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OFFICE OF THE FEDERAL REGISTER

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WHO: Sponsored by the Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 17, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2013 Tariff-Rate Quota Year

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document sets forth the revised appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2013 quota year reflecting the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

DATES: *Effective Date:* August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Abdelsalam El-Farra, Dairy Import Licensing Program, Import Policies and Export Reporting Division, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 1021, Washington, DC 20250–1021; or by telephone at (202) 720–9439; or by email at: *abdelsalam.el-farra@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service, under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20–6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Policies and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and, in conjunction with U.S. Customs and Border Protection, U.S. Department of Homeland Security, monitors their use.

The regulation at 7 CFR 6.34(a) states: "Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2." Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets forth the revised Appendices for the 2013 tariff-rate quota year.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Issued at Washington, DC the 3rd day of July, 2013.

Ronald Lord,

Licensing Authority.

Accordingly, 7 CFR part 6 is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

■ 1. The authority citation for Part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

■ 2. Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing are revised to read as follows:

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NON-HISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTERS LICENSES FOR QUOTA YEAR 2013

[Quantities in kilograms]

	Appendix 1	Appendix 2	Sum of Appendix 1 & 2	Appendix 3		Grand total	HTS
				Tokyo R.	Uruguay R.		Chapter 4/2010
NON–CHEESE ARTICLES:							
BUTTER (NOTE 6)	4,618,233	2,358,767	6,977,000			6,977,000	6,977,000
EU–25	75,000	21,161	96,161				
New Zealand	110,045	40,548	150,593				
Other Countries	40,211	33,724	73,935				
Any Country	4,392,977	2,263,334	6,656,311				
DRIED SKIM MILK (NOTE 7)		5,261,000	5,261,000			5,261,000	5,261,000
Australia		600,076	600,076				
Canada		219,565	219,565				
Any Country		4,441,359	4,441,359				
DRIED WHOLE MILK (NOTE 8)	3,175	3,318,125	3,321,300			3,321,300	3,321,300
New Zealand	3,175		3,175				
Any Country		3,318,125	3,318,125				

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NON-HISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTERS LICENSES FOR QUOTA YEAR 2013—Continued

[Quantities in kilograms]

	Appendix 1	Appendix 2	Sum of Appendix 1 & 2	Appendix 3		Grand total	HTS
				Tokyo R.	Uruguay R.		Chapter 4/2010
DRIED BUTTERMILK/WHEY (NOTE 12)	.....	224,981	224,981	.....	.....	224,981	224,981
Canada	.....	161,161	161,161	.....	.....	.....	.....
New Zealand	.....	63,820	63,820	.....	.....	.....	.....
BUTTER SUBSTITUTES CONTAINING OVER 45 PERCENT OF BUTTERFAT AND/OR BUTTER OIL (NOTE 14)	.....	6,080,500	6,080,500	.....	.....	6,080,500	6,080,500
Any Country	.....	6,080,500	6,080,500	.....	.....	.....	.....
TOTAL: NON–CHEESE ARTICLES	4,621,408	17,243,373	21,864,781	.....	.....	21,864,781	21,864,781
CHEESE ARTICLES:							
CHEESE AND SUBSTITUTES FOR CHEESE (EXCEPT: SOFT RIPENED COW'S MILK CHEESE; CHEESE NOT CONTAINING COW'S MILK; CHEESE (EXCEPT COTTAGE CHEESE) CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT; AND, ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER) (OT—NOTE 16)	21,290,334	10,179,397	31,469,731	9,661,128	7,496,000	48,626,859	48,626,859
Argentina	7,690	0	7,690	92,310	.....	100,000	100,000
Australia	535,628	5,542	541,170	758,830	1,750,000	3,050,000	3,050,000
Canada	977,439	163,561	1,141,000	.....	.....	1,141,000	1,141,000
Costa Rica	.....	0	0	.....	1,550,000	1,550,000	1,550,000
EU–25	15,609,021	7,658,635	23,267,656	1,132,568	3,446,000	27,846,224	27,493,224
Of which Portugal is:	65,838	63,471	129,309	223,691	.....	353,000	353,000
Israel	79,696	0	79,696	593,304	.....	673,000	673,000
Iceland	294,000	0	294,000	29,000	.....	323,000	323,000
New Zealand	2,910,180	1,905,292	4,815,472	6,506,528	.....	11,322,000	11,322,000
Norway	124,982	25,018	150,000	.....	.....	150,000	150,000
Switzerland	584,954	86,458	671,412	548,588	500,000	1,720,000	1,720,000
Uruguay	.....	0	0	.....	250,000	250,000	250,000
Other Countries	100,906	100,729	201,635	.....	.....	201,635	201,635
Any Country	.....	300,000	300,000	.....	.....	300,000	300,000
BLUE–MOLD CHEESE (EXCEPT STILTON PRODUCED IN THE UNITED KINGDOM) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, BLUE–MOLD CHEESE (B—NOTE 17)	2,278.657	202,344	2,481,001	.....	430,000	2,911,001	2,911,001
Argentina	2,000	0	2,000	.....	.....	2,000	2,000
EU–25	2,276,657	202,343	2,479,000	.....	350,000	2,829,000	2,829,000
Chile	.....	.....	0	.....	80,000	80,000	80,000
Other Countries	.....	1	1	.....	.....	1	1
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE (C—NOTE 18)	2,775,728	1,508,128	4,283,856	519,033	7,620,000	12,422,889	12,422,889
Australia	897,786	86,713	984,499	215,501	1,250,000	2,450,000	2,450,000
Chile	.....	0	0	.....	220,000	220,000	220,000
EU–25	52,404	210,596	263,000	.....	1,050,000	1,313,000	1,313,000
New Zealand	1,723,925	1,072,543	2,796,468	303,532	5,100,000	8,200,000	8,200,000
Other Countries	101,613	38,276	139,889	.....	.....	139,889	139,889
Any Country	.....	100,000	100,000	.....	.....	100,000	100,000

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NON-HISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTERS LICENSES FOR QUOTA YEAR 2013—Continued

[Quantities in kilograms]

	Appendix 1	Appendix 2	Sum of Appendix 1 & 2	Appendix 3		Grand total	HTS
				Tokyo R.	Uruguay R.		Chapter 4/2010
AMERICAN–TYPE CHEESE, INCLUDING COLBY, WASHED CURD AND GRANULAR CHEESE (BUT NOT INCLUDING CHEDDAR) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING OR PROCESSED FROM SUCH AMERICAN–TYPE CHEESE (A—NOTE 19)	2,665,482	500,071	3,165,553	357,003	0	3,522,556	3,522,556
Australia	761,890	119,108	880,998	119,002	.....	1,000,000	1,000,000
EU–25	145,147	208,853	354,000	.....	.....	354,000	354,000
New Zealand	1,607,804	154,195	1,761,999	238,001	.....	2,000,000	2,000,000
Other Countries	150,641	17,915	168,556	.....	.....	168,556	168,556
EDAM AND GOUDA CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, EDAM AND GOUDA CHEESE (E—NOTE 20)	4,795,823	810,579	5,606,402	0	1,210,000	6,816,402	6,816,402
Argentina	110,495	14,505	125,000	.....	110,000	235,000	235,000
EU–25	4,569,520	719,480	5,289,000	.....	1,100,000	6,389,000	6,389,000
Norway	111,046	55,954	167,000	.....	.....	167,000	167,000
Other Countries	4,762	20,640	25,402	.....	.....	25,402	25,402
ITALIAN–TYPE CHEESES, MADE FROM COW'S MILK, (ROMANO MADE FROM COW'S MILK, REGGIANO, PARMESAN, PROVOLONE, PROVOLETTI, SBRINZ, AND GOYA—NOT IN ORIGINAL LOAVES) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH ITALIAN–TYPE CHEESES, WHETHER OR NOT IN ORIGINAL LOAVES (D—NOTE 21)	6,386,711	1,133,836	7,520,547	795,517	5,165,000	13,481,064	13,481,064
Argentina	3,899,395	226,088	4,125,483	367,517	1,890,000	6,383,000	6,383,000
EU–25	2,487,316	894,684	3,382,000	.....	2,025,000	5,407,000	5,407,000
Romania	.....	0	0	.....	500,000	500,000	500,000
Uruguay	.....	0	0	428,000	750,000	1,178,000	1,178,000
Other Countries	.....	13,064	13,064	.....	.....	13,064	13,064
SWISS OR EMMENTHALER CHEESE OTHER THAN WITH EYE FORMATION, GRUYERE–PROCESS CHEESE AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH CHEESES (GR—NOTE 22)	5,254,360	1,396,954	6,651,314	823,519	380,000	7,854,833	7,854,833
EU–25	3,986,207	1,165,787	5,151,994	393,006	380,000	5,925,000	5,925,000
Switzerland	1,234,655	184,832	1,419,487	430,513	.....	1,850,000	1,850,000
Other Countries	33,498	46,335	79,833	.....	.....	79,833	79,833
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER TARIFF–RATE QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE (LF—NOTE 23)	1,840,852	2,584,056	4,424,918	1,050,000	0	5,474,908	5,474,908

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NON-HISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTERS LICENSES FOR QUOTA YEAR 2013—Continued

[Quantities in kilograms]

	Appendix 1	Appendix 2	Sum of Appendix 1 & 2	Appendix 3		Grand total	HTS
				Tokyo R.	Uruguay R.		Chapter 4/2010
EU–25	1,840,852	2,584,055	4,424,907	.....	.....	4,424,907	4,424,907
Israel	.....	0	0	50,000	.....	50,000	50,000
New Zealand	.....	0	0	1,000,000	.....	1,000,000	1,000,000
Other Countries	.....	1	1	.....	.....	1	1
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION (SW—NOTE 25)	15,337,670	6,959,661	22,297,331	9,557,945	2,620,000	34,475,276	34,475,276
Argentina	.....	9,115	9,115	70,885	.....	80,000	80,000
Australia	209,698	0	209,698	290,302	.....	500,000	500,000
Canada	.....	0	0	70,000	.....	70,000	70,000
EU–25	10,979,785	5,497,043	16,476,828	4,003,172	2,420,000	22,900,000	22,900,000
Iceland	149,999	0	149,999	150,001	.....	300,000	300,000
Israel	27,000	0	27,000	.....	.....	27,000	27,000
Norway	3,159,885	495,425	3,655,310	3,227,690	.....	6,883,000	6,883,000
Switzerland	763,050	921,055	1,684,105	1,745,895	200,000	3,630,000	3,630,000
Other Countries	48,253	37,023	85,276	.....	.....	85,276	85,276
TOTAL: CHEESE ARTICLES	62,625,617	25,275,026	87,900,653	22,764,145	24,921,000	135,585,788	135,585,788
TOTAL: CHEESE & NON-CHEESE	67,247,025	42,518,399	109,765,434	22,764,145	24,921,000	157,450,569	157,450,569

[FR Doc. 2013–18568 Filed 7–31–13; 8:45 am]
BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–13–0030; FV13–930–2 IR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Revising Handler Reporting and Grower Diversion Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule invites comments on changes to handler reporting and grower diversion requirements prescribed under the marketing order for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin (order). The Cherry Industry Administrative Board (Board) locally administers the order. This rule changes the deadline for submitting the handler reserve plan from November 1 to October 1 and extends the deadline for redeeming or transferring grower diversion certificates from November 1 to June 30 of a given crop year. A crop year is the 12-month period beginning on July 1 of any crop year and ending on June 30 of the following year. These changes will provide the industry with a more complete and timely picture of the available supply earlier in the season and give handlers more time and flexibility in meeting their obligations under volume regulation.

