSX's execution algorithm than other non-displayed odd-lot orders solely by virtue of its minimum quantity condition. In all other respects, the operation of the order will remain unchanged.

Midpoint Peg Post-Only Order

Phlx is adopting as a new order type the Midpoint Peg Post-Only Order.[25] Like a regular Midpoint Peg Order, a Midpoint Peg Post-Only Order is a non-displayed order that is priced at the midpoint between the national best bid and best offer ("NBBO") (as determined using the consolidated tape). However, like a Post-Only Order, the Midpoint Peg Post-Only Order does not remove liquidity from PSX upon entry if it would lock a non-displayed order on PSX. Rather, the Midpoint Peg Post-Only Order will post and lock the pre-existing order, but will remain undisplayed.[26] For example, if the NBBO is $1.10 bid and $1.11 offer, and there is a non-displayed Midpoint Peg Order to buy on the book at $1.105, an incoming Midpoint Peg Post-Only Order to sell will also post to the book at $1.105 and will not execute. By contrast, a regular Midpoint Peg Order would execute against the posted order at $1.105. If the Midpoint Peg Post-Only Order would cross a pre-existing order, however, the crossing orders will execute.

Midpoint Peg Post-Only Orders that post to the book and lock a pre-existing non-displayed order will execute against an incoming order only if the price of the incoming buy (sell) order is higher (lower) than the price of the pre-existing order. This restriction ensures that the non-displayed Midpoint Peg Post-Only Order will not execute before an order already on the book unless the incoming order against which it executes has price priority over the already posted order. For example, if the NBBO is $1.10 bid and $1.11 offer, and there is a non-displayed Midpoint Peg Order to buy on the book at $1.105, an incoming Midpoint Peg Post-Only Order to sell will also post to the book at $1.105 and will not execute. If another Midpoint Peg Order to buy is entered, it would also post to the book, rather than executing against the Midpoint Peg Post-Only Order. On the other hand, an order to buy at $1.11 would execute against the Midpoint Peg Post-Only Order, receiving $0.005 price improvement. Thus, the order provides a means by which a market participant may offer price improvement in exchange for receiving greater certainty with respect to its trading costs.

If a Midpoint Peg Order and a Midpoint Peg Post-Only Order are locked, and a Midpoint Peg Order is entered on the same side of the market as the Midpoint Peg Post-Only Order, the new order will execute against the original Midpoint Peg Order. Thus, in the above example, if a Midpoint Peg Order to buy at $1.105 is locked by a Midpoint Peg Post-Only Order to sell at $1.105, a subsequent Midpoint Peg Order to sell at $1.105 would execute against the original buy order. This is the case because the market participant entering the Midpoint Peg Post-Only Order has expressed its intention not to execute against posted liquidity, and therefore cedes execution priority to the new order.

A Midpoint Peg Post-Only Order will only be posted to the book at a price of more than $1. Accordingly, if the midpoint between the NBBO for a particular stock is $1 or less, all Midpoint Peg Post-Only Orders for that stock will be rejected or cancelled, as applicable. This limitation reflects the fact that the difference between the inside market and the midpoint for stocks at this price level is likely to be extremely small, and therefore the price improvement opportunities associated with the order in such stocks are unlikely to justify making the order available.[27]

Phlx believes that the Midpoint Peg Post-Only Order will serve a valid purpose in the current market environment. Although SEC Rule 610[28] limits access fees, market participants remain focused on their trading costs, and in a pricing environment characterized by fees on one side of a trade being used to fund rebates on the other side,[29] it is entirely understandable that some market participants may wish to structure their trading activity in a manner that is more likely to avoid a fee and earn a rebate. In this respect, the order is conceptually similar to a limit order: just as a limit order allows market participants to control the price that they will pay or receive for a stock, the proposed new order will allow market participants to exercise greater control over the fees associated with order execution. Moreover, the order type will operate in a manner calculated to require Participants posting the order generally to provide price improvement in order to justify the ability to earn a rebate. Thus, as long as a Midpoint Peg Post-Only Order is locking a pre-existing Midpoint Order, the order can execute only if it offers price improvement. By means of price improvement, the market participant effectively shares a portion of its rebate with the counterparty with whom it is matched, thereby reducing its trading costs as well.

Post-Only Orders

Phlx proposes to modify the functionality associated with its existing Post-Only Order on PSX.[30] Currently, if a Post-Only Order would lock or cross an order on PSX at the time of entry, the order is re-priced and displayed by the System to one minimum price increment (*i.e.*, $0.01 or $0.0001) below the current low offer (for bids) or above the current best bid (for offers). Thus, if the best bid and best offer on the PSX book were $10.00 × $10.05, and a market participant entered a Post-Only Order to buy at $10.05, the order would be re-priced and displayed at $10.04. This aspect of the functionality of the order is not changing.[31] Under the

[25] The order on PSX will be identical to the comparable order on NASDAQ. *See* Securities Exchange Act Release No. 64430 (May 6, 2011), 76 FR 27699 (May 12, 2011) (SR–NASDAQ–2011–059); Securities Exchange Act Release No. 68015 (October 9, 2012), 77 FR 63368 (October 16, 2012) (SR–NASDAQ–2012–111).

[26] SEC Rule 610(d) under Regulation NMS, 17 CFR 242.610(d), restricts displayed quotations that lock protected quotations in NMS Stocks, but does not apply to non-displayed trading interest.

[27] NASDAQ's corresponding rule includes language stipulating the treatment of posted Midpoint Peg Post-Only Orders for purposes of calculating the best bid and offer within NASDAQ under rules governing the opening cross (NASDAQ Rule 4752), halt and imbalance cross (NASDAQ Rule 4753), and closing cross (NASDAQ Rule 4754). Because PSX does not have comparable rules, this language is omitted from the proposed rule.

[28] 17 CFR 242.610.

[29] It should be noted that some markets, such as NASDAQ OMX BX, the BATS–Y Exchange, the EDGA Exchange, and CBSX, feature fees for liquidity providers and rebates for liquidity takers, while all other cash equities markets now have a taker fee/maker rebate structure.

[30] An identical change was mistakenly filed by Phlx (Securities Exchange Act Release No. 64563 (May 27, 2011), 76 FR 32255 (June 3, 2011) (SR–Phlx–2011–70)) at the same time as the change was made by NASDAQ (Securities Exchange Act Release No. 64552 (May 26, 2011), 76 FR 31998 (June 2, 2011) (SR–NASDAQ–2011–070)), with the error being corrected through a subsequent filing (Securities Exchange Act Release No. 67351 (July 5, 2012), 77 FR 40922 (July 11, 2012) (SR–Phlx–2012–84)). The prior filing to make this change was mistaken because the proposed change was incompatible with PSX's price/size/pro rata algorithm. With PSX's move to a price/time algorithm, the change to the functioning of the Post-Only Order is now possible.

[31] In addition, if the order would lock or cross a protected quotation of another market center, the order will be accepted at the locking price (*i.e.*, the current low offer (for bids) or to [sic] the current best bid (for offers)) and displayed by the System to one minimum price increment (i.e., $0.01 or $0.0001) below the current low offer (for bids) or above the current best bid (for offers). Thus, if the national best bid and offer, as displayed on another market center, was $10 × $10.05, an order to buy at $10.05 or higher would be accepted at the locking price of $10.05, but would be displayed at $10.04.

Continued

proposed change, if a Post-Only Order would cross an order on the System, the order will be repriced as described above *unless* the value of price improvement associated with executing against a resting order equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the book and subsequently provided liquidity, in which case the order will execute.

As provided by Rule 3307, in such an instance the price improvement accrues to the party entering the order that takes liquidity. Thus, if a sell order is on the book at $10 and a Post-Only Order to buy at $10.01 is entered, the Post-Only Order will execute at $10.

The modified Post-Only Order will serve to allow the market participant entering the order to post its order at its desired price, unless the amount of price improvement makes execution of the order economically advantageous to the entering participant. Thus, the revised order type is designed to provide market participants with better control over their execution costs and to provide them with a means to offer price improvement opportunities to other market participants.

Minimum Life Order

Phlx is proposing to eliminate PSX's Minimum Life Order. The Minimum Life Order is a Displayed Order that may not be cancelled for a period of 100 milliseconds following its receipt. The order type was not used by the vast majority of PSX's market participants, and is not currently offered by any other national securities exchange. Accordingly, PSX believes that its elimination will not have any material effect on market participants or on the cash equities markets in general.

Price To Comply Post Order

Phlx is proposing to introduce the Price To Comply Post Order on PSX, with terms and conditions identical to those found on NASDAQ and BX. The Price To Comply Post Order provides a straightforward means by which market makers and others may post liquidity at or near the inside market in compliance with the restrictions on locked and crossed markets and trade-throughs under Rules 610(d) and 611 under Regulation NMS.[32] If, at the time of its entry, a Price To Comply Post Order would lock or cross the Protected Quotation of another trading center or would execute at a price inferior to the Protected Quotation of another trading center, the order will be re-priced and displayed to one minimum price increment (*i.e.*, $0.01 or $0.0001, depending on the price of the security being traded) below the current low offer (for bids) or to one penny above the current best bid (for offers). Price to Comply Post Orders are not routable.[33]

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[34] in general, and with Section 6(b)(5) of the Act[35] 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 proposed adoption of [sic] price/time execution algorithm will allow PSX to operate in a manner consistent with every other national securities exchange that trades cash equities securities, a market model that the Commission has repeatedly determined to be consistent with the Act.[36] Thus, the change with regard to the execution algorithm will remove impediments to and perfect the mechanism of a free and open market and a national market system by making PSX's functionality more consistent with that of other exchanges. Similarly, the proposed rules regarding maker [sic] making, including the obligations of market makers to adhere to specific quoting and pricing obligations, have previously been determined by the Commission to be consistent with the Act.[37] Specifically, in approving rules governing market maker quoting and pricing obligations such as those proposed by Phlx, the Commission found that "the proposed rule should assure that quotations submitted by market makers to an exchange or FINRA's ADF, and displayed to market participants, bear some relationship to the prevailing market price, and thus should promote fair and orderly markets and the protection of investors."[38]

The proposed changes to order type functionality will remove impediments to and perfect the mechanism of a free and open market and the national market system because they will conform PSX's rules to functionality that is already in use and accepted by market participants at other exchanges. Specifically, with regard to the change to the Minimum Quantity Order, the proposed change will allow the operation of the order to better reflect the intention of the market participants entering the order, since it will allow a minimum quantity condition to continue to attach to an order at a size below one round lot. The change will also make the operation of the order conform to functionality that was implemented on an immediately effective basis on NASDAQ and BX.[39]

Similarly, the proposed Midpoint Peg Post-Only Order is identical to the order that is operative on NASDAQ, and which was introduced and modified through immediately effective filings.[40] As described in the original NASDAQ filing with respect to the order, the Midpoint Peg Post-Only Order is designed to provide market participants with better control over their execution costs and to provide a means to offer price improvement opportunities.

The modified Post Only Order, which adopts changes filed by NASDAQ and BX on an immediately effective basis,[41]

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Subsequently, an incoming order to sell at $10.05 or lower would be matched against the Post-Only buy order. In this case, the incoming sell order would receive price improvement.

[32] 17 CFR 242.610(d), 611.

[33] With respect to the foregoing changes to the availability of order types, Phlx is amending Rule 3305 to reflect the changes in a list of available order types.

[34] 15 U.S.C. 78f.

[35] 15 U.S.C. 78f(b)(5).

[36] *See, e.g.*, Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001); Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48).

[37] *See, e.g.*, Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving NASDAQ market maker rules as part of its registration as a national securities exchange); Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48); Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484, 69485 (November 12, 2010) (SR–BATS–2010–025, SR–BX–2010–66, SR–CBOE–2010–087, SR–CHX–2010–22, SR–FINRA–2010–049, SR–NASDAQ–2010–115, SR–NSX–2010–12, SR–NYSE–2010–69, SR–NYSEAmex–2010–96, SR–NYSEArca–2010–83) (approving corresponding marketwide rules with respect to market maker quoting and pricing obligations) ("2010 Order").

[38] 2010 Order, 75 FR at 69485.

[39] Securities Exchange Act Release No. 65536 (October 12, 2011), 76 FR 64411 (October 18, 2011) (SR–NASDAQ–2011–140); Securities Exchange Act Release No. 65535 (October 12, 2011), 76 FR 64416 (October 18, 2011) (SR–BX–2011–069).

[40] *See* Securities Exchange Act Release No. 64430 (May 6, 2011), 76 FR 27699 (May 12, 2011) (SR–NASDAQ–2011–059); Securities Exchange Act Release No. 68015 (October 9, 2012), 77 FR 63368 (October 16, 2012) (SR–NASDAQ–2012–111).

[41] Securities Exchange Act Release No. 64552 (May 26, 2011), 76 FR 31998 (June 2, 2011) (SR–NASDAQ–2011–070); Securities Exchange Act Release No. 64615 (June 7, 2011), 76 FR 34284 (June 13, 2011) (SR–BX–2011–033).

is similarly designed to provide market participants with better control over their execution costs. Specifically, the changes will ensure that a Post Only Order will post to the PSX book only in circumstances where an immediate execution of the order would not be more economically advantageous to the market participant that entered it.

The proposed Price to Comply Post Order is consistent with the Act because it provides market makers and other market participants with a straightforward mechanism to enter an order that reprices to ensure that it does not lock or cross or trade through the Protected Quotation of another market center. The rule has previously been approved for use at NASDAQ and BX.[42]

Finally, Phlx believes that the proposed elimination of the Minimum Life Order is consistent with the Act because the order has not been widely used and has not been adopted at any other exchange. Accordingly, Phlx believes that offering an order of this nature is not a required aspect of the operation of a national securities exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Phlx 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. Specifically, since its introduction with a price/size execution algorithm, PSX has not been a significant competitor in the market for execution of cash equities orders, with a market share generally below 1 percent of total consolidated volume. By means of the changes proposed in this rule filing, Phlx hopes to enhance PSX's competitiveness by offering functionality that is more consistent with that offered by other national securities exchanges. In light of the highly competitive nature of these markets, however, PSX will be successful in attracting additional order flow only if its overall offering of functionality and pricing is successful in convincing market participants to direct order flow to it, rather than the larger number of exchanges and alternative trading systems that compete with it. Accordingly, Phlx does not believe that the changes proposed herein will impose any burden on competition, because they do not provide any means through which PSX may diminish the free choice with regard to order routing decisions that exists in the market. To the extent, however, that the changes make PSX a more attractive trading venue, they have the potential to enhance competition by providing market participants with additional choices when making such decisions.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (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–Phlx–2013–24 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–24. 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–Phlx–2013–24 and should be submitted on or before April 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06880 Filed 3–25–13; 8:45 am]

**BILLING CODE 8011–01–P**

[42] Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001); Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48).

[43] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69195; File No. SR–NASDAQ–2012–137]**

## Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3 Thereto, To Establish the Market Quality Program

March 20, 2013.

On December 7, 2012, The NASDAQ Stock Market LLC ("Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("SEC" or "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 establish the Market Quality Program ("MQP" or "Program") on a pilot basis.[3] On December 20, 2012, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19–4.

[3] The Exchange states that SR–NASDAQ–2012–137 replaces SR–NASDAQ–2012–043, which was withdrawn by the Exchange. *See* Securities Exchange Act Release Nos. 66765 (Apr. 6, 2012), 77 FR 22042 (Apr. 12, 2012) (SR–NASDAQ–2012–043)

Continued

Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on December 31, 2012.[4] The Commission initially received two comment letters on the proposed rule change.[5] On February 7, 2013, the Exchange submitted Amendment No. 2 to the proposed rule change. On February 8, 2013, the Exchange withdrew Amendment No. 2 and filed Amendment No. 3 to the proposed rule change.[6] On February 14, 2013, the Commission extended the time period during which it must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to March 31, 2013.[7] The Commission subsequently received one additional comment letter on the proposed rule change.[8] This order grants approval of the proposed rule change, as modified by Amendment Nos. 1 and 3.[9]

## I. Description of the Proposal

As set forth in more detail in the Notice,[10] the Exchange is proposing to amend its rules to add NASDAQ Rule 5950 (Market Quality Program) to establish an MQP listing fee and related market maker incentive program, and to adopt interpretation IM–2460–1 to exempt the MQP from NASDAQ Rule 2460 (Payment for Market Making), on a pilot basis. The MQP will be a voluntary program, and participation in the program will be at the discretion of each MQP Company (as defined below), subject to the requirements set forth in the proposed rule.

### *A. Proposed NASDAQ Rule 5950 (Market Quality Program)*

The Exchange states that the proposed MQP is a voluntary program designed to promote market quality in certain securities listed on the Exchange ("MQP Securities").[11] MQP Securities will consist of ETF securities issued by an MQP Company [12] and listed on the Exchange pursuant to NASDAQ Rule 5705.[13] In addition to the standard (non-MQP) Exchange listing fee applicable to an MQP Security set forth in the NASDAQ Rule 5000 Series (consisting of NASDAQ Rules 5000–5999), an MQP Company may incur a fee ("MQP Fee"), on behalf of an MQP Security, to participate in the Program.[14] The Exchange represents that an MQP Fee will be used for the purpose of incentivizing one or more Market Makers [15] in the MQP Security ("MQP Market Maker") to enhance the market quality of the MQP Security.[16] Subject to the conditions set forth in the proposed rule, this incentive payment will be credited ("MQP Credit") to one or more MQP Market Makers that make a high-quality market in the MQP Security pursuant to the MQP.[17]

#### 1. Application and Withdrawal

An MQP Company that wants to have its MQP Security participate in the MQP, and a Market Maker that wants to participate in the MQP, will each be required to submit an application in the form prescribed by the Exchange.[18] The Exchange can, on a program-wide basis, limit the number of MQP Securities that any one MQP Company may have in the MQP.[19] In determining whether to limit the number of MQP Securities per MQP Company, the Exchange will consider all relevant information, including whether a restriction, if any, is consistent with the goals of the MQP and in the best interest of the Exchange, the MQP Company, and investors.[20] The Exchange can also, on a program-wide basis, limit the number of MQP Market Makers permitted to register in an MQP Security.[21] If such a limit is established, the Exchange will allocate available MQP Market Maker registrations in a first-come-first-served fashion based on successful completion of an MQP Market Maker application.[22]

The Exchange will provide notification on its Web site regarding: (i) The acceptance of an MQP Company (on behalf of an MQP Security) and an MQP Market Maker into the MQP; (ii) the total number of MQP Securities that any one MQP Company may have in the MQP; (iii) the names of MQP Securities and the MQP Market Maker(s) in each MQP Security, and the dates that an MQP Company, on behalf of an MQP Security, commenced participation in and withdrew or was terminated from

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and 68378 (Dec. 6, 2012), 77 FR 74042 (Dec. 12, 2012). *See also* Notice, *infra* note 4, at 77141, n.3.

[4] Securities Exchange Act Release No. 68515 (Dec. 21, 2012), 77 FR 77141 (Dec. 31, 2012) ("Notice").

[5] *See* Letter From Rey Ramsey, President & CEO, TechNet, dated Jan. 22, 2013 ("TechNet Letter") and Letter From Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated Jan. 30, 2013 ("Weaver Letter").

[6] The Exchange withdrew Amendment No. 2 due to a technical error in the amendment. In Amendment No. 3, the Exchange clarified that: (i) The Exchange may limit on a Program-wide basis the number of Exchange-Traded Funds ("ETFs") per MQP Company that can participate in the MQP, and that the Exchange would not be limiting the number of actual shares issued by an MQP Company for a particular ETF participating in the Program; (ii) the Exchange will provide in the monthly public report to the Commission relating to the MQP (a) information on the market quality of MQP Securities after they exceed the threshold and "graduate" from the Program pursuant to proposed Rule 5950(d)(1)(A), and (b) its analysis of the information to be included in the report and its assessment of the efficacy of the MQP; and (iii) the Exchange will provide to the Commission data and analyses about comparable ETFs that are listed on the Exchange but that are not in the MQP, as well as any other MQP-related data and analyses requested by Commission staff for the purpose of evaluating the efficacy of the MQP. Amendment No. 3 provides clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change, Amendment No. 3 does not require notice and comment.

[7] *See* Securities Exchange Act Release No. 68925 (Feb. 14, 2013), 78 FR 12116 (Feb. 21, 2013).

[8] *See* Letter from Albert J. Menkveld, Associate Professor of Finance, VU University Amsterdam, dated Feb. 18, 2013 ("Menkveld Letter").

[9] Today the Commission also is granting exemptive relief from Rule 102 under Regulation M concerning the MQP. *See* Securities Exchange Act Release No. 69196 (March 20, 2013) (Order Granting a Limited Exemption from Rule 102 of Regulation M Concerning the NASDAQ Stock Market LLC Stock's Market Quality Program Pilot Pursuant to Regulation M Rule 102(e)).

[10] *See* Notice, *supra* note 4.

[11] *See* proposed Rule 5950 Preamble.

[12] The term "MQP Company" means the trust or company housing the ETF or, if the ETF is not a series of a trust or company, then the ETF itself. *See* proposed Rule 5950(e)(5).

[13] *See* proposed Rule 5950(e)(1) (defining the term "MQP Security" to mean an ETF security issued by an MQP Company that meets all of the requirements to be listed on the Exchange pursuant to Rule 5705). The term "Exchange Traded Fund" includes Portfolio Depository Receipts and Index Fund Shares, which are defined in NASDAQ Rule 5705. *See* proposed Rule 5950(e)(2).

[14] *See* proposed Rules 5950 Preamble and 5950(b)(2). MQP Fees for MQP Securities will be paid by the Sponsors associated with the MQP Companies. *See* proposed Rule 5950(e)(5). *See also* proposed Rule 5950(b)(2)(C)(i) (requiring that the MQP Fee in respect of an ETF be paid by the Sponsor(s) of the ETF). The term "Sponsor" means the registered investment adviser that provides investment management services to an MQP Company or any of the adviser's parents or subsidiaries. *See* proposed Rule 5950(e)(5).

[15] The term "Market Maker" has the meaning given in NASDAQ Rule 5005(a)(24). *See* proposed Rule 5950(e)(3).

[16] *See* proposed Rule 5950 Preamble.

[17] *See* proposed Rule 5950 Preamble. The MQP Credit will be paid to eligible MQP Market Maker(s) based on quoting and trading activity in the MQP Security, as discussed in further detail below. *See infra* notes 47–55 and accompanying text.

[18] *See* proposed Rule 5950(a)(1).

[19] *See* proposed Rule 5950(a)(1)(A). The Exchange clarified that this provision is intended to allow the Exchange, on a Program-wide basis, to limit the number of ETFs that any one MQP Company may have in the MQP, and that this provision would not allow the Exchange to limit the number of actual shares issued by any MQP Company for a particular ETF participating in the MQP. *See* Amendment No. 3, *supra* note 6.

[20] *See* proposed Rule 5950(a)(1)(B). Factors that could be considered by the Exchange include, but are not limited to, the current and expected liquidity characteristics of MQP Securities; the projected initial and continuing market quality needs of MQP Securities; and the trading characteristics of MQP Securities (*e.g.*, quoting, trading, and volume). *See* proposed Rule 5950(a)(1)(B)(i).

[21] *See* proposed Rule 5950(c)(3).

[22] *See* proposed Rule 5950(c)(3)(A).

the MQP; and (iv) any limit on the number of MQP Market Makers permitted to register in an MQP Security.[23]

After an MQP Company, on behalf of an MQP Security, has been in the MQP for not less than two consecutive quarters but less than one year, it can voluntarily withdraw from the MQP on a quarterly basis.[24] An MQP Company seeking to withdraw from the MQP must notify the Exchange in writing not less than one month prior to withdrawing from the MQP. The Exchange can determine to allow an MQP Company to withdraw from the MQP earlier.[25] In making this determination, the Exchange may take into account the volume and price movements in the MQP Security; the liquidity, size quoted, and quality of the market in the MQP Security; and any other relevant factors.[26] After an MQP Company, on behalf of an MQP Security, has been in the MQP for one year or more, it can voluntarily withdraw from the MQP on a monthly basis, provided that it has notified the Exchange in writing not less than one month prior to withdrawing from the MQP.[27] After an MQP Company, on behalf of an MQP Security, has been in the MQP for one year, the MQP and all obligations and requirements of the MQP will automatically continue on an annual basis, unless: (a) The Exchange terminates the MQP by providing not less than one month prior notice of intent to terminate; (b) the MQP Company, on behalf of an MQP Security, withdraws from the MQP pursuant to the proposed rule; (c) the MQP Company is terminated from the MQP pursuant to proposed Rule 5950(d); [28] or (d) the pilot Program is not extended or made permanent pursuant to a proposed rule change approved by the Commission under Section 19(b)[29] of the Exchange Act.[30]

After an MQP Market Maker has been in the MQP for not less than one quarter, the MQP Market Maker can withdraw from the MQP on a quarterly basis. The MQP Market Maker must notify the Exchange in writing one month prior to withdrawing from the MQP.[31]

The Exchange will provide notification on its Web site when it receives notification that an MQP Company, on behalf of an MQP Security, or an MQP Market Maker intends to withdraw from the MQP, including the date of actual withdrawal or termination from the MQP.[32]

2. MQP Company Eligibility and Fee Liability

For an MQP Company, on behalf of an MQP Security, to be eligible to participate in the MQP, the following conditions must be satisfied: (i) The Exchange must have accepted the MQP Company's application in respect of the MQP Security and must have accepted the application of at least one MQP Market Maker in the same MQP Security; (ii) the MQP Security must meet all requirements to be listed on the Exchange as an ETF; (iii) the MQP Security must meet all Exchange requirements for continued listing at all times the MQP Security is in the MQP; and (iv) while an MQP Company lists an MQP Security, the MQP Company must, on a product-specific Web site for each product, indicate that the product is in the MQP and provide the link to the Exchange's MQP Web site.[33]

An MQP Company participating in the MQP will incur an annual basic MQP Fee of $50,000 per MQP Security ("Basic MQP Fee"), which must be paid to the Exchange prospectively each quarter.[34] An MQP Company may also, on an annual basis, voluntarily select to incur an annual supplemental MQP Fee per MQP Security ("Supplemental MQP Fee"), which must be paid to the Exchange prospectively each quarter.[35] The Basic MQP Fee and Supplemental MQP Fee cannot exceed $100,000 per year when combined.[36] The amount of the Supplemental MQP Fee, if any, for each MQP Security will be determined by the MQP Company initially and will remain the same for one year.[37] The Exchange will provide notification on its Web site regarding the amount, if any, of any Supplemental MQP Fee determined by an MQP Company per MQP Security.[38]

The Basic MQP Fee and Supplemental MQP Fee, if any, will be in addition to the standard (non-MQP) NASDAQ listing fee applicable to the MQP Security and will not offset the standard listing fee.[39] The Exchange will prospectively bill each MQP Company for the quarterly MQP Fee for each MQP Security.[40] Basic MQP Fees and the Supplemental MQP Fees will be credited to the NASDAQ General Fund.[41]

3. MQP Market Maker Eligibility and MQP Credit Distribution

For a Market Maker to be eligible to participate in the MQP, the Exchange must have accepted the Market Maker's application in respect of an MQP Security and must have accepted the application of the MQP Company in respect of the same MQP Security.[42] In addition, to be eligible to receive a periodic MQP Credit out of the NASDAQ General Fund, MQP Market Makers must, when making markets in an MQP Security, meet the applicable Market Maker obligations pursuant to NASDAQ Rule 4613[43] and must also

[23] *See* proposed Rule 5950(a)(1)(C) and proposed Rule 5950(c)(3). The Exchange also will include on its Web site a statement about the MQP that sets forth a general description of the MQP as implemented on a pilot basis and a fair and balanced summation of the potentially positive aspects of the MQP (*e.g.*, enhancement of liquidity and market quality in MQP Securities) as well as the potentially negative aspects and risks of the MQP (*e.g.*, possible lack of liquidity and negative price impact on MQP Securities that withdraw or are terminated from the MQP), and indicates how interested parties can get additional information about products in the MQP. *See* proposed Rule 5950(a)(1)(C)(iv).

[24] *See* proposed Rule 5950(a)(2)(A).

[25] *Id.*

[26] *Id.*

[27] *See* proposed Rule 5950(a)(2)(B).

[28] Proposed Rule 5950(d) states, in part, that the MQP will terminate in respect of an MQP Security under the following circumstances: (A) An MQP Security sustains an average daily trading volume (consolidated trades in all U.S. Markets) of one million shares or more for three consecutive months; (B) an MQP Company, on behalf of an MQP Security, withdraws from the MQP, is no longer eligible to be in the MQP pursuant to the proposed rule, or its Sponsor ceases to make MQP Fee payments to the Exchange; (C) an MQP Security is delisted or is no longer eligible for the MQP; (D) an MQP Security does not have at least one MQP Market Maker for more than one quarter; or (E) an MQP Security does not, for two consecutive quarters, have at least one MQP Market Maker that is eligible for the MQP Credit.

[29] 15 U.S.C. 78s(b).

[30] *See* proposed Rule 5950(a)(3).

[31] *See* proposed Rule 5950(a)(2)(C).

[32] *See* proposed Rule 5950(a)(2)(D).

[33] *See* proposed Rule 5950(b)(1).

[34] *See* proposed Rule 5950(b)(2)(A). MQP Fees for MQP Securities will be paid by the Sponsors associated with the MQP Companies. *See supra* note 14.

[35] *See* proposed Rule 5950(b)(2)(B). As noted above, MQP Fees for MQP Securities will be paid by the Sponsors associated with the MQP Companies. *See supra* notes 14 and 34

[36] *Id.*

[37] *See* proposed Rule 5950(b)(2)(B)(i).

[38] *See* proposed Rule 5950(b)(2)(B)(ii).

[39] *See* proposed Rule 5950(b)(2)(C).

[40] *See* proposed Rule 5950(b)(2)(D). As discussed above, the MQP Fee for an MQP Security will be paid by the Sponsor(s) associated with the MQP Company. *See supra* note 14.

[41] *See* proposed Rule 5950(b)(2)(E).