DATES: Effective August 2, 2013; comments received by September 30, 2013 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order and Agreement No. 930, as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice

Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This rule changes the deadline for submitting the handler reserve plan from November 1 to October 1 and extends the deadline for redeeming or transferring grower diversion certificates issued by the Board from November 1 to June 30 of a given crop year. These changes will provide the industry with a more complete and timely picture of the available supply earlier in the season and will provide handlers more time and flexibility in meeting their obligations under volume regulation. The Board unanimously approved these changes at its March 21, 2013, meeting.

Sections 930.58 and 930.59 of the order provide authority for grower and handler diversion, respectively. In particular, § 930.59(c) requires that handlers notify the Board of their intent to divert cherries. These sections also provide authority for the Board to establish rules and regulations to administer these provisions, with the approval of the Secretary.

Section 930.159 of the rules and regulations establishes requirements for handler diversion. This section currently states, in part, that handlers intending to divert cherries or cherry products under a volume regulation must notify the Board and submit their plan for complying with that season's restriction obligation by November 1.

Section 930.158 of the order's rules and regulations establishes requirements for using grower diversion certificates. This section currently provides that handlers redeem grower diversion certificates with the Board by November 1 of the crop year, as the certificates will not be valid after that date.

Section 930.58 of the order was recently amended to exempt cherries diverted in the orchard (grower diversion) from inclusion in a handler's total volume calculation. When a volume regulation is issued, handlers are obligated to keep a percentage of their total volume in reserve or account for the restricted volume with diversion certificates. These certificates can be earned through export sales, new market or new product sales, or through grower diversion. Before the amendment, the volume of cherries represented by a grower diversion certificate was added to the handler's total volume. Following the amendment, handlers can redeem grower diversion certificates without adding tonnage to their total volume.

Amendments to an order often require conforming changes or adjustments to the administrative rules and regulations. The Board created a committee to review the order's diversion and reporting regulations and present any recommended changes to the Board. This rule implements the two recommended changes: Changing the due date for the handler reserve plan to October 1, and allowing the transfer and redemption of grower diversion certificates through the end of the crop year, June 30.

Separating grower diversion certificates from a handler's total volume simplified the completion of the reserve plan. Consequently, the Board believes handlers will be able to complete their reserve plan for restricted tart cherries at an earlier date. As a result, the Board recommended that the deadline for submitting handler reserve plans be changed from November 1 to October 1 of each season. The reserve plan is submitted in combination with a handler's final pack report. The Board consolidates this data and uses it to issue reports on the final volume processed and available inventory. This date change will provide the industry a more complete and timely picture of the available supply earlier in the season. This information is important to the industry, especially when considering the release of additional reserves when a volume regulation is in effect.

Originally, the deadline to redeem grower diversion certificates was tied to the handler reserve plan as handlers needed to account for grower diversion when calculating their total volume. As such, current regulations establish a due date of November 1 for grower diversion certificates, while other diversion certificates can be transferred throughout the season. With the amendment to the order, grower diversion certificates no longer need to be linked to when the handler reserve plan is due. To bring consistency to the use of diversion certificates, the Board recommended allowing handlers to transfer and redeem grower diversion certificates through the end of the season, June 30. This change also provides handlers additional time and flexibility in meeting restriction obligations.

In addition to adjusting the deadline for submitting the handler reserve plan and extending the deadline for redeeming grower diversion certificates, this rule also makes a minor wording change to § 930.158 to facilitate the change in date.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 600 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000 and small agricultural service firms have been defined as those having annual receipts of less than $7,000,000 (13 CFR 121.201).

According to data from the National Agricultural Statistics Service and the Board, the average annual grower price for tart cherries during the 2012–13 season was $0.54 per pound, and total shipments were around 85 million pounds. Therefore, average receipts for tart cherry producers were around $76,200, well below the SBA threshold for small producers. In 2013, The Food Institute estimated an f.o.b. price of $0.84 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Using this data, average annual handler receipts were about $1.8 million, also below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers

of tart cherries may be classified as small entities.

This rule modifies § 930.159, changing the deadline for submitting the handler reserve plan from November 1 to October 1. This rule also modifies § 930.158 to extend the deadline for redeeming or transferring grower diversion certificates issued by the Board from November 1 to June 30 of a given crop year. These changes are authorized under §§ 930.59 and 930.58, respectively. These changes will provide the industry with a more complete and timely picture of the available supply earlier in the season. In addition, the new deadline for transferring grower diversion certificates will allow handlers more time and flexibility in meeting their obligations under volume regulation.

It is not anticipated that this rule will generate any additional costs for growers or handlers. This action is intended to adjust regulations to reflect recent amendments to the order and to allow the order to function more efficiently. These changes are expected to benefit the industry by providing a clear picture of available supply earlier in the season, and by allowing handlers more time to utilize grower diversion certificates to meet their restriction under volume regulation. These changes should impact all entities positively, regardless of size.

Regarding alternatives to this action, the Board considered not making any changes to the regulations regarding the handler reserve plan or grower diversion certificates. However, the Board unanimously supported an earlier date for the handler reserve plan as all handlers are aware of the restriction well in advance and it would provide timely information regarding the season. Additionally, the Board determined that changing the deadline for redeeming grower diversion certificates was in line with the industry's objective to have consistency among the application of diversion credits. As such, these alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, (Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will require changes to Cherry Industry Administrative Board Form 4, "Handler Reserve Plan and Final Pack Report". However, these changes are minor and the currently approved burden for the form remains the same. The revised form has been submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the videoconference meeting at regional locations or call in to participate in the Board's deliberations. Like all Board meetings, the March 21, 2013, meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to handler reporting and grower diversion requirements prescribed under the order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The order amendments prompting these changes were implemented on June 7, 2012; (2) the Board unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; (3) this change relaxes the date for utilizing grower diversion certificates; (4) handlers begin to make plans regarding diversion requirements in July; and (5) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 930.158 [Amended]

■ 2. In § 930.158, paragraph (a) is amended by removing the words "November 1" and adding in their place "June 30" everywhere they appear.

§ 930.159 [Amended]

■ 3. In § 930.159, paragraph (b) is amended by removing the word "November" and adding in its place "October" in the first sentence, and removing the words "certificates redeemed" and adding in their place "certificates to be redeemed" in the fourth sentence.

Dated: July 25, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–18432 Filed 7–31–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0038; Airspace Docket No. 13–AEA–2]

Amendment of Class D and E Airspace, and Establishment of Class E Airspace; Oceana NAS, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E airspace operating hours, and establishes Class E surface airspace at Oceana Naval Air Station, (NAS), VA, due to the Air Traffic Control Tower at Oceana NAS (Apollo Soucek Field) now operating on a part time basis. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also updates the geographic coordinates of Oceana NAS (Apollo Soucek Field) and NALF Fentress.

DATES: Effective 0901 UTC, October 17, 2013. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On April 9, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D and Class E airspace, and establish Class E airspace at Oceana Naval Air Station, (NAS), VA, (78 FR 21084). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication the FAA found that the geographic coordinates of the NALF Fentress were transposed. This action makes the correction.

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

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the hours of operation for Class D airspace and Class E airspace designated as an extension to Class D surface airspace at Oceana NAS (Apollo Soucek Field), VA, as the air traffic control tower is transitioning from a full time facility to part time, and requires a Notice to Airmen notification. This action also establishes Class E airspace extending upward from the surface at Oceana NAS (Apollo Soucek Field), VA. The geographic coordinates of Oceana NAS (Apollo Soucek Field) and NALF Fentress are adjusted to coincide with the FAAs aeronautical database.

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, is non-controversial and unlikely to result in adverse or negative comments. 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does 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 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 and establishes controlled airspace at Oceana NAS (Apollo Soucek Field), Oceana, VA.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a. 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

Lists 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 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 Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AEA VA D Oceana NAS, VA [Amended]

Oceana NAS (Apollo Soucek Field), VA
(Lat. 36°49′22″ N., long. 76°01′55″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Oceana NAS (Apollo Soucek Field). This Class D airspace area is effective during 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

* * * * *

AEA VA E2 Oceana NAS, VA [New]

Oceana NAS (Apollo Soucek Field), VA
(Lat. 36°49′22″ N., long. 76°01′55″ W.)
Navy Oceana TACAN
(Lat. 36°49′27″ N., long. 76°02′13″ W)
NALF Fentress, VA
(Lat. 36°41′31″ N., long. 76°08′04″ W.)

That airspace extending upward from the surface within a 4.3-mile radius of Oceana NAS (Apollo Soucek Field), and within 1.8 miles each side of the Navy Oceana TACAN 213° radial extending from the 4.3-mile

radius of Oceana NAS (Apollo Soucek Field) to 9.3 miles southwest of the TACAN and within a 2.7-mile radius of NALF Fentress. This Class E airspace area is effective during 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.

* * * * *

AEA VA E4 Oceana NAS, VA [Amended]

Oceana NAS (Apollo Soucek Field)
(Lat. 36°49′22″ N., long. 76°01′55″ W.)
Navy Oceana TACAN
(Lat. 36°49′27″ N., long. 76°02′13″ W.)
NALF Fentress, VA
(Lat. 36°41′31″ N., long. 76°08′04″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Navy Oceana TACAN 213° radial extending from the 4.3-mile radius of Oceana NAS (Apollo Soucek Field) to 9.3 miles southwest of the TACAN and within a 2.7-mile radius of NALF Fentress. This Class E airspace area is effective during 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.

Issued in College Park, Georgia, on July 24, 2013.

Jackson D. Allen,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–18398 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–70049]

Delegation of Authority to Director of the Division of Enforcement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its rules to delegate to the Director of the Division of Enforcement the authority to appoint distribution fund administrators in enforcement administrative proceedings from a Commission-approved pool of administrators, and to set the amount of, or waive for good cause shown, the administrator's bond required by Rule 1105(c) of the Commission's rules on Fair Fund and Disgorgement Plans.

DATES: *Effective Date:* August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Nancy Chase Burton, 202–551–4425, Office of Distributions, Division of Enforcement, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–6553.

SUPPLEMENTARY INFORMATION: In administrative proceedings instituted by the Commission to enforce the federal securities laws, the Commission, in the exercise of its discretion, seeks to distribute amounts collected as disgorgement, prejudgment interest, and penalties to investor victims. The federal securities laws authorize the Commission in administrative proceedings to establish disgorgement and other funds to accomplish this goal. *See, e.g.*, Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7261; Sections 21B(e) and 21C(e) of the Securities Exchange Act ("Exchange Act"), 15 U.S.C. 78u–2(e) and 78u–3(e). According to the Commission's regulations, the "Commission or [a] hearing officer shall have discretion to appoint any person, including a Commission employee, as administrator of a plan of disgorgement or a Fair Fund plan and to delegate to that person responsibility for administering the plan." Rule 1105(a), 17 CFR 201.1105(a). To improve the efficiency of the Commission's distribution processes, and to centralize certain distribution-related functions within the Division of Enforcement, the Commission is formally delegating to the Director of the Division of Enforcement the authority to appoint certain persons as plan administrators if the person to be appointed is included in the Commission's approved pool of qualified administrators.[1] The Commission is also delegating to the Director, when the Director appoints an administrator pursuant to this delegation, the authority to set the amount of, or waive for good cause shown, the administrator's bond required by Rule 1105(c), 17 CFR 201.1105(c), of the Commission's rules on Fair Fund and Disgorgement Plans.

If the Division Director deems it appropriate, a recommendation to appoint an administrator from the qualified pool or to set the amount of, or waive for good cause shown, any administrator's bond may be submitted to the Commission for review.