[42] *See* proposed Rule 5950(c)(1)(A). The Exchange also could accept the MQP applications of multiple MQP Market Makers in the same MQP Security, subject to any limitation on the number of MQP Market Makers established pursuant to the proposed rule. *Id.*

[43] NASDAQ Rule 4613 states that market making obligations applicable to NASDAQ members that are registered as Market Makers include, among other things, the following quotation requirements and obligations: For each security in which a member is registered as a Market Maker, the member shall be willing to buy and sell the security for its own account on a continuous basis during regular market hours and shall enter and maintain a two-sided trading interest ("Two-Sided

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meet or exceed the following requirements on a monthly basis with respect to an MQP Security: (i) For at least 25% of the time when quotes can be entered in the Regular Market Session,[44] as averaged over the course of a calendar month, maintain at least 500 shares of attributable, displayed quotes or orders at the National Best Bid ("NBB") or better, and at least 500 shares of attributable, displayed quotes or orders at the National Best Offer ("NBO") or better; and (ii) for at least 90% of the time when quotes can be entered in the Regular Market Session, as averaged over the course of a month, maintain at least 2,500 shares of attributable, displayed posted liquidity on the NASDAQ Market Center[45] that are priced no wider than 2% away from the NBB, and at least 2,500 shares of attributable, displayed posted liquidity on the NASDAQ Market Center that are priced no wider than 2% away from the NBO.[46]

MQP Credits for each MQP Security will be calculated monthly and credited out of the NASDAQ General Fund quarterly on a pro rata basis to one or more eligible MQP Market Makers.[47] Each MQP Credit will be allocated 50% to a "Quote Share Payment" that is based on "Qualified Quotes," and 50% to a "Trade Share Payment" that is based on "Qualified Trades."[48] A "Qualified Quote" represents attributable and displayed liquidity (either quotes or orders) entered by an MQP Market Maker in an MQP Security that is posted within 2% of the NBBO.[49] A "Qualified Trade" represents a liquidity-providing execution in an MQP Security by an MQP Market Maker of a Qualified Quote on the NASDAQ Market Center.[50] Quote Share Payments will be based in equal proportions on: (a) Average quoted size at or better than the NBBO; and (b) average time spent quoting at or better than the NBBO.[51] Trade Share Payments will be based upon each MQP Market Maker's share of total Qualified Trades in an MQP Security executed on the NASDAQ Market Center.[52] Quote Share Payments and Trade Share Payments will be composed of Basic MQP Fees and Supplemental MQP Fees, if any.[53]

An MQP Credit will be credited quarterly to an MQP Market Maker on a pro rata basis for each month during the preceding quarter that an MQP Market Maker is eligible to receive a credit pursuant to the proposed rule.[54] The calculation to establish the eligibility of an MQP Market Maker will be done on a monthly basis.[55]

4. Termination of the MQP

The MQP will terminate in respect of an MQP Security under any of the following circumstances: (i) The MQP Security sustains an average daily trading volume (consolidated trades in all U.S. markets) ("ATV") of 1,000,000 shares or more for three consecutive months; (ii) an MQP Company, on behalf of an MQP Security, withdraws from the MQP, is no longer eligible to be in the MQP, or its Sponsor ceases to make MQP Fee payments to the Exchange; (iii) the MQP Security is delisted or is no longer eligible for the MQP; (iv) the MQP Security does not have at least one MQP Market Maker for more than one quarter; or (v) the MQP Security does not, for two consecutive quarters, have at least one MQP Market Maker that is eligible for MQP Credit.[56] Any MQP Credits remaining upon termination of the MQP in respect of an MQP Security will be distributed on a pro rata basis to the MQP Market Makers that made a market in the MQP Security and were eligible to receive MQP Credits pursuant to the proposed rule.[57] Termination of an MQP Company, MQP Security, or MQP Market Maker from the MQP will not preclude the Exchange from allowing re-entry into the MQP where the Exchange deems proper.[58]

5. Pilot Basis

To provide the Exchange, the Commission, and other interested parties an opportunity to evaluate the impact of the MQP on the quality of markets in MQP Securities, the Exchange has proposed to implement the MQP as a one-year pilot program that will commence when the MQP is implemented by the Exchange's acceptance of an MQP Company, on behalf of an MQP Security, and relevant MQP Market Maker into the MQP. The MQP will end one year after implementation, unless extended pursuant to a proposed rule change approved by the Commission under Section 19(b) of the Exchange Act.[59]

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Obligation") that is identified to NASDAQ as the interest meeting the obligation and is displayed in NASDAQ's quotation montage at all times. Interest eligible to be considered as part of a Market Maker's Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that a Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. Unless otherwise designated, a "normal unit of trading" shall be 100 shares. After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in NASDAQ to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the NASDAQ book that will satisfy this obligation. *See* Notice, *supra* note 4, at 77148, n.68.

[44] The term "Regular Market Session" has the meaning given in NASDAQ Rule 4120(b)(4)(D). *See* proposed Rule 5950(e)(6).

[45] The term "NASDAQ Market Center" has the meaning given in NASDAQ Rule 4751(a). *See* proposed Rule 5950(e)(4).

[46] *See* proposed Rule 5950(c)(1)(B). The Exchange provides the following examples to illustrate these market quality requirements:

Regarding the first market quality standard (25%), in an MQP Security where the NBBO is $25.00 × $25.10, for a minimum of 25% of the time when quotes can be entered in the Regular Market Session as averaged over the course of a month, an MQP Market Maker must maintain bids at or better than $25.00 for at least 500 shares and must maintain offers at or better than $25.10 for at least 500 shares. Thus, if there were 20 trading days in a given month and the MQP Market Maker met this requirement 20% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions and 40% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions then the MQP Market Maker would have met the requirement 30% of the time in that month.

Regarding the second market quality standard (90%), in an MQP Security where the NBBO is $25.00 × $25.10, for a minimum of 90% of the time when quotes can be entered in the Regular Market Session as averaged over the course of a month, an MQP Market Maker must post bids for an aggregate of 2,500 shares between $24.50 and $25.00, and post offers for an aggregate of 2,500 shares between $25.10 and $25.60. Thus, if there were 20 trading days in a given month and the MQP Market Maker met this requirement 88% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions and 98% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions then the MQP Market Maker would have met the requirement 93% of the time in that month.

*See* Notice, *supra* note 4, at 77148–49, n.71.

[47] *See* proposed Rule 5950(c)(2). If only one MQP Market Maker meets its obligations under the proposal with respect to an MQP Security, the entire MQP Credit available for that MQP Security will be distributed by the Exchange to that MQP Market Maker out of the NASDAQ General Fund. If multiple MQP Market Makers satisfy their obligations with respect to an MQP Security, the available MQP Credit for the quarter will be distributed pro rata among them. *See* Notice, *supra* note 4, at 77150. If no MQP Market Maker is eligible to receive an MQP Credit, the MQP Fee relating to the MQP Security will remain in the Exchange's General Fund. *See id.* at 77147.

[48] *See* proposed Rule 5950(c)(2)(A).

[49] *See* proposed Rule 5950(c)(2)(A)(i).

[50] *See* proposed Rule 5950(c)(2)(A)(ii).

[51] *See* proposed Rule 5950(c)(2)(B)(ii).

[52] *See* proposed Rule 5950(c)(2)(B)(i).

[53] *See* proposed Rule 5950(c)(2)(B)(iii). As discussed above, MQP Credits will be credited out of the NASDAQ General Fund. *See supra* note 47 and accompanying text.

[54] *See* proposed Rule 5950(c)(2)(C).

[55] *Id.* For example, if during a quarter an MQP Market Maker was eligible to receive a credit for two out of three months, the MQP Market Maker would receive a quarterly pro rata MQP Credit for those two months. *Id.*

[56] *See* proposed Rule 5950(d)(1).

[57] *See* proposed Rule 5950(d)(2). As discussed above, if no Market Maker is eligible to receive MQP Credits pursuant to the proposed rule, the MQP Fee will remain in the Exchange's General Fund. *See supra* note 47.

[58] *See* proposed Rule 5950(d)(3).

[59] *See* proposed Rule 5950(f).

During the pilot period, the Exchange will periodically provide information to the Commission about market quality in respect of the MQP. Specifically, the Exchange will submit monthly reports to the Commission about market quality in respect of the MQP (and will make these monthly reports public). The reports will include data and analysis with respect to MQP Securities that are in the Program, as well as data and analysis about the market quality of MQP Securities that exceed the one million ATV threshold and "graduate" from the Program pursuant to proposed Rule 5950(d)(1)(A).[60] The reports will compare, to the extent practicable, securities before and after they are in the MQP, and will include information regarding the MQP such as: (i) Rule 605 metrics;[61] (ii) volume metrics; (iii) the number of MQP Market Makers; (iv) spread size; and (v) the availability of shares at the NBBO.[62] These reports also will include the Exchange's analysis of the information and assessment of the efficacy of the MQP.[63] In addition, the Exchange will provide similar data and analyses to the Commission about comparable ETFs that are listed on the Exchange but that are not in the MQP, as well as any other MQP-related data and analyses requested by Commission staff for the purpose of evaluating the efficacy of the MQP.[64] The Exchange will post the monthly reports on its Web site.[65] The first report will be submitted within sixty days after the MQP becomes operative.[66]

*B. Proposed Interpretation IM–2460–1 (Market Quality Program)*

As part of its proposal to establish the MQP by adding Rule 5950, the Exchange is amending NASDAQ Rule 2460 (Payments for Market Making), which prohibits direct or indirect payment by an issuer to a Market Maker, to adopt a new interpretive provision to the rule.[67] Specifically, the Exchange is proposing to adopt new interpretation IM–2460–1 (Market Quality Program) to provide that Rule 2460 will not be applicable to a member that is accepted into the MQP pursuant to proposed Rule 5950 (or to a person that is associated with that member) for its conduct in connection with the MQP.[68]

*C. Information Bulletin and Surveillance*

The Exchange will issue to its members an information bulletin about the MQP prior to operation of the Program.[69]

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the MQP Securities on the Exchange during all trading sessions and to detect and deter violations of the Exchange's rules and applicable federal securities laws. Trading of the MQP Securities through the Exchange will be subject to FINRA's surveillance procedures for derivative products including ETFs.[70] The Exchange may obtain information through the Intermarket Surveillance Group ("ISG") from other exchanges that are members or affiliates of ISG and from listed MQP Companies and public and non-public data sources such as, for example, Bloomberg.

**II. Summary of Comment Letters**

The Commission received three comment letters in support of the proposed rule change.[71]

One commenter believes that the proposed MQP would be an important, positive first step towards addressing the lack of liquidity for many securities in today's market.[72] This commenter states its belief that the MQP is designed to encourage liquidity where it generally has not flourished, and would make securities that participate in the Program more attractive to a broader range of investors.[73] This commenter also believes that the MQP has the potential to benefit promising tech companies that today may lack liquid, quality markets.[74]

Another commenter states that it fully supports NASDAQ's proposal and urges the Commission to adopt a stance allowing direct payment between issuers and market makers.[75] This commenter states that direct payments from issuers to market makers are used in a number of markets outside of the U.S., and argues that such programs are very successful, resulting in lower transaction costs, lower volatility, and higher depth for investors.[76] This commenter points to academic studies finding that such programs applied to common stocks generally improve market quality and benefit social welfare.[77] This commenter cites an article finding that narrower spreads arising from designated market makers with an affirmative obligation to set spreads narrower than would exist otherwise will induce both uninformed and informed traders to trade more, which in turn will lead to increased price efficiency and faster price discovery.[78] This commenter also discusses his own study of payments from issuers of common stock to market makers and concludes that market makers entering into these types of agreements provide liquidity buffers against supply and demand shocks.[79] This commenter states that there have been no reports of manipulation attempts by issuers or abuses by market makers relating to paid-for market making arrangements abroad, and argues that the implementation of paying market makers to improve market quality in other countries probably improved investor confidence, as evidenced by the increase in volume and order size observed by

[60] *See* Amendment No. 3, *supra* note 6.

[61] 17 CFR 242.605.

[62] *See* Notice, *supra* note 4, at 77149. *See also* Amendment No. 3, *supra* note 6.

[63] *See* Amendment No. 3, *supra* note 6.

[64] *See* Notice, *supra* note 4, at 77149. *See also* Amendment No. 3, *supra* note 6.

[65] *See* Notice, *supra* note 4, at 77149.

[66] *Id.*

[67] In relevant part, Rule 2460 provides that "[n]o member or person associated with a member shall accept any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith."

[68] *See* proposed IM–2460–1. The Exchange notes that, based on discussions with the Financial Industry Regulatory Authority ("FINRA"), it expects FINRA to file a proposed rule change to exempt the MQP from FINRA Rule 5250. *See* Notice, *supra* note 4, at 77141, n.7. Similar to NASDAQ Rule 2460, FINRA Rule 5250 (formerly NASD Rule 2460) prohibits FINRA members from directly or indirectly accepting payment from an issuer of a security for acting as a market maker. *See* Securities Exchange Act Release No. 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997) (SR–NASD–97–29) ("NASD Rule 2460 Approval Order").

[69] *See* Notice, *supra* note 4, at 77149.

[70] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement with the Exchange. The Exchange states that it is responsible for FINRA's performance under this regulatory services agreement. *See* Notice, *supra* note 4, at 77149, n.79.

[71] *See* TechNet Letter, Weaver Letter, and Menkveld Letter, *supra* notes 5 and 8.

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *See* Weaver Letter, *supra* note 5, at 1.

[76] *See id.* at 1, 3–4 (citing Euronext, Deutsche Borse, NASDAQ OMX's European exchanges, and the Oslo Stock Exchange as markets where such programs have been successful).

[77] *See id.* at 1–2 (citing to the following studies: D.G. Weaver and A. Anand, "The Value of the Specialist: Empirical Evidence from the CBOE" *Journal of Financial Markets*, Vol. 9, no. 2, 100–118 (2006); D.G. Weaver, A. Anand, and C. Tanggaard "Paying for Market Quality" *Journal of Financial and Quantitative Analysis*, Vol. 44, 1427–1457 (2009) ("Weaver Study"); H. Bessembinder, J. Hao, and M. Lemmon "Why Designate Market Makers? Affirmative Obligations and Market Quality" *Working paper*, University of Utah (2006) ("Bessembinder Study"); and A. Charitou and M. Panayides, "Market Making in International Capital Markets" *International Journal of Managerial Finance*, Vol. 5, 50–80 (2009).

[78] *See id.* at 3 (citing to the Bessembinder Study, *supra* note 77).

[79] *See id.* at 2 (citing to the Weaver Study, *supra* note 77).

researchers.[80] The commenter further argues that the payments made to MQP Market Makers under the Exchange's proposal will not be of sufficient size to provide enough incentive for manipulation.[81]

Another commenter is supportive of an MQP pilot study and believes that the MQP could create value for an issuer by enabling an issuer to essentially guarantee liquidity in its stock.[82] The commenter views the proposed MQP as a form of "liquidity insurance" through which shareholders in the issuer agree *ex ante* to pay for a minimum liquidity guarantee to insure against uncertain future liquidity.[83] The commenter states that if future liquidity for a security is less uncertain, more investors should participate in the market for the security, creating a beneficial equilibrium of increased liquidity and increased investor participation.[84] Thus, the commenter asserts, the MQP could be a way to jump-start trading in a particular product at launch, and if there is intrinsic interest in the product, the product launch should have a better chance of being successful.[85] This commenter cites his own study of designated market maker contracts for common stocks at Euronext for the finding that such contracts on average improve the liquidity level, reduce liquidity risk, and reduce the size of pricing errors in such stocks, among other things,[86] and states that his study complements the generally favorable evidence from other European markets on designated market maker contracts.[87]

This commenter further notes that the risk that insider information at an issuer could reach an MQP Market Maker is low because the terms of the Program are fixed and specific, there is no need for communication between an issuer and the MQP Market Maker after the Program is in place, the Exchange monitors the performance of the MQP Market Makers, and the securities proposed for inclusion in the MQP (ETPs) are baskets of securities and therefore less likely to be affected by such insider information risk.[88] Finally, this commenter suggests that the pilot have a staggered introduction of MQP Securities with a randomized sequence, and a long enough pre-and post-event period (*e.g.*, three months) for each introduction to identify an effect, and that the Exchange provide the Commission with detailed reporting of all trades and quotes in all securities for a pre-event period and a post-event period (with MQP Market Maker trades and quotes flagged).[89]

## III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by Amendment Nos. 1 and 3 thereto, and finds that the proposed rule change, as modified by Amendment Nos. 1 and 3 thereto, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, as discussed below, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[90] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[91] which requires, among other things, that the rules of a national securities exchange 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, and that the rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Further, as required by Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.[92]

The MQP, as proposed to be implemented on a pilot basis, is designed to benefit investors, issuers and market participants by improving the market quality for ETFs that participate in the MQP. As proposed by the Exchange, to remain in the MQP and to receive quarterly MQP Credit payments out of the NASDAQ General Fund, each MQP Market Maker will be required to comply with monthly quoting requirements that are higher than the standard quoting requirements applicable to market makers in ETFs on the Exchange.[93] Each MQP Market Maker that complies with these heightened quoting obligations will receive a share of the MQP Credit based upon its size quoted, and time spent quoting, at or better than the NBBO, and based on its liquidity-providing executions of such quotes. In addition, the Program is separately designed to incentivize MQP Market Makers to compete with each other to receive the MQP Credit payments, as the payments will be distributed based on each MQP Market Maker's average quoted size and time spent quoting at or better than the NBBO as compared to other MQP Market Makers, and its share of total Qualified Trades in an MQP Security executed on the Exchange. Thus, the proposal is designed to incentivize MQP Market Makers to quote more often, and in greater quoted size, at the NBBO, potentially improving the market quality of the MQP Securities that participate in the MQP. This potential improved market quality, were it to occur, could benefit investors in the form of enhanced liquidity, narrowed spreads, and reduced transaction costs.[94]

In addition, because the quoted bid-ask spread in a security represents one of the main drivers of transaction costs for investors, and because high price volatility should generally deter

[80] *See id.* at 4 and 6.

[81] *See id.* at 7.

[82] *See* Menkveld Letter, *supra* note 8, at 2.

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *See id.* at 1–2 (citing to A.J. Menkveld & T. Wang, "How do designated market makers create value for small-caps?" *Manuscript*, VU University, Amsterdam (2011)).

[87] *See id.* at 2 (citing to the Weaver Study, *supra* note 77; M. Nimalendran & G. Petrella, "Do 'Thinly-Traded' Stocks Benefit from Specialist Intervention?" *Journal of Banking and Finance*, Vol. 27, 1823–54 (2003); and K. Venkataraman & A. Waisburd, "The Value of the Designated Market Maker" *Journal of Financial and Quantitative Analysis*, Vol. 42, 735–58 (2007)).

[88] *Id.* at 3.

[89] *Id.* at 4–5.

[90] 15 U.S.C. 78f(b)(4).

[91] 15 U.S.C. 78f(b)(5).

[92] *See* 15 U.S.C. 78c(f).

[93] Specifically, with respect to the monthly quoting requirement, an MQP Market Maker must quote at least 500 shares of attributable, displayed liquidity at the NBB or NBO 25% of the time during the Regular Market Session, and at least 2,500 shares of attributable, displayed liquidity within 2% of the NBB or NBO 90% of the time during the Regular Market Session.

[94] In support of the proposal, the Exchange argues that the MQP will, among other things, lower transaction costs and enhance liquidity in both ETFs and their components, making both more attractive to a broader range of investors, and that, in so doing, the MQP will help companies access capital to invest and grow. *See* Notice, *supra* note 4, at 77142. The Exchange asserts that being included in a successful ETF can provide the stocks of these companies with enhanced liquidity and exposure, enabling them to attract investors and access capital markets to fund investment and growth. *See id.* at 77142, n.12 and 77145, n.37–38 and accompanying text (citing to the testimony of Eric Noll, Executive Vice President, NASDAQ OMX, Before the Securities Subcommittee of the Senate Banking Committee October 19, 2011). Two commenters agree with the Exchange that the MQP will benefit the operating companies underlying ETFs in the MQP, in addition to the ETFs themselves. *See* Weaver Letter, *supra* note 5, at 4–5, and Menkveld Letter, supra note 8, at 3–4. As constructed, any potential benefit to operating companies from the MQP could be derived from the company being included within an index or other benchmark that underlies an ETF that participates in the MQP.

investors from trading low-liquidity ETFs, the MQP, were the potential benefits of the program to occur, should facilitate a more-efficient and less-uncertain trading environment for investors.[95] Furthermore, were the potential benefits of the MQP to occur, improving the liquidity of certain low-volume ETFs may help those ETFs better compete with more established ETFs that cover the same underlying assets and that have an advantage over new market entrants because they have already attracted a significant amount of liquidity.[96]

While the Commission believes that the Program has the potential to improve market quality of the MQP Securities participating in the Program, the Commission is concerned about unintended consequences of the Program. For example, the MQP could have the potential to distort market forces because the Program may act to artificially influence trading in ETFs that otherwise would not be traded. Similarly, the Commission recognizes concerns about the potential negative impact on an MQP Security, such as reduced liquidity and wider spreads, when an MQP Company withdraws or is terminated from the Program. While the Commission is mindful of these concerns, the Commission believes, for the reasons described below, that certain aspects of the Program could help mitigate these concerns.[97]

First, the proposal contains disclosure provisions that will help to alert and educate potential and existing investors in the MQP Securities about the Program. Specifically, the Exchange will disclose on its Web site the following information: (i) The identities of the MQP Companies, MQP Securities, and MQP Market Makers accepted into the MQP; (ii) any limits the Exchange may impose on the number of MQP Securities per MQP Company or MQP Market Makers per MQP Security in the MQP; (iii) for each MQP Security, the amount of the Supplemental MQP Fee, if any, per MQP Security that would be in addition to the fixed Basic MQP Fee of $50,000; (iv) any notification received by the Exchange that an MQP Company, on behalf of an MQP Security, or MQP Market Maker intends to withdraw from the MQP; and (v) the dates that an MQP Company, on behalf of an MQP Security, commences participation in and is withdrawn or terminated from the MQP. The Exchange also will include on its Web site a statement about the MQP that sets forth a fair and balanced summation of the potentially positive and negative aspects of the MQP. Furthermore, an MQP Company will be required to disclose on a product-specific Web site that the MQP Security is participating in the MQP and will be required to provide a link on that Web site to the Exchange's MQP Web site. This disclosure will help to inform investors and other market participants which securities are participating in the MQP, which and how many MQP Market Makers are assigned to each MQP Security, the amount of MQP Fees an MQP Company will incur as a result of participating in the MQP, the amount of MQP Credits the MQP Market Makers could potentially receive from the Exchange under the MQP, and the potential benefits and risks of the MQP. A wide variety of ETFs are currently listed and trading today, and the Commission believes that such disclosure could be helpful for investors and other market participants to discern which ETFs listed on the Exchange are and are not subject to the MQP and to make informed investment decisions with respect to ETFs.

Second, the Program is targeted at a subset of ETFs, namely those ETFs that are generally less liquid and which the Exchange believes might benefit most from the Program.[98] Specifically, as proposed, ETFs that are otherwise eligible for the Program will not be eligible if they have an ATV of 1,000,000 shares or more for three consecutive months. Likewise, the Program will terminate with respect to a particular MQP Security if the MQP Security sustains an ATV of 1,000,000 shares or more for three consecutive months.

Finally, as proposed by the Exchange, the MQP will be limited to a one-year pilot. The Commission believes that it is important to implement the MQP as a pilot. Operating the MQP as a pilot will allow assessment of whether the MQP is in fact achieving its goal of improving the market quality of MQP Securities, prior to any proposal or determination to make the Program permanent.[99] In addition, approval on a pilot basis will allow the assessment, prior to any proposal or determination to make the program permanent, of whether the MQP has any unintended impact on the MQP Securities, securities not in the MQP, or the market or market participants generally.

The Exchange has represented that during the pilot it will submit monthly reports to the Commission about market quality in respect of the MQP and that these reports will be posted on the Exchange's public Web site and will compare securities before and after they are in the MQP, to the extent practicable, and provide information regarding MQP Security volume metrics, the number of MQP Market Makers in MQP Securities, quotation spread and size statistics, and data and analysis about the market quality of MQP Securities that exceed the threshold and "graduate" from the Program pursuant to proposed Rule 5950(d)(1)(A), among other information and analyses.[100] The Exchange also has represented that it will provide to the Commission similar data and analyses about comparable products listed on the Exchange that are not participating in the MQP, as well as any other MQP-

[95] Transaction costs are generally defined as the penalty that an investor pays for transacting. Transaction costs have four components: commissions; bid/ask spread; market impact; and opportunity cost. *See* Grinold, Kahn. *Active Portfolio Management*, Second Edition, Chapter 16. An increase in bid-ask spreads will inevitably increase the transaction costs of an investor. In addition, transactions in low-liquidity securities have a higher market impact when compared to other more liquid securities. *See* Albert Kyle's (1985) measure of market impact (Kyle's Lambda), defining an inverse relationship between volume and price impact. Therefore, the lower the volume of the ETF or stock, the higher the market impact of any transaction in that stock. This last effect acts as a disincentive to trading that security. Therefore, an environment where an ETF trades more often and with a larger number of shares will reduce transaction costs both through the narrowing of spreads and lower market impact.

[96] This phenomenon can be described as economies of scale in the management of ETFs. Given that most ETFs track an index, it costs little more to run a fund with $20 billion in assets under management than one with $200 million in assets under management. As a result, ETFs that have established large asset holdings can be offered to investors with lower management fees, which in turn reinforces the cycle of growth for the large ETFs. *See* Latzko, David A., "Economies of Scale in Mutual Fund Administration." Pennsylvania State University, York Campus, 1998 (available at *http://www.personal.psu.edu/~dxl31/research/articles/mutual.pdf*) (analyzing economies of scale in mutual fund administration). *See also* Rompotis, Gerasimos Georgiou, "The German Exchange Traded Funds (December 4, 2012). *The IUP Journal of Applied Finance*, Vol. 18, No. 4, October 2012, pp. 62–82 (available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2184748*) (analyzing economies of scale in German ETFs).

[97] The concurrent exemptive relief the Commission is issuing today from Rule 102 under Regulation M concerning the MQP also contains additional disclosure requirements. *See* Securities Exchange Act Release No. 69196 (March 20, 2013), *supra* note 9.

[98] The Exchange has stated that the proposal is designed to provide market quality support to smaller, less frequently traded ETFs. *See* Notice, *supra* note 4, at 77145.

[99] The Exchange has indicated that if the MQP is successful, it will seek to expand the program to small cap stocks and other similar products that may need liquidity enhancement. *See* Notice, *supra* note 4, at 77145. The Exchange would be required to file any similar proposal applicable to small cap companies pursuant to Section 19(b) of the Exchange Act and the rules and regulations thereunder. Such a filing would be published for comment in the **Federal Register** pursuant to Section 19(b) and Rule 19b–4.

[100] *See supra* notes 60–64 and accompanying text.

related data and analyses the Commission staff requests from the Exchange for the purpose of evaluating the efficacy of the MQP.[101] This information will help the Commission, the Exchange, and other interested persons to evaluate whether the MQP has resulted in the intended benefits it is designed to achieve, any unintended consequences resulting from the MQP, and the extent to which the MQP alleviates or aggravates the concerns the Commission has noted, including previously-stated Commission concerns relating to issuer payments to market makers.[102]

For example, the Exchange and the Commission will look to assess what impact, if any, there is on the market quality of MQP Securities that withdraw or are otherwise terminated from the MQP.[103] One way for an MQP Security to be terminated from the MQP is if it exceeds the 1,000,000 ATV threshold included within the rules.[104] The Exchange states that past trading data indicate that "graduation" from the MQP during the pilot at a 1,000,000 ATV threshold should occur more frequently than at a 2,000,000 ATV threshold, which was the threshold proposed in its original filing relating to the MQP (which was later withdrawn).[105] The Commission recognizes that the MQP may not, in the one-year pilot period, produce sufficient data (*i.e.*, a large number of MQP Securities that enter and exit the MQP) to allow a full assessment of whether termination (or withdrawal) of an MQP Security from the Program has resulted in any unintended consequences on the market quality of the MQP Security or otherwise.[106] However, the Commission believes that the proposal strikes a reasonable balance between (i) setting the threshold for "graduation" from the MQP high enough to encourage participation in the MQP and (ii) setting the threshold low enough to have a sufficient number of MQP Securities graduate from the Program within the pilot period so that the Exchange, the Commission, and other interested persons can assess the impact, if any, of the MQP, including "graduation" of MQP Securities from the Program.

Furthermore, the pilot structure of the MQP will provide information to help determine whether any provisions of the MQP should be modified. For example, based on data from the pilot, the Exchange may determine that the 1,000,000 ATV termination threshold is not an appropriate threshold on which to base eligibility for the MQP or that the Program should be time-limited.[107]

The Commission believes that the design of the MQP and the public disclosure requirements, coupled with implementation of the proposal on a pilot basis, should help mitigate potential concerns the Commission has noted above relating to any unintended or negative effects of the MQP on the ETF market and investors.

The Commission also believes that proposed interpretation IM–2460–1, which would exempt the MQP from the Exchange's general prohibition on payments by an issuer to a Market Maker contained in Exchange Rule 2460, is consistent with the Act. Exchange Rule 2460 is almost identical to, and is based on, FINRA Rule 5250. FINRA Rule 5250 (formerly NASD Rule 2460) was implemented, in part, to address concerns about issuers paying market makers, directly or indirectly, to improperly influence the price of an issuer's stock and because of conflict of interest concerns between issuers and market makers.[108] FINRA Rule 5250 was designed to preserve "the integrity of the marketplace by ensuring that quotations accurately reflect a broker-dealer's interest in buying or selling a security."[109] Specifically, in the NASD Rule 2460 Approval Order, the Commission found that the "decision by a firm to make a market in a given security and the question of price generally are dependent on a number of factors, including, among others, supply and demand, the firm's expectations toward the market, its current inventory position, and exposure to risk and competition. This decision should not be influenced by payments to the member from issuers or promoters. Public investors expect broker-dealers' quotations to be based on the factors described above. If payments to broker-dealers by promoters and issuers were permitted, investors would not be able to ascertain which quotations in the marketplace are based on actual interest and which quotations are supported by issuers or promoters. This structure would harm investor confidence in the overall integrity of the marketplace."[110] The Commission also added that "such payments may be viewed as a conflict of interest since they may influence the member's decision as to whether to quote or make a market in a security and, thereafter, the prices that the member would quote."[111]

The Commission believes that a number of aspects of the MQP mitigate the concerns that FINRA Rule 5250 and

[101] *Id.*

[102] *See infra* notes 108–111 and accompanying text.

[103] *See* Notice, *supra* note 4, at 77140 (stating that the 1,000,000 ATV threshold would "better provide NASDAQ and the Commission with an opportunity to observe the impact, if any, on MQP Securities that exceed the threshold and 'graduate' from the Program").

[104] *See* proposed Rule 5950(d)(1)(A).

[105] *See supra* note 3. The Exchange provided statistics on the number of ETFs that would have graduated annually at the 1 million ATV and 2 million ATV volume thresholds from the MQP had it been in existence over the period of 2001 to 2012. Specifically, (i) in 2001, 2 ETPs would have graduated from the MQP under the 2 million ATV threshold, while 3 ETPs would have graduated under the 1 million ATV threshold; (ii) in 2002, 1 ETP would have graduated under the 2 million ATV threshold, while 4 ETPs would have graduated under the 1 million ATV threshold; (iii) in 2003, 3 ETPs would have graduated under the 2 million ATV threshold, while 5 ETPs would have graduated under the 1 million ATV threshold; (iv) in 2004, 2 ETPs would have graduated under the 2 million ATV threshold, while 5 ETPs would have graduated under the 1 million ATV threshold; (v) in 2005, 7 ETPs would have graduated under the 2 million ATV threshold, while 14 ETPs would have graduated under the 1 million ATV threshold; (vi) in 2006, 10 ETPs would have graduated under the 2 million ATV threshold, while 20 ETPs would have graduated under the 1 million ATV threshold; (vii) in 2007, 23 ETPs would have graduated under the 2 million ATV threshold, while 24 ETPs would have graduated under the 1 million ATV threshold; (viii) in 2008, 38 ETPs would have graduated under the 2 million ATV threshold, while 48 ETPs would have graduated under the 1 million ATV threshold; (ix) in 2009, 20 ETPs would have graduated under the 2 million ATV threshold, while 27 ETPs would have graduated under the 1 million ATV threshold; (x) in 2010, 10 ETPs would have graduated under the 2 million ATV threshold, while 16 ETPs would have graduated under the 1 million ATV threshold; (xi) in 2011, 12 ETPs would have graduated under the 2 million ATV threshold, while 16 ETPs would have graduated under the 1 million ATV threshold; and (xii) in 2012, 3 ETPs would have graduated under the 2 million ATV threshold, while 5 ETPs would have graduated under the 1 million ATV threshold. *See* Notice, *supra* note 4, at 77145. These statistics, however, assume that all eligible securities actually participate in the Program.

[106] One commenter suggests that the pilot have a staggered introduction of MQP Securities with a randomized sequence, and a long enough pre- and post-event period (*e.g.*, three months) for each introduction to identify any effects of the MQP. *See* Menkveld Letter, *supra* note 8, at 4; *see also supra* note 89. The Commission believes that the way the Exchange has structured the pilot is reasonable and consistent with the Act. As discussed above, the Exchange has represented that it will (a) provide reports to the Commission that include information about MQP Securities that exceed the threshold and "graduate" from the Program (and make these reports public) and (b) provide information to the Commission about other ETPs not in the Program and any other MQP-related data and analysis Commission staff requests. Such information should be useful in the evaluation of the effects of the MQP.