Administrative Law Matters:

The Commission finds, in accordance with the Administrative Procedure Act ("APA") 5 U.S.C. 553(b)(3)(A), that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, the provisions of the APA regarding notice of rulemaking, opportunity for public comment, and publication of the amendment prior to its effective date are not applicable. For the same reason, and because this amendment does not substantively affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(3)(C), are not applicable. Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, 5 U.S.C. 603, are not applicable. Further, because this amendment imposes no new burdens on private persons, the Commission does not believe that the amendment will have any anti-competitive effects for purposes of Section 23(a)(2) of the Exchange Act, 15 U.S.C. 78w(a)(2). Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Accordingly, the amendment is effective [insert date of **Federal Register** publication].

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

[1] On July 15, 2013, the Commission approved a pool of nine firms from which future fund administrators will be appointed to administer the distribution of disgorgement or fair funds. Each administrator in the pool will be evaluated annually by the Office of Distributions and, if performance is deemed in compliance with the requirements for selection, will be continued in the pool for another year, up to a total of five years, at which time a selection process for a new pool will take place. Beginning six months after approval of the delegation and every six months thereafter, the Office of Distributions must provide the Commission with a memorandum discussing the implementation of the delegation and issues relevant to the Commission's evaluation of the distribution processes. In particular, each memorandum must include (i) a list of all distributions assigned to pool participants at that time; (ii) the stage of each such distribution; and (iii) the Office of Distributions' evaluation of each administrator responsible for the distributions. Each memorandum must also discuss, as data becomes available, the following: (i) whether the delegation has resulted in lower cost of distributions; (ii) whether the delegation has resulted in a greater percentage of funds from the distribution funds being returned to harmed investors; and (iii) whether the delegation has resulted in more timely and efficient distributions. The Office of Distributions must follow these procedures in connection with the delegation authority.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 80a–37, 80b–11, 7202, and 7211 *et seq.*, unless otherwise noted.

* * * * *

■ 2. Section 200.30–4 is amended by adding paragraph (a)(17) to read as follows:

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(17) With respect to disgorgement and Fair Fund plans established in administrative proceedings instituted by the Commission pursuant to the federal securities laws, to appoint a person as a plan administrator, if that person is included in the Commission's approved pool of administrators, and, for an administrator appointed pursuant to this delegation, to set the amount of or waive for good cause shown, the administrator's bond required by § 201.1105(c) of this chapter.

* * * * *

By the Commission.

Dated: July 26, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–18468 Filed 7–31–13; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2012–0066]

RIN 0960–AH52

Change in Terminology: "Mental Retardation" to "Intellectual Disability"

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, the notice of proposed rulemaking (NPRM) we published in the **Federal Register** on January 28, 2013. We are replacing the term "mental retardation" with "intellectual disability" in our Listing of Impairments (listings) that we use to evaluate claims involving mental disorders in adults and children under titles II and XVI of the Social Security Act (Act) and in other appropriate sections of our rules. This change reflects the widespread adoption of the term "intellectual disability" by Congress, government agencies, and various public and private organizations.

DATES: This final rule is effective September 3, 2013.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2013, we published an NPRM that proposed replacing the term "mental retardation" with "intellectual disability" in our listings that we use to evaluate claims involving mental disorders in adults and children under titles II and XVI of the Social Security Act (Act) and in other appropriate sections of our rules.[1] We are finalizing the proposed rule without change.

Why are we changing the term "mental retardation" to "intellectual disability"?

The term "intellectual disability" is gradually replacing the term "mental retardation" nationwide. Advocates for individuals with intellectual disability have rightfully asserted that the term "mental retardation" has negative connotations, has become offensive to many people, and often results in misunderstandings about the nature of the disorder and those who have it.

In October 2010, Congress passed Rosa's Law, which changed references to "mental retardation" in specified Federal laws to "intellectual disability," and references to "a mentally retarded individual" to "an individual with an intellectual disability."[2] Rosa's Law also required the Federal agencies that administer the affected laws to make conforming amendments to their regulations. Rosa's Law did not specifically include titles II and XVI of the Act within its scope, and therefore, did not require any changes in our existing regulations. However, consistent with the concerns expressed by Congress when it enacted Rosa's Law, and in response to numerous inquiries from advocate organizations, we are revising our rules to use the term "intellectual disability" in the name of our current listings and in our other regulations. In so doing, we join other agencies that responded to the spirit of the law, even though Rosa's Law did not require them to change their terminology.[3]

Public Comments

In the NPRM, we provided the public a 30-day comment period, which ended on February 27, 2013. We received 76 comments. Seventy-one commenters enthusiastically supported our proposal to replace the term "mentally retarded" with intellectual disability or another term, while only five opposed the change. The comments came from national advocacy and disability rights groups, professional organizations, disability examiners, parents, and members of the public. We summarized and paraphrased the significant comments in our responses below. We carefully considered all of the comments. However, we did not make any changes to the final rule.

Support for Replacing the Term "Mental Retardation"

Comment: Seventy-one commenters enthusiastically supported replacing the term "mentally retarded" and 66 commenters supported the use of the term "intellectual disability." Organizations including The Arc, The Consortium for Citizens with Disabilities, The National Disability Rights Network, American Association on Intellectual and Developmental Disabilities, and National Association of State Directors of Special Education, Inc., commented in support of our proposed changes.

Almost all commenters noted the negative connotations and offensive nature of term "mental retardation." Often, commenters referred to the word "retarded" as "the R-word." Several provided personal stories about the effect the words "retarded" and "mental retardation" have had on a loved one with a disability and expressed their gratitude for our proposing to remove the term from the listings. One organization observed that the "change in terminology is consistent with the widely expressed desire of people with intellectual disability for the use of modern, respectful language." Another organization stated, "We appreciate SSA's commitment to eliminate outdated terminology and the negative stereotypes that they perpetuate for people with disabilities." One commenter, a graduate student in vocational rehabilitation, observed how

[1] 78 FR 5755.

[2] Public Law 111–256.

[3] See 77 FR 29002 and 77 FR 6022–01.

"'labeling' an individual can hinder them from participating in the community . . . Let's give this population the respect and dignity they deserve."

Most commenters also supported our proposed adoption of the term "intellectual disability." One organization noted how our adoption of "intellectual disability" would "align SSA's medical listings and other rules with terminology used by many federal agencies under Rosa's Law. This change is long overdue and [they] are glad SSA is taking this important step which will help fight stigma in this country." Another organization observed how "people will be able to file a claim for Social Security benefits based on having an 'intellectual disability,' rather than being forced to identify themselves with a label that many find offensive and degrading." In supporting the change, one individual commenter stated that "'intellectual disability' is much more respectful than 'mental retardation.'" Another commented, "It is critical that SSA treat applicants respectfully, and using the term 'intellectual disability' is the respectful terminology."

Response: We are glad that the overwhelming majority of commenters favored our proposed change and we decided to finalize the proposed rule without change.

Keep the Term "Mental Retardation" in Our Rules

Comment: Three commenters, all parents of adult children with profound intellectual and developmental disabilities, asked that we not replace "mental retardation" with the term "intellectual disability." They regard "mental retardation" as the medical term that best describes their children's conditions. The commenters expressed concern about the "imprecise and vague" nature of the term "intellectual disability." They fear that the loss of the term "mental retardation" could contribute to a lessening of public awareness and concern for individuals like their children and possibly the elimination of the public institutional service support systems that their children require. A fourth commenter said that while the change in terminology may make people feel good, the new term is not as descriptive as the current terminology.

Response: We did not adopt this suggestion. While we appreciate the concerns expressed in these comments, the term we use to describe a medical disorder does not affect the actual medical definition of the disorder or available programs or services. The American Psychiatric Association (APA) is responsible for naming, defining, and describing mental disorders.

In the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM–5)*, the APA replaced "mental retardation" with "intellectual disability (intellectual developmental disorder)."[4] The APA included the parenthetical name "(intellectual developmental disorder)" to indicate that the diagnosed deficits in cognitive capacity begin in the developmental period. The authors of the DSM–5 explain that these revisions bring the DSM–5 into alignment with terminology used by the World Health Organization's (WHO) International Classification of Diseases, other professional disciplines and organizations, such as the American Association on Intellectual and Developmental Disabilities, and the U.S. Department of Education.[5]

Use a Term Other Than "Intellectual Disability"

Comment: Three individual commenters, for different reasons, offered alternatives to "intellectual disability." One preferred "developmental disability," because it is "a much more recognized and acceptable term over 'intellectual disability.'" Another wanted us to "make the right change," and asked, "What is wrong with calling it what it is, 'developmental disability,'" which the commenter said, "fits a lot better than either mental retardation, or intellectual disability." Another commenter said that, "'intellectual disability' is really no better than 'mental retardation' because it highlights a defect in intellect or IQ. Perhaps a different choice of words—such as 'cognitively impaired'—would be more appropriate."

Response: We did not adopt these suggestions. While there are several terms that could effectively replace "mental retardation" in our current listings and related regulations, we believe that it is appropriate to use the term adopted by other Federal agencies in response to a Federal statute.

The Term "Intellectual Disability" Is Too Broad and, Therefore, Unclear

Comment: One commenter observed that there are "many gradations" in the type or severity of intellectual disabilities, which the term "intellectual disability" could encompass. The commenter was concerned that blanket use of the new term by various entities could result in its becoming a "catch-all term" in the way that "mental retardation" became a pejorative term. He suggested that we include an explanation about the breadth of conditions encompassed by the new term in a definitions section.

Response: We did not adopt this suggestion. In conjunction with publication of this final rule revising the name of current listings 12.05 and 112.05 and related regulations, we are notifying our regional offices and state disability determination services regarding the change in terminology. As explained in the NPRM, however, the change does not affect how we evaluate a claim based on "intellectual disability" under listing 12.05 or 112.05, nor any of our other current listings or rules pertaining to other mental disorders.

The Change in Terminology Has Unclear Implications for Disability Policy and Adjudication

Comment: One commenter suggested that the change in terminology from "mental retardation" to "intellectual disability" could generate confusion among adjudicators, including possible misinterpretation and misapplication of other listings. Another commenter expressed concern that the "prominent use of the term 'disability' in a body system listing" could prompt some people to assume or infer that we would find a person disabled under program rules "simply because the term 'disability' is used . . . to describe, or designate, an alleged condition." A third commenter expressed concern that, given our legal definition of "disabled," the term "intellectual disability" is prone to confuse the lay reader, since "'intellectually disabled' persons might not qualify for disability benefits because of the manner in which SSA defines disability." This commenter suggested that we use a qualifying term "to distinguish between ordinary intellectual disability and intellectual disability grave enough to warrant disability benefits." He suggested that a term such as "SSA-qualified intellectual disability" would facilitate greater lay understanding of the difference between the terms.

Response: We did not adopt these suggestions. The final rule will apply to only the name of listings 12.05 and 112.05 and will not affect how we interpret or apply any other listings. We will fully train our adjudicators on the effect of this name change.

[4] American Psychiatric Association, *Diagnastic and Statistical Manual of Mental Disarders, Fifth Edition: DSM–5* (Washington, DC: American Psychiatric Publishing, 2013).

[5] *DSM–5 Intellectual Disability Fact Sheet*, APA, 2013, *http://psychiatry.org/FILE%20library/PRACTICE/DSM/DSM-5/DSM-5-intellectual-disability-fact-sheet.pdf.*

As we noted in the NPRM, unlike other agencies, we are bound by a legal definition of the word "disability." The Act and our regulations define "disability" in specific terms and outline the requirements that an individual must meet in order to establish entitlement or eligibility to receive disability benefits.[6] An individual may have a medically determinable intellectual impairment, such as intellectual disability, but not be "under a disability" within the meaning of the Act. The name of any disorder, whether mental or physical, in no way directs our findings regarding disability. We advise all claimants that they will not be found "disabled" for the purposes of our programs until we determine that their impairments satisfy all of the statutory and regulatory requirements for establishing disability.