[107] One commenter, addressing whether a 2,000,000 ATV threshold would be appropriate, noted that such a termination threshold would be "an arbitrary number that is no better or worse than any other large number" and that the threshold may need to be adjusted after the MQP has been implemented. *See* Weaver Letter, *supra* note 5, at 8.

[108] *See* NASD Rule 2460 Approval Order, *supra* note 68, at 37107.

[109] *See* NASD Rule 2460 Approval Order, *supra* note 68, at 37107.

[110] *See id.*

[111] *See id.* at 37106.

Exchange Rule 2460 were designed to address.[112] First, the Commission believes that the terms of the MQP are generally objective, clear, and transparent. The standards for the MQP are set forth in proposed NASDAQ Rule 5950 (further described above)[113] and describe the application and withdrawal process, the fee and credit structure, the market quality standards that an MQP Market Maker must meet and maintain to secure an MQP Credit, and the MQP termination process. These requirements apply to all MQP Securities, MQP Companies, and MQP Market Makers.[114]

Second, the Exchange also will provide notification on its public Web site regarding the various aspects of the MQP. As discussed above, this notification will include: (i) The names of the MQP Companies and the MQP Market Makers that are accepted into the MQP; (ii) the specific names of the MQP Securities that are participating in the MQP; (iii) the identity of the MQP Market Makers in each MQP Security; (iv) any limits the Exchange may impose on the number of MQP Securities per MQP Company or MQP Market Makers per MQP Security in the MQP; (v) the amount of the Supplemental MQP Fee of each MQP Security, if one is established by an MQP Company; (vi) any notification received by the Exchange that an MQP Company, on behalf of an MQP Security, or MQP Market Maker intends to withdraw from the MQP; and (v) the dates that an MQP Company, on behalf of an MQP Security, commences participation in and is withdrawn or terminated from the MQP; and (vii) a statement about the MQP that sets forth a fair and balanced summary of the potentially positive and negative aspects of the MQP. In addition, an MQP Company will be required to disclose that the MQP Security is participating in the MQP and to provide a link to the Exchange's MQP Web page on the MQP Security's Web site.

And third, MQP Securities will be traded on the Exchange, which is a regulated market, pursuant to the current trading and reporting rules of the Exchange, and pursuant to the Exchange's established market surveillance and trade monitoring procedures. The Exchange will administer the application and acceptance of the MQP Companies and MQP Market Makers into the MQP and will manage the payment of the MQP Credit to MQP Market Makers. The Exchange has represented that the recipient MQP Market Makers of the MQP Credits and the size of the MQP Credits will be determined solely by the Exchange pursuant to objective criteria, and MQP Companies will have no role in selecting the MQP Market Maker recipients or in determining the specific amount, if any, of their MQP Credits. Furthermore, the MQP Fees will be paid into NASDAQ's General Fund, and the MQP Credits will be paid out of NASDAQ's General Fund. If no MQP Market Maker is eligible to earn an MQP Credit for a particular MQP Security during a quarter, the MQP Fee will remain in NASDAQ's General Fund, and no MQP Fees or any portion thereof will be rebated with respect to any MQP Security, regardless of the performance of the MQP Security's assigned MQP Market Makers. The Commission believes that these factors, taken together, should help to mitigate the conflict of interest and other concerns that the Commission has previously identified[115] relating to issuers paying for market making.[116]

The Commission believes that it is reasonable and consistent with the Act for the Exchange to limit the MQP to certain types of securities to allow the Exchange, through a pilot, to assess whether the Program will have the desired effect of improving the market quality of these securities before implementing the Program on a wider scale. The Commission believes that it is reasonable and consistent with the Act for the Exchange to limit the MQP to products under the 1,000,000 ATV threshold, to support the Exchange's stated purpose to provide market quality support to less frequently traded ETFs.

The Commission believes that the MQP Fees are an equitable allocation of reasonable fees. First, participation in the MQP is voluntary. An entity is free to determine whether it would be economically desirable to pay the MQP Fee, given the amount of the fee, the trading characteristics of the ETF (if applicable) and the anticipated benefit. If an MQP Company chooses to participate in the MQP with respect to an MQP Security, it will incur the Basic MQP Fee of $50,000, and the MQP Company will have discretion to incur the Supplemental MQP Fee in an amount up to an additional $50,000. The MQP Fees will be paid for by the Sponsors associated with the MQP Companies. Thus, the MQP Fees will be incurred and paid for by an issuer and its sponsor, as applicable, that have chosen to participate in, and that may potentially benefit from, the MQP.[117] An entity that chooses not to participate will not be required to pay any additional fee beyond the standard listing fees. Further, the MQP Fees will be the same for any MQP Company wishing to participate in the program.

The Commission also believes that availability of the discretionary Supplemental MQP Fee is consistent with the Act. Each MQP Company participating in the MQP will have the choice of whether or not to incur, as well as the exact amount (up to $50,000) of, the Supplemental MQP Fee. Not all ETFs are alike, and trading in certain products may be riskier or more costly

[112] Two commenters have stated that the design and overall transparency of the Program adequately address concerns relating to manipulation. *See* Weaver Letter, *supra* note 5, at 6–7, and Menkveld Letter, *supra* note 8, at 3.

[113] *See supra* Section I.A.

[114] While the Exchange will have some amount of discretion pursuant to the proposed rules to limit the number of MQP Securities that any one MQP Company may list in the MQP, if such a limit is in the best interest of the Exchange, the MQP Company and the goals of the MQP, or investors, and/or to limit the number of MQP Market Makers in an MQP Security, the Commission believes such limits would not be unfairly discriminatory, as they would be imposed on a MQP-wide basis. In addition, the Commission believes that it is reasonable and consistent with the Act for the Exchange to have some amount of flexibility to limit the number of MQP Securities or MQP Market Makers, to protect investors and the ETF market

[115] *See* NASD Rule 2460 Approval Order, *supra* note 68, and *supra* notes 108–111. *See also* Securities Act Release No. 6334 (Aug. 6, 1981), 46 FR 42001 (Aug. 18, 1981), at Section IV.B (Treatment as Statutory Underwriter). In addition, only index-based ETFs are eligible to participate in the MQP. The Exchange notes that the prices of ETFs are generally linked back to the underlying securities and that the ETF trust structure acts as an insulating wall between market maker and product. *See* Notice, *supra* note 4, at 77145, n.36.

[116] Until FINRA files a proposed rule change to exempt payments made pursuant to the MQP from FINRA Rule 5250 and the proposed rule change becomes effective, receipt of payments pursuant to the MQP by a market maker that is a FINRA member would be in violation of FINRA Rule 5250.

[117] Issuers of ETFs registered under the 1940 Act are prohibited from paying directly or indirectly for distribution of their shares (*i.e.*, directly or indirectly financing any activity that is primarily intended to result in the sale of shares), unless such payments are made pursuant to a plan that meets the requirements of Rule 12b–1 under the 1940 Act. Although the services at issue could be primarily intended to result in the sale of fund shares, the Commission has stated that such a determination will depend on the surrounding circumstances. *See Payment of Asset-Based Sales Loads by Registered Open-End Management Investment Companies*, Investment Company Act Release No. 16431 (June 13, 1988) ("1988 12b–1 Release"). As the Commission has noted previously, if a fund makes payments that are ostensibly for a non-distribution purpose, and the recipient of those payments finances distribution, the question arises whether the fund's assets are being used indirectly for distribution. The Commission has stated that there can be no precise definition of what types of expenditures constitute indirect use of fund assets, and this determination is based on the facts and circumstances of each individual case. In addition, fund directors, particularly independent directors bear substantial responsibility for making that judgment. *See Bearing of Distribution Expenses by Mutual Funds*, Investment Company Act Release No. 11414 (October 28, 1980).

than trading in others. The Commission believes that it is reasonable to allow each MQP Company to choose to participate in the Program and to determine whether it is desirable to incentivize MQP Market Makers through the Supplemental MQP Fee to improve the market quality of certain MQP Securities. Further, as discussed above, the payment of the Supplemental MQP Fee will be transparent to the marketplace, as this information will be disclosed on the Exchange's Web site.[118]

## IV. Section 11(d)(1) of the Exchange Act

Section 11(d)(1) of the Exchange Act[119] generally prohibits a broker-dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, on shares of new issue securities, if the broker-dealer participated in the distribution of the new issue securities within the preceding 30 days. The Commission's view is that shares of open-end investment companies and unit investment trusts registered under the 1940 Act, such as ETF shares, are distributed in a continuous manner, and broker-dealers that sell such securities are therefore participating in the "distribution" of a new issue for purposes of Section 11(d)(1).[120]

The Division of Trading and Markets, acting under delegated authority, granted an exemption from Section 11(d)(1) and Rule 11d1–2 thereunder for broker-dealers that have entered into an agreement with an ETF's distributor to place orders with the distributor to purchase or redeem the ETF's shares ("Broker-Dealer APs").[121] The SIA Exemption allows a Broker-Dealer AP to extend or maintain credit, or arrange for the extension or maintenance of credit, to or for customers on the shares of qualifying ETFs subject to the condition that neither the Broker-Dealer AP, nor any natural person associated with the Broker-Dealer AP, directly or indirectly (including through any affiliate of the Broker-Dealer AP), receives from the fund complex any payment, compensation, or other economic incentive to promote or sell the shares of the ETF to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B), or (C). This condition is intended to eliminate special incentives that Broker-Dealer APs and their associated persons might otherwise have to "push" ETF shares.

The MQP will permit certain ETFs to voluntarily incur increased listing fees payable to the Exchange. In turn, the Exchange will use the fees to make incentive payments to market makers that improve the liquidity of participating issuers' securities, and thus enhance the market quality for the participating issuers. Incentives payments will be accrued for, among other things, executing purchases and sales on the Exchange. Receipt of the incentive payments by certain broker-dealers will implicate the condition of the SIA Exemption from the new issue lending restriction in Section 11(d)(1) of the Exchange Act discussed above. The Commission's view is that the incentive payments market makers will receive under the proposal are indirect payments from the fund complex to the market maker and that those payments are compensation to promote or sell the shares of the ETF. Therefore, a market maker that also is a Broker-Dealer AP for an ETF (or an associated person or an affiliate of a Broker-Dealer AP) that receives the incentives will not be able to rely on the SIA Exemption from Section 11(d)(1). This does not mean that Broker-Dealer APs cannot participate in the MQP; it merely means they cannot rely on the SIA Exemption while doing so. Thus, Broker-Dealer AP's that participate in the MQP will need to comply with Section 11(d)(1) unless there is another applicable exemption.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[122] that the proposed rule change (SR–NASDAQ–2012–137), as modified by Amendment Nos. 1 and 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[123]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06882 Filed 3–25–13; 8:45 am]

**BILLING CODE 8011–01–P**

[118] *See supra* note 38 and accompanying text.

[119] 15 U.S.C. 78k(d)(1).

[120] *See, e.g.*, Exchange Act Release Nos. 6726 (Feb. 8, 1962), 27 FR 1415 (Feb. 15, 1962) and 21577 (Dec. 18, 1984), 49 FR 50174 (Dec. 27, 1984).

[121] *See* Letter from Catherine McGuire, Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission to Securities Industry Association (Nov. 21, 2005) ("SIA Exemption").

[122] 15 U.S.C. 78s(b)(2).

[123] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69187; File Nos. SR–NYSE–2013–08; NYSEMKT–2013–07]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Changes Amending the Attestation Requirement of Rules 107C and 107C-Equities, Respectively, To Allow a Retail Member Organization To Attest That "Substantially All" Orders Submitted to The Retail Liquidity Program Will Qualify as "Retail Orders"

March 20, 2013.

On January 17, 2013, New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT" and together with NYSE, the "Exchanges") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] proposed rule changes to allow Retail Member Organizations ("RMOs") to attest that "substantially all," rather than all, orders submitted to the Retail Liquidity Program qualify as "Retail Orders." The proposed rule changes were published for comment in the **Federal Register** on February 4, 2013.[3] To date, the Commission has received one comment on the proposals.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for these filings is March 21, 2013.

The Commission is extending the 45-day time period for Commission action on the proposed rule changes. The Commission finds that it is appropriate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 68747 (Jan. 28, 2013), 78 FR 7824 (SR–NYSE–2013–08); and 68746 (Jan. 28, 2013), 78 FR 7842 (SR–NYSEMKT–2013–07).

[4] *See* Letter to the Commission from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA), dated March 11, 2013.

[5] 15 U.S.C. 78s(b)(2).

to designate a longer period to take action on the proposed rule changes so that it has sufficient time to consider the Exchanges' proposals, which would lessen the attestation requirements of RMOs that submit "Retail Orders" eligible to receive potential price improvement through the respective Retail Liquidity Programs, and to consider the comment letter that has been submitted in connection with the proposed rule changes.

Accordingly, pursuant to Section 19(b)(2) of the Act,[6] the Commission designates May 5, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule changes (File Numbers SR–NYSE–2013–08 and SR–NYSEMKT–2013–07).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06877 Filed 3–25–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69193; File No. SR–BOX–2013–06]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Option Contracts Overlying 1,000 Shares of the SPDR S&P 500 Exchange-Traded Fund

March 20, 2013.

On January 18, 2013, BOX Options Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade options overlying 1,000 shares of the SPDR S&P 500 exchange-traded fund. The proposed rule change was published for comment in the **Federal Register** on February 4, 2013.[3] The Commission received two comment letters on this proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 21, 2013. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which would allow the listing of a new option product, the comment letters that have been submitted in connection with this proposed rule change, and any response to the comment letters submitted by the Exchange.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates May 5, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BOX–2013–06).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06879 Filed 3–25–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69181; File No. SR–MIAX–2013–07]**

## Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt MIAX Rule 530, Limit Up-Limit Down

March 19, 2013.

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 March 7, 2013, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to adopt new Exchange Rule 530, Limit Up-Limit Down ("LULD"), to provide for how the Exchange intends to treat options orders in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (the "Plan"). The Plan establishes procedures to address extraordinary volatility in NMS Stocks (as defined below). The proposed rule outlines MIAX's LULD processing for options overlying such NMS Stocks.

The text of the proposed rule change is provided in *Exhibit 5*.[3] The text of the proposed rule change is also available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing*, at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to adopt MIAX Rule 530 to provide for how the Exchange proposes

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[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68759 (January 29, 2013), 78 FR 7835.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP & Corporate Secretary, General Counsel, NYSE Markets, NYSE Euronext, dated February 25, 2013 and Edward T. Tilly, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated, dated February 25, 2013.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that Exhibit 5 is attached to the filing, not to this Notice.

to treat options orders in response to the Plan.

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the "flash crash," the equities exchanges and The Financial Industry Regulatory Authority ("FINRA")[4] have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility.

Among the measures adopted include pilot plans for stock-by-stock trading pauses, related changes to the equities market clearly erroneous execution rules, and more stringent equities market maker quoting requirements. On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[5] In addition, the Commission approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan.[6] The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.[7] The instant proposed rule change is intended to adopt MIAX rules that address the trading of options overlying NMS Stocks that are the subject of the Plan and its provisions during times of unusual volatility in the markets.

The requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.[8]

Limit State and Straddle State

As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[9] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as non-executable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[10] All trading centers in NMS stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, with a flag indicating that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.[11] Trading in an NMS stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[12] Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the Plan, which would be applicable to all markets trading the security.[13]

In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore non-executable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

The Proposal

MIAX is not a Participant in the Plan because it does not list and trade NMS Stocks. MIAX lists and trades options overlying NMS Stocks. Trading in options overlying NMS Stocks is impacted by the implementation of the Plan because options pricing models are highly dependent on the price of the underlying security and the ability of options traders to effect hedging transactions in the underlying security. Thus, proposed MIAX Rule 530 would provide for how the Exchange will treat orders and quotes in options overlying NMS stocks when the Plan is in effect.

Pilot Period

Proposed Rule 530 includes an introductory paragraph stating that the rule shall be in effect during a pilot period to coincide with the pilot period for the Plan, and that the proposed rule establishes procedures to address extraordinary volatility in NMS Stocks and outlines MIAX's Limit Up-Limit Down processing.

Definitions

Proposed Rule 530(a) lists definitions that are identical to definitions set forth in the Plan. The capitalized terms in proposed Rule 530(a) and throughout the MIAX rules shall have the same meaning as provided for in the Plan. The definitions set forth in proposed Rule 530 are as follows:

"Eligible Reported Transactions" shall have the meaning prescribed by the Operating Committee of the Plan (as defined below) and shall generally mean transactions that are eligible to update the last sale price of an NMS Stock.

"Limit State" shall have the meaning provided in Section VI of the Plan. When a National Best Bid is below the Lower Price Band calculated by the Processor (as defined below) for an NMS Stock or a National Best Offer is above the Upper Price Band calculated by the Processor for an NMS Stock, the Processor will disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to the Lower Price Band or a National Best Bid is equal to the Upper Price Band for an NMS Stock, the

[4] FINRA is the largest independent regulator for all securities firms doing business in the United States. FINRA oversees approximately 4,275 brokerage firms, approximately 161,495 branch offices and approximately 630,010 registered securities representatives.

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving the Plan on a Pilot Basis).

[6] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[7] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[8] MIAX is currently an options exchange only, and thus currently does not trade NMS Stocks. Therefore, as of the date of this proposal, MIAX is not a Participant in the Plan.

[9] See Section V(A) of the Plan.

[10] See Section VI(A) of the Plan.

[11] See Section VI(A)(3) of the Plan.

[12] See Section VI(B)(1) of the Plan.

[13] The primary listing market would declare a Trading Pause in an NMS stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS stock could occur during the trading pause, but all bids and offers may be displayed. See Section VII(A) of the Plan.

Processor will distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a "Limit State Quotation".

"LULD Functionality" shall mean the specific processing logic applied by the Exchange System to options traded on the Exchange when the underlying NMS Stock has entered into a Limit State or Straddle State. LULD Functionality remains in effect for the duration that the underlying NMS Stock is in a Limit State or a Straddle State.

"Market Data Plan" shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

"Plan" shall mean the Plan to Address Extraordinary Market Volatility Submitted to the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, as amended from time to time in accordance with its provisions.

"Primary Listing Exchange" shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

"Processor" shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

"Participant" shall mean a party to the Plan.

"Regular Trading Hours" shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

"Regulatory Halt" shall have the meaning specified in the Market Data Plans.

"Straddle State" shall have the meaning provided in Section VII(A)(2) of the Plan. An NMS Stock is in a Straddle State when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address extraordinary market volatility.

"Trading Pause" shall have the meaning provided in Section VII of the Plan. If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange will declare a Trading Pause for such NMS Stock and shall notify the Processor. The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State.

General Statement of LULD Functionality on MIAX

Proposed Rule 530(b) states that LULD Functionality becomes effective for an option traded on the Exchange when the underlying NMS Stock has entered into a Limit State or Straddle State. LULD Functionality remains in effect for the duration that the underlying NMS Stock is in a Limit State or a Straddle State. LULD Functionality modifies the normal operation of the Exchange System in ways identified by this Rule. LULD Functionality ends when the underlying NMS Stock is no longer in a Limit State or a Straddle State, or when a Trading Pause is declared by the Primary Listing Exchange.

The purpose of this provision is to establish in the Exchange's rules, and thus notify investors, that the Exchange will respond by modifying the normal operation of the Exchange's System when an underlying NMS Stock is in a Limit State or a Straddle State.

Determining Straddle States and Limit States

Proposed Rule 530(c) states that the Exchange shall use the SIP feed (CQS for Tape A and Tape B securities and UQDF for Tape C securities) to determine when an NMS Stock is in a Limit State or a Straddle State, and when such Limit State or Straddle State no longer exists.

Handling of Orders During Straddle States and Limit States

Proposed Rule 530(d) describes how orders will be handled during a Limit State and Straddle State in the underlying NMS Stock. Under new Rule 530(d)(1), the opening in an option will not commence in the event that the underlying NMS stock is open, but has entered into a Limit State or Straddle State. If this occurs, the opening will only commence and complete if the underlying NMS stock exits, and stays out of, a Limit or Straddle State.

Accordingly, new Rule 530(d)(1) will provide that the Exchange will not open an affected option. As a result, if an opening process is occurring, it will cease and then start the opening process from the beginning once the Limit State or Straddle State is no longer present. This is consistent with the provisions of Exchange Rule 504(a)(1) that states that the System may halt trading in the case of an option on a security, when trading in the underlying security has been halted or suspended in the primary market.

Rejection of Incoming Market Orders

The Exchange proposes to adopt provisions regarding the treatment of certain orders if the underlying NMS stock is in a Limit State or Straddle State. Whenever an NMS stock is in a Limit State or Straddle State, trading continues; however, there will not be a reliable price for a security to serve as a benchmark for the price of the option. For example, if the underlying NMS stock is in a Limit State, while trading in that stock continues, by being in a Limit State, there will be either cancellations or executions at that price, and if the Limit State is not resolved in 15 seconds, the NMS Stock will enter a Trading Pause. If an NMS stock is in a Straddle State, there is either a National Best Bid or National Best Offer that is non-executable, which could result in limited price discovery in the underlying NMS stock. In addition to the lack of a reliable underlying reference price, the Exchange believes that the width of the markets and quality of the execution for market participants during a Limit State or Straddle State could lead to inferior executions. The Exchange believes that certain types of orders increase the risk of errors and poor executions and therefore should not be allowed during these times when there may not be a reliable underlying reference price, there may be a wide bid/ask quotation differential, and there may be lower trading liquidity in the options markets.

Therefore, the Exchange proposes that if an NMS stock is in a Limit State or Straddle State, once the option has opened for trading, the Exchange shall reject all incoming market orders submitted into the Exchange's System.

In order to provide clarity in the Exchange's rules concerning market order cancellations during a Limit or Straddle State, the Exchange proposes to adopt proposed Rule 530(d)(2)(ii), which states that the Exchange will cancel all unexecuted market orders existing within the Exchange System during a Limit or Straddle State. Market orders to sell an option received when the national best bid is zero and the Exchange's disseminated offer is equal to or less than $0.10 that have been converted to limit orders to sell pursuant to Rule 519(a)[14] will not be

[14] If the Exchange receives a market order to sell an option when the national best bid is zero and the Exchange's disseminated offer is equal to or less

Continued

cancelled by the Exchange's System. Although such orders were submitted as market orders, due to the zero-bid at the time of receipt of such orders, they are not maintained as market orders in the Exchange's System but instead are converted into limit orders to sell at the minimum price variation ("MPV") applicable to the affected series, provided that the MPV is equal to or less than $0.10. Proposed Rule 530(d)(2)(ii) would therefore state that once an NMS Stock has entered either a Straddle State or Limit State, after the opening the Exchange will cancel all unexecuted market orders existing within the Exchange System, except that market orders to sell an option received when the national best bid is zero and the Exchange's disseminated offer is equal to or less than $0.10 that have been converted to limit orders to sell pursuant to Rule 519(a) will not be cancelled by the Exchange's System.

The Exchange believes that adding certainty to the treatment of market orders when the underlying NMS stock is in these situations should encourage market participants to continue to provide liquidity to the Exchange and thus promote a fair and orderly market.

The Exchange also proposes to adopt Rule 530(e), which provides that the Exchange shall halt trading in all options whenever the equities markets initiate a market-wide trading halt commonly known as a circuit breaker in response to extraordinary market conditions. Although the Exchange's rules currently address a variety of situations involving halts, pauses and suspensions,[15] the purpose of this proposed rule is to adopt a very specific rule to deal with circuit breaker-related halts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[16] in general, and with Section 6(b)(5) of the Act,[17] in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it should provide certainty about how options orders and trades will be handled during periods of extraordinary volatility in the underlying security.

The proposed rule change addresses specific order types that are subject to added risks during such periods. The Exchange believes that the rejection of options market orders should help to prevent executions that might occur at prices that have not been reliably formed, which should, in turn, protect investors from poor executions during times of significant volatility.

Accordingly, the Exchange believes that the proposed rule change is consistent with these requirements in that it should reduce the negative impacts of sudden, unanticipated volatility in individual options, and serve to preserve an orderly market in a transparent and uniform manner, enhance the price-discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the proposal does not impose a burden on competition among the options exchanges, because, despite the intense competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange in the instant proposal, market participants are certainly able to direct order flow to competing venues.

The Exchange believes this proposal for how to treat options openings and orders will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited or received.

**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[18] and Rule 19b–4(f)(6) thereunder.[19] 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.

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) of the Act[20] 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

than $0.10, the System will convert the market order to sell to a limit order to sell with a limit price of one Minimum Trading Increment. In this case, such sell orders will automatically be placed on the Book in time priority and will be displayed at the appropriate Minimum Price Variation. *See* Exchange Rule 519(a)(1).

If the Exchange receives a market order to sell an option when the national best bid is zero and the national best offer is greater than $0.10, the System will reject the market order to sell. *See* Exchange Rule 519(a)(2).

[15] *See, e.g.*, Exchange Rules 504, 506(d), 515 and 523.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 15 U.S.C. 78s(b)(2)(B).

No. SR–MIAX–2013–07 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–MIAX–2013–07. 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 No. SR–MIAX–2013–07 and should be submitted on or before April 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06787 Filed 3–25–13; 8:45 am]

**BILLING CODE 8011–01–P**

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69184; File No. SR–BX–2013–028]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Minimum Price Variation for Mini Options To Be the Same as Permitted for Standard Options on the Same Security

March 19, 2013.

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 March 15, 2013, NASDAQ OMX BX, Inc. ("BX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Chapter IV (Securities Traded on BX Options), Supplementary Material .08 to Section 6 (Series of Options Contracts Open for Trading), and Chapter VI (Trading Systems), Section 5 (Minimum Increments) to permit the minimum price variation for Mini Options contracts that deliver 10 shares to be the same as permitted for standard options that deliver 100 shares on the same security.

The text of the proposed rule change is provided in *Exhibit 5*. The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects 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 purpose of this proposal is to change the rules of the Exchange in Chapter IV, Supplementary Material .08 to Section 6, and Chapter VI, Section 5 to permit the minimum price variation for Mini Options contracts that deliver 10 shares to be the same as permitted for standard options that deliver 100 shares on the same security.

This filing is based on a recent proposal of Chicago Board Options Exchange, Inc. ("CBOE"), with virtually identical rule text in CBOE Rules 6.42 and 5.5.[3]

The Exchange recently amended its rules to allow for the listing of Mini Options that deliver 10 physical shares on SPDR S&P 500 ("SPY"), Apple, Inc. ("AAPL"), SPDR Gold Trust ("GLD"), Google Inc. ("GOOG") and Amazon.com Inc. ("AMZN").[4] Mini Options trading is expected to commence in March 2013. Prior to the commencement of trading Mini Options, the Exchange proposes to establish and permit the minimum price variation for Mini Option contracts to be the same as permitted for standard options on the same security. In addition to giving market participants clarity as to the minimum pricing increments for Mini Options, the filing would harmonize penny pricing between Mini Options and standard options on the same security.

Of the five securities on which Mini Options are permitted, four of them (SPY, AAPL, GLD and AMZN) participate in the Penny Pilot Program.[5] Under the Penny Pilot Program:

• The minimum price variation for AAPL, GLD and AMZN options is $0.01 for all quotations in series that are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69124 (March 12, 2013) (SR–CBOE–2013–016; SR–ISE–2013–08) (approval order).

[4] *See* Securities Exchange Act Release No. 68719 (January 24, 2013), 78 FR 6391 (January 30, 2013) (SR–BX–2013–006) (notice of filing and immediate effectiveness of proposed rule change establishing Mini Options on BX).

[5] The Penny Pilot was established in July 2012 and was last extended in December 2012. *See* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving BX option rules and establishing Penny Pilot); and 68518 (December 21, 2012), 77 FR 77152 (December 31, 2012) (SR–BX–2012–076) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2013).

quoted at less than $3 per contract and $0.05 for all quotations in series that are quoted at $3 per contract or greater; and

• The minimum price variation for SPY options is $0.01 for all quotations in all series.[6]

In the lead up to the launch of Mini Options trading on an industry-wide basis, firms with customer bases of potential product users have indicated a preference that premium pricing for Mini Options match what is currently permitted for standard options that deliver 100 physical shares on the same securities. The Exchange understands that firms' systems are configured using the "root symbol" of an underlying security and cannot differentiate, for purposes of minimum variation pricing, between contracts on the same security. Mini Options will be loaded into firms' systems using the same "root symbol" that is used for standard options on the same security. As a result, it is believed that existing systems will not be able to assign different minimum pricing variations to different contracts on the same security. As a result, firms have indicated their preference that there be matched pricing between Mini Options and standard options on the same security because their systems, which are programmed using "root symbols," would not be able to assign different minimum pricing variations to Mini Options and standard options on the same security.

Because Mini Options are a separate class from standard options on the same security, Mini Options would have to qualify separately for entry into the Penny Pilot Program. This, however, is not possible by product launch (or possibly ever) for a number of reasons. First, there is a six calendar month trading volume criteria for entry into the Penny Pilot Program, which Mini Options cannot satisfy prior to launch. Second, even if Mini Options met the trading volume criteria, replacement classes are only added to the Penny Pilot Program on the second trading day following January 1 and July 1 in a given year. Finally, there is a price test for entry into the Penny Pilot Program which excludes "high premium" classes, which are defined as classes priced at $200 per share or higher at the time of selection. As of the date of this filing, three of the five securities (AAPL, AMZN and GOOG) eligible for Mini Options would be excluded as "high premium" classes, even though two of those securities (AAPL and AMZN) are in the Penny Pilot Program for standard options. The Exchange notes that GOOG is not in the Penny Pilot Program.[7]

The Exchange, therefore, is proposing to establish a pricing regime for Mini Options separate from the Penny Pilot Program that permits the minimum price variation for Mini Option contracts to be the same as permitted for standard options on the same security, which would encompass penny pricing for Mini Option contracts on securities that participate in the Penny Pilot Program.[8]

As to the Penny Pilot Program, the Exchange believes that there are several good reasons to allow penny pricing for Mini Options on securities that currently participate in the Penny Pilot Program, without requiring Mini Options to separately qualify for the Penny Pilot Program. First, the Penny Pilot Program applies to the most actively-traded, multiply-listed option classes. Likewise, the five securities which may underlie Mini Options were chosen because of the significant liquidity in standard options on the same security. The Exchange also believes that the marketplace and investors will be expecting the minimum price variation for contracts on the same security to be the same. Second, one of the primary goals of the Penny Pilot Program is to narrow the bid-ask spreads of exchange-traded options to reduce the cost of entering and exiting positions. This same goal can similarly be accomplished by permitting penny pricing for Mini Option contracts on securities that already participate in the Penny Pilot Program. Finally, the Exchange believes that penny pricing for Mini Options is desirable for a product that is geared toward retail investors. Mini Options are on high priced securities and are meant to be an investment tool with more affordable and realistic prices for the average retail investor. Penny pricing for Mini Options on securities that are currently in the Penny Pilot Program would benefit the anticipated users of Mini Options by providing more price points. The Exchange notes that it is not requesting penny pricing for all of the five securities eligible for Mini Options trading; but rather is seeking to permit matched penny pricing for Mini Options on those securities for which standard options already trade in pennies.

To effect the current proposed rule changes, the Exchange proposes to add new language in Chapter IV, Supplementary Material .08 to Section 6, and in Chapter VI, Section 5. As to Chapter VI, Section 5, the Exchange proposes adding new subsection (a)(4) that has an internal cross reference to new proposed Chapter IV, Supplementary Material .08(d) to Section 6 as the provision that sets forth the minimum price variation for bids and offers for Mini Options. As to Supplementary Material .08 to Section 6, the Exchange proposes adding new subsection (d), which would provide as follows:

> The minimum price variation for bids and offers for Mini Options shall be the same as permitted for standard options on the same security. For example, if a security participates in the Penny Pilot Program, Mini Options on the same underlying security may be quoted in the same minimum increments, *e.g.*, $0.01 for all quotations in series that are quoted at less than $3 per contract and $0.05 for all quotations in series that are quoted at $3 per contract or greater, $0.01 for all SPY option series, and Mini Options do not separately need to qualify for the Penny Pilot Program.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since Mini Options are limited to a fixed number of underlying securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[9] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(h)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative

[6] Chapter VI, Section 5(a)(3).

[7] The minimum price variation for standard options on GOOG is $0.05 for all quotations in series that are quoted at less than $3 per contract and $0.10 for all quotations in series that are quoted at $3 per contract or greater. *See* Chapter VI, Section 5(a).

[8] As noted in the Exchange's original Mini Option filing, Mini Options are limited to five securities and any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission. The current proposal is limited to the five securities originally approved to underlie Mini Options. The Exchange anticipates that a similar minimum pricing variation regime would be included in any rule change to expand the Mini Option program. *See* Securities Exchange Act Release No. 68719 (January 24, 2013), 78 FR 6391 (January 30, 2013) (SR–BX–2013–006) (notice of filing and immediate effectiveness of proposed rule change establishing Mini Options on BX).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that investors and other market participants would benefit from the current rule proposal because it would clarify and establish the minimum price variation for Mini Options prior to the commencement of trading. The Exchange believes that the marketplace and investors will be expecting the minimum price variation for contracts on the same security to be the same. As a result, the Exchange believes that this change would lessen investor and marketplace confusion because Mini Options and standard options on the same security would have the same minimum price variation.

While price protection between Mini Options and standard options on the same security is not required, the Exchange believes that consistency between Mini Options and standard options as to the minimum price variation is desirable and is designed to promote just and equitable principles of trade. Matching the minimum price variation between Mini Options and standard options on the same security would help to eliminate any unnecessary arbitrage opportunities that could result from having contracts on the same underlying security traded in different minimum price increments. Similarly, matched minimum pricing would hopefully generate enhanced competition among liquidity providers. The Exchange believes that matched pricing for Mini Options and standard options on the same security would attract additional liquidity providers who would make markets in Mini Options and standard options on the same security. In addition to the possibility of more liquidity providers, the Exchange believes that the ability to quote Mini Options and standard options on the same security in the same minimum increments would hopefully result in more efficient pricing via arbitrage and possible price improvement in both contracts on the same security. The Exchange also believes that allowing penny pricing for Mini Options on securities that currently participate in the Penny Pilot Program (without Mini Options having to qualify separately for entry into the Penny Pilot Program) will benefit the marketplace and investors because penny pricing in Mini Options may also accomplish one of the primary goals of the Penny Pilot Program, which is to narrow the bid-ask spreads of exchange-traded options to reduce the cost of entering and exiting positions. Finally, the proposed rule would be beneficial from a logistical perspective since firms' existing systems are configured using the "root symbol" of an underlying security and would not be able to assign different minimum pricing variations to Mini Options and standard options on the same security.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, since Mini Options are permitted on multiply-listed classes, other exchanges that have received approval to trade Mini Options will have the opportunity to similarly establish the minimum price variation for Mini Options prior to the anticipated launch on or about March 18, 2013. The Exchange also believes that the proposed rule change will enhance competition by allowing products on the same security to be priced in the same minimum price increments.

*C. Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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 [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may coincide with the anticipated launch of trading in Mini Options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Waiver of the operative delay will allow the Exchange to implement its proposal consistent with the commencement of trading in Mini Options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

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–BX–2013–028 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2013–028. 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

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240 19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[13] 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).

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–BX–2013–028 and should be submitted on or before April 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06790 Filed 3–25–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69196]**

## Order Granting a Limited Exemption From Rule 102 of Regulation M Concerning the NASDAQ Stock Market LLC Market Quality Program Pilot Pursuant to Regulation M Rule 102(e)

March 20, 2013.

The Securities and Exchange Commission ("Commission") approved a proposed rule change of the NASDAQ Stock Market LLC ("Exchange" or "NASDAQ") to add new NASDAQ Rule 5950 ("New Rule 5950") to establish the Market Quality Program ("MQP" or "Program").[1] In connection with the Program, an MQP Company [2] may list an eligible MQP Security [3] on NASDAQ and in addition to the standard (non-MQP) NASDAQ listing fee, a sponsor may pay a fee ("MQP Fee") [4] that will be used for the purpose of incentivizing one or more market makers to enhance the market quality of an MQP Security on a voluntary pilot basis. The Commission believes that payment of the MQP Fee, which is incurred by the MQP Company but paid by the sponsor associated with the MQP Company, for the purpose of incentivizing market makers to make a quality market in otherwise less liquid MQP Securities would constitute an indirect attempt by the issuer to induce a bid for or a purchase of a covered security during a restricted period.[5] As a result, absent exemptive relief, participation in the MQP by an MQP Company would violate Rule 102 of Regulation M.[6] This order grants a limited exemption from Rule 102 of Regulation M solely to permit MQP Companies to participate in the MQP during the pilot, subject to certain conditions described below.

NASDAQ represents that the MQP is designed to "promote market quality" in certain ETFs listed on NASDAQ.[7] NASDAQ represents that, pursuant to the MQP, the MQP Fee will be used for the purpose of incentivizing one or more market makers in the MQP Security ("MQP Market Maker") [8] to make a quality market in the MQP Security.[9] An MQP Company participating in the MQP shall incur an annual basic MQP Fee of $50,000 per MQP Security.[10] An MQP Company may also voluntarily incur an annual supplemental MQP Fee per MQP Security.[11] The MQP Fee is in addition to the standard (non-MQP) NASDAQ listing fee applicable to the MQP Security.[12] NASDAQ will prospectively bill each MQP Company for the MQP Fee.[13] The MQP Fee will be credited to the NASDAQ General Fund.[14] MQP Credits for each MQP Security will be calculated monthly and credited out of the NASDAQ General Fund quarterly on a pro rata basis to one or more eligible MQP Market Makers.[15] The voluntary MQP established by New Rule 5950 will be effective on a pilot basis.[16]

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[14] 17 CFR 200.30–3(a)(12).

[1] Securities Exchange Act Release No. 69195, (Mar. 20, 2013) ("Approval Order"). The Approval Order contains a detailed description of the MQP. On December 7, 2012, NASDAQ filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act" or "Exchange Act") and Rule 19b–4 thereunder, a proposed rule change to establish the MQP. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on December 31, 2012. Securities Exchange Act Release No. 68515 (Dec. 21, 2012), 77 FR 77141 (Dec. 31, 2012) ("Notice"). On February 7, 2013, NASDAQ submitted Amendment No. 2 to the proposed rule change. On February 8, 2013 NASDAQ withdrew Amendment No. 2 due to a technical error in that amendment and submitted Amendment No. 3 to the proposed rule change. As noted in the Approval Order, Amendment No. 3 provided clarification to the proposed rule change and did not require notice and comment. On February 14, 2013, the Commission designated a longer period within which to take action on the proposed rule change. Securities Exchange Act Release No. 68925 (Feb. 14, 2013), 78 FR 12116 (Feb. 21, 2013). The Approval Order grants approval of the proposed rule change, as modified by Amendment Nos. 1 and 3.

Previously, NASDAQ filed, but later withdrew, an initial proposed rule change to establish the MQP. On March 23, 2012, NASDAQ filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder, a proposed rule change to establish the MQP. On March 29, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on April 12, 2012. Securities Exchange Act Release No. 66765 (Apr. 6, 2012), 77 FR 22042 (Apr. 12, 2012). On May 18, 2012, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change to July 11, 2012. Securities Exchange Act Release No. 67022 (May 18, 2012), 77 FR 31050 (May 24, 2012). On July 11, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1. Securities Exchange Act Release No. 67411 (Jul. 11, 2012), 77 FR 42052 (Jul. 17, 2012). On October 2, 2012, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change. Securities Exchange Act Release No. 67961, 77 FR 61452 (Oct. 9, 2012). On November 6, 2012, NASDAQ submitted Amendment No. 2 to the proposed rule change. On December 6, 2012, NASDAQ withdrew the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto. Securities Exchange Act Release No. 68378, 77 FR 74042 (Dec. 12, 2012) (Securities Exchange Act Release Nos. 66765, 67022, 67411, 67961, and 68378 collectively, the "Initial Proposal").

[2] The term "MQP Company" means the trust or company housing the exchange traded fund ("ETF") or, if the ETF is not a series of a trust or company, then the ETF itself. New Rule 5950(e)(5).

[3] The term "MQP Security" means an ETF security issued by an MQP Company that meets all of the requirements to be listed on NASDAQ pursuant to Rule 5705. New Rule 5950(e)(1).

[4] The MQP Fee, as described more fully in New Rule 5950(b)(2), consists of an annual basic MQP Fee, and may include an additional annual supplemental fee.

[5] *See* Securities Exchange Act Release No. 67411 (Jul. 11, 2012), 77 FR 42052 (Jul. 17, 2012) (stating "The Commission believes that issuer payments made under the SRO Proposals would constitute an indirect attempt by the issuer of a covered security to induce a purchase or bid in a covered security during a restricted period in violation of Rule 102 * * * (u)nder the NASDAQ Proposal, the issuer payments would 'be used for the purpose of incentivizing one or more Market Makers in the MQP Security,' which could induce bids or purchases for the issuer's security during a restricted period").

[6] 17 CFR 242.102.

[7] New Rule 5950 Preamble.

[8] "The term 'Market Maker' has the meaning given in Rule 5005(a)(24)." New Rule 5950(e)(3).

[9] New Rule 5950 Preamble.

[10] New Rule 5950(b)(2)(A).

[11] New Rule 5950(b)(2)(B).

[12] New Rule 5950(b)(2)(C).

[13] New Rule 5950(b)(2)(D).

[14] New Rule 5950(b)(2)(E).

[15] New Rule 5950(c)(2).

[16] New Rule 5950(f).

Under New Rule 5950, NASDAQ will be required to provide notification on its Web site regarding: (i) acceptance of an MQP Company, on behalf of an MQP Security, and an MQP Market Maker into the Program; [17] (ii) the total number of MQP Securities that any one MQP Company may have in the Program; [18] (iii) the names of MQP Securities and MQP Market Maker(s) in each MQP Security, and the dates that an MQP Company, on behalf of an MQP Security, commences participation in and withdraws or is terminated from the Program; [19] (iv) a statement about the MQP that sets forth a general description of the Program as implemented on a pilot basis and a fair and balanced summation of the potentially positive aspects of the Program (e.g., enhancement of liquidity and market quality in MQP Securities) as well as the potentially negative aspects and risks of the Program (e.g., possible lack of liquidity and negative price impact on MQP Securities that withdraw or are terminated from the Program), and indicates how interested parties can get additional information about products in the Program; [20] (v) when NASDAQ receives notification that an MQP Company, on behalf of an MQP Security, or a Market Maker intends to withdraw from the Program, and the date of actual withdrawal or termination from the Program; [21] and (vi) any limit on the number of MQP Market Makers permitted to register in an MQP Security.[22] Furthermore, MQP Companies must, on a product-specific Web site for each product, indicate that the product is in the MQP and provide a link to the Exchange's MQP Web page during such time that the MQP Company lists an MQP Security.[23]

In response to the Notice, the Commission received three comment letters in support of the MQP.[24] One commenter stated that the MQP program "could create value for an issuer," "jump-start trading," and make future liquidity "less uncertain." [25] One commenter believes "the MQP could benefit promising tech companies that today may lack liquid, quality markets." [26] Another commenter stated that "payments from issuers to market makers are used in a number of countries outside of the United States with great success." [27] This commenter reiterated answers to questions concerning disclosure posed in connection with the Initial Proposal. In some areas, the commenter stated that "more information is probably better than less," but in other areas cautioned about the "potential for information overload." [28] Further, the commenter stated that a ticker symbol identifier could be used in connection with an MQP Company's participation in the Program to signal to investors that lower volatility is generated by the Program.[29] Another commenter agreed that "MQP brokers' trades and quotes should be flagged." [30]

In addition, commenters generally in favor of the Initial Proposal supported the Program's stated goal to increase liquidity and promote efficient, robust markets for exchange-traded products.[31] However, in connection with the Initial Proposal, certain commenters expressed concerns about the MQP, including the departure from rules precluding market makers from directly or indirectly accepting payment from an issuer of a security for acting as a market maker.[32] In particular, commenters discussed the potential distortive impact on the natural market forces of supply and demand.[33] Commenters also discussed what they viewed as the failure of Program requirements to adequately mitigate potential negative impacts of the MQP, including concerns about hampering investors' ability to evaluate quotations in MQP Securities.[34]

One commenter stated that "[i]ssuer payments to market makers have the potential to distort market forces, resulting in spreads and prices that do not reflect actual supply and demand." [35] Another commenter suggested that "[i]ncentivized trading obfuscates true supply and demand by creating volume where no natural buyers and sellers exist." [36] One commenter questioned whether any safeguards could alleviate their concerns regarding issuer payments to market makers.[37] Another commenter questioned whether information that would be posted to NASDAQ's Web site would adequately address investor protection and market integrity concerns because investors may not search the NASDAQ Web site for important information about a particular product.[38]

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[17] New Rule 5950(a)(1)(C)(i).

[18] New Rule 5950(a)(1)(C)(ii).

[19] New Rule 5950(a)(1)(C)(iii).

[20] New Rule 5950(a)(1)(C)(iv).

[21] New Rule 5950(a)(2)(D).

[22] New Rule 5950(c)(3).

[23] New Rule 5950(h)(1)(D).

[24] Letter from Albert J. Menkveld, Associate Professor of Finance, VU University Amsterdam and the Duisenberg School of Finance, dated February 18, 2013 ("Menkveld Letter"), Letter from Rey Ramsey, President and CEO, TechNet, dated January 22, 2013 ("TechNet Letter") and Letter from Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated January 30, 2013 ("Weaver Letter"). Both commenters submitted letters in support of the Initial Proposal as well. Letter from Rey Ramsey, President and CEO, TechNet, dated June 20, 2012 and Letter from Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated April 26, 2012.

[25] Menkveld Letter.

[26] TechNet Letter.

[27] Weaver Letter.

[28] Id.

[29] Id.

[30] Menkveld Letter.

[31] *See, e.g.*, Letter from Joseph Cavatoni, Managing Director, and Joanne Medero, Managing Director, BlackRock, Inc., dated July 11, 2012.

[32] *See, e.g.*, Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated May 3, 2012 (citing to a discussion in NASD Notice to Members 75–16 regarding the reasons for prohibiting issuer payments for market making: "The additional factor of payments by an issuer to a market maker would probably be viewed as a conflict of interest since it would undoubtedly influence, to some degree, a firm's decision to make a market and thereafter, perhaps, the prices it would quote. Hence, what might appear to be independent trading activity may well be illusory."). In addition, another commenter noted "that the MQP would represent a departure from the current rules precluding market makers from directly or indirectly accepting payment from an issuer of a security for acting as a market maker" yet supported the concept of market maker incentive programs on a pilot basis. Letter from Ari Burstein, Investment Company Institute ("ICI"), dated May 3, 2012. In a subsequent letter, however, the same commenter noted that certain of its members opposed the MQP and stated that it "could create a 'pay-to-play' environment." Letter from Ari Burstein, ICI, dated August 16, 2012. Pursuant to the Approval Order, the Exchange will adopt new IM–2460–1 to exclude the MQP from NASDAQ Rule 2460 (Payment for Market Making). The Approval Order notes that NASDAQ Rule 2460 is almost identical to, and is based on, FINRA Rule 5250 (Payments for Market Making) and that a number of aspects of the MQP mitigate the concerns that FINRA Rule 5250 and NASDAQ Rule 2460 were designed to address.

[33] *See, e.g.*, Letter from F. William McNabb, Chairman and Chief Executive Officer, Vanguard, dated August 16, 2012.

[34] *See, e.g.*, Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated May 3, 2012.

[35] Letter from F. William McNabb, Chairman and Chief Executive Officer, Vanguard, dated August 16, 2012.

[36] Letter from Timothy Quast, Managing Director, Modern IR, dated April 26, 2012.

[37] Letter from Ari Burstein, ICI, dated August 16, 2012 (stating "ICI members who oppose the Programs believe any fixes to the proposed parameters will be insufficient to address their overall concerns with market maker incentive programs").

[38] Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated May 3, 2012 (asking "[f]or example, given what we know about investor behavior, is it likely that investors would consult Nasdaq's Web site for information about which ETFs and market makers are participating in the Program. * * * [i]f not, then most investors would not be able to distinguish quotations that reflect true market forces from quotations that have been influenced by issuer payments"). As discussed below, while New Rule 5950 requires certain disclosures on the NASDAQ Web site, the Commission believes that additional disclosures are required to address these concerns as they relate to relief from Rule 102 of Regulation M.

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such persons, directly or indirectly, from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security[39] during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder, except as specifically permitted in the rule.[40] As mentioned above, the Commission believes that the payment of the MQP Fee would constitute an indirect attempt to induce a bid for or purchase of a covered security during the applicable restricted period.[41] As a result, absent exemptive relief, participation in the MQP by an MQP Company would violate Rule 102.

On the basis of the conditions set out below and the requirements set forth in New Rule 5950, which in general are designed to help inform investors about the potential impact of the MQP, the Commission finds that it is appropriate in the public interest, and is consistent with the protection of investors, to grant a limited exemption from Rule 102 of Regulation M solely to permit the payment of the MQP Fee as set forth in New Rule 5950 during the pilot.[42] This limited exemption is conditioned on a requirement that the MQP Security is an ETF and the secondary market price for shares of the ETF must not vary substantially from the net asset value of such ETF shares during the duration of the ETF's participation in the MQP. This condition is designed to limit the MQP to ETFs that have a pricing mechanism that is expected to keep the price of the ETF shares tracking the net asset value of the ETF shares, which should make the shares less susceptible to price manipulation.

This limited exemption is further conditioned on disclosure requirements, as set forth below, which are designed to alert potential investors that the trading market for the otherwise less liquid securities in the MQP may be affected by the Program. By making it easier for investors to be able to distinguish which quotations may have been influenced by the MQP Fee from those that have not, and by requiring the MQP Companies to provide information on the potential effect of Program participation on the price of their MQP Securities, the required enhanced disclosure requirements are designed to inform potential investors about the potential distortive impact of the MQP Fee on the natural market forces of supply and demand. General disclosure provided on the Exchange's Web site and a simple notification on a product-specific Web site, as required under new NASDAQ Rule 5950, may not be sufficient to obtain this result. The required enhanced disclosures are expected to promote greater investor protection by helping to ensure that investors (who may not know to search the NASDAQ's Web site) will have easier access to important information about a particular ETF.[43] We also note that, to the extent that information about participation in the MQP is material, disclosure of this kind may already be required by the federal securities laws and rules.

**Conclusion**

*It is therefore ordered,* that MQP Companies are hereby exempted from Rule 102 of Regulation M solely to permit the payment of the MQP Fee as set forth in New Rule 5950 in connection with an MQP Security during the pilot, subject to the conditions contained in this order and compliance with the requirements of New Rule 5950.

This exemption is subject to the following conditions:

1. The MQP Security is an ETF and the secondary market price for shares of the ETF must not vary substantially from the net asset value of such ETF shares during the duration of the MQP Security's participation in the MQP;

2. An MQP Company must provide prompt notice to the public by broadly disseminating a press release prior to entry (or upon re-entry) into the MQP. This press release must disclose:

a. The payment of an MQP Fee is intended to generate more quotes and trading than might otherwise exist absent this payment, and that the MQP Security leaving the Program may adversely impact a purchaser's subsequent sale of the security; and

b. A hyperlink to the Web page described in condition (4) below;

3. An MQP Company must provide prompt notice to the public by broadly disseminating a press release prior to an MQP Security leaving the Program for any reason, including termination of the Program. This press release must disclose:

a. The date that the MQP Security is leaving the MQP and that leaving the MQP may have a negative impact on the price and liquidity of the MQP Security which could adversely impact a purchaser's subsequent sale of the MQP Security; and

b. A hyperlink to the Web page described in condition (4) below;

4. An MQP Company must provide prompt, prominent and continuous disclosure on its Web site in the location generally used to communicate information to investors about a particular MQP Security, and for an MQP Security that has a separate Web site, the MQP Security's Web site of:

a. The MQP Security and ticker, date of entry into the Program, and the amount of the MQP Fee (basic and supplemental, if any);

b. Risk factors investors should consider when making an investment decision, including that participation in the Program may have potential impacts on the price and liquidity of the MQP Security; and

c. Termination date of the pilot, anticipated date (if any) of the MQP Security leaving the Program for any reason and the date of actual exit date (if applicable), and that the MQP Security leaving the Program could adversely impact a purchaser's subsequent sale of the MQP Security; and

5. The Web site disclosure in condition 4 must be promptly updated if a material change occurs with respect to any information contained in the disclosure.

This exemptive relief expires when the pilot terminates, and is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. This exemptive relief is limited solely to the payment of the MQP Fee as set forth in New Rule 5950 for an MQP Security that is an ETF participating in the Program, and does not extend to any other activities, any other security of the MQP Company, or any other issuers.[44] In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This

[39] Covered security is defined as any security that is the subject of a distribution, or any reference security. 17 CFR 242.100(b).

[40] 17 CFR 242.102(a).

[41] *See* note 5, *supra*

[42] Rule 102(e) allows the Commission to grant an exemption from the provision of Rule 102, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

[43] The required Web site and press release disclosures should be less burdensome than requiring a ticker symbol identifier or flagging MQP broker quotes and trades, as suggested by two commenters.

[44] Other activities, such as ETF redemptions, are not covered by this exemptive relief.

order does not represent Commission views with respect to any other question that the proposed activities may raise, including, but not limited to the adequacy of the disclosure required by federal securities laws and rules, and the applicability of other federal or state laws and rules to, the proposed activities.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06884 Filed 3–25–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69186; File No. SR–BOX–2013–12]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Interpretive Material to Rule 7080 in Connection With the Implementation of the Limit Up-Limit Down Plan

March 20, 2013.

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 March 8, 2013, BOX Options Exchange LLC ("BOX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Interpretive Material to Rule 7080 in connection with the implementation of Limit Up-Limit Down procedures for securities that underlie options traded on BOX. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Previously, the Commission approved a National Market System Plan to Address Extraordinary Market Volatility across the equities markets (as amended, the "Plan").[3] The purpose of the proposed rule change is to implement joint industry principles across the options exchanges to address the implementation of the Plan. In particular, the proposed rule change will address the trading conditions for options on BOX Market LLC (the Exchange's options trading facility, "BOX"), when an underlying equity security enters a Limit State, or Straddle State, as those terms are defined within the Plan.

The Exchange currently allows the entry of market orders, which are orders to buy or sell at the best price available at the time of execution ("Market Orders").[4] The purpose of this proposed rule change is to add to the Exchange Rules new IM–7080–1 (Trading Conditions During Limit State or Straddle State) to provide for how the Exchange will treat orders during occurrences when an underlying NMS stock is in a Limit State or a Straddle State. IM–7080–1 will provide that if the underlying security has entered a Limit State or Straddle State as those terms are defined within the Plan, certain conditions shall apply during the Limit State or Straddle State. Specifically, all Market Orders and BOX-Top Orders will be rejected and any resting Market Orders and BOX-Top Orders will be cancelled.

The Limit Up/Limit-Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan. Under the Plan, a Limit State will be declared if the national best offer equals the lower price band and does not cross the national best bid, or the national best bid equals the upper price band and does not cross the national best offer. A Straddle State is when the national best bid (offer) is below (above) the lower (upper) price band and the security is not in a Limit State, and trading in that security deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility. Accordingly, when the underlying security is in a Limit State or Straddle State, there will not be a reliable price for the security to serve as a benchmark for the price of the related option.

In such a state, the Exchange does not believe that it should permit the execution of Market Orders or BOX-Top Orders, which are un-priced orders that execute at the best price available at the time the Exchange receives such orders. However, limit orders, which are orders to buy or sell at the price stated or better ("Limit Orders"), contain a limit price that will protect them from being executed at inferior prices.[5] Limit Orders will not be rejected during the Limit or Straddle State.[6]

The Exchange believes that the rejection of Market Orders or BOX-Top Orders when the underlying security is subject to a Limit State or Straddle State will help to maintain a fair and efficient marketplace for the execution of options. Furthermore, the Exchange will reject all incoming Market Orders or BOX-Top Orders during the opening of in the event that the underlying NMS stock is open, but has entered into a Limit State or Straddle State. When this occurs, any resting Market Orders will be eliminated and new Market Orders

[45] 17 CFR 200.30–3(a)(6).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release").

[4] *See* BOX Rule 7110(c).

[5] *Id.*

[6] The Exchange will not reject pending transactions in the Exchange's Facilitation or Solicitation Mechanisms (BOX Rule 7270), as all such transactions are initiated with a limit price. Market Orders received via the Exchange's Price Improvement mechanism (BOX Rule 7150) will be rejected, while Limit Orders will be accepted However, if the PIP auction commences before the underlying has moved into a Limit or Straddle State it will not be terminated or canceled, as market conditions were reasonable when the auction started. Subject to regulatory approval, the Exchange expects to launch a Complex Order Offering. *See* Securities Exchange Act Release No. 69027 (March 4, 2013), 78 FR 15093 (March 8, 2013) (SR–BOX–2013–01) (Notice of Filing Regarding Complex Orders). When this functionality is approved Complex Orders that are Market Orders will be also be rejected when the underlying enters a Limit or Straddle State.

will be rejected during the pre-opening. The series will open as scheduled, but Market Orders and BOX-Top Orders will continue to be rejected until the underlying NMS stock stays out of a Limit or Straddle State.

Lastly, the Exchange proposes that current IM–7080–1 regarding Trading Pause be renumbered to IM–7080–2.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and furthers the objections of Section 6(b)(4) of the Act,[8] in particular, in that it is 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. Specifically, the Exchange believes that the proposal is designed to help maintain fair and orderly markets by imposing certain modified conditions for Market Orders and BOX-Top Orders during times of uncertainty regarding the price of the underlying security due to extraordinary market volatility in such underlying security.

When the underlying equity security is in a Limit State or Straddle State, there will not be a reliable price for the security to serve as a benchmark for the price of the option. This circumstance raises particular concerns for the quality of execution for retail customers buying or selling options. Accordingly, the Exchange and its options exchange competitors are proposing rules that will treat listed options on the subject underlying security in a uniform fashion across the various markets. As such, the Exchange believes it is in the interests of the public and for investor protection to reject Market Orders and BOX-Top Orders and cancel such resting orders when the underlying equity security enters a Limit State or Straddle State.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange and its options exchange competitors are proposing rules designed to treat listed options on any underlying equity security affected as part of the Plan in a uniform fashion across the various markets. As such, the Exchange believes the proposals among the various options exchanges will impact all market participants equally, and will benefit market participants in periods of extraordinary market volatility and as consistent with the purposes of the Act. For this reason, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b-4(f)(6) thereunder.[10] 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.

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) of the Act[11] 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 No. SR–BOX–2013–12 on the subject line.

*Paper comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BOX–2013–12. 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 No. SR–BOX–2013–12 and should be submitted on or before April 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06875 Filed 3–25–13; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Council on Underserved Communities, Re-Establishment

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice of re-establishment of Council on Underserved Communities.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act and its implementing regulations, SBA is issuing this notice to announce the re-establishment of its Council on Underserved Communities. This advisory committee is being re-established to help the agency identify and address needs of small businesses in underserved urban and rural communities.

**FOR FURTHER INFORMATION CONTACT:** Questions about the Council on Underserved Communities may be directed to Dan Jones, telephone (202) 205–7583, fax (202) 481–6536, email *dan.jones@sba.gov* or mail, U.S. Small Business Administration, 409 3rd Street SW. 7th Floor, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authority in section 8(b)(13) of the Small Business Act, (15 U.S.C. 637(b)), SBA is re-establishing the Council on Underserved Communities. This discretionary committee is being re-established in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

The Council provides advice, ideas and opinions on SBA programs and services and issues of interest to small businesses in underserved communities. Its members provide an essential connection between SBA and small businesses in inner city and rural communities. The Council's scope of activities includes reviewing SBA current programs and policies, while working towards creating new and insightful place-based initiatives to spur economic growth, job creation, competiveness, and sustainability.

Council members bring a number of important points of views to the Council: An understanding of the barriers to success for small business owners in underserved communities; experience working in and operating businesses in urban and rural underserved communities; challenges regarding access to capital; knowledge and experience in training and counseling entrepreneurs in underserved communities; and associations representing owners of small business in underserved communities.

The Council has a total of twenty (20) members, 19 members-at-large and one Chair. Members consist of current or former small business owners, community leaders, officials from small business trade associations, and academic institutions. Members represent the interests of underserved communities across the country, both rural and urban.

Dated: March 15, 2013.

**Dan Jones,**

*SBA Committee Management Officer.*

[FR Doc. 2013–06776 Filed 3–25–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF STATE

**[Public Notice 8257]**

### Notice of Amendment to the Advisory Committee on International Law Charter

The Department of State has amended the Charter of the Advisory Committee on International Law to add three additional membership positions. The Committee is comprised of all former Legal Advisers of the Department of State and, under the amended Charter, up to 28 individuals appointed by the Legal Adviser. Through the Committee, the Department of State will continue to obtain the views and advice of a cross section of the country's outstanding members of the legal profession on significant issues of international law. The Committee follows the procedures prescribed by the Federal Advisory Committee Act (FACA). Its meetings are open to the public unless a determination is made in accordance with the FACA and 5 U.S.C. 552b(c) that a meeting or portion of a meeting should be closed to the public. Notice of each meeting will be published in the **Federal Register** at least 15 days prior to the meeting, unless extraordinary circumstances require shorter notice. For further information, please contact Jonas Lerman, Executive Director, Advisory Committee on International Law, Department of State, at 202–776–8442 or *lermanjb@state.gov*.

Dated: March 19, 2013.

**Jonas Lerman,**

*Attorney-Adviser, Office of the Legal Adviser, Department of State.*

[FR Doc. 2013–06902 Filed 3–25–13; 8:45 am]

**BILLING CODE 4710–08–P**

## DEPARTMENT OF STATE

**[Public Notice 8256]**

### Advisory Committee for the U.S. National Commission for UNESCO; Renewal

The Department of State has renewed the Charter of the Advisory Committee for the U.S. National Commission for UNESCO. This advisory committee makes recommendations to the U.S. Department of State. The primary focus of these recommendations relate to the formulation and implementation of U.S. policy towards UNESCO on matters of education, science, communications, and culture. Also, it functions as a liaison with organizations, institutions, and individuals in the United States interested in the work of UNESCO.

The committee is comprised of representatives from various non-governmental organizations interested in matters of education, science, culture, and communications. And it also includes at-large individuals and state, local, and federal government representatives. The committee meets annually with the Commission to provide information on UNESCO related topics and make recommendations.

For further information, please call Francine Randolph, U.S. Department of State, (202) 663–0026.

Dated: January 17, 2013.

**Jennifer Eldridge,**

*Acting Office Director, Advisory Committee for the U.S. National Commission for UNESCO.*

[FR Doc. 2013–06900 Filed 3–25–13; 8:45 am]

**BILLING CODE 4710–19–P**

## DEPARTMENT OF TRANSPORTATION

### Connected Vehicle Reference Implementation Architecture Workshop; Notice of Public Meeting

**AGENCY:** ITS Joint Program Office, Research and Innovative Technology Administration, U.S. Department of Transportation.