The Proposed Term Will Become Outdated and Require More SSA Resources To Change

Comment: One commenter, although appreciating SSA's effort to use non-offensive terms, expressed the view that doing so is a waste of agency resources because of the "euphemism treadmill." He noted that the terms "mental retardation" and "mentally retarded" were created in the mid-20th century to replace other terms that had become offensive. By the end of the century, however, the new terms were also used in derogatory ways. The commenter predicted that the current change to "intellectual disability" is "merely another attempt to create a term without a prejudicial history . . . and that this term will . . . eventually be used as a pejorative and require more agency resources to change again." He recommended keeping the current wording.

Response: We did not adopt this suggestion. Speculation about the future use of the term "intellectual disability" or the subjective value of this change will not dictate our policy. The term "intellectual disability" is gradually replacing the term "mental retardation" in both the public and private sectors, and we believe it incumbent upon us to make this change in order to ensure that our listings and other rules reflect current terminology.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

While this rule will not impose new public reporting burdens, it will require changes to existing OMB-approved information collections that contain the language referenced in this rule. We will make changes to the affected information collections via separate non-substantive change requests.

(Catalog of Federal Domestic Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and No. 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 26, 2013.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we amend 20 CFR chapter III as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189, sec 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

§ 404.1513 [Amended]

■ 2. Amend § 404.1513(a)(2) by removing the words "mental retardation" and adding in their place "intellectual disability".

Appendix 1 to Subpart P of Part 404 [Amended]

■ 3. Amend Appendix 1 to subpart P of part 404 by:

■ a. Removing the words "mental retardation" and adding in their place "intellectual disability" wherever they occur;

■ b. Removing the words "Mental retardation" and adding in their place "Intellectual disability" wherever they occur; and

■ c. Removing the words "Mental Retardation" and adding in their place "Intellectual Disability" wherever they occur.

Subpart U—Representative Payment

■ 4. The authority citation for subpart U of part 404 continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

§ 404.2045 [Amended]

■ 5. Amend the example in § 404.2045(a) by removing the words "mentally retarded children" and adding in their place "children with intellectual disability".

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart F—Representative Payment

■ 6. The authority citation for subpart F of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1613(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

§ 416.645 [Amended]

■ 7. Amend the example in § 416.645(a) by removing the words "mentally retarded children" and adding in their place "children with intellectual disability".

Subpart I—Determining Disability and Blindness

■ 8. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

[6] Sections 216(i)(1) and 1614(a)(3)(B)–(C) of the Act.

§ 416.913 [Amended]

■ 9. Amend § 416.913(a)(2) by removing the words "mental retardation" and adding in their place "intellectual disability".

[FR Doc. 2013–18552 Filed 7–31–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9625]

RIN 1545–BI83

Reimbursed Entertainment Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the exception to the deduction limitations on certain expenditures paid or incurred under reimbursement or other expense allowance arrangements. These final regulations affect taxpayers that pay or receive advances, allowances, or reimbursements under reimbursement or other expense allowance arrangements and clarify the rules for these arrangements.

DATES: *Effective Date:* These regulations are effective on August 1, 2013.

Applicability Date: For date of applicability, see § 1.274–2(f)(2)(iv)(F).

FOR FURTHER INFORMATION CONTACT: Patrick Clinton, (202) 622–4930 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) under section 274(e)(3) of the Internal Revenue Code (Code). The regulations provide rules for the exception under section 274(e)(3) to the section 274(a) and (n) deduction limitations for certain expenditures paid or incurred under reimbursement or other expense allowance arrangements. The final regulations clarify the definition of reimbursement or other expense allowance arrangements for purposes of section 274(a) and (n) and how the deduction limitations apply to reimbursement arrangements between more than two parties.

On August 1, 2012, a notice of proposed rulemaking (REG–137589–07) was published in the **Federal Register** (77 FR 45520). One written comment responding to the notice of proposed rulemaking was received. No public hearing was requested or held. After consideration of the comment, the regulations are adopted without substantive change by this Treasury decision.

Summary of Comment and Explanation of Provisions

1. Reimbursement Arrangements of Payors

The proposed regulations would amend regulations that apply the section 274(e)(3) exception to reimbursement and other expense allowance arrangements involving employees. The proposed regulations clarify that these rules apply to reimbursement or other expense allowance arrangements between payors and employees. Under the proposed regulations, a payor may be an employer, an agent of the employer, or a third party.

The commentator suggested that the change in terminology is confusing and that the final regulations either should retain the term employer or further define the terms.

The regulations use the term *payor* to clarify that the rules relating to reimbursement and other expense allowance arrangements with employees do not require determining who is the common law employer. The rules require, instead, identifying the party that bears the expense. Thus, the regulations are not limited to employers but encompass any party that reimburses an employee's expenses under a reimbursement or other expense allowance arrangement. Accordingly, the final regulations do not adopt this comment.

2. Arrangements Between Independent Contractors and Clients

The proposed regulations provide that, for a reimbursement or other expense allowance arrangement involving persons that are not employees (an independent contractor and a client or customer), the parties may expressly identify the party subject to the section 274(a) and (n) limitations. If the agreement does not specify a party, the limitations apply to the client if the independent contractor accounts to the client for (substantiates) the expenses, and to the independent contractor if the independent contractor does not account to the client. The commentator suggested that the language of section 274(e)(3) does not permit the parties to choose which party is subject to the limitations.

Section 274(e)(3)(B) provides that taxpayers may identify the party subject to the section 274(a) and (n) limitations by accounting or not accounting for expenses and therefore contemplates identification of the party subject to the limitations. The final regulations provide a rule that gives taxpayers the flexibility contemplated under section 274(e) and is easily administrable for the IRS. Accordingly, the final regulations do not adopt this comment.

Effective/Applicability Date

These regulations apply to expenses paid or incurred in taxable years beginning after August 1, 2013. Taxpayers may apply these regulations to expenses paid or incurred in taxable years beginning on or before August 1, 2013 for which the period of limitation on credit or refund under section 6511 has not expired.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these final regulations is Patrick Clinton of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.274–2 also issued under 26 U.S.C. 274(o). * * *

■ **Par. 2.** Section 1.274–2 is amended by revising paragraph (f)(2)(iv) to read as follows:

§ 1.274–2 Disallowance of deductions for certain expenses for entertainment, amusement, recreation, or travel.

* * * * *

(f) * * *

(2) * * *

(iv) *Reimbursed entertainment, food, or beverage expenses*—(A) *Introduction.* In the case of any expenditure for entertainment, amusement, recreation, food, or beverages made by one person in performing services for another person (whether or not the other person is an employer) under a reimbursement or other expense allowance arrangement, the limitations on deductions in paragraphs (a) through (e) of this section and section 274(n)(1) apply either to the person who makes the expenditure or to the person who actually bears the expense, but not to both. If an expenditure of a type described in this paragraph (f)(2)(iv) properly constitutes a dividend paid to a shareholder, unreasonable compensation paid to an employee, a personal expense, or other nondeductible expense, nothing in this exception prevents disallowance of the expenditure to the taxpayer under other provisions of the Code.

(B) *Reimbursement arrangements involving employees.* In the case of an employee's expenditure for entertainment, amusement, recreation, food, or beverages in performing services as an employee under a reimbursement or other expense allowance arrangement with a payor (the employer, its agent, or a third party), the limitations on deductions in paragraphs (a) through (e) of this section and section 274(n)(1) apply—

(*1*) To the employee to the extent the employer treats the reimbursement or other payment of the expense on the employer's income tax return as originally filed as compensation paid to the employee and as wages to the employee for purposes of withholding under chapter 24 (relating to collection of income tax at source on wages); or

(*2*) To the payor to the extent the reimbursement or other payment of the expense is not treated as compensation and wages paid to the employee in the manner provided in paragraph (f)(2)(iv)(B)(*1*) of this section (however, see paragraph (f)(2)(iv)(C) of this section if the payor receives a payment from a third party that may be treated as a reimbursement arrangement under that paragraph).

(C) *Reimbursement arrangements involving persons that are not employees.* In the case of an expense for entertainment, amusement, recreation, food, or beverages of a person who is not an employee (referred to as an independent contractor) in performing services for another person (a client or customer) under a reimbursement or other expense allowance arrangement with the person, the limitations on deductions in paragraphs (a) through (e) of this section and section 274(n)(1) apply to the party expressly identified in an agreement between the parties as subject to the limitations. If an agreement between the parties does not expressly identify the party subject to the limitations, the limitations apply—

(*1*) To the independent contractor (which may be a payor described in paragraph (f)(2)(iv)(B) of this section) to the extent the independent contractor does not account to the client or customer within the meaning of section 274(d) and the associated regulations; or

(*2*) To the client or customer if the independent contractor accounts to the client or customer within the meaning of section 274(d) and the associated regulations. See also § 1.274–5.

(D) *Reimbursement or other expense allowance arrangement.* The term *reimbursement or other expense allowance arrangement* means—

(*1*) For purposes of paragraph (f)(2)(iv)(B) of this section, an arrangement under which an employee receives an advance, allowance, or reimbursement from a payor (the employer, its agent, or a third party) for expenses the employee pays or incurs; and

(*2*) For purposes of paragraph (f)(2)(iv)(C) of this section, an arrangement under which an independent contractor receives an advance, allowance, or reimbursement from a client or customer for expenses the independent contractor pays or incurs if either—

(*a*) A written agreement between the parties expressly states that the client or customer will reimburse the independent contractor for expenses that are subject to the limitations on deductions in paragraphs (a) through (e) of this section and section 274(n)(1); or

(*b*) A written agreement between the parties expressly identifies the party subject to the limitations.

(E) *Examples.* The following examples illustrate the application of this paragraph (f)(2)(iv).

Example 1. (i) Y, an employee, performs services under an arrangement in which L, an employee leasing company, pays Y a per diem allowance of $10x for each day that Y performs services for L's client, C, while traveling away from home. The per diem allowance is a reimbursement of travel expenses for food and beverages that Y pays in performing services as an employee. L enters into a written agreement with C under which C agrees to reimburse L for any substantiated reimbursements for travel expenses, including meals, that L pays to Y. The agreement does not expressly identify the party that is subject to the deduction limitations. Y performs services for C while traveling away from home for 10 days and provides L with substantiation that satisfies the requirements of section 274(d) of $100x of meal expenses incurred by Y while traveling away from home. L pays Y $100x to reimburse those expenses pursuant to their arrangement. L delivers a copy of Y's substantiation to C. C pays L $300x, which includes $200x compensation for services and $100x as reimbursement of L's payment of Y's travel expenses for meals. Neither L nor C treats the $100x paid to Y as compensation or wages.

(ii) Under paragraph (f)(2)(iv)(D)(*1*) of this section, Y and L have established a reimbursement or other expense allowance arrangement for purposes of paragraph (f)(2)(iv)(B) of this section. Because the reimbursement payment is not treated as compensation and wages paid to Y, under section 274(e)(3)(A) and paragraph (f)(2)(iv)(B)(*1*) of this section, Y is not subject to the section 274 deduction limitations. Instead, under paragraph (f)(2)(iv)(B)(*2*) of this section, L, the payor, is subject to the section 274 deduction limitations unless L can meet the requirements of section 274(e)(3)(B) and paragraph (f)(2)(iv)(C) of this section.

(iii) Because the agreement between L and C expressly states that C will reimburse L for substantiated reimbursements for travel expenses that L pays to Y, under paragraph (f)(2)(iv)(D)(*2*)(*a*) of this section, L and C have established a reimbursement or other expense allowance arrangement for purposes of paragraph (f)(2)(iv)(C) of this section. L accounts to C for C's reimbursement in the manner required by section 274(d) by delivering to C a copy of the substantiation L received from Y. Therefore, under section 274(e)(3)(B) and paragraph (f)(2)(iv)(C)(*2*) of this section, C and not L is subject to the section 274 deduction limitations.