**ACTION:** Notice.

The U.S. Department of Transportation (USDOT) Intelligent Transportation System Joint Program Office (ITS JPO) will host a free Connected Vehicle Reference Implementation Architecture (CVRIA) public workshop meeting to discuss and solicit feedback on preliminary architecture viewpoint drafts and to gain important feedback from the stakeholders who will be involved in manufacturing, developing, deploying, operating, or maintaining the connected

vehicle technologies and applications. The public meeting will take place April 30, 2013, 8:30 a.m.–5:00 p.m. PDT and May 1, 2013, 8:30 a.m.–4:00 p.m. PDT at the Hyatt Place, 282 Almaden Boulevard, San Jose, California 95113. To register for the CVRIA Workshop, please visit *www.itsa.org/cvriaregistration.*

**About the Connected Vehicle Research Program at USDOT**

Connected Vehicle research at USDOT is a multimodal program that involves using wireless communication between vehicles, infrastructure, and personal communications devices to improve safety, mobility, and environmental sustainability. The CVRIA project is sponsored and led by the ITS JPO, under the management of the ITS Architecture and Standards Programs and in cooperation with the Systems Engineering and Test Bed Programs. To learn more about the Connected Vehicle program please visit *www.its.dot.gov.*

If you have any questions or you need any special accommodations, please contact Adam Hopps, Transportation Program Specialist, Intelligent Transportation Society of America, 1100 17th Street NW., Suite 1200, Washington, DC 20036, 202–680–0091.

Issued in Washington, DC, on the 20th day of March 2013.

**Brian Cronin,**

*Acting Managing Director, ITS Joint Program Office.*

[FR Doc. 2013–06893 Filed 3–25–13; 8:45 am]

BILLING CODE 4910–HY–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Commercial Space Transportation Advisory Committee; Open Meeting

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

**ACTION:** Notice of Commercial Space Transportation Advisory Committee Open Meeting.

**SUMMARY:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Tuesday, May 14, 2013, from 8:00 a.m. to 5:00 p.m., and Wednesday, May 15, from 8:30 a.m. to 2:00 p.m., at the National Housing Center, 1201 15th Street NW., Washington, DC 20005. This will be the 57th meeting of the COMSTAC.

The proposed schedule for the COMSTAC working group meetings on May 14 is below:

—Operations (8:00 a.m.–10:00 a.m.)
—Business/Legal (10:00 a.m.–12:00 a.m.)
—Systems (1:00 p.m.–3:00 p.m.)
—Export Controls (3:00 p.m.–5.00 p.m.)

The full Committee will meet on May 15. The proposed agenda for that meeting features speakers relevant to the commercial space transportation industry; and reports and recommendations from the working groups.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Paul Eckert, COMSTAC Executive Director, (the Contact Person listed below) in writing (mail or email) by April 30, 2013, so that the information can be made available to COMSTAC members for their review and consideration before the May 14 and 15 meetings. Written statements should be supplied in the following formats: one hard copy with original signature and/or one electronic copy via email

Subject to approval, a portion of the May 15th meeting will be closed to the public (starting at approximately 2:00 p.m.).

An agenda will be posted on the FAA Web site at *www.faa.gov/go/ast.* For specific information concerning the times and locations of the COMSTAC working group meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Persons listed below in advance of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Paul Eckert, telephone (202) 267–8655; email *paul.eckert@faa.gov,* or Brenda Parker, telephone (202) 267–3674; email *brenda.parker@faa.gov,* FAA Office of Commercial Space Transportation (AST–3), 800 Independence Avenue SW., Room 331, Washington, DC 20591.

Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Issued in Washington, DC, March 19, 2013.

**George C. Nield,**

*Associate Administrator for Commercial Space Transportation.*

[FR Doc. 2013–06939 Filed 3–25–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Sixth Meeting: RTCA Special Committee 226, Audio Systems and Equipment

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

**ACTION:** Meeting Notice of RTCA Special Committee 226, Audio Systems and Equipment.

**SUMMARY:** The FAA is issuing this notice to advise the public of the sixth meeting of the RTCA Special Committee 226, Audio Systems and Equipment.

**DATES:** The meeting will be held April 15–17, 2013 from 9:00 a.m.–5:00 p.m.

**ADDRESSES:** The meeting will be held at RTCA, 1150 18th Street NW., Suite 910, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* In addition, Sophie Bouquet may be contacted directly at (202) 330–0663, email: *sbousquet@rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 226. The agenda will include the following:

- Welcome and Administrative Remarks
- Introductions
- Agenda Overview
- Review meeting minutes from January Working Group Meeting
- Comment period related to any actions taken at January Working Group Meeting
- Review previous action items
- Solicit proposals for further changes to DO–214
- Continue discussion on the following:
  - (a) A consistent method for testing of ANR headsets
  - (b) A consistent method for testing of Oxygen Mask Microphones
  - (c) Impedance to be used for headset standard
  - (d) Additional tests required for

powered headsets
(e) RF susceptibility issues
- Continue review of DO–214 and draft updates & changes since last meeting
- Other Business
- Review open actions
- Establish agenda for next meeting & discuss actions to reach
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 15, 2013.

**Paige Williams,**

*Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.*

[FR Doc. 2013–06795 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2013 0029]**

### Information Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

**DATES:** Comments should be submitted on or before May 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** Bill Kurfehs, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–2318; or email: *bill.kurfehs@dot.gov*. Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Application and Reporting Requirements for Participation in the Maritime Security Program.

*Type of Request:* Extension of currently approved information collection.

*OMB Control Number:* 2133–0525.

*Form Numbers:* MA–172.

*Expiration Date of Approval:* Three years from date of approval by the Office of Management and Budget.

*Summary of Collection of Information:* The Maritime Security Act of 2003 provides for the enrollment of qualified vessels in the Maritime Security Program Fleet. Applications and amendments are used to select vessels for the fleet. Periodic reporting is used to monitor adherence of contractors to program parameters.

*Need and Use of the Information:* The collected information is necessary for MARAD to determine if selected vessels are qualified to participate in the Maritime Security Program.

*Description of Respondents:* Respondents are vessel operators.

*Annual Responses:* 195.

*Annual Burden:* 210 hours.

*Comments:* Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://regulations.gov*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT* (*or EST*), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://regulations.gov*.

*Privacy Act:* Anyone is able to search the electronic form of all 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://regulations.gov*.

**Authority:** 49 CFR 1.93.

By Order of the Maritime Administrator.

Dated: March 19, 2013.

**Christine Gurland,**

*Acting Secretary, Maritime Administration.*

[FR Doc. 2013–06668 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Notice of Applications for Modification of Special Permit

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications for Modification of Special Permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

**DATES:** Comments must be received on or before April 10, 2013.

**ADDRESSES:**

*Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New

Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov*.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 04, 2013.

**Donald Burger,**

*Chief, General Approvals and Permits.*

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of special permit thereof |
|---|---|---|---|---|
| | | **Modification Special Permits** | | |
| 14828–M ..... | Croman Corporation White City, OR. | 49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2)(3), 175.30 and 175.75. | To modify the special permit to authorize the addition of Division 1.2 explosives. | |
| 14912–M ..... | ITW Sexton Decatur, AL. | 49 CFR 173.304a and 173.306 (a)(3)(ii). | To authorize the addition of a Division 2.1 material and require burst pressure of containers to not be below 480 psig. | |
| 15793–M ..... | Northern Air Cargo Anchorage, AK. | 49 CFR 172.101 Column (9B). | To reissue the special permit originally issued on an emergency basis. | |

[FR Doc. 2013–06699 Filed 3–25–13; 8:45 am]

**BILLING CODE 4910–60–M**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Notice of Application for Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications for Special Permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before April 25, 2013.

**ADDRESS COMMENTS TO:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 18, 2013.

**Donald Burger,**

*Chief, General Approvals and Permits.*

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of special permits thereof |
|---|---|---|---|---|
| | | **NEW SPECIAL PERMITS** | | |
| 15811–N ..... | ..... | Bluesky Helicopters, Inc., Redlands, CA. | 49 CFR 49 CFR Table § 172.101, Column(9B), § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1), § 172.200, 172.300, and 172.400. | To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4) |
| 15820–N ..... | ..... | Korean Air, Arlington, VA. | 49 CFR 172.101, Column (9B), 172.204(c)(3), 173.27, and 175.30(a)(1). | To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4) |

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of special permits thereof |
|---|---|---|---|---|
| 15821–N | | Circor Instrumentation Technologies dba, Hoke Incorporated, Spartanburg, SC. | 49 CFR 49 CFR 178.36 | To authorize the manufacture, marking, sale and use of non-DOT specification cylinders manufactured from Hastelloy C–276 (ASTM B622) material. (mode 1) |
| 15827–N | | Advanced Chemical Transport, Sunnyvale, CA. | 49 CFR 173.185(a) | To authorize the manufacture, marking, sale an use of certain packagings for spent lithium ion batteries that have not been tested in accordance with the UN Manual of Test Criteria. (modes 1, 3, 4) |
| 15828–N | | Praxair, Inc., Danbury, CT. | 49 CFR 180.605(h)(3) | To authorize the transportation in commerce of certain portable tanks that have been alternatively tested. (modes 1, 3) |
| 15832–N | | Baker Petrolite, Sugar Land, TX. | 49 CFR 172.102(c) Special Provision B14 and TP38. | To authorize the transportation in commerce of certain uninsulated portable tanks for transportation of acrolein by motor vehicle and cargo vessel. (modes 1, 3) |
| 15833–N | | Northern Power Systems, Inc. | 49 CFR 172.200, 172.315(a)(2), and 172.504(a). | To authorize the transportation in commerce of limited quantities of paint, aerosols and fire extinguishers in a package containing a windmill with no marks, labels or shipping paper documents for transportation by highway and cargo vessel. (modes 1,3) |
| 15834–N | | Multistar Ind., Inc., Othello, WA. | 49 CFR 180.605(1) | To authorize the transportation in commerce of certain portable tanks and cargo tanks containing anhydrous ammonia that do not have manufacturer's data reports required by 49 CFR 180.605(1). (mode 1) |
| 15836–N | | Galyean LP | 49 CFR 173.202, 173.203, 173.241, 173.242 and 173.243. | To authorize the transportation in commerce of certain Class 3 and Class 8 materials in alternative packaging for transportation by motor vehicle. (mode 1) |

[FR Doc. 2013–06700 Filed 3–25–13; 8:45 am]
BILLING CODE 4909–60–M

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Office of Hazardous Materials Safety; Delayed Applications

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications Delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535

**Key to "Reason for Delay"**

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

**Meaning of Application Number Suffixes**

N—New Application
M—Modification Request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on March 18, 2013.

**Donald Burger,**
*Chief, General Approvals and Permits.*

| Application | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| **Modification to Special Permits** | | | |
| 14562–M | The Lite Cylinder Company Franklin, TN | 3 | 05–31–2013 |

| Application | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| | **New Special Permit Applications** | | |
| 15650–N | JL Shepherd & Associates San Fernando, CA | 3 | 05–31–2013 |
| | **Renewal Special Permits Applications** | | |
| 14455–R | EnergySolutions, LLC Oak Ridge, TN | 3 | 03–31–2013 |
| 15228–R | FedEx Express Memphis, TN | 3 | 03–31–2013 |
| 14832–R | Trinity Industries, Inc. Dallas, TX | 3 | 05–31–2013 |

[FR Doc. 2013–06692 Filed 3–25–13; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Special Permit Applications Actions

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (February to Febrnary 2013). The mode of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on March 18, 2013.

**Donald Burger,**

*Chief, Special Permits and Approvals Branch.*

| S.P No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|
| | **MODIFICATION SPECIAL PERMIT GRANTED** | | |
| 11470–M | Veolia ES Technical Solutions, L.L.C., Flanders, NJ. | 49 CFR 172.301(a)(2) | To modify the special permit to authorize revising the marking requirements. |
| 15655–M | Walt Disney Parks and Resorts U.S., Inc., Anaheim, CA. | 49 CFR 173.56(b) and 172.320. | To modify the special permit to authorize an additional packaging configuration. |
| 13232–M | CP Industries, McKeesport, PA. | 49 CFR 178.37(k)(2)(i); 178.37(1); 178.45(j)(1); 178.45(k)(2). | To modify the special permit to remove the requirement for maintaining a copy of the special permit where each package is offered or reoffered for transportation. |
| 15647–M | Thunderbird Cylinder, Inc., Phoenix, AZ. | 49 CFR 179.7 and 180.505 | To reissue the special permit originally issued on an emergency basis for retesting of certain DOT Specification and non-DOT Specification multi unit tank car tanks. |
| 14003–M | INOCOM Inc., Riverside, CA | 49 CFR 173.302(a)(1), 173.304(a) and 180.205. | To modify the special permit by replacing the current CFFC gunfire test with the ISO–11119–2 gunfire test for cylinders with diameter of 120 mm or less. |
| 15118–M | Mystery Creek Resources Inc., Anchorage, AK. | 49 CFR 172.101 Column (9B) | To modify the special permit to authorize Sodium hydroxide solution in quantities that exceed those authorized by cargo only aircraft. |
| | **NEW SPECIAL PERMIT GRANTED** | | |
| 15676–N | Iberica del Espacio, S.A | 49 CFR 172.101 Column (9B) | To authorize the transportation in commerce of anhydrous ammonia by cargo aircraft exceeding the quantities authorized in Column (9B). (mode 4) |
| 15716–N | Department of Energy, Washington, DC. | 49 CFR, 49 CFR § 173.310 | To authorize the transportation in commerce of boron trifluoride in radiation detectors. (mode 1) |
| 15735–N | W.R. Grace, Grace-Conn, Columbia, MD. | 49 CFR 173.242 | To authorize the transportation in commerce of a Class 4.3 material in an IBC. (mode 1) |
| 15741–N | Pacific Consolidated Industries, LLC Riverside, CA. | 49 CFR 173.302(f) (3), (4), (5); 175.501(e)(3). | To authorize the transportation of oxidizing gases by cargo aircraft without a strong outer packaging capable of passing the Flame Penetration Restance Test, the Thermal Resistance Test, and to waive marking the outer package. (modes 4, 5) |
| 15744–N | Praxair Distribution, Inc., Danbury, CT. | 49 CFR 180.205; 180.209 | To authorize the transportation in commerce of certain cylinders that have been ultrasonically retested for use in transporting Division 2.1, 2.2, and 2.3 materials. (modes 1, 2, 3, 4) |

| S.P No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|
| 15758–N | K&S Helicopters, Inc. Column (9B), Kailua Kona, HI. | 49 CFR § 172.101, § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1), §§ 172.200, 172.300, 172.400, 173.302(f)(3) and § 175.75. | To authorize the transportation in commerce of certain hazardous materials by Part 133 Rotorcraft External. Load Operations, attached to or suspended from an aircraft, in remote areas of the US without meeting certain hazard communication and stowage requirements. (mode 4) |
| 15768–N | E.I. DuPont de Nemours & Company, Inc., Mt. Clemens, MI. | 49 CFR 172.302(a); 172.302(c); 172.326(a); 172.331(b); 172.504(a). | To authorize the transportation in commerce of bulk packagings and unmarked IBCs and DOT–57 portable tanks containing residue of high flash point combustible liquid. (mode 1) |
| **EMERGENCY SPECIAL PERMIT GRANTED** | | | |
| 12135–M | Daicel Safety Systems, Inc., Hyogo Prefecture 671–1681. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the special permit to authorize a new design of non-DOT specification cylinders (pressure vessels) for use as components of automobile vehicle safety systems. (modes 1, 2, 3, 4) |
| 15756–M | United States Environmental Protection Agency Region II, Edison, NJ. | 49 CFR Parts 171–180 | To authorize additional time for the transportation in commerce of certain hazardous materials in support of the recovery and relief efforts within the Hurricane Sandy disaster areas of New York and New Jersey under conditions that may not meet the Hazardous Materials Regulations. (mode 1) |
| 15817–N | CL Smith Company, Saint Louis, MO. | 49 CFR 173.13(a), 173.13(b), 173.13(c)(l)(ii), 173.13(c)(1)(iv), 173.13(d). | Authorizes the manufacture, marking, and sale of specially designed combination packaging, for shipment of small quantities Division 6.1 solids in Packing Group II and III shipped without labels. (modes 1, 2, 4, 5) |
| **DENIED** | | | |
| 15764–N | Request by Matheson Tr-Gas Basking Ridge, NJ February 15, 2013. To authorize the transportation in commerce of certain cylinders that have been ultrasonically retested for use in transporting Division 2.1, 2.2, and 2.3 materials. | | |

[FR Doc. 2013–06698 Filed 3–25–13; 8:45 am]
BILLING CODE 4909–60–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Information Collection Activities; Household Movers' Disclosure Requirements

**ACTION:** 30-day notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (Board) gives notice that it is requesting from the Office of Management and Budget (OMB) approval of the information collection—Household Movers' Disclosure Requirements—further described below and detailed in the appendices. The Board previously published a notice about this collection on August 10, 2012, at 77 Fed. Reg. 47918. That notice allowed for a 60-day public review and comment period. No comments were received.

Comments may now be submitted to OMB concerning (1) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate.

**DATES:** Written comments are due on April 25, 2013.

**ADDRESSES:** Written comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Patrick Fuchs, Surface Transportation Board Desk Officer, by fax at (202) 395–5167; by mail at OMB, Room 10235, 725 17th Street NW., Washington, DC 20500; or by email at *OIRA_SUBMISSION@OMB.EOP.GOV*. Comments should refer to "Household Movers' Disclosure Requirements."

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Marilyn Levitt at (202) 245–0323 or *PRA@stb.dot.gov*. [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.]

**SUBJECTS:** In this notice the Board is requesting comments on the following information collection:

*Title:* Household Movers' Disclosure Requirements.

*OMB Control Number:* 2140–XXXX.

*STB Form Number:* None.

*Type of Review:* Existing collections in use without an OMB control number.

*Respondents:* Household goods movers that desire to offer a rate limiting their liability on interstate moves to anything less than replacement value of the goods.

*Number of Respondents:* 4,500 (approximate number of motor carriers and freight forwarders involved in authorized for-hire household goods carriage in the United States according to the American Moving and Storage Association.

*Frequency:* One time (Movers need only modify the standard documents that they already distribute.).

*Total Burden Hours* (annually including all respondents): We estimate that 15 of the approximately 4,500 household-goods movers are large firms that print their own forms and that it will take each of these large firms no more than 24 hours to produce the modified forms, resulting in a total start-up burden of 360 hours (24 × 15). Annualized over the three years covered by OMB's approval, this results in an

annual burden of 120 hours. The household-goods carrier already knows its released rate. It is merely adding that rate to a document that it already distributes to the customer.

*Total "Non-hour Burden" Cost:* There will be a startup cost to the remaining approximately 4485 movers/freight forwarders that are small companies that will use the services of a professional printer to replace their existing stock of outdated forms (estimated at 500 copies). This cost is expected to be $460 per mover, based on information supplied by the American Moving & Storage Association. Therefore, the total non-hour burden cost is estimated at a one-time expense of $2,063,100. Annualized over the three years covered by OMB's approval, this results in an annual burden of $687,700.

*Needs and Uses:* Moving companies must inform consumers of their rights and obtain a signed waiver if the consumer elects anything other than full-value protection. *See Released Rates of Motor Common Carriers of Household Goods.* RR 999 (Amendment No. 5) (STB served March 9, 2012); Appendices I–IV in this notice. Previously, consumers were sometimes confused and did not realize that they had waived full value protection until after they had experienced damage to or loss of their goods. The information collection that is the subject of this notice is intended to correct this problem by providing early notice regarding the two liability options (full-value protection and the lower released-rate protection), as well as adequate time and information to help consumers decide which option to choose.

**SUPPLEMENTARY INFORMATION:**

Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: March 21, 2013.

**Jeffrey Herzig,**

*Clearance Clerk.*

## Appendix 1

NOTICE REQUIRED ON ESTIMATE FORM/ COMPUTER SCREEN

The following notice shall be placed in a prominent place, in at least 12-point type, on a moving company's required written estimate (if printed). If the estimate is provided electronically, this statement must be of a size that, when printed on 8 by 12 inch paper, equates to 12-point type.

WARNING: If a moving company loses or damages your goods, there are 2 different standards for the company's liability based on the types of rates you pay. BY FEDERAL LAW, THIS FORM MUST CONTAIN A FILLED-IN ESTIMATE OF THE COST OF A MOVE FOR WHICH THE MOVING COMPANY IS LIABLE FOR THE FULL (REPLACEMENT) VALUE OF YOUR GOODS in the event of loss of, or damage to, the goods. This form may also contain an estimate of the cost of a move in which the moving company is liable for FAR LESS than the replacement value of your goods, typically at a lower cost to you. You will select the liability level later, on the bill of lading (contract) for your move. Before selecting a liability level, please read "Your Rights and Responsibilities When You Move," provided by the moving company, and seek further information at the government website *www.protectyourmove.gov.*

## Appendix 2

VALUTION STATEMENT REQUIRED ON BILL OF LADING

The following notice shall be placed in a prominent place, in at least 10-point type, on a moving company's required bill of lading (if printed). If the bill of lading is provided electronically, this statement must be of a size that, when printed on 8 by 12 inch paper, equates to 10-point type.

REQUIRED VALUATION CLAUSE AND ESTIMATE OF COST OF SHIPMENT AT FULL-VALUE PROTECTION

THE CONSUMER MUST SELECT ONE OF THESE OPTIONS FOR THE CARRIER'S LIABILITY FOR LOSS OR DAMAGE TO YOUR HOUSEHOLD GOODS

*CUSTOMER'S DECLARATION OF VALUE*

THIS IS A STATEMENT OF THE LEVEL OF CARRIER LIABILITY—IT IS *NOT* INSURANCE

*Option 1:*

The Cost Estimate that you receive from your mover MUST INCLUDE Full (Replacement) Value Protection for the articles that are included in your shipment. If you wish to waive the Full (Replacement) Value level of protection, you must complete the WAIVER of Full (Replacement) Value Protection shown below.

Full (Replacement) Value Protection is the most comprehensive plan available for protection of your goods. If any article is lost, destroyed, or damaged while in your mover's custody, your mover will, at its option, either: 1) repair the article to the extent necessary to restore it to the same condition as when it was received by your mover, or pay you for the cost of such repairs; or 2) replace the article with an article of like kind and quality, or pay you for the cost of such a replacement. Under Full (Replacement) Value Protection, if you do not declare a higher replacement value on this form prior to the time of shipment, the *value of your goods will be deemed to be equal to $6.00 multiplied by the weight (in pounds) of the shipment, subject to a minimum valuation for the shipment of $6,000. Under this option, the cost of your move will be composed of a base rate plus an added cost reflecting the cost of providing this full value cargo liability protection for your shipment.*

If you wish to *declare a higher value* for your shipment than these default amounts, you must *indicate that value here. Declaring a higher value may increase the valuation charge in your cost estimate.*

The Total Value of my shipment is: _____ *(to be provided by customer)*

Dollar Estimate of the cost of your move at Full (Replacement) Value Protection: _____ *(to be provided by carrier)*

I acknowledge that for my shipment I have: 1) ACCEPTED the Full (Replacement) Level of protection included in this estimate of charges and declared a higher Total Value of my shipment (if appropriate); and 2) received a copy of the "Your Rights and Responsibilities When You Move" brochure explaining these provisions.

X _____

Customer's signature

_____

Date

————————OR————————

*Option 2:*

WAIVER of Full (Replacement) Value Protection. This lower level of protection is provided at no additional cost beyond the base rate; however, it provides only minimal protection that is considerably less than the average value of household goods. Under this option, a claim for any article that may be lost, destroyed, or damaged while in your mover's custody will be settled based on the weight of the individual article multiplied by 60 cents. For example, the settlement for an audio component valued at $1,000 that weighs 10 pounds would be $6.00 (10 pounds times 60 cents).

Dollar Estimate of the cost of your move under the 60-cents option: _____.

COMPLETE THIS PART ONLY if you wish to WAIVE The Full (Replacement) Level of Protection included in the higher cost estimate provided [above] [on the prior page] for your shipment and instead select the LOWER Released Value of 60-cents-per-pound Per Article; to do so you must initial and sign on the lines below.

I wish to Release My Shipment to a Maximum Value of 60-cents-per-pound per Article.

_____

(Initials)

I acknowledge that for my shipment I have: 1) WAIVED the Full (Replacement) Level of protection, for which I have received an

estimate of charges, and 2) received a copy of the "Your Rights and Responsibilities When You Move" brochure explaining these provisions.

X

Customer's signature

Date

**Appendix 3**

(Optional language that carriers may choose to include in the Required Valuation Clause printed in Appendix 2)

Deductibles

You may also select one of the following deductible amounts under the Full (Replacement) Value level of liability that will apply for your shipment. (If you do not make a selection, the "No Deductible" level of full value protection that is included in your cost estimate will apply):

[List here all deductibles offered, with a space to fill in the estimate of cost of a full value move at that deductible filled in]

| Amount of deductible and (estimate of total cost of move) | Customer to write initials beside selected deductible |
|---|---|
| $0 Deductible ( ) | (Customer writes in initials to Select a deductible) |
| $XXX Deductible ( ) | |
| $XXX Deductible ( ) | |
| $XXX Deductible ( ) | |

And so on.

Declaration of Article(s) of Extraordinary (Unusual) Value

I acknowledge that I have prepared and retained a copy of the "Inventory of Items Valued in Excess of $100 Per Pound per Article" that are included in my shipment and that I have given a copy of this inventory to the mover's representative. I also acknowledge that the mover's liability for loss of or damage to any article valued in excess of $100 per pound will be limited to $100 per pound for each pound of such lost or damaged article(s) (based on actual article weight), not to exceed the declared value of the entire shipment, unless I have specifically identified such articles for which a claim for loss or damage may be made, on the attached inventory.

X

(Customer's signature)

(Date)

**Appendix 4**

The following notice shall be placed on the bill of lading for household goods shipments involving a motor carrier segment and an ocean segment.

The provisions of the Carriage of Goods by the Sea Act and/or of 49 U.S.C. 14706(f)(2) (a provision in the Interstate Commerce Act) permit us to offer "released" rates (reduced rates under which you will not be fully reimbursed if your shipment is lost, damaged, or destroyed), but they also require that we offer rates that will better protect a consumer in the event of loss or damage to a shipment. Under the rates offered here, your reimbursement in the event of loss will be limited to

We also offer higher levels of protection (at higher rates). Signing this document below indicates that you agree to pay and be bound by the terms of the released, limited-recovery rates.

(Customer's signature)

(Date)

[FR Doc. 2013–06881 Filed 3–25–13; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Release of Waybill Data

The Surface Transportation Board has received a request from GATX Corporation (WB512–17—3/04/2013), for permission to use certain data from the Board's 2011 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Megan Conley (202) 245–0348.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2013–06848 Filed 3–25–13; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

March 21, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before April 25, 2013 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0052.

*Type of Review:* Revision of a currently approved collection.

*Title:* Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, and Form 4720, Return of Certain Excise Taxes on Charities and Other.

*Form:* 990–PF, 4720.

*Abstract:* IRC section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Form 990–PF is used for this purpose. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundation and certain related parties. Form 4720 is used by foundations and/or related persons to report prohibited activities in detail and pay the tax on them.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated Total Burden Hours:* 11,054,637.

*OMB Number:* 1545–0196.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Split-Interest Trust Information Return.

*Form:* 5227 and worksheets.

*Abstract:* The data reported is used to verify that the beneficiaries of a charitable remainder trust include the correct amounts in their tax returns, and that the split-interest trust is not subject to private foundation taxes.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 15,152,550.

*OMB Number:* 1545–1546.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Revenue Procedure 97–33, EFTPS (Electronic Federal Tax Payment System).

*Abstract:* Some taxpayers are required by regulations issued under Sec. 6302 (h) of the Internal Revenue Code to make Federal Tax Deposits (FTDs) using the Electronic Federal Tax Payment System (EFTPS); other taxpayers may choose to voluntarily participate in EFTPS. EFTPS requires that a taxpayer complete an enrollment form to provide the information the IRS needs to properly credit the taxpayer's account. Revenue Procedure 97–33 provides procedures and information that will help taxpayers to electronically make FTDs and tax payments through EFTPS.

*Affected Public:* Private Sector: Businesses or other for-profits; Not-for-profit institutions, and Farms.

*Estimated Total Burden Hours:* 278,622.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2013–06841 Filed 3–25–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0118]**

### Proposed Information Collection (Transfer of Scholastic Credit (Schools)) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether an eligible person who is enrolled in a program at one school is entitled to receive education benefits for enrollment at a secondary school.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; or email: *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0118" in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–7492 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Transfer of Scholastic Credit (Schools), VA Form Letter 22–315.

*OMB Control Number:* 2900–0118.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Students receiving VA education benefits and are enrolled in two training institutions, must have the primary institution at which he or she is pursuing approved program of education verify that their courses pursued at a secondary school will be accepted as full credit towards their course objective. VA sends VA Form Letter 22–315 to the student requesting that they have the certifying official of his or her primary institution list the course or courses pursued at the secondary school for which the primary institution will give full credit. Educational payment for courses pursued at a secondary school is not payable until VA receives evidence from the primary institution verifying that the student is pursuing his or her approved program while enrolled in these courses. VA Form Letter 22–315 serves as this certification of acceptance.

*Affected Public:* State, Local or Tribal Government.

*Estimated Annual Burden:* 1,569 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* Occasion.

*Estimated Number of Respondents:* 9,415.

Dated: March 21, 2013.

By direction of the Secretary.

**Robert C. McFetridge,**

*Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2013–06869 Filed 3–25–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0060]**

### Proposed Information Collection (Claim for One Sum Payment (Government Life Insurance)); Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved

collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to process beneficiaries claims for payment of insurance proceeds.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0060" in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:*

a. Claim for One Sum Payment (Government Life Insurance), VA Form 29–4125.

b. Claim for Monthly Payments (National Service Life Insurance), VA Form 29–4125a.

c. Claim for Monthly Payments (United States Government Life Insurance, (USGLI)), VA Form 29–4125k.

*OMB Control Number:* 2900–0060.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Beneficiaries of deceased veterans must complete VA Form 29–4125 to apply for proceeds of the veteran's Government Insurance policies. If the beneficiary desires monthly installment in lieu of one lump payment he or she must complete VA Forms 29–4125a and 29–4125k. VA uses the information to determine the claimant's eligibility for payment of insurance proceeds and to process monthly installment payments.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:*

a. VA Form 29–4125—8,200 hours.

b. VA Form 29–4125a—185 hours.

c. VA Form 4125k—125 hours.

*Estimated Average Burden per Respondents:*

a. VA Form 29–4125—6 minutes.

b. VA Form 29–4125a—6 minutes.

c. VA Form 4125k—15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:*

a. VA Form 29–4125—82,000.

b. VA Form 29–4125a—1,850.

c. VA Form 4125k—500.

Dated: March 21, 2013.

By direction of the Secretary.

**Robert C. McFetridge,**

*Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2013–06872 Filed 3–25–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0524]**

### Proposed Information Collection VA Police Officer Pre-Employment Screening Checklist); Comment Request

**AGENCY:** Office of Operations, Security, and Preparedness, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Office of Operations, Security, and Preparedness (OSP), Department of Veterans Affairs is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension without change of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine an applicant's qualification and suitability as a VA police officer.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2013.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Harry Brist, Office of Operations, Security, and Preparedness, Department of Veterans Affairs, LETC, 2200 Fort Root Drive, Little Rock, AR 72114 or email: *harry.brist@va.gov.* Please refer to "OMB Control No. 2900–0524" in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Harry Brist at (501) 257–4051 or Fax (501) 257–4145.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OSP invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OSP's functions, including whether the information will have practical utility; (2) the accuracy of OSP'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* VA Police Officer Pre-Employment Screening Checklist, VA Form 0120.

*OMB Control Number:* 2900–0524.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA personnel complete VA Form 0120 to document pre-employment history and conduct background checks on applicants seeking employment as VA police officers. VA will use the data collected to determine the applicant's qualification and suitability to be hired as a VA police officer.

*Affected Public:* State, Local, or Tribal Government.

*Estimated Annual Burden:* 250 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* One time.

*Estimated Number of Responses:* 1,500.

Dated: March 21, 2013.

By direction of the Secretary.

**Robert C. McFetridge,**

*Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2013–06866 Filed 3–25–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0012]**

### Proposed Information Collection (Application for Cash Surrender or Policy Loan) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for a loan or cash surrender value on his or her Government Life Insurance policy.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0012 in any correspondence. During the comment period, comments may be viewed online through FDMS at *www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:*

a. Application for Cash Surrender, Government Life Insurance, VA Form 29–1546.

b. Application for Policy Loan, Government Life Insurance, 29–1546–1.