Example 2. (i) The facts are the same as in *Example 1* except that, under the arrangements between Y and L and between L and C, Y provides the substantiation of the expenses directly to C, and C pays the per diem directly to Y.

(ii) Under paragraph (f)(2)(iv)(D)(*1*) of this section, Y and C have established a reimbursement or other expense allowance arrangement for purposes of paragraph (f)(2)(iv)(C) of this section. Because Y substantiates directly to C and the

reimbursement payment was not treated as compensation and wages paid to Y, under section 274(e)(3)(A) and paragraph (f)(2)(iv)(C)(*1*) of this section Y is not subject to the section 274 deduction limitations. Under paragraph (f)(2)(iv)(C)(*2*) of this section, C, the payor, is subject to the section 274 deduction limitations.

Example 3. (i) The facts are the same as in *Example 1*, except that the written agreement between L and C expressly provides that the limitations of this section will apply to C.

(ii) Under paragraph (f)(2)(iv)(D)(*2*)(*b*) of this section, L and C have established a reimbursement or other expense allowance arrangement for purposes of paragraph (f)(2)(iv)(C) of this section. Because the agreement provides that the 274 deduction limitations apply to C, under section 274(e)(3)(B) and paragraph (f)(2)(iv)(C) of this section, C and not L is subject to the section 274 deduction limitations.

Example 4. (i) The facts are the same as in *Example 1*, except that the agreement between L and C does not provide that C will reimburse L for travel expenses.

(ii) The arrangement between L and C is not a reimbursement or other expense allowance arrangement within the meaning of section 274(e)(3)(B) and paragraph (f)(2)(iv)(D)(*2*) of this section. Therefore, even though L accounts to C for the expenses, L is subject to the section 274 deduction limitations.

(F) *Effective/applicability date.* This paragraph (f)(2)(iv) applies to expenses paid or incurred in taxable years beginning after August 1, 2013.

* * * * *

■ **Par. 3.** Section 1.274–8 is revised to read as follows:

§ 1.274–8 Effective/applicability date.

Except as provided in §§ 1.274–2(a), 1.274–2(e), 1.274–2(f)(2)(iv)(F), and 1.274–5, §§ 1.274–1 through 1.274–7 apply to taxable years ending after December 31, 1962.

Beth Tucker,

Deputy Commissioner for Services and Enforcement.

Approved: June 25, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–18559 Filed 7–31–13; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0062; FRL–9837–5]

Approval and Promulgation of Implementation Plans, State of California, San Joaquin Valley Unified Air Pollution Control District, New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to correct the May 2004 approval of a version of the New Source Review (NSR) rules for the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan, consistent with the relevant provisions of state law. Specifically, EPA is taking final action to correct the May 2004 approval by limiting the approval, as it relates to agricultural sources, to apply the permitting requirements only to such sources with potential emissions at or above a major source applicability threshold and to such sources with actual emissions at or above 50 percent of a major source applicability threshold and to apply the emission offset requirement only to major agricultural sources and major modifications of such sources.

DATES: This rule is effective on September 3, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2010–0062 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3534, *yannayon.laura@epa.gov*.

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

Table of Contents

I. Background for Today's Final Action

A. Actions Proposed in January 29, 2010 Proposed Rule

On January 29, 2010 (75 FR 4745), under the Clean Air Act (CAA or "Act"), we proposed three actions in connection with the permitting rules for the San Joaquin Valley Unified Air Pollution Control District ("District") portion of the California State Implementation Plan (SIP).[1] Herein, we refer to our January 29, 2010 proposed rule as the "proposed rule." As discussed further below, we have already finalized the second and third actions included in our proposed rule, and are taking action today to finalize the first action.

First, in our proposed rule, we proposed to correct an error in our May 2004 final rule approving Rules 2020 ("Exemptions") and 2201 ("New and Modified Stationary Source Review Rule"), as amended by the District in December 2002, that establish the requirements and exemptions for review of new or modified stationary sources ("new source review" or "NSR"). Herein, we refer to District Rules 2020 and 2201 as the "District's NSR rules." In our proposed rule, we explained how our error arose from the failure, in light of information available at the time, to recognize that the District did not have the authority under state law to implement the District's NSR rules with respect to permitting of minor agricultural sources with actual emissions less than 50% of the applicable "major source" thresholds and with respect to the imposition of emissions offset requirements for minor agricultural sources.

In addition to the error correction described above, our January 2010 proposed rule also proposed two other actions: (a) a limited approval and limited disapproval of the District's NSR rules, as further amended in 2007 and

[1] The San Joaquin Valley includes all of San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings and Tulare counties, and the western half of Kern County, in the State of California. The San Joaquin Valley is designated as a nonattainment area for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS) and the 1997 (annual) and 2006 (24-hour) fine particulate matter ($PM_{2.5}$) NAAQS and is designated as attainment or unclassifiable for the other NAAQS. See 40 CFR 81.305. The area is further classified as "extreme" for the now-revoked 1-hour ozone NAAQS, and the 1997 and 2008 8-hour ozone NAAQS.

2008 and a full approval of amended District Rule 2530 ("Federally Enforceable Potential to Emit"); and (b) rescission of certain obsolete permitting requirements from the District portion of the California SIP.

On May 11, 2010 (75 FR 26102), we finalized the proposed action on the 2007 and 2008 amendments to the District's NSR rules,[2] District Rule 2530, and the proposed rescission of obsolete permitting requirements, but we deferred final action on the proposed error correction pending receipt from the California Attorney General of an interpretation of the District's legal authority with respect to agricultural sources under state law.

B. Background, Authority, and Rationale for Proposed Error Correction

In our proposed rule, we provided a detailed background discussion regarding the District's NSR rules and related EPA SIP actions. See pages 4746–4747 of our proposed rule. In the following paragraphs, we provide a summary of this information. For more details, please see our proposed rule.

EPA originally approved the District's NSR rules as part of the California SIP in 2001.[3] See 66 FR 37587 (July 19, 2001). EPA's 2001 action was a limited approval and limited disapproval reflecting our conclusion that the rules could not be fully approved as meeting all applicable requirements because, among other reasons, District Rule 2020 exempted all agricultural sources from District permitting requirements. 66 FR at 37590. At that time, District Rule 2020, citing California Health & Safety Code (CH&SC) section 42310(e), included a permitting exclusion for "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals," except for certain orchard and citrus grove heaters in the southern portion of the District. Our limited disapproval stated that the District could not exempt major stationary sources or major modifications at existing major sources from NSR requirements and be found to meet applicable CAA requirements.[4]

To correct this deficiency, in December 2002, the District amended their NSR rules to eliminate the agricultural permitting exemption in its entirety, and, later that same month, the California Air Resources Board (CARB) submitted the District's amended NSR rules to EPA as a revision to the California SIP. Shortly thereafter, EPA proposed approval of the amended District NSR rules, see 68 FR 7330 (February 13, 2003), even though we recognized that "California Health & Safety Code 42310(e) continues to preclude the District, as well as all other districts in California, from permitting agricultural sources under either title I or title V of the CAA." See 68 FR 7330, at 7335. We did so in light of a proposed "SIP Call" that we issued on the same day as we proposed approval of the amended District NSR rules. See 68 FR 7327 (February 13, 2003). The SIP Call was based on our finding that the California SIP was substantially inadequate by failing to provide the necessary assurances under CAA section 110(a)(2)(E) that the State had the legal authority to carry out its NSR permitting obligations under the CAA with respect to major agricultural sources. EPA finalized the SIP Call in mid-2003, and thereby required California to submit the necessary assurances of authority to support an affirmative finding by EPA under CAA section 110(a)(2)(E). 68 FR 37746 (June 25, 2003).

Later in 2003, the California legislature enacted Senate Bill (SB) 700, which the Governor of California signed on September 22, 2003. SB 700 removed the wholesale exemption from permitting for agricultural sources provided under CH&SC section 42310(e) and subjected major agricultural sources to permit requirements. SB 700, however, retained a limited exemption for new source permitting at certain minor agricultural sources, and limited the ability of districts to require minor agricultural sources to obtain offsets.[5] California notified EPA of the legislature's action by letter dated November 3, 2003 and enclosed a copy of SB 700.[6]

On May 17, 2004, EPA took final action approving the District's NSR rules, as amended by the District and submitted by CARB in 2002. See 69 FR 27837 (May 17, 2004). These rules, as approved by EPA, did not on their face exempt any agricultural sources from permitting or limit the applicability of offset requirements. EPA's final approval stated that the District had removed its exemption for agricultural sources and that the state had also "removed a similar blanket exemption, thereby providing the District with authority to require air permits for agricultural sources, including federally required NSR permits." See 69 FR 27837, at 27838. EPA's final approval cited SB 700 in a footnote, but did not note the limited scope of authority for permitting and offset requirements under SB 700, which allowed permitting of only certain minor agricultural sources and continued the exemption for other minor agricultural sources.

In our proposed rule, under CAA section 110(k)(6), we found that (1) our May 2004 final full approval of District's NSR rules was in error in that our approval of the rules should have ensured that the authority in those rules was consistent with the authority granted by SB 700 and that (2) the District did not, as of May 2004, have the authority under SB 700 to require permits for new or modified minor agricultural sources with actual emissions less than 50 percent of the

[2] As discussed in more detail in our proposed rule, the amendments to the NSR rules that were adopted by the District in 2007 and 2008, among other things, aligned the rules explicitly with the limitations on the District's authority under state law to permit minor agricultural sources and to require emissions offsets for such sources. 75 FR 4745, at 4749–4750 (January 29, 2010). Thus, as of the effective date of EPA approval of the 2007- and 2008-amended District NSR rules at 75 FR 26102 (May 11, 2010), the SIP and State law is aligned with respect to permitting of agricultural sources (and imposition of the emissions offset requirement) in San Joaquin Valley. Today's final action thus affects the applicable California plan under 40 CFR part 52, subpart F during the period of time after the effective date of our May 2004 approval of the 2002-amended District NSR rules (i.e., June 16, 2004) and the effective date of our May 2010 approval of the subsequently amended NSR rules (i.e., June 9, 2010). During this period, a number of CAA enforcement actions were brought against San Joaquin Valley agricultural sources for failure to secure permits and/or provide emissions offsets even though such requirements were beyond the authority of the District to impose under State law. For additional background on why EPA is taking today's action, please see our January 29, 2010 proposed rule at 75 FR 4745, at 4748.

[3] Rules 2020 and 2201 were adopted by the District to meet NSR requirements under the Clean Air Act, as amended in 1990, for areas that have not attained the National Ambient Air Quality Standards (NAAQS). District Rules 2020 and 2201 replaced existing NSR rules from the individual county air pollution control districts that were combined into the San Joaquin Valley Unified Air Pollution Control District ("District") in 1991.

[4] District NSR permitting rules do not adopt the distinction between minor sources and major sources as set forth under the CAA. District Rules 2020 and 2201 generally apply to both federal minor and major stationary sources. Our limited approval and limited disapproval specified that the rule deficiency was exempting major agricultural sources and major modifications. See 65 FR 58252, at 58254 (September 28, 2000).

[5] Specifically, under SB 700, minor agricultural sources with actual emissions below 50 percent of the major source threshold are exempt from permitting unless the District makes certain findings, while sources at or above 50 percent of the major source threshold are subject to permitting unless the District makes certain findings. See CH&SC section 42301.16(b) and (c). In addition, a district may not require an agricultural source to obtain emissions offsets for criteria pollutants for that source if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions. See CH&SC section 42301.18(c).

[6] See Letter from Bill Lockyer, Attorney General, California Office of the Attorney General, to Marianne Horinko, Acting Administrator, EPA, dated November 3, 2003.

major source threshold or to require new minor agricultural sources or minor modifications to agricultural sources to obtain emission reduction offsets, notwithstanding the absence of explicit exemptions in the District's NSR rules. Moreover, we noted in our proposed rule that California submitted a copy of SB 700 in November 2003, and thus we had information indicating that the District did not have the authority to implement the NSR rules to the extent that the language of the District's rule appeared to allow (i.e., to require permits and offsets from all new or modified agricultural sources, including those exempt under SB 700) prior to the time we took final action. In our proposed rule, we explained that we should have limited our approval of the District's NSR rules in May 2004 to conform with SB 700, and promulgated language in 40 CFR part 52 codifying that limitation on our approval.

To correct this error, we proposed to limit our approval of the District's NSR rules to exclude applicability to agricultural sources exempt from new source permitting under SB 700 (i.e., minor sources with actual emissions less than 50 percent of the major source threshold). We also proposed to limit our approval to require offsets only for major agricultural sources, because at the time of our 2010 proposed action, we believed that the District had not found emissions reductions from agricultural sources to meet the criteria for real, permanent, quantifiable, and enforceable emissions reductions and thus had not lifted the restriction otherwise provided in SB 700 (and codified in CH&SC section 42301.18(c)) on the imposition of the emissions offset requirement on new minor agricultural sources or minor modifications of agricultural sources.

For more information about our proposed determination of error and our proposed correction, please see pages 4747–4748 of our proposed rule.

C. Letters From the California Attorney General's Office

In response to our proposed rule, several comments were submitted that objected to our proposed error correction action and the interpretation of state law upon which it was based, and raised significant questions as to the extent of District authority with respect to agricultural sources under state law. Specifically, the commenters who objected to our proposed correction cited "savings" clauses in state law that they contend ratified the District's NSR rules that contain no permitting or offsets exemptions for agricultural sources notwithstanding other provisions in state law that would otherwise limit District authority over those sources.

To ensure our final action would be informed by the State's interpretation of the relevant provisions of state law, we requested that CARB provide us with a legal interpretation from the California Attorney General of the extent of District authority with respect to agricultural sources under state law.[7] More specifically, we requested that CARB provide us a legal interpretation from the California Attorney General of SB 700 as it applies to the District NSR rules adopted in December 2002 and approved by EPA in May 2004. By letters dated November 14, 2012 and March 18, 2013, the California Attorney General's Office has now provided us the requested interpretation of state law.[8]

II. Public Comments and EPA's Responses

Our proposed rule (75 FR 4745) provided for a 30-day comment period. During that period, we received adverse comments from three groups: (1) Greenberg-Glusker law firm, on behalf of Dairy Cares, a coalition of California's dairy producer and processor associations (referred to herein as "Dairy Cares"), by letter dated March 1, 2010; (2) Earthjustice, by letter dated March 1, 2010; and (3) the Center on Race, Poverty & the Environment, on behalf of the Association of Irritated Residents and other community and environmental groups (referred to herein as "AIR"), by letter dated March 1, 2010. AIR joins in the comments from Earthjustice, but also adds comments of its own.

All three comment letters cited above included comments on one or more aspects of our proposed rule (e.g., on our proposed limited approval and limited disapproval of the District's NSR rules, as further amended in 2007 and 2008) in addition to comments on the proposed error correction. With respect to the comments germane to the other aspects of our proposed rule, we provided responses in our final action published on May 11, 2010 (75 FR 26102) and do not reopen those issues through today's final action.[9] Rather, in the following paragraphs, we summarize the significant comments that relate to the proposed error correction that we are taking final action on today, and provide our responses.

Earthjustice Comment #1: EPA has incorrectly interpreted State law in proposing the error correction, and EPA should ask the State to provide the necessary assurances that the District has the authority under State law to permit all sources covered by Rule 2201.

Response to Earthjustice Comment #1: EPA requested that the California Attorney General provide an interpretation of SB 700 as applied to the District's NSR rules, as amended by the District in December 2002, and as noted above, the California Attorney General's Office has responded to EPA's request in the form of two letters, one dated November 14, 2012 and one dated March 18, 2013. EPA has taken the State's interpretation into account in responding to comments on our proposed error correction and in taking today's final action.

Earthjustice Comment #2: The District's authority to permit agricultural sources under the Clean Air Act is not limited to sources above 50 percent of any applicable major source threshold. EPA reads CH&SC section 42301.16(a) as only authorizing permits for major agricultural sources. Nothing in section 42301.16(a) refers to "major" sources or limits the CAA provisions referenced to "major source" requirements. To the contrary, the language refers to permits required for "any" source and instead of referring only to part D of Title I, as EPA suggests, refers to all of Title I beginning with section 101 of the Act. EPA's interpretation cannot be reconciled with the plain language of the CH&SC.

Response to Earthjustice Comment #2: Earthjustice is correct that our proposed error correction is predicated in part on the interpretation that CH&SC section 42301.16(a) refers to "major sources" as defined under the CAA, i.e., sources that emit or have the potential to emit at or above the major source threshold, notwithstanding the fact that an explicit reference to "major sources" is not found in CH&SC section 42301.16(a). See footnote #7 on page 4747 in the proposed rule.

CH&SC section 42301.16(a) provides: "In addition to complying with the requirements of this chapter, a permit system established by a district

[7] See letters from Jared Blumenfeld, Regional Administrator, EPA Region IX, to Mary D. Nichols, Chairwoman, California Air Resources Board, dated April 12, 2010 and April 26, 2012.

[8] See letters dated November 14, 2012 and March 18, 2013 from Robert W. Byrne, Senior Assistant Attorney General, to Jared Blumenfeld, Regional Administrator, EPA Region IX.

[9] In its March 1, 2010 comment letter, AIR also provided comments germane to a separate EPA rulemaking also proposed on January 29, 2010 ("Approval and Promulgation of Implementation Plans: State of California; Legal Authority," and published at 75 FR 4742. We responded to AIR's comments germane to that separate rulemaking in a final rule published at 75 FR 27938 (May 19, 2010) and do not reopen those issues through today's final action.

pursuant to Section 42300 shall ensure that any agricultural source that is required to obtain a permit pursuant to Title I . . . or Title V . . . of the federal Clean Air Act is required by district regulation to obtain a permit in a manner that is consistent with the federal requirements." In proposing the error correction, we interpreted the reference to permits *required* under Title I as meaning permits for major sources covered under parts C or D of Title I, and not minor sources. This is because, under the relevant SIP content provisions under Title I [section 110(a)(2)(C)], while SIPs must provide for the "regulation of the modification and construction of any stationary source," i.e., including minor sources, the only explicit permitting requirement is for a "permit program as required in part C and D" of Title I. Thus, under Title I, a permit program is only explicitly required for sources covered under parts C and D, and the sources covered under parts C and D are major sources.

Moreover, a State must identify the types and sizes of minor stationary sources which will be subject to review [see 40 CFR 51.160(e)]. As such, States are authorized to exempt certain minor stationary sources from such review. No such exemptions are allowed for review of new or modified major sources. Thus, permits for "major sources" can be considered to be "required" in a way that permits for minor sources are not.

In addition, our interpretation of CH&SC section 42301.16(a) is consistent with the fact that the California legislature adopted SB 700 in part in an effort to avoid sanctions that were set in motion by EPA's final determination that the California SIP was "substantially inadequate" because State law did not provide the legal authority allowing State and local permitting agencies to meet the permitting obligations under parts C and D of title I with respect to *major* agricultural sources. Lastly, we note that our interpretation of CH&SC section 42301.16(a) is consistent with California's interpretation. See the memorandum from James N. Goldstene, Executive Director, CARB, to Air Pollution Control Officers, dated September 3, 2008; and the letter from Robert W. Byrne, Acting Senior Assistant Attorney General, to Jared Blumenfeld, dated November 14, 2012. For the reasons given above, therefore, we continue to interpret CH&SC section 423016(a) as referring to major sources under Titles I and V of the CAA.

Earthjustice Comment #3: Even if one were to accept EPA's interpretation of CH&SC section 42301.16(a) as being limited to title I part D requirements, permitting of minor agricultural sources in the District would still be authorized because Rule 2201 relies on non-major source permitting to fulfill the requirements of part D. The District has chosen not to impose Part D requirements on major sources and has claimed instead (with EPA's approval) that its permitting of non-major sources can be credited to show that in the aggregate Rule 2201 is "equivalent" to the program required under part D for major sources. By relying on credit from its permitting of non-major sources to meet federal NSR requirements, the District has eliminated any lines between what portion of Rule 2201 is meant to comply with major source permit requirements and what part is not derived from or in satisfaction of the part D major source provisions. The same is true for agricultural sources. It is only by permitting both major and minor sources that the District can claim to satisfy part D. Having allowed this demonstration of compliance with major source requirements "in the aggregate," EPA cannot now claim that the permitting of certain non-major source is not authorized under Title I.

Response to Earthjustice Comment #3: Earthjustice is correct that EPA has approved an equivalency tracking system that the District uses to assess overall equivalency of its NSR program with CAA nonattainment NSR (i.e., part D) requirements on an annual basis. 69 FR 27837 (May 17, 2004). The requirements for the tracking system are set forth in District Rule 2201, section 7.0 ("Annual Offset Equivalency Demonstration and Pre-Baseline ERC Cap Tracking System"). The goal of the tracking system is to show that, notwithstanding certain differences between the District and Federal NSR program, the District's NSR rules would require offsets that are, in the aggregate, equivalent to offsets required under the Federal program. 68 FR 7330, at 7332 (February 13, 2003).

To make the equivalency demonstration, the District can use, among other sources of emissions reductions, emission reductions used to meet offset requirements imposed on minor sources. However, the fact that the District can rely, and has relied, on minor source offsets to demonstrate equivalency does not mean that permits for new or modified minor agricultural sources are required under part D of Title I and therefore subject to District permitting authority under CH&SC section 42301.16(a). The District has demonstrated equivalency each year since the tracking system was approved and has never relied on offsets from new minor agricultural sources or minor modifications of agricultural sources to do so. Thus, we disagree with Earthjustice's contention that the District's reliance on minor source (non-agricultural source) offsets to demonstrate equivalency of the District's NSR program with Federal NSR requirements makes all minor source permits, including minor source permits for agricultural sources, required under part D of Title I and thus "required" for the purposes of CH&SC section 42301.16(a).

Earthjustice Comment #4: EPA's interpretation of State law regarding District permitting authority over agricultural sources fails to reconcile and give meaning to CH&SC section 39011.5. Under paragraphs (b) and (c) of CH&SC section 39011.5, the authority to permit any agricultural source under the terms of Rule 2201 as it was revised in December 2002 is expressly preserved and made applicable to agricultural sources. There is no dispute that, under the terms of Rule 2201, the District had jurisdiction over the permitting of all agricultural sources on January 1, 2003, and there is no dispute that Rule 2201 was adopted and submitted for EPA approval to satisfy the requirements of the CAA. Nothing in the language of CH&SC section 39011.5(b) and (c) suggests that the permitting authority conferred by these preserved regulations is subject to the limitations in CH&SC section 42301.16(c) [10] or elsewhere. To the contrary, the CH&SC uses broad language making "any" existing district regulation applicable to agricultural sources and ensuring that "nothing" limits existing district authority. If the District truly lacked authority to regulate sources with actual emission less than 50 percent of a major source threshold, there would be no need for these sections preserving the authority of existing regulations. State law could have been silent and allowed the permitting of these sources only to the extent authorized by SB 700. The only way to reconcile these provisions is to limit the effect of CH&SC section 42301.16(c) to future regulation (i.e., post enactment of SB 700) of these sources.