*OMB Control Number:* 2900–0012.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants complete VA Forms 29–1546 and 29–1546–1 to request a cash surrender or policy loan on his or her Government Life Insurance.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 4,939 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 29,636.

Dated: March 21, 2013.

By direction of the Secretary.

**Robert C. McFetridge,**

*Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2013–06871 Filed 3–25–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0619]**

### Proposed Information Collection (IRIS) Activity; Comment Request

**AGENCY:** Office of Information and Technology, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Office of Information and Technology (OIT), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on rapid response to electronic inquiries submitted to VA through the Inquiry Routing and Information System (IRIS).

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2013.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System at *www.Regulations.gov;* or to Nancy Tucker, Department of Veterans Affairs, Office of Information and Technology (005Q3), 550 Foothill Drive, Salt Lake City, Utah 84113; or email: *nancy.tucker@va.gov.* Please refer to "OMB Control No. 2900–0619" in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy Tucker (801) 580–7884 or Fax (801) 588–5004.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OIT invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OI&T's functions, including whether the information will have practical utility; (2) the accuracy of OI&T'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Inquiry Routing and Information System (IRIS), VA Form 0873.

*OMB Control Number:* 2900–0619.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The World Wide Web is a powerful media for the delivery of information and services to veterans, dependents, and active duty personnel worldwide. IRIS allows a customer to submit questions, complaints, compliments, and suggestions directly to the appropriate office at any time and receive an answer more quickly than through standard mail. IRIS does not provide applications to veterans or serve as a conduit for patient data.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 108,000 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* Monthly.

*Estimated Number of Respondents:* 648,000.

Dated: March 21, 2013.

By direction of the Secretary.

**Robert C. McFetridge,**

*Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2013–06873 Filed 3–25–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0020]**

## Proposed Information Collection (Designation of Beneficiary) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's eligibility to receive the proceeds of a veteran's Government Life Insurance.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0020 in any correspondence. During the comment period, comments may be viewed online through FDMS at *www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Designation of Beneficiary, Government Life Insurance, VA Form 29–336.

*OMB Control Number:* 2900–0020.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 29–336 is completed by the insured to designate a beneficiary and select an optional settlement to be used when the Government Life Insurance matures by death.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 13,917 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 83,500.

Dated: March 21, 2013.

By direction of the Secretary.

**Robert C. McFetridge,**

*Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2013–06870 Filed 3–25–13; 8:45 am]

**BILLING CODE 8320–01–P**


# FEDERAL REGISTER

Vol. 78 Tuesday,
No. 58 March 26, 2013

Part II

## Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 736, 737 et al.
Cost Recovery for Permit Processing, Administration, and Enforcement; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 701, 736, 737, 738, and 750**

**RIN 1029–AC65**

**[Docket ID OSM–2012–0003]**

## Cost Recovery for Permit Processing, Administration, and Enforcement

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to revise its Federal and Indian Lands Program regulations for the purposes of adjusting the existing permit fees and assessing new fees to recover the actual costs for permit review and administration and permit enforcement activities provided to the coal industry. These fees are authorized under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the Independent Offices Appropriations Act of 1952 (IOAA). The fees would be used to offset OSM's costs for processing various permit applications and related actions, administering those permits over their lifecycle, and performing required inspections. The proposed fees would be applicable to permits for coal mining on lands under OSM's direct regulatory jurisdiction. The proposed fees would also be applicable to coal mining on Indian lands where OSM is the regulatory authority. The primary purpose of this rulemaking is to charge the surface coal mining and reclamation operations that benefit from obtaining and operating under surface coal mining and reclamation permits for OSM's costs to review, administer, and enforce those permits instead of passing those costs on to the general public.

**DATES:**

*Electronic or written comments:* OSM will accept written comments on the proposed rule on or before May 28, 2013. Comments on the proposed rule's information collection should be submitted by April 25, 2013.

*Public hearing:* If you wish to testify at a public hearing, you must submit a request before 4:30 p.m., Eastern Time, on April 16, 2013. OSM will hold a public hearing only if there is sufficient interest. Hearing arrangements, dates and times, if any, will be announced in a subsequent **Federal Register** notice.

**ADDRESSES:**

*Public comments:* You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID: OSM–2012–0003. Please follow the on-line instructions for submitting comments.
- *Mail/Hand-Delivery/Courier:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252 SIB, 1951 Constitution Avenue NW., Washington, DC 20240. Please include the Docket ID: OSM–2012–0003.

You may view the public comments submitted on this rulemaking at *http://www.regulations.gov.* When searching for comments, please use the Docket ID: OSM–2012–0003.

*Public hearing:* You may submit a request for a public hearing on the proposed rule to the person and address specified under **FOR FURTHER INFORMATION CONTACT.** If you require reasonable accommodation to attend a public hearing, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

*Information Collection:* If you are commenting on the information collection aspects of this proposed rule, please submit your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via email to *OIRA_submission@omb.eop.gov,* or via facsimile to 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** Michael F. Kuhns, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Room 222, Washington, DC 20240. Telephone: 202–208–2860.

**SUPPLEMENTARY INFORMATION:**



## I. Background Information

### *Why is OSM revising the regulations?*

In an effort to promote fiscal responsibility, OSM (also referred to as "we" and "our") has undertaken a comprehensive review of the costs it takes to run its programs. As part of this assessment, we identified the need to update our regulations related to the permit application and other fees that we collect from the coal industry to reflect our costs more accurately.

We last promulgated regulations related to fee collections over 20 years ago, in 1990, 55 FR 29536 (July 19, 1990). Pursuant to those regulations, we collect only approximately 2 percent of the costs that it takes us to perform permit reviews, and we do not collect any fees, other than civil penalties, for our permit administration and enforcement costs.

This rulemaking would allow us to better implement SMCRA and other policies and requirements with regard to fees and cost recovery for services rendered to regulated industries. Since our last rulemaking, the Office of Management and Budget (OMB) has revised Circular No. A–25 relating to "fees assessed for Government services and for sale or use of Government goods or resources." 58 FR 38144 (adopted 1959; revised July 15, 1993), available at *http://www.whitehouse.gov/omb/circulars_a025.* In addition, under the Department of the Interior's (Interior's) implementing policy, OSM is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. See 330 Departmental Manual 1.3A and Department of the Interior Accounting Handbook at 6–4, available at *http://www.doi.gov/pfm/handbooks/accounting.html.*

In addition, implementation of this proposed rule would shift a significant portion of the financial costs for reviewing, administering, and enforcing permits from the general public to the identifiable beneficiary—the permit applicant or existing permittee or operator.[1] It would also reduce an indirect taxpayer-funded subsidy to applicants, permittees, and operators of surface coal mining and reclamation operations within our regulatory jurisdiction because these services are currently fully funded through annual discretionary appropriations.

### *What laws authorize OSM to collect fees?*

We have specific authority to collect fees in jurisdictions where we are the regulatory authority—i.e., States and Tribes that have not obtained approval to run their own regulatory program.

[1] The operator of a surface coal mining and reclamation operation governed by the initial program regulations is sometimes referred to in this preamble as the "permittee" and the holder of a "permit," despite the lack of the type of permit required under the permanent regulatory program. We would intend for these operators to be subject to the new cost recovery requirements.

Section 507(a) of SMCRA (30 U.S.C. 1257) states that—

> Each application for a surface coal mining and reclamation permit pursuant to an approved State program or a Federal program under the provisions of this Act shall be accompanied by a fee as determined by the regulatory authority. Such fee may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program. The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.

This provision applies to all States in which we are the regulatory authority: currently Tennessee and Washington. Likewise, pursuant to section 710(d) of SMCRA (30 U.S.C. 1300(d)), which refers specifically to section 507, we have authority to collect fees on surface coal mining operations on Indian lands for which no Tribal regulatory program has been approved pursuant to section 710(j) of SMCRA: currently, surface coal mining and reclamation operations are located on lands of the Crow Tribe, the Hopi Tribe, the Ute Mountain Ute Tribe, and the Navajo Nation.

Additional authority for cost recovery is provided by the Independent Offices Appropriations Act of 1952 (IOAA), as amended, 31 U.S.C. 9701, which provides generally for cost recovery by Federal agencies. The IOAA expresses the intent that services provided by agencies should be "self-sustaining to the extent possible," 31 U.S.C. 9701(a), and authorizes agency heads to "prescribe regulations establishing the charge for a service or thing of value provided by the agency." 31 U.S.C. 9701(b).

*What policy documents govern cost recovery or collecting fees?*

Executive Branch policy on cost recovery is set out in OMB Circular No. A–25. It establishes Federal policy regarding user charges under the IOAA. It also "provides guidance to agencies regarding their assessment of user charges under other statutes." In general, section 6 of the Circular provides: "A user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." This charge is designed "to recover the full cost to the Federal Government for providing the special benefit, or the market price." Interior and its bureaus have adopted OMB's policy as set forth in section 6 of Circular A–25. See Department of the Interior Accounting Handbook at 6.4.2.

*How did we solicit public participation for the development of the rule?*

As part of our comprehensive review, we identified 89 specific stakeholders who might be affected by this rule or might have an interest in this rule. The stakeholders include coal mining operators, environmental groups, government agencies, and municipalities located in the States of Tennessee, Washington, and on Indian lands where OSM is the regulatory authority. On March 2, 2012, we asked for their feedback by sending them an outreach letter that summarized some concepts that we were considering regarding the restructuring of our permit fees. We received 13 responses from this effort. Nine responses came from the coal industry, one was from a Tribal government, one was from an environmental organization, and two were from private citizens. In general, the coal mining industry objected to any provisions that would increase their mining costs. The environmental organization and citizens supported the rule, and the Tribal government raised issues concerning costs and applicability. We reviewed and considered these responses as we developed this proposed rule.

In addition, OSM considered comments we received through consultation and coordination with the impacted Indian Tribal governments. This consultation is described in greater detail below in the discussion of Executive Order 13175 under IV. Procedural Matters.

*How did OSM determine which of its services should be recovered through fees?*

Section 507(a) of SMRCA provides the authority to charge fees equal to or less than the actual or anticipated costs for reviewing, administering, and enforcing surface coal mining and reclamation permits. Given this broad authority, we reviewed the specific activities and work that we perform with regard to (1) reviewing, (2) administering, and (3) enforcing permits. Included within our permit review responsibilities are activities related to the processing of new permit applications, requests to modify or revise existing permits, the required mid-term review of the permit, permit renewals, and the transfer, assignment, or sale of rights to an existing permit. We also recognize that there could be irregular, non-routine costs associated with applications or other actions that OSM might require in 30 CFR Chapter VII now or in the future. Administration of an existing permit includes permit file maintenance, the review and analysis of various periodic monitoring and inspection reports, as well as verification that bond release requirements are met. Our inspections of mine Web sites are included within our permit enforcement activities.

Once we identified our review, administrative, and enforcement services and activities, we analyzed the extent to which the activity conveyed a benefit to an identifiable recipient, such as a permit applicant or existing permit holder, or to the general public. In keeping with Federal cost recovery policy, we are only proposing fees for those services and activities that we have identified as conveying a benefit to an identifiable recipient.

*How did OSM analyze its costs for the services it provides to identifiable recipients?*

In October 2009, we began a review of costs associated with administering our responsibilities for the Federal Program States (currently Washington and Tennessee) and the Indian Lands Programs. To facilitate this review and to acquire the best information available, we enhanced the level of detail captured in our accounting system by adding the name of the State or Tribe and the permit number to many of the previously established cost codes. This additional information allowed us to more accurately capture the costs for each of the activities and services we provided. The new coding structure began to be phased-in during April 2010.

After gathering this information, we then performed a cost analysis of various activities and services using the detailed cost data and associated accumulated programmatic output data. For example, we examined our costs for activities that occur infrequently in connection with a given mining operation, such as the review of a permit application, as well as for more routine and recurring activities, such as those associated with administering and enforcing existing permits (regular inspections would be one example). We then analyzed the resulting costs, associated cost drivers (i.e., factors that affect the cost of a task, such as the number of hours it takes to complete an inspection), and the differing costs for the administration of the Federal and Indian Land Programs among the regions where OSM is the regulatory authority.

After reviewing this data, we considered various approaches for recovering these costs through fees as authorized by SMCRA and the IOAA. We considered many options, including the recovery of actual costs, average

costs, and standard costs through a case-by-case or set fee rate.

*How does the existing rule operate?*

Our existing rule is located at 30 CFR 736.25(d) for Federal Program States and 30 CFR 750.25(d) for Indian lands. Under these regulations, we only charge a fee on new permit applications, and we do not collect a fee for the majority of other permit application and review services that we provide to applicants, permittees, and operators. This existing fee for permit applications is based on a fixed fee schedule, which, in sum, assesses nationwide fees at significant stages of the review process for new permit applications. Specifically, under the existing regulations, we charge a flat $250 for our administrative completeness review, $1,350 for our technical review, and $2,000 for our issuance of decisional documents. In addition, we currently assess a nationwide declining graduated permit application fee based on the acreage of the disturbed area within the proposed permit boundaries:

First 1,000 acres—$13.50/acre
Second 1,000 acres—$6.00/acre
Third 1,000 acres—$4.00/acre
Additional acres—$3.00/acre

As previously stated, the existing fee neither recovers the actual costs for our permit review nor addresses the recovery of our ongoing permit administration or enforcement services.

## III. Discussion of the Proposed Rule

### A. General

*How are the proposed fees different from the existing fees?*

The proposed rule would overhaul the way we calculate fees for permitting activities. In addition to restructuring the fees we charge for new permit applications, the proposed rule would include fees for a broader range of permitting activities and services. The fee for permitting activities would not use a fee schedule but instead would be based on actual costs that we would calculate on a case-by-case basis.

The proposed rule also would establish an annual fixed fee to recover a portion of our yearly permit administration and enforcement services. The annual fixed fee for each permit would be determined by four factors—the geographic region; type of permit operation (i.e., whether a permit is for a mine site or support facility); mine site acreage; and the required frequency of inspections as determined by the permit's phase of bond release or by special situations. Special situations consist of operations with atypical inspection requirements, such as surface coal mining and reclamation operations governed by the initial program regulations or permits that are inactive as defined in 30 CFR 842.11(c)(2)(iii), which includes sites that have achieved Phase II bond release or that are in temporary cessation of mining operations. The annual fixed fee would account for the number of mandated annual inspections, including the time for review, travel, inspection and reporting, as well as indirect costs. As proposed, these fees are designed so that OSM would not exceed its actual costs for providing review and administration, and engaging in enforcement activities and services. Fees would be reviewed and adjusted on a periodic basis.

*What kind of fees would this rule establish?*

Our proposed rule would eliminate the current fixed fee schedule and replace it with (1) a *processing fee* that is determined on a case-by-case basis for the review and approval of all permit application services and (2) an *annual fixed fee,* which is designed to recover the costs of OSM's recurring permit administration and permit inspection services. These fees would cover our activities and services in Federal Program States and on Indian lands where OSM is the regulatory authority; however, these fees would also be applicable to any lands for which OSM becomes the regulatory authority pursuant to an action under Part 733 of our regulations (i.e., when OSM takes over all or part of a State program).

Our proposed processing fee rule would be located in a new Part 737. Under the rule, in Federal Program States and on Indian lands where OSM is the regulatory authority, the processing fee would be paid by (1) any applicant for a permit to conduct surface coal mining and reclamation operations, a permit renewal or revision, a transfer, assignment or sale of rights of an existing permit, or any new application or action that OSM might require to be submitted in 30 CFR Chapter VII as a result of possible future rulemaking, and (2) permittees and operators that undergo the required mid-term permit review. In addition, these fees would be paid on applications for coal exploration permits under 30 CFR 772.12. Fees would not be required for notices of intention to explore as described in 30 CFR 772.11 because these notices typically require much less processing time than coal exploration permits. For services other than notices of intention to explore, we would calculate the processing fee for services on a case-by-case basis by determining our actual costs to process the action.

Our proposed annual fixed fee would be located in a new Part 738. That fee would be paid by any permittee or operator of a surface or underground coal mining and reclamation operation. The annual fixed fee for each surface coal mining and reclamation operation would be determined by four factors—the geographic region; the type of permit operation (e.g., whether the site is a mine or a support facility); the mine site acreage; and the required frequency of inspection—whether the permit is in any phase of bond release or whether any special situations exist (as with initial program Web sites or permits that are inactive). The fee would account for the number of mandated inspections conducted annually, the variations in inspection hours and travel in locations east and west of the 100th meridian west longitude, and indirect costs.[2] Support facilities include preparation plants, ancillary facilities (such as haul roads), refuse and/or impoundment Web sites, loading facilities and/or tipples, and stockpiles. We also recognize that we still administer some surface coal mining and reclamation operations under the initial program regulations, and that these surface coal mining and reclamation operations have different inspection requirements; therefore, we are providing a separate category of annual fixed fees for those permits. OSM estimates 10 active surface coal mining and reclamation operations fall into this category.

*What happens if OSM substitutes direct federal enforcement or withdraws approval of all or part of a State program?*

Pursuant to 30 CFR 733.12, if the Director determines that (1) the State has failed to effectively implement, administer, maintain, or enforce all or part of its approved State program, and (2) the State has not demonstrated its capability and intent to administer the State program, the Director can:

a. Substitute direct federal enforcement for all or a portion of a State program pursuant to § 733.12(g); or

b. Withdraw approval of all or part of a State program and implement a replacement Federal program pursuant to § 733.12(h)

In the event that OSM does substitute direct federal enforcement or withdraws approval of all or a portion of a State

[2] SMCRA relies on the 100th meridian west longitudinal line to represent the boundary between the moist eastern United States and the arid western United States. See, e.g., SMCRA, 30 U.S.C. 1260(b)(5) & 1277(a).

program, all applicants, operators, and permittees in that State would he required to pay fees covering our expenses for processing applications and performing other actions. In other words, the applicants, operators, and permittees would be responsible for the same costs as any proposed or actual surface coal mining and reclamation operation located within any other Federal Program State or on Indian lands where OSM is the regulatory authority. The collection of this proposed fee would cover the cost of services provided by OSM associated with assuming the responsibilities of all or a portion of a State program.

Because OSM can take over part of a State program under § 733.12, OSM's new role might consist only of performing a few activities that would be subject to cost recovery under the proposed regulation. For instance, OSM might assume only the bond calculation function of a State program. In that case, we would calculate the amount of the bond at the required times in the life of your permit and recover from the applicant or operator the cost of doing so. Under such a scenario, the State regulatory authority would continue to perform all the other permitting activities. In that case, we would charge you processing fees to cover our actual costs of performing the bond calculation review. We would only charge you an annual fixed fee if we were to assume the inspection and enforcement activity for a particular regulatory authority.

*How did OSM determine the proposed fee structures?*

First, we examined SMCRA section 507(a) and other relevant statutes and guidance documents to determine the parameters of our authority to collect fees. Our overall goals are to establish fees that would be fair and equitable, would not exceed our actual costs, and would minimize the administrative burden associated with billing and collecting the fees.

Second, in order to develop the proposed fee structures, we reviewed the three permit-related components for which the applicant, permittee, or operator receives a benefit or service unique to the operation (i.e., permit review, permit administration, and permit enforcement), and classified them either as activities and services with variable costs based on the circumstances, or activities and services that are similar and routine. In particular, we determined that permit application processing and other similar review activities often occur infrequently in connection with any given operation and that the time required for reviewing these activities varies. For example, although every new surface coal mining and reclamation operation requires a permit, the review times and associated processing costs for applications for a new permit vary widely depending on factors such as the size of the mine, potential environmental impacts, complexity of the proposed action, mining method, Web site topography and hydrology, and the completeness and accuracy of the application itself. Other than mid-term permit reviews, these activities are usually triggered by the applicant or permit holder. Mid-term reviews and permit revisions and renewals are similarly very Web site specific and vary significantly in the amount of time it takes to process them. In addition, permit revision applications can be submitted during either the active mining phase or the reclamation phase, which affects our processing costs. In contrast, some activities and services, such as performing the review and analysis of various monitoring reports, file maintenance and conducting inspections of the permitted mine Web site, are regular, routine activities and services. Our work relative to these activities and services largely correlates to the number of required inspections we conduct each year, the geographic region, the type of operation we are inspecting, and the permitted acreage.

Based on this analysis, we are proposing an actual cost, case-by-case processing fee for the activities that occur only occasionally and that vary significantly in the amount of review required and a recurring annual fixed fee for activities that are routine and have similar costs. We believe that this approach would recover the greatest percentage of our review, administrative, and enforcement costs while minimizing our administrative burden. This approach also ensures that the fees do not exceed the actual cost of our work, which is expressly prohibited by SMCRA.

*What OSM costs would be recovered by the proposed processing fee?*

We have calculated the proposed fee rates to include the sum of our direct and indirect costs related to the activities covered in proposed § 736.25. Direct costs are comprised of the time spent by the employee or employees who process the permit and other expenses such as travel and supplies necessary for carrying out each step of an application. The hourly cost of the employees' time is based on the employees' salaries and benefits. The cost of travel includes travel associated with field work and Web site visits for technical and programmatic review of applications. Direct costs would vary by permit because of differences in the technical complexity and skill requirements of personnel reviewing permits.

Indirect costs include all expenses that are common to all regulation and technology activities and are assessed at the same rate in all cases. These costs include centrally paid items such as telecommunications, rent, utilities, security, as well as bureau support functions such as human resource services, finance, and management. We used the general guidance contained on OMB Circular A–25 for determining the activities to include in our indirect cost rate.

*Will there be penalties if the processing or annual fixed fee is not paid on time?*

Yes. Under proposed §§ 737.18 and 738.14, if the applicant, permittee, or operator does not pay the fees by the due date specified in parts 737 and 738, respectively, we would use our authority under the Debt Collection Act, as amended, (31 U.S.C. 3717) to charge interest, penalties, and administrative costs related to our fee collection activities.

In addition, if the annual fixed fee is not paid by the dates specified in parts 737 and 738, we might also exercise our enforcement authority under parts 843, 845, and 846, which would generally result in the issuance of a notice of violation under § 843.12. If the processing fee is not paid by the date specified in § 737.14, as discussed below, we would suspend processing the application or other action until we receive the fee unless doing so would delay corrective action at the site.

If you are delinquent in paying your annual fixed fee or processing fee, under the proposed rule, we might enter this violation into the Applicant/Violator System (AVS). As reflected in the proposed addition of paragraph (vi) to the definition of "violation" contained in 30 CFR 701.5, a violation in the context of permit application information or permit eligibility requirements of sections 507 and 510(c) of the Act could include the failure to pay the required processing or annual fixed fee. Such a violation in the AVS might cause the violator and associated parties to be ineligible for future permit actions, including being ineligible to receive AML reclamation contracts, under 30 CFR 773.12 and coordinating state regulatory counterparts. Section 510(c) of SMCRA precludes permitting authorities from issuing a permit to an applicant that owns or controls a mining operation with a current violation.

*Could the proposed OSM consolidation with the Bureau of Land Management and the Office of Natural Resources Revenue affect this rule?*

The Department of the Interior is in the beginning phases of consolidating certain fee collection functions between OSM and the Office of Natural Resources Revenue (ONRR). See Secretary of the Interior Ken Salazar's Secretarial Order No. 3320, signed on April 13, 2012. We do not expect the consolidation efforts between OSM, ONRR, and the Bureau of Land Management to affect the substance of this rulemaking; however, it is possible that, at some point, certain procedural sections of the rule (i.e., the provisions governing where the fees contained in this rule would need to be sent) might be revised to reflect the ongoing consolidation efforts.

B. Processing Fee

*For what services or actions would OSM assess a processing fee?*

Under the proposed rule at § 736.25(a), OSM would charge a processing fee for the following activities in a Federal Program State or on Indian lands where OSM is the regulatory authority:

1. A new permit application to conduct surface coal mining and reclamation operations, including coal exploration permits (but excluding notices of intention to explore);
2. A revision to an existing permit, whether requested by the permittee or ordered by OSM;
3. A request to transfer, assign or sell rights to an existing permit;
4. A mid-term review;
5. A request to renew a permit; and
6. With the exception of bond release applications, any other action on which OSM may assess fees as specified in 30 CFR Chapter VII.

The processing fee would be charged for the application review costs that we incur, even if a permit application is ultimately denied.

We are not proposing to charge a processing fee for bond release applications because a substantial amount of the review time for these applications consists of inspection of the onWeb site mine permit conditions and many of these inspection hours overlap with the required inspections that are part of the annual fixed fee.

We foresee the possibility that future rulemaking could require the submission of other applications or actions for us to process. If we do propose such future rulemaking that requires us to process new actions, we would discuss in the preamble whether it should be subject to a processing fee.

*Would the applicant know the amount of processing fee at the time the application is submitted?*

As described in proposed § 737.11(a), we would provide the applicant with a written estimate of the proposed fee and an estimated processing time before we begin to process the application or other permitting action.

*Would the permittee or operator know the amount of processing fee at the time the mid-term permit review is started?*

Under proposed § 737.11, we would notify you, the permittee or operator, of the estimated costs of your mid-term permit review when we are required to begin that review.

*How would OSM estimate your processing fee?*

First, OSM would estimate the direct costs of processing your application or other action based on our known range of costs for reviewing various permitting activities. To produce this estimate, we would perform a cursory review of your application or other action to determine its scope and complexity when we receive your application or when your mid-term review is required. Next, we would determine the type of staff needed to review and act upon your application or other action. Using our most recent data for processing similar applications or other actions, we would estimate the number of hours that we expect it would take us to complete the review. We would break down this estimate by discipline (i.e., hydrologist, engineer, reclamation specialist, etc.) and assign corresponding hourly rate costs. We would also include any estimated travel costs that we would incur in visiting the permit application site to verify the site conditions or meet with others about the permit application or mid-term review.

The cost estimate would not include any costs associated with our attending any interagency pre-application meetings because we view these meetings as beneficial and time-saving to everybody, including the general public, who is involved in the process. Similarly, we would not include the costs of estimating the processing fee in developing our estimate of your processing fee.

As described above, a bureau-wide flat indirect cost rate was calculated based upon our total direct costs for regulatory activities. After we determine the estimated direct costs to process your application or conduct a mid-term review, we would use this figure and apply the indirect cost rate to arrive at your estimated processing fee. We would use this estimate for billing purposes. As we move forward in reviewing your application or conducting our mid-term review, we would re-calculate our costs and periodically provide you with an updated estimate.

*What indirect costs are included in the processing fee?*

We used the general guidance contained on OMB Circular A–25 for determining the indirect costs that are applied to our direct costs. Indirect costs include centrally paid items such as telecommunications, rent, utilities, security, as well as bureau support functions such as human resource services, finance, and management. OSM used a cost estimation methodology based on activities identified in its Work Breakdown Structure (WBS) System. WBS provides reasonable managerial accounts for costs. We used Fiscal Year 2011 as the baseline year for this rate. We applied the indirect costs identified above to total regulation and technology costs for the fiscal year yielding a rate of 21 percent. We intend to periodically adjust our indirect cost rate fees to reflect changes in our indirect costs. We would publish this revised rate in the **Federal Register**.

*Would the proposed processing fee change how Environmental Impact Statements (EISs) and Environmental Assessments (EAs) are handled by OSM?*

We would continue our general practice of hiring a consultant to prepare an EIS when one is required for your permit application, and the consultant would continue to bill you, the applicant, directly. However, the costs for OSM's staff time associated with this activity would be included in our new processing fee. When OSM prepares an EA for your permit activity, which might also include the preparation of a finding of no significant impact, we would bill you for our actual costs to produce these documents.

*How would processing fees be billed?*

Upon receiving the estimate, pursuant to proposed § 737.13, the applicant, permittee, or operator would have the option to submit the estimated fee in total or to submit a partial payment if the processing time is estimated to be more than six months. Applicants, permittees, and operators paying the full amount would have to do so within 30 days of the printed date of our estimate under proposed § 737.14. Proposed

§ 737.14 also details when payments would be due from applicants, permittees, and operators choosing the partial payment method. Generally, under this proposed provision, the first installment would be due within 30 days of the estimate and each additional installment would be billed every six months thereafter.

As detailed in proposed § 737.13(b), the amount of the partial payment would be calculated by dividing the total estimated fee amount by the number of six-month periods estimated for our processing. Under proposed § 737.16, we would generally revise the estimates every six months and incorporate any adjustments into the next six-month billing. Thus, if a payment turns out to be more or less than our processing costs for that same period, the adjustment would be reflected in a subsequent billing cycle.

Except for mid-term reviews, processing would not normally begin on your permit application or other action until we receive your first installment. Regardless of whether the fee is paid in a lump sum or installments, proposed § 737.14(c) makes clear that the entire fee would have to be paid before we would issue the final decision document unless the fee is for a permit revision that is necessary to correct a violation. According to proposed § 737.18(a), we might begin processing any permit revisions that are required to correct a violation before we receive payment. This exception was added because we do not want to delay corrective action by the permittees.

*What happens if the processing fee estimate is more or less than actual processing costs?*

We intend for your final processing fee to reflect our actual costs of performing the review and preparing a decision document regarding the permit application (or other action listed in proposed § 736.25(a)). You would not be expected to pay more than our actual costs. To make sure that you do not pay more than the costs that we actually incur to process your application or other action, we would record our actual costs in our financial system. Our financial system would allow us to capture unique cost accounts that would be established for each unique permitting action. These cost accounts would reflect our direct labor and non-labor costs (if applicable).

We would reconcile our estimated costs and actual costs pursuant to proposed § 737.16. If you are paying by installments, we would adjust a subsequent installment to make up the difference between the estimated and actual costs. Once the final amount has been paid and the decision document issued, if our estimate was greater than our actual processing costs, we propose to refund the excess amount to you, without interest. If our estimate was less than our actual processing costs, we would bill you for the difference; however, we would have to receive your payment before the issuance of the final decision document.

Instead of issuing automatic refunds of any amount in excess of our processing costs, we considered retaining the overage and applying it to future annual fixed fee or other processing fee costs. However, current guidance from the Department of the Treasury requires us to refund all excess monies to which OSM has no claim. For that reason, and in the interest of administrative efficiency, we decided to propose the automatic refund.

*Would these new regulations increase the time required to obtain or revise a permit or other action?*

We are sensitive to concerns about the creation of regulations that might extend the time required to obtain or revise a permit or review another action, and we have drafted this proposed rule to include only one new process—the cost estimate and billing process. We anticipate the amount of time required for this process would be minimal. OSM staff is already required to track the time they spend on specific categories of work; thus, we have a good basis for providing cost estimates for different activities and services. Therefore, we do not believe this regulation would materially increase the amount of time it would take us to review a permit application or other action, assuming the processing fees are paid in a timely manner. Moreover, we believe that this proposed regulation might encourage the submission of more complete and accurate applications packages, which could have the effect of decreasing the amount of time we need for review and the associated cost.

*How would the processing fee be applied to services and actions that OSM is already reviewing?*

At this time OSM has not determined how best to apply the processing fee to applications pending review at the time the proposed rule is finalized. We do not want this rulemaking effort to encourage applicants to submit incomplete or hastily prepared applications before the effective date of the final rule in order to avoid the new processing fees.

Although not specifically reflected in the proposed rule text, we are considering adding language to the final rule that would waive the proposed processing fee for applications for (1) all activities other than new surface coal mining and reclamation operations, permit renewals, and significant permit revisions that are received by OSM prior to the effective date of the final rule; and (2) new surface coal mining and reclamation operations, permit renewals, and significant permit revisions that are received by OSM prior to the effective date of the final rule *and* determined by OSM to be both administratively *and* technically complete at the time of submission. Applications for all of these activities received after the effective date of this rule, those applications that do not meet the conditions above, and mid-term reviews that are required after the effective date would be subject to the new processing fee.

We are considering making this distinction because permit applications for new surface coal mining and reclamation operations typically require substantially more hours of review than all other types of permit applications, and it is important for the applications for those activities to be technically complete before we can meaningfully review the application. If we adopt this approach, applicants that satisfy the criteria for waiver of the new processing fees for these activities would still be required to pay some fees, such as an application fee based on the existing regulations, and the annual fixed fee. These applicants would also be required to pay processing fees under the new regulations for any future applications.

We would like your comments about this proposed approach or other ideas about how the revised fee structure should apply to permit applications already submitted.

C. Annual Fixed Fee

*For what services would OSM assess an annual fixed fee?*

As previously noted, under § 736.27 and Part 738, we propose to recover our costs for permit administration and permit enforcement through an annual fixed fee, which would be assessed yearly. When certain services are performed repeatedly and as expected, a fixed fee is a good mechanism for recovering those costs and is administratively efficient. When we assessed our work, we noted that inspections are one type of routine service that we provide because the minimum number and types of inspections for assessing compliance of permits are set by regulation. Based on an analysis of the records of previous

inspections, we were able to ascertain that certain factors, such as the type of inspections (full or partial), the geographic area, and size of the mine Web site or support facility, all contribute to the length of time per inspection. In other words, we noticed that mines of similar size and similar geography require approximately the same amount of time to complete a particular type of inspection. Because of the predictable nature of inspections, we believe a fixed fee is appropriate. This approach is consistent with section 507(a) of SMCRA, which specifically authorizes us to collect fees for administrative and enforcement costs and allows these costs to be paid over the term of the permit. We anticipate the collection of this fee would help us recover a portion of our activity and service costs related to permit maintenance, permit administration, and permit inspection.

*How would I know how much my annual fixed fee would be?*

We have determined that a one-size-fits-all annual fee is impracticable because our costs to administer and enforce permits can vary due to a number of factors—primarily related to geography, the permit acreage for mining operations or permit type for nonmining operations (i.e., a support facility), the phase of bond release, if any; and special situations (such as operations governed by the initial program regulations and permits that are inactive). Thus, in § 738.11(b), we are proposing a table that sets different rates for surface coal mining and reclamation operations based on those factors. Operators should be able to identify their annual fixed fee by consulting this table.

We believe that this table fairly represents our fixed costs for administering and enforcing these permits because our recurring inspection and other maintenance activity costs are directly related to statutory and regulatory requirements that specify criteria for inspection frequency. For instance, we are required to complete no fewer than four (4) complete and eight (8) partial inspections each year on permits that have not achieved Phase II bond release. However, once a permit achieves Phase II bond release, the frequency of mandated inspections is reduced to four (4) complete inspections annually. The lower annual fixed fee rate for permits that have achieved Phase II bond release acknowledges this reduction in our administrative and enforcement costs. Likewise, for permits that are inactive or operating under the initial program regulations, and which have different inspection requirements, the table identifies a separate rate. We would not collect annual fixed fees on any permit Web sites that have been fully reclaimed as evidenced by Phase III bond release certification.

*How did OSM determine the annual fixed fee rates proposed in the table in § 738.11(b)?*

We collected data on the direct historical costs for permit administration and permit enforcement activities and services that are captured in our accounting system related to permit maintenance, permit administration, and permit inspection. We then assigned these costs to the appropriate inspections in Tennessee, Washington State, and on Indian lands for Web sites that were not in a forfeited or abandoned status. As discussed above, we also treat Web sites that are inactive, are governed by our initial program regulations, or have achieved Phase II bond release differently by applying lower fees to reflect a reduction in costs from a reduced number of inspections.

In setting the annual fixed fees, we excluded costs associated with conducting citizen complaint inspections because we recognize these inspections vary widely in frequency and scope and do not lend themselves to an annual fixed fee. We also excluded costs associated with taking enforcement actions, such as the issuance of a cessation order or a notice of violation, because these are not recurring actions but instead occur only in connection with specific permits where a problem is encountered.

We initially considered basing the annual fixed fee solely on the amount of bonded or disturbed acreage, but rejected that method after a thorough analysis of our costs and of some of the outreach comments we received. To ensure that we would not recover more than our actual costs on any individual permit, we are using a conservative annual fixed fee based on the geographic region, acreage, and type of permitted operation (i.e., mining operation or support facility), and stage of bond release. A permit that achieves Phase II bond release would be eligible for the reduced annual fee rate once it has been in this new phase status for an entire billing cycle. Similarly, a permit that achieves Phase III bond release would no longer have to pay an annual fee. We would notify the Division of Financial Management when a permit becomes inactive or when the appropriate bond release occurs. An adjustment to the annual fixed fee or a refund would be made as described in proposed § 738.15.

After determining the base figure for our direct costs, we then applied a 21 percent indirect rate to that base figure in order to arrive at the final annual fixed fee rates proposed in § 738.11(b). A discussion of the indirect cost rate can be found in the section above regarding the processing fee.

*What cost methodology did OSM use to determine its direct costs for the annual fixed fees?*

The proposed rates for the annual fixed fees are based upon the costs that OSM incurs annually for activities directly associated with ongoing permit administration and enforcement. We considered several methods for establishing a proposed fee to recoup our annual costs to administer and enforce permits for surface coal mining and reclamation operations. First, we considered proposing a flat annual fixed fee for all permits, regardless of the characteristics of the surface coal mining and reclamation operation (such as location, size, or phase of bond release); however, we determined that such an approach would be inappropriate given that costs vary substantially across permitted sites. So, we decided to set fees based on several criteria because we recognize that our administrative and enforcement expenses vary as we regulate permitted sites ranging from large surface mines spanning tens of thousands of acres down to small permitted units, such as an ancillary haul road facilitating nearby mining operations. We also considered proposing a simple acreage fee but determined that, given the wide array of permitted sites across geographical areas, such a fee would not be equitable. Eventually, we settled on the proposed method, which explicitly recognizes differences in surface coal mining and reclamation operations based on site attributes, size, and reclamation status of permitted sites.

We then analyzed data to link the site categories to costs. OSM maintains an agency-wide database to record, among other things, the inspection and enforcement time for conducting federal inspections in States and Tribes. Upon review of this data, we determined that a good indicator of our costs to administer and enforce the permits was the time expended by OSM inspectors to service permits annually. We were able to pull information from our database to review our inspectors' time for each activity necessary to implement the Federal and Indian lands program in non-primacy States and Tribes. We specifically looked at the time it takes

for each inspection to: (1) Review the permit; (2) travel to and from the site; (3) inspect the site; and (4) write the report. Our inspectors use standardized forms to record mining status and reclamation phases, acres of the permitted site, permit type (permanent program or interim site), type of mine (surface or underground), facility type (prep plant, haul road, refuse, loading facility, or stockpiles), and inspection type (complete or partial).

We also sorted all permits in Federal Program States and on Indian lands where OSM is the regulatory authority into six physical categories (described below) and four inspection groups (permits without Phase II bond release, permits with Phase II bond release, inactive permits, and initial program operations) based on the minimum required inspection frequency. The physical categories include support facilities and five categories based on ranges of permitted acreage—mines less than 100 acres, mines 100 acres but less than 1,000 acres, mines 1,000 acres but less than 10,000 acres, mines 10,000 acres but less than 20,000 acres, and mines 20,000 acres or greater. The range of site categories reflects the required hours per inspection which varies substantially between mine types due to the size and complexity of mines in each geographical area. For example, partial inspections require nearly twice as much time in Tennessee as similar sized mine sites west of the 100th meridian west longitude.

Mine sites above 10,000 acres do not exist in areas east of the 100th meridian, while some mines exceed 60,000 acres in areas west of the 100th meridian west longitude. Another physical category is the location of the permit or operation, specifically if it is located east or west of the 100th meridian west longitude. The underground mine acreages we considered consist only of surface acreage, rather than the affected subsurface "shadow area," which is often larger than the surface footprint. All of the existent active underground mines presently fall into the category of mines less than 100 acres. Inspection frequency groups include permits requiring 12 inspections, permits requiring 4 complete inspections (for permits achieving Phase II bond release and for inactive permits), and those requiring only 2 complete inspections (initial program sites).

For each physical category, we calculated inspection time for both complete and partial inspections using a statistical mean for inspection times for both complete and partial inspections. We recognize that inspection times on a site might vary for a given year due to the various circumstances of a mining operation or reclamation process, so we took a three-year average (2009–2011) of hours per inspection to better represent the time requirements for inspections performed in each category.

Averages were statistically different across the physical categories. For example, complete inspections in Tennessee for the three ascending acreage categories required 5 hours, 11 hours, and 47 hours respectively, while partial inspections for the same acreage categories required 4 hours, 6 hours, and 10 hours respectively. We considered creating subcategories within each broad physical category, but deemed such a division unnecessary because there was a lack of significant difference in the statistics. For example, the estimated time required to service permits with permitted acreages falling between 800 and 1,000 acres was not statistically higher than permits with acreages falling between 600 and 800 acres. Thus, we determined that five broad acreage categories were appropriate based on statistical differences in total hours expended for inspecting the entirety of each permitted site.

Next, using OSM's inspection and enforcement database to determine the time required to administer and enforce each of the categories, we established annual cost estimates for servicing each of these categories of permits. SMCRA requires a minimum number of annual inspections, and we used this minimum number to calculate the total hours needed to maintain a permit annually, even though OSM would sometimes perform more than the minimum number of inspections on an individual permit. As an example, our data revealed that at a minimum, for an active mine in Tennessee with 600 permitted acres (category 2), we require 92 inspection hours (11 hours for each complete inspection multiplied by 4 complete inspections annually plus 6 hours for each partial inspection multiplied by 8 partial inspections annually). When the minimum number of inspections drops once a mine has obtained Phase II bond release, the number of inspection hours required would drop to 44 hours (11 hours multiplied by 4 complete inspections annually). We decided not to include costs associated with time expended due to enforcement actions, such as follow-up inspections for assessing civil penalties and reviewing notices of violation. These costs are unanticipated and specific to an individual permit, and therefore are not appropriate for inclusion in the annual fixed fee, which is designed to cover our predictable and recurring costs.

Once we determined the number of required inspection hours, we could multiply that figure by the standard hourly rate for an inspector's salary and benefits and average annual travel costs to perform the required inspections. This sum gives us the direct costs for administration and enforcement for the various categories reflected in proposed § 738.11(b). We then applied an indirect cost of 21 percent for all geographical areas to determine the annual permit fee. We applied the same nationwide indirect fee rate as previously described in the processing fee section of the **SUPPLEMENTARY INFORMATION**, Discussion of The Proposed Rule. Thus, the table in § 738.11(b) includes both our direct and indirect costs.

*How would annual fixed fees be billed?*

The annual fixed fee would be billed in advance for our permit administration and enforcement costs. For new permits issued after the effective date of this rule, we propose to send you a prorated bill for the period beginning when the permit is issued through the end of the current fiscal year (September 30) as described in § 738.11(a). For permits already issued prior to the effective date of this rule, we propose to send you a prorated bill for the period beginning when the rule becomes effective through the end of the current fiscal year (September 30) as described in § 738.11(a). Because initial program sites, inactive permits, and permits that have achieved Phase 2 bond release require only two complete annual inspections, their prorated amount would be determined by the timing of our inspections rather than the remaining months in the billing year. We would then annually bill you each year thereafter at the start of each new fiscal year (October 1). However, we recognize that there are many options for billing that might be more or less convenient for our permittees, such as billing at the beginning of the calendar year. Alternatively, we could bill on a quarterly basis (similar to the current AML fee) or a semi-annual basis. We specifically invite comments as regarding the billing procedures for the annual fixed fee.

*What happens if my permit becomes eligible for a reduced annual fixed fee rate during the year?*

You would have to pay the annual fixed fee in advance for the next 12 months. However, if your operation achieves a phase of bond release or becomes inactive during the year, you might be eligible for a reduced annual

fixed fee. If the event that makes your permit eligible for a reduced fee occurs within the first 6 months of the billing year, we would refund a prorated portion of your annual fixed fee, without interest, as proposed in § 738.15.

*Would the annual fixed fees be updated or revised?*

Yes. Under proposed § 738.11(c), we intend to periodically adjust our annual fixed fee to reflect changes in our direct costs and/or indirect rate. We would publish all such revised fees in the **Federal Register**.

## III. Public Comment Procedures and Information

*How do I submit comments on the proposed rule?*

*General Guidance*

We will review and consider all comments that are timely received, but the most helpful comments and the ones most likely to influence the final rule are those that include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Federal laws or regulations, technical literature or other relevant publications, or that involve personal experience. Your comments should reference a specific portion of the proposed rule or preamble, be confined to issues pertinent to the proposed rule, explain the reason for any recommended change or objection, and include supporting data when appropriate.

Please include the Docket ID "OSM–2012–0003" at the beginning of all written comments that are mailed or hand carried to OSM. We will log all comments that are received prior to the close of the comment period into the docket for this rulemaking; however, we cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking or considered in the development of a final rule.

Procedures for sending comments to the Office of Management and Budget are described in the Paperwork Reduction Act section of the Procedural Matters.

*Public Availability of Comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Public Hearing and Teleconferences*

We will hold a public hearing on the proposed rule only if there is sufficient interest. We will announce the time, date, and address for any hearing in the **Federal Register** at least 7 days before the hearing. If there is only limited interest in a public hearing, we may hold a teleconference instead and invite those who had expressed an interest in presenting oral comments. We will place a summary of the public hearing or teleconference, if held, in the docket for this rulemaking.

If you wish to testify at a hearing please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, either orally or in writing, by 4:30 p.m., Eastern Time, on April 16, 2013. If there is only limited interest in speaking at a hearing by that date, we will not hold a hearing and may, instead, offer to hold a teleconference.

## IV. Procedural Matters

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

The revisions to the existing fee schedule are intended to offset OSM's costs for processing various permit applications and related actions, administering those permits over their lifecycle as well as the costs associated with providing enforcement of the permits. The proposed fees would be applicable to permits for mining on lands where regulatory jurisdiction has not been delegated to the States. The proposed fees would also be applicable to mining on Indian lands where OSM is the regulatory authority. The primary purpose of this rulemaking is to charge the costs to review, administer, and enforce surface coal mining and reclamation permits to those who benefit from obtaining and operating under the permit, rather than the general public.

The proposed revisions would result in an increase in the costs placed on coal operators mining in Federal Program States (Tennessee and Washington) and on Indian lands where OSM is the regulatory authority. Within the Federal and Indian lands programs, we currently issue approximately 200 permitting actions per year with less than 5% currently subject to a fee. We also have inspection and permit administration responsibilities for over 300 permits that include over 120,000 bonded acres. For all of these activities, the total amount we currently collect averages $40,000 per year under the existing fee structure. The fees under the proposed rule would recover a large portion of the annual $3.1 million for permitting and inspection costs currently being incurred by OSM and paid using appropriated (discretionary) funds to finance these activities.

*Regulatory Flexibility Act*

There are approximately 1086 surface coal mining and reclamation operations in the United States. This rulemaking would only affect the surface coal mining and reclamation operations located in Tennessee, Washington and on Indian lands, which we estimate to be 41 companies—25 active surface coal mining operations and 16 reclamation operations.

The Small Business Administration uses the North American Industry Classification System Codes to establish size standards for small businesses in the coal mining industry. The size standard established for coal mining is 500 employees or less for each business concern and associated affiliates. The Mine Safety and Health Administration indicates that small coal-mining firms comprise over 96% of the 1086 coal-mining firms in the United States. For purposes of this proposed rule, we are estimating that all 41 surface coal mining and reclamation operations impacted by this rule would qualify as small business entities. The actual dollar effect upon each operator would be highly variable and depend upon the number of permitting actions that each

operator requests, the geographic region, the size and type of the mining operation, and the phase of bond release. Although this number is variable, we have included rough estimates of the minimum and maximum processing fees under the Paperwork Reduction Act section below. In addition, the annual fixed fees range from roughly $700 for an initial program Web site with less than 100 acres in the East to roughly $96,000 for a surface coal mining operation with more than 20,000 acres and without Phase II Bond Release in the West. See proposed 30 CFR 738.11(b).

The Department of the Interior certifies that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This conclusion is based on the small number of surface coal mining and reclamation operators affected by the proposed rule—approximately 4 percent of small surface coal mining and reclamation operations in the United States—and the graduated fee schedule based on mine size and facilities.

*Small Business Regulatory Enforcement Fairness Act*

Based on the cost data previously discussed, this rule is not considered a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Will not have an annual effect on the economy of $100 million.

2. Will not cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions.

3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector.

Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*Paperwork Reduction Act*

This rule contains collections of information that require approval by OMB under 44 U.S.C. 3501 *et seq.* In accordance with 44 U.S.C. 3507(d), we have submitted the information collection and recordkeeping requirements of 30 CFR Part 737 to the Office of Management and Budget (OMB) for review and approval. We are planning to establish a new collection of information for the following activity:

*Title:* 30 CFR Part 737—Processing Fees for Operations on Land Where OSM is the Regulatory Authority.

*OMB Control Number:* 1029–xxxx.

*Summary:* In an effort to promote fiscal responsibility, OSM has identified the need to update its regulations related to the permit application and related fees that we collect from the coal industry to more accurately reflect our costs. We have revised our Federal and Indian Lands Program regulations for the purpose of adjusting the existing permit fees and to assess fees to recover up to our actual costs for permit administration activities provided to the coal industry. The primary purpose of this regulation is to charge those who benefit from obtaining, and operating under, a surface coal mining and reclamation permit for our costs to review, administer, and enforce permits instead of passing those costs on to the general public. These fees are authorized under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the Independent Offices Appropriations Act of 1952. The fees relating to the processing of various categories of permit applications are considered a burden on the public under the Paperwork Reduction Act and need OMB approval accordingly.

*Bureau Form Number:* None.

*Frequency of Collection:* Once, on occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Description of Respondents:* Coal mine permittees.

*Total Annual Responses:* 177 permittee responses.

*Total Annual Burden Hours:* 0 burden hours.

*Total Annual Non-Wage Burden Costs:* $1,142,069.

Non-wage burden costs are the processing fees which OSM will assess on a case-by-case basis for various types of permitting activities. The fees below are based upon a national weighted-average for hours required for each geographical area to review applications and, therefore, should not be construed to represent the cost of an individual permit activity. Costs include the labor costs for Federal salaries and benefits, and an indirect charge of 21% of direct costs.

(1) New Permits—4 applications × $45,423 in average Federal wage costs to review the application + 21% indirect costs = $219,848 (rounded) for permit applicant fees. We anticipate minimum Federal wage costs of $19,318 (including indirect costs) and a maximum of $151,602 (including indirect costs) per new permit application.

(2) Permit Renewals—9 applications × $6,585 in average Federal wage costs to review the application + 21% indirect costs = $71,712 (rounded) for permit renewals. We anticipate minimum Federal wage costs of $3,883 (including indirect costs) and a maximum of $74,673 (including indirect costs) per permit renewal application.

(3) Mid-Term Reviews—13 reviews × $7,228 in average Federal wage costs to review the application + 21% indirect costs = $113,698 (rounded) for mid-term reviews. We anticipate minimum Federal wage costs of $3,883 (including indirect costs) and a maximum of $74,673 (including indirect costs) per permit renewal application.

(4) Transfer, Sale, or Assignment of Permit Rights—6 applications × $1,216 in average Federal wage costs to review the application + 21% indirect costs = $8,826 (rounded) for applications for the transfer, sale, or assignment of permit rights. We anticipate minimum Federal wage costs of $552 (including indirect costs) and a maximum of $9,446 (including indirect costs) per transfer, sale, or assignment of permit rights application.

(5) Exploration Permits—2 applications × $2,821 in average Federal wage costs to review the application + 21% indirect costs = $6,826 (rounded) for exploration permits. We anticipate minimum Federal wage costs of $109 (including indirect costs) and a maximum of $12,824 (including indirect costs) per exploration permit application.

(6) Significant Permit Revisions—5 applications × $19,532 in average Federal wage costs to review the application + 21% indirect costs = $118,165 (rounded) for significant revisions to permits. We anticipate minimum Federal wage costs of $670 (including indirect costs) and a maximum of $74,824 (including indirect costs) per significant permit revision application.

(7) Non-significant Permit Revisions—151 applications × $3,302 in average Federal wage costs to review the application + 21% indirect costs = $602,994 (rounded) for non-significant revisions to permits. We anticipate minimum Federal wage costs of $331 (including indirect costs and a maximum of $22,263 (including indirect costs) per non-significant permit revision application.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for SMCRA regulatory authorities to implement their responsibilities, including whether the information will have practical utility.

(b) The accuracy of our estimate of the burden of the proposed collections of information.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected.

(d) Ways to minimize the burden of collection on the respondents.

Under the Paperwork Reduction Act, we must obtain OMB approval of all information and recordkeeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. OSM is seeking a new OMB control number for the collection in proposed Part 737, which will appear in § 737.10 once assigned. To obtain a copy of our information collection clearance request, contact John A. Trelease at 202–208–2783 or by email at *jtrelease@osmre.gov*. You may also review the information collection request at *http://www.reginfo.gov/public/do/PRAMain*. Follow the Web site to the Department of the Interior's collections currently under review by OMB, where you can find the collection being created for this proposed rulemaking.

By law, OMB must respond to us within 60 days of publication of this proposed rule, but it may respond as soon as 30 days after publication. Therefore, to ensure consideration by OMB, you must send comments regarding these burden estimates or any other aspect of these information collection and recordkeeping requirements by April 25, 2013 to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via email to *OIRA_submission@omb.eop.gov*, or via facsimile to (202) 395–5806. Also, send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203 SIB, Washington, DC 20240, electronically to *jtrelease@osmre.gov*, or by facsimile to (202) 219–3276. You may still send comments on the proposed rulemaking to us until 4:30 p.m., Eastern Time, on April 30, 2013.

*National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by the categorical exclusion listed in the Department of the Interior regulations at 43 CFR 46.210(i). That categorical exclusion covers policies, directives, regulations and guidelines that are of an administrative, financial, legal, technical, or procedural nature. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*Executive Order 12988—Civil Justice Reform*

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not expected to have a significant adverse effect on the supply, distribution, or use of energy. It will have limited effect in the states of Tennessee and Washington and on those mining on Indian lands. Further, the rule does not prohibit surface coal mining operations; therefore, a Statement of Energy Effects is not required.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the proposed revisions would not have substantial direct effects 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. In November of 2011, OSM held separate meetings with representatives of the Crow Tribe, Hopi Tribe and the Navajo Nation to discuss the proposed rule and obtain their comments. Each of these Indian Tribes/Nations currently has or anticipates having coal mining activity.

One concern that was expressed was that the proposed rule would put coal mining on Indian lands at a disadvantage as compared to coal mining on lands where OSM is not the regulatory authority. We understand this concern; however, there are already differences in permitting fees, severance taxes and other taxes that are assessed in the various States and Indian lands where OSM is the regulatory authority. Another concern that was expressed was how the proposed rule would impact Indian lands once the Tribe/Nation assumes either full or partial primacy. If a Tribe/Nation assumes full primacy, it would replace OSM as the regulatory authority and the fees in this proposed rule would no longer be collected by OSM. In that case, the Tribe/Nation would have authority to set its own fees pursuant to sections 507(a) and 710(j)(1)(B). If a Tribe/Nation assumes only partial primacy, OSM would still assess fees for the work it does in lieu of the Tribe/Nation. For example, if a Tribe/Nation decided to assume responsibility for inspection and enforcement but not permit processing, OSM would assess and collect the permit processing fee.

The Crow Tribe's "Ceded Strip" in Montana represents a unique and special situation. The United States Department of the Interior and the State of Montana entered into a Memorandum of Understanding (MOU) on August 12, 1985, "to provide for effective regulation of surface coal mining and reclamation operations * * * on lands on the Crow Ceded Strip in Montana in a manner that achieves the regulatory purposes of the Surface Mining Control and Reclamation Act of 1977, fosters State-Federal cooperation and eliminates unnecessary burdens, intergovernmental overlap and duplicative regulation." Under the terms of the MOU, the Department of the Interior and Montana agreed to coordinate the administration of applicable surface mining requirements in the Crow Ceded Strip. Under this proposed rule, permits and applications on lands within the Crow Ceded Strip would be subject to the processing fee and the annual fixed fee for all services OSM provides because these services provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Because, pursuant to the MOU, OSM and Montana share responsibility for the regulation of

surface coal mining and reclamation operations on the Crow Ceded Strip, OSM would expect the processing fees it charges to an applicant, operator, or permittee located on the Crow Ceded Strip to address only the costs OSM incurs with regard to its regulatory responsibilities under SMCRA, and not the separate costs that Montana incurs as a result of its responsibilities under SMCRA and the MOU. Therefore, OSM would also expect that its processing fees would be lower than the fees that OSM would charge a comparable operation that is not within those boundaries. Because, consistent with the MOU, OSM would charge only those processing and annual fixed fees attributable to the regulatory functions that OSM actually performs, we do not view the potential assessment of two sets of fees (Montana's and OSM's) as unnecessary and duplicative.

*Executive Order 12630—Takings*

Under the criteria in Executive Order 12630, this rule does not have significant takings implications; therefore, a takings implication assessment is not required. This determination is based on the fact that the rule will not have an impact on the use or value of private property.

*Executive Order 13132—Federalism*

This proposed rule does not have Federalism implications because it only seeks to recover costs incurred by the Federal government for activities within the exclusive jurisdiction of the Federal government—e.g., in States that have not assumed primacy. Thus, it will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

*Data Quality Act*

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

*Clarity of These Regulations*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more but shorter sections (a "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, "§ 736.25 Who is required to pay fees?")

(5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** part of this preamble helpful in understanding the proposed rule?

(6) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Information and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also email the comments to this address: *Exsec@ios.doi.gov*.

**List of Subjects**

*30 CFR Part 701*

Law Enforcement, Surface mining, Underground mining.

*30 CFR Part 736*

Intergovernmental relations, Surface mining, Underground mining.

*30 CFR Part 737*

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 738*

Intergovernmental relations, Surface mining, Underground mining.

*30 CFR Part 750*

Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining.

Dated: March 3, 2013.

**Tommy P. Beaudreau,**

*Principal Deputy Assistant Secretary—Land and Minerals Management.*

For the reasons set forth in the preamble, we propose to amend 30 CFR Chapter VII as follows.

## PART 701—PERMANENT REGULATORY PROGRAM

■ 1. The authority citation for part 701 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. In § 701.5, in the definition for the term "violation," add paragraph (2)(vi) to read as follows:

**§ 701.5 Definitions.**

* * * * *

Violation * * *

(2) * * *

(vi) a bill or demand letter pertaining to a delinquent processing fee or annual fixed fee owed under parts 736 and 750 of this chapter.

* * * * *

## PART 736—FEDERAL PROGRAM FOR A STATE

■ 3. The authority citation for part 736 is revised to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 4. Revise § 736.25 to read as follows:

**§ 736.25 Who is required to pay fees?**

You, the applicant, permittee, or operator of a surface coal mining and reclamation operation on land where OSM is the regulatory authority or has substituted federal enforcement under Part 733 of this Chapter, must pay the fees required by this subchapter if:

(a) You are an applicant for a permit to conduct surface coal mining and reclamation operations, a permit to conduct coal exploration (but excluding a written notice of intention to explore under § 772.11), a permit renewal or revision, a transfer, assignment or sale of rights in an existing permit, or any other action on which OSM may assess fees as specified in 30 CFR Chapter VII, and we receive your application on or after [*the effective date of this rule*]; or

(b) You are a permittee or operator of a surface coal mining and reclamation operation and we begin to conduct a mid-term review of your operation after [*the effective date of this rule*]; or

(c) You are a permittee or operator of a surface coal mining and reclamation operation and we are required to inspect your operation.

■ 5. Add §§ 736.26 and 736.27 to read as follows:

**§ 736.26 What fees must I pay if I am an applicant?**

Before we (OSM) begin to process your application for one of the activities listed in § 736.25(a) or (b), you must pay a processing fee as set forth in Part 737 of this subchapter.

**§ 736.27 What fees must I pay if I am a permittee or an operator?**

Beginning on [*the effective date of this rule*], you must pay

(a) a *processing fee* as set forth in Part 737 of this subchapter when we conduct a mid-term review of your permit; and

(b) an *annual fixed fee* as set forth in Part 738 of this subchapter.

■ 6. Add part 737 to subchapter C to read as follows:

## PART 737—PROCESSING FEES FOR OPERATIONS ON LAND WHERE OSM IS THE REGULATORY AUTHORITY

Sec.



**Authority:** 30 U.S.C. 1201 *et seq.*

### § 737.1 What does this part do?

(a) This part describes the *processing fee*, including how and when to pay this fee.

(b) Except for a bond release application under § 800.40, all applicants for a permit to conduct surface coal mining and reclamation operations or coal exploration operations (but excluding a written notice of intention to explore under § 772.11), a permit renewal or revision, a transfer, assignment or sale of rights in an existing permit, or any other action on which OSM may assess fees as specified in 30 CFR Chapter VII are required to pay the processing fee if we (OSM) receive your application on or after [*the effective date of this rule*] involving land where we are the regulatory authority or where we have substituted federal enforcement under Part 733 of this Chapter.

(c) All operators and permittees of surface coal mining and reclamation operations are required to pay the processing fee if we are required to conduct a mid-term review of your permit on or after [*the effective date of this rule*] involving land where we are the regulatory authority or where we have substituted federal enforcement under Part 733 of this Chapter.

### § 737.10 Information collection.

The collections of information contained in Part 737 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned control number 1029–XXXX. OSM uses the information collected in this Part to re-estimate and collect fees imposed on permit applicants for surface coal mining and reclamation operations and on operators and permittees when OSM is required to perform a mid-term review. Respondents are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### § 737.11 What happens after I submit a permit application or a mid-term review is required for my surface coal mining and reclamation operation?

After we receive a permit application or other permitting action identified in section 736.25(a) and before we begin processing that application or when a mid-term review of your permit is required, we will provide you with a written initial estimate of the fee and processing time.

### § 737.12 How much is the processing fee?

(a) We will determine the amount of the processing fee on a case-by-case basis and provide you with an initial estimate. Our initial estimate of your processing fee will be an estimate of our costs to review and process your application or conduct a mid-term review of your operation and will be based on our costs to review recent, similar applications and actions. The amount of the fee will consist of:

(1) Our actual direct costs to process the permit application or other action; and

(2) An applied indirect rate (expressed as a percentage of direct costs) to recover that portion of our indirect costs associated with performing the review.

(b) Your final cost will be the sum of the actual costs that we incurred.

### § 737.13 May I pay the processing fee in installments?

Yes. You have the option to either:

(a) Submit the estimated fee in one lump sum; or

(b) If the processing time of your application or other action is estimated to be more than six months, you may request to pay the estimated fee in installments. The amount of the partial payment will be calculated by dividing the total estimated fee amount by the number of six-month billing periods estimated for our processing.

### § 737.14 When must I pay the processing fee?

(a) You must make full payment or the first installment of your payment, if applicable, within 30 days of the date of the initial estimate.

(b) If you are paying the processing fee in installments, we will bill you for the second installment and all future installments within 10 days following the end of each six-month period while we are processing your application or other action. We must receive payment within 30 days of the billing date on your invoice.

(c) You must pay the entire fee before we will issue the final decision document. However, if you are revising your permit to remedy a violation, we may postpone the deadline for your payment of the fee as necessary to avoid causing a delay in your corrective action.

### § 737.15 What method of payment may I use to pay my fees?

All fees due must be submitted to us in the form of an electronic funds transfer (EFT) or a certified check, bank draft or money order payable to the Office of Surface Mining. A bank draft is a check, draft or other order for payment of money drawn by an authorized officer of the bank.

### § 737.16 What if the processing fee estimate is more or less than the actual processing costs?

(a) If you are paying your processing fee in installments, we will generally re-estimate the fee every 6 months once processing has begun. If our actual costs to process your application or other action are higher or lower than the amount that you paid, we will adjust the amount of a subsequent billing cycle to reflect this difference.