Response to Earthjustice Comment #4: We disagree with the contention that, under the terms of Rule 2201, the District had jurisdiction over the

[10] As noted in footnote #5 of this document, under CH&SC section 42301.16(b) and (c), minor agricultural sources with emissions below 50 percent of the major source threshold are exempt from permitting unless the District makes certain findings, while sources at or above 50 percent of the major source threshold are subject to permitting unless the District makes certain findings.

permitting of all agricultural sources on January 1, 2003. At that time, State law excluded all agricultural sources from District permitting authority. The absence of an exemption in Rule 2201 as adopted by the District in December 2002 did not imbue the District with authority otherwise denied under State law. In the following paragraphs, we explain how our interpretation of District permitting authority over agricultural sources can be reconciled with CH&SC section 39011.5. We also find further support for our view in the California Attorney General office's interpretation of the relevant sections of SB 700.

CH&SC section 39011.5(a) defines "agricultural source of pollution" and "agricultural source" for the purposes of Division 26 ("Air Resources") of the CH&SC. As noted in our proposed rule (75 FR at 4752), California law defines "agricultural source" as a source of air pollution or group of sources used in the production of crops or the raising of fowl or animals located on contiguous property under common ownership or control that is a confined animal facility (e.g., barn, corral, coop); is an internal combustion engine used in the production of crops or the raising of fowl or animals (e.g., irrigation pumps, but excluding nonroad vehicles such as tractors); or is a title V source or is a source that is otherwise subject to regulation by a district or the federal Clean Air Act. See CH&SC section 39011.5(a). As such, agricultural sources include both combustion sources (such as, internal combustion engines and boilers) and non-combustion sources [e.g., confined animal facilities and on- and off-field vehicular activity (e.g., tilling and harvesting)]. Among the non-combustion agricultural sources, some by their nature generate fugitive emissions such as tilling, harvesting, and vehicle travel over unpaved farm roads.

CH&SC section 39011.5(b) provides that: "Any district rule or regulation affecting stationary sources on agricultural operations adopted on or before January 1, 2004, is applicable to an agricultural source." In proposing the error correction, we were aware of CH&SC section 39011.5(b) but did not interpret that statutory provision as conferring authority to the District to require permits for all new or modified agricultural sources on January 1, 2004 (i.e., the effective date of SB 700).

Under our interpretation, the savings clause in CH&SC section 39011.5(b) preserves general prohibitory and permitting rules affecting agricultural sources and adopted prior to the effective date of SB 700 (i.e., January 1, 2004) but does not authorize the application of District permitting requirements inconsistent with the limited exemptions set forth in other sections of SB 700 [specifically, CH&SC section 42301.16(c) and 42301.18(c)]. That is, CH&SC section 39011.5(b) simply preserves District rules affecting agricultural sources that were adopted prior to SB 700 and avoids the need to re-adopt such rules after the effective date of SB 700. Under this view, CH&SC section 39011.5(b) preserved the ability of the District to administer its NSR rules and apply them to agricultural sources consistent with SB 700 upon the effective date of SB 700 notwithstanding the fact that the NSR rules were adopted prior to the effective date of SB 700 and thus could not be applied to agricultural sources (because of the preclusion from District permitting for agricultural sources in then-current CH&SC section 42310(e)) at the time the District adopted them.

The California Attorney General's office shares this view:

". . . . Although California before SB 700's enactment exempted agricultural sources from New Source Review permitting requirements, California law did not preclude districts from adopting emissions-reduction rules of general application (independent of the New Source Review process) that would apply to agricultural stationary sources. Some districts had such rules and, following SB 700's enactment, section 39011.5, subdivision (b) preserved them. For example, where air pollution control districts had regulated stationary diesel engines or generators, those regulations were not limited or diminished by SB 700 merely because the regulated equipment happened to be located on or involved in what SB 700 now termed 'agricultural sources.' Therefore, section 39011.5, subdivision (b) has a limited and distinct purpose; it preserves and validates those existing equipment-governing regulations of general application, that, without such a savings clause, might be construed as invalid because the regulated equipment was included as part of SB 700's 'agricultural sources.' Subdivision (b) does not authorize district New Source Review rules that conflict with the sections of SB 700 that address the New Source Review permitting process." [11]

Thus, EPA's interpretation of CH&SC section 39011.5(b) is consistent with that expressed by the California Attorney General's office. Moreover, in the excerpt provided above, the California Attorney General's office explains the need for the savings clause.

CH&SC section 39011.5(c) provides in relevant part: "Nothing in this section limits the authority of a district to regulate a source, including, but not limited to, a stationary source that is an agricultural source, over which it otherwise has jurisdiction pursuant to this division, or pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act that were in effect on or before January 1, 2003, or . . . ."

Similar to CH&SC section 39011.5(b), EPA did not view CH&SC section 39011.5(c) as validating the application of District permitting requirements to all new or modified agricultural sources inconsistent with the limited exemptions found in other sections of SB 700 [specifically, CH&SC section 42301.16(c) and 42301.18(c)]. Under our view, the phrase "nothing in this section" limits the reach of CH&SC section 39011.5(c) to the other provisions in CH&SC section 39011.5, i.e., the definition of "agricultural source" in CH&SC section 39011.5(a) and the savings clause in CH&SC section 39011.5(b), discussed above. As such, we view CH&SC section 39011.5(c) as ensuring that the definition of "agricultural source" and the savings clause in paragraph (b) does not inadvertently limit the authority of districts to regulate sources, including agricultural sources, over which the districts otherwise have jurisdiction pursuant to rules adopted before January 1, 2003, and does not inform our interpretation of other sections of SB 700, such as CH&SC section 42301.16(c) and 42301.18(c). Thus, CH&SC 39011.5(c) in no way undermines our determination in the proposed rule that the District's authority to permit agricultural sources and to impose emissions offset requirements on such sources was limited under State law notwithstanding the absence of such limiting language in the District's NSR rules as adopted in December 2002 and approved by EPA in May 2004.

The California Attorney General's office agrees that CH&SC section 39011.5(c) does not authorize NSR rules that conflict with other sections of SB 700 that expressly address the NSR permitting process. The California Attorney General's office explains:

"Likewise, [CH&SC section 39011.5(c)] does not authorize district New Source Review rules that conflict with SB 700's provisions concerning the New Source Review process. Subdivision (c) provides that nothing in that section limits a district's authority to regulate a source over which it otherwise has jurisdiction under the Clean Air Act or any Clean Air Act rules or regulations that were in effect on or before January 1, 2003. That is, subdivision (c) clarifies that section 39011.5 itself does not

[11] See California Attorney General Office's Letter, November 14, 2013, page 4.

limit a district's existing authority, but subdivision (c) does not concern whether some other provision of SB 700 might limit a district's authority. Therefore, the only effect of subdivision (c) is to assure that section 39011.5, by defining the term 'agricultural source,' did not inadvertently limit the validity or reach of any existing district rules. Subdivision (c) does not grant authority, and does not authorize New Source Review rules that conflict with other sections of SB 700 that expressly address the New Source Review permitting process." [12]

Thus, we continue to read the savings clauses of CH&SC section 39011.5(b) and (c) as not validating the application of District permitting requirements to all new or modified agricultural sources inconsistent with the limited exemptions found in other sections of SB 700, and as consistent with our finding in the proposed rule that the absence of the limited exemptions in SB 700 for agricultural sources in the District's NSR rules resulted in a mismatch between the SIP and the District's authority under State law when we approved the District's NSR rules in May 2004.

Earthjustice Comment #5: There is no requirement that the District make specific findings before requiring offsets from agricultural sources. First, EPA's interpretation of CH&SC section 42301.18(c) has no basis in the language of that section. There is nothing in CH&SC section 42301.18(c) that requires some "finding" by the District before imposing offsets. Second, EPA's interpretation is inconsistent with CARB's explanation that the issue in CH&SC 42301.18(c) is "whether the emissions reductions meet the generic criteria that the U.S. EPA and the ARB and air district have, since 1976, required of sources in order for the reductions to 'count' for purposes of attaining ambient standards" and "[t]he existence of a District rule allowing such offsets to be generated is not germane. . . ." [13]

Response to Earthjustice Comment #5: We start with the words of CH&SC section 42301.18(c): "A district may not require an agricultural source to obtain emissions offsets for criteria pollutants for that source if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions." Earthjustice is correct that EPA did read CH&SC section 42301.18(c) as exempting new minor agricultural sources or minor modifications of existing agricultural sources from the emissions offset requirement pending a determination on the part of the District. Based on that understanding, EPA proposed to limit the Agency's prior approval in such a way as to give effect to the absence of such a determination during the period in which the relevant version of District's NSR rules were in effect as part of the SIP, i.e., mid-2004 through mid-2010.

In response to this comment, we reviewed again the language of CH&SC section 42301.18(c) and acknowledge that it does not specify any particular process for determining when the criteria, that would authorize imposition by a District of the emission offset requirement for a new or modified minor agricultural source, have been met for the given minor agricultural source. We also reviewed the CARB reference cited above in Earthjustice Comment #5, and agree that it does not support EPA's understanding that a determination by the District is a prerequisite to the District's authority to impose the emissions offset requirement to new or modified minor agricultural sources under CH&SC section 42301.18(c), to the extent that the "determination" consists of a regulatory protocol or District rule allowing such offsets to be generated. In the CARB reference cited by Earthjustice, CARB writes:

"With respect to our interpretation of [CH&SC section 42301.18(c)], we believe that section 42301.18(c) does not ask whether or not the District has a regulatory protocol to verify whether ERC's offered by agricultural source are creditable, but rather sets forth the objective, generic criteria that must be satisfied by an agricultural source seeking credits for its emission reductions. If the proffered reductions were real (i.e., surplus to required reductions), quantifiable, and enforceable, then the source would be able to use (or bank) them as credits and the District may, therefore, require the source to provide offsets. The use of the subjective "would not meet" is critical in interpreting this provision; it focuses the inquiry on whether the emissions reductions meet the generic criteria that the U.S. EPA and the ARB and air districts have, since 1976, required of sources in order for the reductions to "count" for purposes of attaining ambient standards and to qualify for use as offsets. The existence of a District rule allowing offsets to be generated is not germane to determining whether emission reductions from a given agricultural source "would" meet the criteria for real, permanent, quantifiable, and enforceable."

However, whether emissions reductions from a given agricultural source meet the relevant criteria is not self-evident or self-implementing. Some determination is necessary. For instance, the District is the agency responsible for allowing the emissions reductions from a given agricultural source to be banked or used for the purpose of offsetting emissions increases from new or modified stationary sources that are subject to the offset requirement under an approved NSR program. If the District allowed emission reductions to be banked or used for offsetting emission increases, then the District would thereby be determining that the emissions reductions are "real, permanent, quantifiable, and enforceable" since those are the basic criteria for judging the creditability of emission reductions for use as NSR offsets. The District's authority to impose the offset requirement on new or modified minor agricultural sources would vest as to those agricultural sources for which it has allowed banking or use of emission reductions for NSR offset purposes. Thus, while no protocol or District rule specifically directed at agricultural sources need be adopted for the offset authority to vest, some determination is necessary. Because no such determination was made during the relevant period between the effective date of EPA's 2004 approval of the previous version of District NSR rules and the effective date of EPA's 2010 approval of District NSR rules that align such rules with SB 700, EPA continues to believe that limiting its approval to exempt new minor agricultural sources and minor modifications to existing agricultural sources from the offset requirement is warranted.

EPA's position is supported by the California Attorney General's Office. In its March 2013 letter, the California Attorney General's Office writes: "It is our understanding that currently emissions reductions from minor agricultural sources do not meet the criteria for real, permanent, quantifiable and enforceable emission reductions. On these facts, the plain language of [CH&SC section 42301.18(c)] serves to suspend the duty of a minor agricultural source to offset emissions from that source." [14] If emission reductions from

[12] See California Attorney General Office's Letter, November 14, 2013, pages 4 and 5.