(b) If you paid the full amount of the fee estimate and our actual processing costs are more than the amount paid, OSM will notify you that the costs are expected to be higher and provide you with a revised estimate. If you do not pay the additional fees as required, we may stop processing your application or other action until we receive payment,unless, in our discretion, we decide it is in the public interest to continue to process your application or other action.

(c) If our actual processing costs are less than the processing fee that you have paid, we will refund any fees to you that were not used after issuance of the final decision document. No interest will be paid on refunded fees.

### § 737.17 What happens to the processing fees I have paid if I decide to withdraw my application or other action, or if the application is denied?

Except for mid-term reviews, if you decide to withdraw your application or other action, you must notify us in writing, and we will stop processing your application or other action and

refund any moneys that you paid in excess of our processing costs to date. No interest will be paid on refunded fees. If we ultimately deny your application, you will nevertheless still be responsible for the costs that we incurred in reviewing and processing your application.

**§ 737.18 What happens if I am late paying the processing fee?**

(a) Except for mid-term reviews, processing will not normally begin on your application or other action until we receive your required payment; however, if you submit a permit revision application to remedy a violation, depending on the specific circumstances, we may begin to process your permit revision application before we receive your processing fee to avoid causing a delay in your corrective action.

(b) If you are eligible and choose to pay in installments under § 737.13(b) and you are late paying your six-month processing fee, we will suspend further work on your application or other action, except mid-term reviews, until we receive payment.

(c) All late payments will be subject to interest, penalties, and administrative charges as provided in the Debt Collection Act of 1982, as amended, and 31 CFR 901.9. The failure to make a timely payment of this fee constitutes a violation that will be entered into the Applicant/Violator System.

■ 7. Add part 738 to subchapter C to read as follows:

## PART 738—ANNUAL FIXED FEES FOR OPERATIONS ON LAND WHERE OSM IS THE REGULATORY AUTHORITY

Sec.



**Authority:** 30 U.S.C. 1201 *et seq.*

**§ 738.1 What does this part do?**

This part informs you, the permittee or operator of a surface coal mining and reclamation operation, of the fee schedule for the annual fixed fee and how and when to pay this fee. It applies to operations on land where we (OSM) are the regulatory authority or where we have substituted federal enforcement under Part 733 of this Chapter.

**§ 738.11 How much is the annual fixed fee?**

(a) The table in paragraph (b) of this section sets the annual fixed fee rate, which is based on the geographic region; the permit acreage and type of operation; the permit's phase of bond release, if any; and special situations (such as initial program sites and permits that are inactive). The table contains separate rates applicable to surface coal mining and reclamation operations located east and west of the 100th meridian west longitude. The table identifies two different types of permitted operations: support facilities and surface/underground mines. Support facilities include preparation plants, ancillary facilities (such as haul roads), refuse and/or impoundment sites, loading facilities and/or tipples, and stockpiles.

(b) Annual Fixed Fee Table (in dollars):

| | Support facilities | Surface coal mines (including underground mines) | | | | |
|---|---|---|---|---|---|---|
| | | 100 permitted acres | ≥100 to <1,000 permitted acres (dollars) | ≥1,000 to <10,000 permitted acres | ≥10,000 to <20,000 permitted acres | ≥20,000 permitted acres |
| Areas East of the 100th Meridian West Longitude: | | | | | | |
| Permit Without Phase II Bond Release | 3,100 | 3,300 | 5,900 | 18,000 | na | na |
| Permit With Phase II Bond Release | 1,300 | 1,400 | 2,900 | 13,000 | na | na |
| Permit Inactive | 1,300 | 1,400 | 2,900 | 13,000 | na | na |
| Initial Program Operations | na | 700 | 1,450 | na | na | na |
| Areas West of the 100th Meridian West Longitude: | | | | | | |
| Permit Without Phase II Bond Release | 8,600 | na | 8,300 | 17,000 | 26,000 | 96,000 |
| Permit With Phase II Bond Release | 2,800 | na | 3,300 | 7,900 | 13,000 | 72,000 |
| Permit Inactive | 2,800 | na | 3,300 | 7,900 | 13,000 | 72,000 |
| Initial Program Operations | 1,400 | 2,000 | na | 3,950 | na | na |

For initial program operations, the permit fee relates to the site acreage.
Fees include 21% pecent overhead.
na = no permits available in these categories.

(c) We will periodically adjust the annual fixed fees to reflect changes in our direct costs and indirect rates. The revised annual fixed fee rates will be published in the **Federal Register** and will take effect at the start of the next fiscal year when new annual bills are sent.

**§ 738.12 When is payment of the annual fixed fee due?**

We will bill you on an annual basis in advance of administering and enforcing your permit for the next fiscal year. Existing permittees must pay a prorated bill for the period beginning on the effective date of the rule through the end of the current fiscal year (September 30). Similarly, new permits awarded after the effective date of this rule must pay a prorated bill for the period beginning on the date the permit was issued through the end of the current fiscal year (September 30). Thereafter, all annual bills will be sent at the start of each new fiscal year (October 1). We must receive payment for your annual fixed fee within 30 days of the billing date on your invoice.

**§ 738.13 What method of payment may I use to pay my fees?**

All fees due must be submitted to us in the form of an electronic funds transfer (EFT) or a certified check, bank draft or money order payable to Office of Surface Mining. A bank draft is a check, draft or other order for payment of money drawn by an authorized officer of the bank.

**§ 738.14 What happens if I am late paying the annual fixed fee?**

If you are late paying the annual fixed fee, we may take any enforcement action

necessary to comply with parts 843, 845, and 846 of this chapter. In addition, late payments will be subject to interest, penalties, and administrative charges as provided in the Debt Collection Act of 1982, as amended, and 31 CFR 901.9. The failure to make a timely payment of this fee constitutes a violation that will be entered into the Applicant/Violator System.

**§ 738.15 What happens if my permit achieves a subsequent phase of bond release or becomes inactive after I have paid my annual fixed fee rate for the year?**

(a) If your permit or operation achieves a subsequent phase of bond release or becomes inactive during the year after you have paid your annual fixed fee, you are eligible for a reduction of your annual fixed fee and you may be eligible for a partial refund of the annual fixed fee.

(b) You are eligible for a partial refund of your annual fixed fees, if:

(1) Your permit completes a phase of bond release within the first 6 months of the billing year; or

(2) Your permit or operation is inactive for 12 or more continuous months.

(c) We will prorate the amount of your refund based on the effective date of the event that makes your permit or operation eligible for the reduced annual fixed fee rate, whichever is later.

(d) Your partial refund will be credited to your next annual bill unless you request a refund check in writing.

**§ 738.16 How will my prorated bill for my existent permit be determined?**

Once this proposed rule becomes effective, we will send you a prorated annual fixed fee bill for the remainder of the billing year. For sites where we are required to annually conduct 4 complete inspections and 8 partial inspections, your prorated bill will be determined by the number of remaining months in the billing year. For sites that require only two complete annual inspections, their amount will be determined by the timing of our inspections rather than the remaining months in the billing year.

## PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

■ 8. The authority citation for part 750 continues to read as follows:

**Authority:** 30 U.S.C. 1201 et seq.

■ 9. Revise § 750.25 to read as follows:

**§ 750.25 Who is required to pay fees?**

You, the applicant, permittee, or operator of a surface coal mining and reclamation operation on Indian lands for which OSM is the regulatory authority, must pay the fees required by parts 737 and 738 of this chapter if:

(a) You are an applicant for a permit to conduct surface coal mining and reclamation operations, coal exploration (but not a notice of intention to explore), a permit renewal or revision, a transfer, assignment or sale of rights in an existing permit, or any other action on which OSM may assess fees as specified in 30 CFR Chapter VII, and we receive your application on or after [*the effective date of this rule*]; or

(b) You are a permittee or operator of a surface coal mining and reclamation operation and we begin to conduct a mid-term review of your operation after [*the effective date of this rule*]; or

(c) You are a permittee or operator of a surface coal mining and reclamation operation and we are required to inspect your operation.

■ 10. Add §§ 750.26 and 750.27 to read as follows:

**§ 750.26 What fees must I pay if I am an applicant?**

Before we (OSM) begin to process your application for one of the activities listed in § 750.25(a), you must pay a processing fee as set forth in Part 737 of this subchapter.

**§ 750.27 What fees must I pay if I am a permittee or an operator?**

Beginning on [the effective date of this rule], you must pay

(a) a *processing fee* as set forth in Part 737 of this chapter when we conduct a mid-term review of your permit; and

(b) an *annual fixed fee* as set forth in Part 738 of this chapter.

[FR Doc. 2013–06950 Filed 3–25–13; 8:45 am]
BILLING CODE 4310–05–P


# FEDERAL REGISTER

Vol. 78 Tuesday,
No. 58 March 26, 2013

Part III

## Department of Education

## Department of the Treasury

## Office of Management and Budget

Historically Black College and University (HBCU) Capital Financing Program; Modification of Terms and Conditions of Gulf Hurricane Disaster Loans; Notice

**DEPARTMENT OF EDUCATION**

**DEPARTMENT OF THE TREASURY**

**OFFICE OF MANAGEMENT AND BUDGET**

## Historically Black College and University (HBCU) Capital Financing Program; Modification of Terms and Conditions of Gulf Hurricane Disaster Loans

**AGENCY:** Department of Education, Department of the Treasury, Office of Management and Budget.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Education (Secretary) is authorized to modify the terms and conditions of loans made to the following four institutions affected by Hurricanes Katrina and Rita under the Historically Black College and University (HBCU) Capital Financing Program: Dillard University, Southern University at New Orleans, Tougaloo College, and Xavier University. The loan modifications are required by statute to be on such terms as the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget (OMB) jointly determine are in the best interests of both the United States and the borrowers and necessary to mitigate the economic effects of the hurricanes, provided that the modifications do not result in any net cost to the Federal Government. This notice (1) establishes the terms and conditions of the loan modifications, (2) outlines the methodology undertaken and factors considered in evaluating the loan modifications, and (3) describes how the loan modifications do not result in any net cost to the Federal Government.

**DATES:** The effective date of the determination of the loan modification terms and conditions that will be available to gulf hurricane disaster loan borrowers under the HBCU Capital Financing Program is March 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** Donald E. Watson at (202) 219–7048 or by email at: *Donald.Watson@ed.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:**

### Introduction

In 1992, the HBCU Capital Financing Program was created under the Higher Education Act of 1965, as amended (HEA), to help HBCUs fund capital projects, such as repair, renovation, and, in exceptional circumstances, construction of physical infrastructure by offering low-cost loans. 20 U.S.C. 1066. Congress found that HBCUs often face significant challenges in accessing traditional funding resources at reasonable rates. Operation of the HBCU Capital Financing Program is partially contracted to the Designated Bonding Authority (DBA), a private issuer of taxable bonds. The DBA finances the loans by issuing bonds that are purchased by the Federal Financing Bank (FFB) at an interest rate equal to the six-month Treasury bill rate, as determined semiannually. The bonds are backed by letters of credit issued by the Department of Education (Department). The DBA then loans the proceeds from the sale of the bonds to eligible HBCUs.

In 2006, Congress passed the 2006 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery (Emergency Act), Public Law 109–234. Section 2601 of the Emergency Act authorized loans under the HBCU Capital Financing Program on special terms for a one-year period to HBCUs that qualified as institutions affected by Hurricanes Katrina and Rita. The special loan terms included, but were not limited to: exemption from the program requirement that borrowing institutions each deposit five percent of loan proceeds in a pooled escrow account; interest payable by the borrowing institution capped at one percent, with any interest accruing on the bonds at higher rates to be paid by the Secretary; and an authorization for the Secretary to waive or modify other program provisions. To establish eligibility, affected institutions were required to demonstrate, among other things, that physical damage caused by one of the hurricanes prevented them from fully reopening existing facilities or from fully reopening to the levels that had existed before the hurricane.

Loans were made under the Emergency Act to the four aforementioned institutions, the first three of which are private non-profit HBCUs and the last one is a public HBCU. The loans to the three private nonprofit HBCUs are general obligations secured by mortgages, revenue pledges, and other collateral. The loan to the public HBCU is a special obligation payable solely from the revenues of the dormitory the loan proceeds were used to construct. The bonds issued to finance the loans are pegged to the six-month Treasury bill rate. As required by the Emergency Act, the Secretary is responsible for paying any interest on the bonds in excess of one percent. The HBCUs' loan payments also include: (1) A monthly "servicing fee," payable to the DBA, that is equal to the product of 0.0000833 and the principal amount of the loan outstanding; and (2) a monthly "FFB fee," payable to the Secretary, that is equal to 0.00125, multiplied by both the percentage of a year that has elapsed since the last monthly payment was due and by the principal amount of the loan outstanding.

General Provisions section 307, Title II, Division F of the Consolidated Appropriations Act, 2012, Pub. L. 112–74, as extended under the Continuing Appropriations Resolution, 2013, Public Law 112–175 (2012 Appropriations Law), allows for modifications to the loans to the four schools as collectively agreed upon by the Secretary, the Secretary of the Treasury, and the Director of OMB, as long as: (1) The terms of the modifications are in the best interests of both the United States and the borrowers and necessary to mitigate the economic effects of the hurricanes; and (2) any modifications will not result in any net cost to the Federal Government.

The three agencies have determined that, due to the impact of Hurricanes Katrina and Rita, the current financial conditions and enrollment levels at the HBCU borrowers remain below expectations, despite having made capital improvements since the hurricanes. Accordingly, the agencies have agreed that loan modifications are appropriate to: Facilitate the original intent of the loans, protect the Federal financial interest, put the schools on a path to increased enrollment and net income, and align debt payments with enrollment, income levels, and operating expenses. This notice establishes the significant terms and conditions of the modifications, outlines the methodology undertaken and factors considered in evaluating the loan modifications, and explains how the loan modifications do not result in any net cost to the Federal Government.

### Loan Modification Terms and Conditions

The loan modifications have three principal components: payment forbearance, expense-based repayment (EBR),[1] and debt adjustment. The complete terms and conditions of the loan modifications, including the terms and conditions described below, will be

[1] As described in the next subsection, each of the four HBCUs' payments under EBR will be set at the lesser of the reamortized scheduled payments resulting from the modifications to the loans (plus DBA servicing and FFB fees) or the prescribed percentage of each HBCU's adjusted operating expenses.

set forth in executed amendments to the original loan documents, including an amendment to the promissory note to reflect the school's additional indebtedness to the Secretary, and provisions accordingly clarifying that in each case the Bond, Trust Indenture, Loan Agreement and Note will not terminate upon repayment of the amounts owing to the FFB.

*Payment Forbearance:* Beginning on execution of the amendments to the loan documents, and absent default or prepayment, the participating schools will receive a five-year forbearance during which no principal, interest, servicing fees, or FFB fees will be due on the loans made to these schools in 2007. During the forbearance, the Department will pay to the FFB the principal and interest due on the 2007 bonds and the DBA's servicing fees. The Department will also defer borrower payment of the FFB fees.

The payment support by the Department will not reduce the amount owed by the schools on their loans, and the Department will become the holder of the bonds to the extent of its payments on behalf of a borrower and deferment of borrower repayments. The amount of that payment support, together with outstanding principal, interest, and late fees, will be due in the event of default or prepayment.

At the end of forbearance, the accrued interest, together with the unpaid servicing and FFB fees that the Department paid on the schools' behalf or deferred, will be capitalized into principal. The balance of each loan, with interest accruing at up to one percent, will then be reamortized at substantially level semiannual payments, due each April 1 and October 1, until June 1, 2037, the original maturity date for each of the loans. In addition, the schools will resume their monthly payments of servicing and FFB fees.

Each school will be charged an insurance fee based on the school's individual circumstances. This fee will be the amount necessary to offset the cost of delaying repayments and to compensate for the increased risk assumed by the taxpayer for delaying principal and interest payments as well as offset the cost of the Secretary's payment of the DBA servicing fees and the deferral of the FFB fees during the forbearance period. A pro rata portion of the insurance fee, with accrued interest at up to one percent, becomes payable if default or prepayment occurs before the five-year forbearance ends; otherwise, the insurance fee and accrued interest on it is included in the amortization schedule of substantially level semiannual payments established by the Secretary at the end of the forbearance.

Beginning 60 days after execution of the modification documents, and every February thereafter, each participating institution seeking to establish or maintain eligibility for EBR will provide the Secretary with a detailed operating plan and performance data addressing goals agreed to by the school and the Secretary. The content required to be submitted as part of the operating plan includes financial statements, budgets (including narrative analyses of the budget's line items), census information on employees and students, and short-term and long-term strategies regarding enrollment, auxiliary services income, and the academic core. Performance data must address benchmarks approved by the Secretary to evaluate financial health as well as core revenue-generating and cost-saving strategies. If the Secretary determines that a school's submissions for the first four years of forbearance reflect a good faith effort to devise and implement a reasonable strategic plan, and that the performance data reflect reasonable progress in the circumstances towards the benchmarks adopted, the Secretary will designate the Borrower as eligible for EBR.

Thereafter, the Secretary will carry out a similar review annually of the operating plan and performance data a school submits, to determine if it reflects a reasonable effort and approach to improving the school's financial standing. If it does, eligibility for EBR will continue. A number of options is available to the Secretary in the event a school's submissions are deficient, ranging from providing technical assistance to enable the school to correct the deficiencies in its plan, to denying eligibility for EBR for a year or more until a satisfactory plan and performance data are submitted, to determining a school with a consistent history of deficient submissions ineligible to participate in EBR for the remainder of the term of the loan. Under the modifications, an uncured material failure to perform the terms and conditions of the operating plan, or the making of any false or incorrect material warranty or representation in connection with the operating plan, is an event of default, with remedies available to the Trustee and Secretary including, but not limited to, acceleration of the entire outstanding balance, including all EBR payments previously made by the Secretary on behalf of the school, or establishment of a reamortization schedule that includes all EBR payments previously made.

*Expense-Based Repayment:* Once a school has been initially determined eligible for EBR and the five-year forbearance has ended, the payments to be made by an EBR-eligible school will be based on the individual school's adjusted operating expenses. For purposes of these payments, "adjusted operating expenses" are the operating expenses as reported on the school's audited financial statements for the most recently completed fiscal year, less depreciation and amortization as reported on those statements. "Depreciation" shall mean the allocation of the cost of tangible assets over the assets' useful lives, if reported by the Borrower as depreciation on its audited year-end financial statements. "Amortization" shall mean the allocation of the cost of intangible assets over the assets' useful lives, if reported by the Borrower as amortization on its audited year-end financial statements.

For the three non-profit schools, payments will be set at the lesser of the reamortized scheduled payments (plus servicing and FFB fees) or six percent of the adjusted operating expenses. Based on reviews of both private sector analyses and the Department's analysis, including institutional enrollment and tuition demand, incremental revenue sources, historical financial statements, budget projections, and other information, we have determined that a manageable debt service payment equates to six percent of net adjusted operating expenses for the three non-profit schools. For the public school, payments will be set at the lesser of the reamortized scheduled payment (plus servicing and FFB fees) or three percent of the net adjusted operating expenses. The public school's rate is lower because its existing loan agreement finances only a specific asset—the dormitory—and the Federal Government has rights only to the revenues of the asset.

If a school's EBR payment amount is less than the reamortized scheduled payment, the school will pay the EBR payment amount, and the Department will pay, on its behalf, the difference. As with the amounts paid by the Department on a school's behalf during the forbearance, the EBR payment support by the Department will not reduce the amount owed by the schools on their loans; and those amounts, plus interest and late fees, will be due in the event of default or prepayment.

*Debt Adjustment:* Provided that a school has made payments in the amounts and at the times specified in the loan documents as modified throughout the term of the loan, without default except such default as has been

timely cured, and has not prepaid the loan, upon certification of foregoing by the Trustee and approval by the Secretary, any loan amounts outstanding, due to the difference between the EBR payment amounts and reamortized scheduled payment amounts, at the original loan maturity date—June 1, 2037—will be forgiven. The Secretary reserves the right to deny forgiveness if the borrower has breached, falsified, or misrepresented (i) any covenants, representations or warranties in any loan document, or (ii) any information delivered to the Secretary, the DBA or the Trustee in connection with the loan, the loan documents or any payments of the Borrower or the Secretary.

The Secretary and the Trustee must both agree that the conditions for forgiveness have been met for it to apply, due to their distinct contractual responsibilities for monitoring borrower compliance with the operating plan and repayment requirements.

*Final Terms and Conditions; Administration of the Modification:* The terms and conditions will include those terms generally described above, as well as restrictive covenants that will govern the operations of the schools during the terms of the loans and other customary terms. The Secretary will provide each school in writing an option to elect to modify the school's loan, which will expire on March 28, 2013 unless exercised by the school through written notice to the Secretary in the form and in the manner specified in the option. The Secretary will provide each school, together with the option, copies of the documents that would amend the school's existing loans, as well as a description of the authorizing documents, legal opinion, consents, and any other documentation the school would need to supply at closing. It is expected that the option and accompanying documents will be finalized and sent to the four schools within [15] business days of the publication of this notice.

**Outline of Methodology and Factors in Determining Loan Modifications**

The 2012 Appropriations Law allows for the modification of the four loans only upon terms and conditions that the Secretary, the Secretary of the Treasury, and the Director of OMB jointly determine are in the best interests of both the United States and the borrowers and are necessary to mitigate the economic effects of the hurricanes. The Secretaries and the Director have jointly determined that the loan modifications meet these requirements. In making this determination, they considered, among other factors:

- The importance of HBCUs as a national resource;
- The financial condition and enrollment levels of the four HBCUs prior to and after the gulf hurricanes;
- The original intent of the loans; and
- The U.S. Government's interest in maximizing its return on investment by reducing the likelihood of default on program loans.

The five-year forbearance will give the schools adequate time to strengthen their financial status and prepare for their first payments. This is an important first step in the path to financial recovery for these institutions and will ensure adequate working capital to make necessary investments that improve the operations of each campus.

Since these schools' campuses will depreciate in value over time and lose their ability to generate revenue without the school taking out more debt to repair the facilities, it seems unlikely that the financed assets will continue to service debt obligation beyond twenty-five years. For this reason, outstanding debts from this program that exist beyond the year 2037 will be forgiven in the circumstances described above, provided a school has complied with all other terms of the loan. Enforcing any remaining debt obligation beyond twenty-five years would most likely be debilitating to the institutions in the future when they must borrow additional funds for maintenance and repair of their existing facilities.

The following are detailed explanations of how the loan modifications meet applicable requirements.

*Best interest of the borrower:* The terms and conditions of modification offer the schools time and resources to establish financial and institutional reforms that will help the schools' long-term health. The future debt burden is calibrated to the size of each school's operating budget, significantly reducing the likelihood that the schools will be overextended and default. By decreasing the scheduled debt burden in the event that the schools' operation cannot reasonably support it, the modification supports the long term growth and viability of the schools.

*Best interest of the United States:* It is in the best interest of the United States to mitigate the risk of loan default in the short term, maximize the prospect of repayment in the long term, and maintain viable HBCUs as a national educational and cultural resource. The modifications further these objectives.

While the four institutions have made significant progress toward recovery since Hurricanes Katrina and Rita, their financial climate is still difficult, and enrollment levels remain below expectations. Reduced governmental grant and contract funding also puts downward pressure on the institutions' revenue sources. Accordingly, institutional expenses and debt service need to be realigned with the current revenue environment. This action is necessary to facilitate further recovery by the schools and to ensure the schools' respective debt burdens do not lead to serious financial consequences that could, in turn, result in problems repaying their debt. Setting reasonable payments amounts as a percentage of adjusted operating expenses will allow the schools to satisfactorily meet the obligations of these loans and continue operating.

In addition to the cost neutrality estimates described below in the No Net Cost to the Federal Government section, the Secretaries and Director also considered an analysis of expected payments from the borrowers, based on their most recent financial statements and on budgetary projections. While each school has a unique financial circumstance, the schools seem overextended and may not be able to make the current scheduled debt service payments without serious consequences to the long-term viability of the institutions. The schools have either generated negative net income, putting pressure on liquid assets, or have such anemic net revenue that operations are constrained. Revenue and expense forecasts indicate financial improvement to meet current debt obligations is highly unlikely in some cases. Therefore, the modifications increase the likelihood that the taxpayer will be repaid. Analyses also indicate the designated expense based repayment thresholds align each institution's future payments with their unique financial circumstance and maximizes the ability to make debt service payments.

*Necessary to mitigate the impact of Hurricanes Katrina or Rita:* The intent of the original loans was to mitigate the effects of these two hurricanes, which included damage to school facilities, enrollment reductions, and increased debt levels. While the loans have helped the schools reconstruct damaged facilities, the institutions still suffer from increased debt burdens disproportionate with enrollment levels. The modifications put the schools on a path to increase enrollment and net income, and align debt payments with enrollment and income levels.

*No Net Cost to the Federal Government:* In accordance with the 2012 Appropriations Law, the Secretary, the Secretary of the Treasury, and the Director of OMB have jointly determined that the loan modifications will not result in any net cost to the Federal Government, beginning on the date on which the Secretary modifies the loans.

The cost-neutrality analysis used credit subsidy modification cost estimation procedures established under the Federal Credit Reform Act of 1990 (FCRA, 2 U.S.C. 661a *et seq.*), as amended, and OMB Circular A–11. Per FCRA and the implementing guidance, the cost estimates compare the present value of future cash flows to and from the Government under the original contracts from the point of modification, and the present value of the cash flows under the coutracts as modified. To estimate the present value cost, the analysis used discount rates provided by OMB to estimate credit subsidy costs for all Federal credit programs. The results of the analysis were estimates expressed as a dollar amount of the change in Federal costs of modifying the contractual terms of the loans.

The metric to determine cost neutrality was that the modification costs under the modified contract should not exceed costs expected under the current loan contracts, had no changes to the contracts taken place. Thus, all costs of the modified loans were compared to estimates in the President's Budget baseline assumptions for such loans.

Consistent with the requirements included in the 2012 Appropriations Law that any modification under this authority shall not result in any net cost to the Federal Government as jointly determined by the Secretaries and the Director, separate credit reform modification cost estimates were developed to assess the Federal cost incurred for modifying the terms of loans to each of the four schools. This discussion outlines the analysis of the changes to the loan contracts with respect to the following critical aspects affecting the Federal cost:

- Terms of the modification;
- Default assumptions; and
- Administrative costs.

*Terms of the modification.* Under the current loan contracts, borrowers are required to make monthly payments to the Trustee, which, in turn, makes semiannual payments to the FFB. Under the budget baseline assumptions, for each of the schools, those payments began in 2011 and are scheduled to end in 2037. Under the modified loan contracts, schools would receive a five-year forbearance starting on April 1, 2013, and no principal, interest, servicing or FFB payments would be paid by the schools. The Trustee would not make principal or interest payments during that period. The Secretary also would make the monthly servicing fee payments due from the borrower during the forbearance as they came due. Loans would still mature in 2037, but the insurance fee plus forborn servicing and FFB fees would be capitalized into the principal and interest payment schedule. The payment schedule would be re-amortized in substantially level, semiannual payments after the end of the forbearance.

To reach cost neutrality, the modified contract terms include for each of the schools an insurance fee, calculated as described above. The fee is added to the principal of the loan at the start of forbearance and accrues interest at the borrowers' interest rates, which is also capitalized. These amounts are included in the reamortized repayments. This increase to the scheduled payments including the insurance fee offsets the additional costs of the modification to reach cost neutrality.

*Default assumptions.* As required by FCRA, the modifications used the technical assumptions from the latest President's Budget, including the default and other borrower performance assumptions. For the purposes of the cost estimate, the borrower performance assumptions were assumed to represent the likelihood of EBR trigger and loan forgiveness. Those assumptions include a high expectation of repayment from each of the schools. However, because time has passed since the budget borrower performance assumptions were determined, the Secretaries and Director also considered an analysis that relied on the most recent annual operating expenses reported by the schools in their audited financial statements, discussed above in the Best Interest of the United States section.

*Administrative Costs.* Under FCRA, Federal administrative costs are not included in credit subsidy cost calculations. Instead, those costs are appropriated or obligated at their nominal value at the year they are incurred. The analysis assumed no change in the future federal cost of administering the modified loans versus the administering the loans under the current contract; thus the administrative costs associated with the modifications are necessarily zero.

*Conclusion.* After taking into account alternative borrower performance scenarios and appropriate risk factors, the Secretaries and Director determine that modified terms of the contracts to the four schools will result in no net cost to the Federal Government.

TABLE—HISTORICALLY BLACK COLLEGE AND UNIVERSITY CAPITAL FINANCING PROGRAM COST ESTIMATES FOR MODIFIED GULF HURRICANE DISASTER LOANS

[In millions of dollars]

| | Loan characteristics | | | | Value/costs | |
|---|---|---|---|---|---|---|
| | Outstanding principal April 2013 | Outstanding principal April 2018 | Scheduled interest | Insurance fees | PV cashflows with the public | Subsidy cost |
| Baseline | 353 | 324 | 53 | N/A | 246 | 108 |
| Modified | 353 | 405 | 45 | 30 | 246 | 108 |

**Note:** Estimates reflect a loan modification effective date of April 1st, 2013.

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Dated: March 22. 2013.

**Arne Duncan,**

*Secretary of Education.*

**Jacob J. Lew,**

*Secretary of the Treasury.*

**Jeffrey Zients,**

*Acting Director, Office of Management and Budget.*

[FR Doc. 2013–07071 Filed 3–22–13; 4:15 pm]

BILLING CODE 4000–01–P


# FEDERAL REGISTER

Vol. 78 Tuesday,
No. 58 March 26, 2013

Part IV

## The President

Federal Register
Vol. 78, No. 58
Tuesday, March 26, 2013

# Presidential Documents

Title 3—

The President

Proclamation 8941 of March 21, 2013

## Education and Sharing Day, U.S.A., 2013

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

**A Proclamation**

In a letter to his nephew, Thomas Jefferson once wrote, "an honest heart being the first blessing, a knowing head is the second." It is a notion that rings as true today as it did in 1785: that just as we owe our children a strong start in the classroom, so must we pass on the common values that help define us as a people. On Education and Sharing Day, U.S.A., we celebrate hard work, service, and commitment to learning as cornerstones of a bright future for our youth.

We know education is essential to putting our children on the path to good jobs and a decent living. It is a simple fact that to out-compete the rest of the world for tomorrow's jobs, we need to equip our sons and daughters with the education and skills a 21st-century economy demands. We need to give them every chance to work harder, learn more, and reach higher, from cradle to career.

We also know that learning does not stop when students leave the classroom. Whether at the dinner table or on the field, it is our task as parents, teachers, and mentors to make sure our children grow up practicing the values we preach. We have an obligation to instill in them the virtues that define our national character -- honesty and independence, drive and discipline, courage and compassion. And as citizens of a country where so much progress came only after we fought for fairness and equality, we must remember the wisdom of the Golden Rule by treating others as we would want to be treated.

This day recalls the memory of Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, who taught generations of young men and women the importance of education and good character. His work strengthened ties between people around the world, and his legacy continues to inspire the service, charity, and goodwill he championed in life. As we reflect on the example he and so many others have set, let each of us strive to better realize the values we share.

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 March 22, 2013, as Education and Sharing Day, U.S.A. I call upon all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of March, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–07168
Filed 3–25–13; 11:15 am]
Billing code 3295–F3

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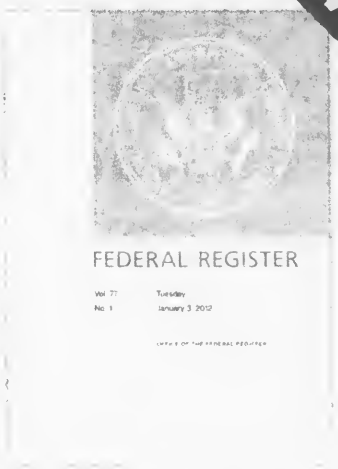


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