[13] Earthjustice cites a letter from W. Thomas Jennings, Chief Counsel, CARB, to Brent Newell, Center on Race, Poverty and the Environment, May 30, 2007.

[14] See letter from the California Attorney General's office, dated March 18, 2013. We recognize that the California Attorney General's Office's November 2012 letter states that CH&SC section 42301.18(c) "does not create an exemption" but merely "disqualifies any offsets that do not meet the offset criteria and forbids the district from requiring these deficient offsets." We find this statement difficult to reconcile with that Office's March 2013 letter that states that CH&SC section 42301.18(c) serves to "suspend the duty of a minor agricultural source to offset emissions from that source." We believe that "exemption" and "suspend the duty" are essentially the same, and thus both statements cannot be correct, but we place greater weight on the March 2013 statement

Continued

minor agricultural sources do not meet the criteria in March 2013, then they certainly did not meet the criteria during the relevant period affected by today's error correction action (mid-2004 through mid-2010).

The California Attorney General's Office, in its March 2013 letter, maintains that its reading of CH&SC section 42301.18(c) is consistent with CARB's letter to the California Air Pollution Control Officers, dated September 3, 2008, which was included as an attachment to the California Attorney General office's letter, dated March 18, 2013, and which provides the following guidance with respect to CH&SC section 42301.18(c):

"This limited exemption from the offset requirement means that agricultural sources that are not amenable to District prohibitory rules or control measures that would qualify for SIP credit—or that are unable to generate emission reductions that would qualify as offsets—because they fail to meet one or more of the basic criteria for a creditable rule or for offset credit cannot be required to provide offsets.

We believe this exemption is based upon considerations of equity. If a source cannot get credit for its emission reductions in the SIP or cannot quantify its surplus emission reductions for banking and later use as offsets, it should not be required to provide offsets. This exemption should be narrowly applied, and in any event, cannot be used to exempt major federal sources from offset requirements." [15]

During the relevant time period, EPA approved several District rules affecting agricultural sources, and several District air quality plans that reflect emissions reductions from implementation of those rules. For example, EPA approved District Rule 4550 ("Conservation Management Practices") and its associated List of Conservation Management Practices at 71 FR 7683 (February 14, 2006), District Rule 4570 ("Confined Animal Facilities") at 75 FR 2079 (January 14, 2010), the 2003 San Joaquin Valley PM_{10} Plan at 69 FR 30006 (May 26, 2004), the 2004 San Joaquin Valley Extreme Ozone Attainment Demonstration Plan at 75 FR 10420 (March 8, 2010), and the 2007 San Joaquin Valley PM_{10} Maintenance Plan and Redesignation Request at 73 FR 66759 (November 12, 2008).

However, the use of the conjunction "or" by CARB in its discussion of CH&SC section 42301.18(c), quoted above, means that, under CARB's interpretation, even if SIP credit were approved for prohibitory rules or control measures, new or modified minor agricultural sources could not be required to provide emissions offsets if they are unable to generate emission reductions that would qualify as offsets. Thus, we find that CARB's interpretation of CH&SC section 42301.18(c) supports EPA's limitation on its May 2004 approval to exempt new minor agricultural sources and minor modifications of existing agricultural sources from the emissions offset requirement because, under that provision of State law, the District did not have the authority to require such sources to provide emissions offsets because such sources were unable to generate emissions reductions that qualify as offsets during the relevant time period.

Earthjustice Comment #6: EPA's use of section 110(k)(6) to correct this error is unlawful. EPA cannot use section 110(k)(6) to achieve a result that EPA could not have achieved if it had acted "correctly" at the outset. EPA can point to no authority that allows EPA to adopt such a limitation when acting on this or any other SIP approval. To the contrary, such attempts to rewrite the rule submitted to EPA for approval violate well-established prohibitions against piecemeal approval of rule submittals. See *Bethlehem Steel Corp.* v. *Gorsuch*, 742 F.2d 1028 (7th Cir. 1984).

Section 110(k)(6) does not allow EPA to revise the rule itself, only the action used to approve the rule. The "actions" on a SIP submittal are outlined in section 110(k)(3) and include full and partial approval or disapproval. First, there should be little question that EPA could not have partially approved the District's NSR rules as submitted in 2002. The other option theoretically available to EPA at the time of the 2004 action was the "limited approval/limited disapproval," but EPA guidance cautions against use of that option to approve any rule that is unenforceable for all situations.[16] None of the options available to EPA when acting on a SIP submittal allow EPA to do what it is proposing to do here. EPA cannot "limit" the approval by rewriting the applicability of the rule as submitted. Section 110(k)(6) does not create new options for EPA to act on SIP submittals and cannot be used to circumvent the limitations on EPA actions provided by the plain language of section 110(k)(3).

Response to Earthjustice Comment #6: First of all, we agree that we cannot use section 110(k)(6) to revise the District's NSR rules that we previously approved, but we are not doing so in this action. Our action to limit our approval would in no way change the language of the District NSR rules that we approved in May 2004. Instead, it would revise the scope of our approval in such a way as to align our approval with the limits of District permitting authority under State law at the time we initially approved the rules and thus does not conflict with the decision in *Bethlehem Steel.*

In doing so, our action amounts to a revision to the approved California SIP that was applicable between June 2004 and June 2010.[17] EPA is not changing the District rule component of the SIP. We believe that our action finalized today is the appropriate revision to make to the California SIP under CAA section 110(k)(6) to address the error that we made in our May 2004 final action.

Second, we agree that there are significant obstacles to correcting our May 2004 action on the District's NSR rules by revising the action from a full approval to a "partial approval/partial disapproval" or "limited approval/limited disapproval." For instance, a "partial approval/partial disapproval" action is problematic in this instance because, as a general matter, NSR rules are not separable. Correcting our action from a full approval action to a "limited approval/limited disapproval" action is problematic in that it would incorporate the entire rule into the California SIP, and thus would not remedy the problem of the mismatch between the District

because it was prepared specifically to respond to the relevant issue addressed herein, i.e., the application of CH&SC section 42301.18(c) to minor agricultural sources.

[15] See letter from James N. Goldstene, Executive Officer, CARB, to "Air Pollution Control Officers," September 3, 2008, page 4. CARB draws a distinction between SIP credit and NSR offset credit, a distinction that we also draw. Some prohibitory rules or control measures are credited in the SIP, particularly those related to mobile sources and non-traditional stationary sources, that do not necessarily qualify for NSR offset credit. For example, a programmatic level of documentation may be acceptable to support quantification of emissions reductions from mobile sources and non-traditional stationary sources for general SIP attainment demonstration purposes, but that same documentation may be insufficient to validate ERCs for owners or operators of individual mobile sources or individual non-traditional stationary sources for NSR offset purposes.

[16] Earthjustice cites EPA guidance memorandum titled "Processing of State Implementation Plan (SIP) Submittals," dated July 9, 1992, from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards.

[17] As discussed in more detail in our proposed rule, the District amended the NSR rules in 2007 and 2008 to, among other things, align the rules explicitly with the District's authority to permit minor agricultural sources and to require emissions offsets for such sources. 75 FR 4745, at 4749–4750 (January 29, 2010). EPA approved the amended NSR rules in May 2010, effective June 10, 2010. 75 FR 26102 (May 11, 2010). Thus, our action today need only correct the mismatch between the District NSR rules and the District's authority with respect to minor agricultural sources under SB 700 from the effective date of our May 2004 approval of the 2002-amended District NSR rules (i.e., June 16, 2004) through June 9, 2010.

NSR rules in the SIP and the District's authority with respect to agricultural sources under SB 700.

We disagree, however, that we could not have limited our approval in May 2004 under section 110(k)(3) in the same manner as we are doing today, but in any event, for today's action, we are relying on section 110(k)(6), not on section 110(k)(3). We believe that the action we proposed to limit our previous approval and that we are finalizing today is authorized under the broad discretionary language of CAA section 110(k)(6):

> "Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), . . . was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public."

The key provisions are that the Administrator has the authority to "determine[ ]" when a SIP approval was in "error," and when he does so, he may then revise the SIP approval "as appropriate," in the same manner as the approval, and without requiring any further submission from the state.

With this action, EPA is determining that its action approving the District's NSR rules in May 2004 was "in error" due to the mismatch between the facial applicability in the NSR rules of the permitting and emission offset requirements to minor agricultural sources and the limits on District authority under State law applicable at the time of our SIP approval. Given the mismatch between the exclusions and exemptions apparent from the words of the District NSR rules and the limits under State law, EPA was in error in fully approving the NSR rules because the SIP and SIP revisions must be supported by necessary assurances by the State that, in this context, the District will have adequate authority under State law to carry out such SIP or SIP revisions and the State of California could not have provided such necessary assurances in May 2004 with respect to minor agricultural sources because of the limits on District authority at the time manifest in SB 700. See CAA section 110(a)(2)(E) and our January 29, 2010 proposed rule at pages 4747–4748.

EPA is further determining that the appropriate action EPA can take—in light of the broad discretion conferred by the phrase, "revise such action *as appropriate,*"—is to limit our previous approval of the District's NSR rules, as it relates to agricultural sources, (1) to the extent that the permit requirements apply to agricultural sources with potential emissions at or above a major source applicability threshold and to agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold; and (2) to the extent that the offset requirements apply to major agricultural sources and major modifications of such sources. We have also conducted this limiting of our prior approval through notice-and-comment rulemaking, which is the same manner as EPA conducted the prior approval.

In limiting our previous approval in this manner, we are taking an approach analogous to the one EPA took with respect to the Agency's previous SIP approvals of certain State programs for the Prevention of Significant Determination (PSD) to the extent those programs applied PSD to greenhouse gas (GHG) emitting sources below the thresholds in the final "Tailoring Rule" published at 75 FR 31514 on June 3, 2010. See our final rule, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans," referred to as the PSD SIP "Narrowing Rule," at 75 FR 82536 (December 30, 2010). In the case of the previous approvals of State PSD programs, EPA determined that its action approving the PSD SIP provisions was "in error" due to the mismatch between the PSD applicability provisions and the state's "necessary assurances" under CAA section 110(a)(2)(E) of adequate resources and further determined that the "appropriate action" to correct the error was to narrow its approval of the PSD programs to the extent they applied PSD to GHG-emitting sources below the Tailoring Rule threshold.

Here, in this action, EPA is determining that its action approving the District's NSR rules was "in error" due to the mismatch between the applicability provisions of the District NSR rules and the state's "necessary assurance" under CAA section 110(a)(2)(E) of adequate legal authority and is further determining that the "appropriate action" to correct the error is to limit its previous approval of the District's NSR rules in May 2004 to align the permitting applicability and offset requirement in the approved SIP to the authority granted the District under State law. EPA's PSD SIP "Narrowing Rule" contains a detailed discussion (see pages 82543–82545) justifying the reliance on CAA section 110(k)(6) to narrow previous SIP approvals and we incorporate that discussion herein.

Lastly, Earthjustice would agree that EPA could have disapproved the District's NSR rules as submitted in December 2002, and thus would agree that we could now, under section 110(k)(6), change our former "approval" to "disapproval," but such an action would have the deleterious effect of removing the December 2002 version of the NSR rules from the SIP entirely notwithstanding the significant strengthening they represented relative to the then-existing SIP District NSR rules approved in 2001 (66 FR 37587, July 19, 2001) that included a blanket exemption for agricultural sources. Our action to limit our approval is narrowly tailored to retain the strengthening aspects of the December 2002 version of the NSR rules while still addressing the mismatch between the language of the NSR rules and the District's authority under State law. Our purpose in doing so is to align the SIP approved by EPA in May 2004 with the intent of both EPA and the State of California to address the deficiencies in the District's NSR rules, including the previous blanket exemption for agricultural sources as it applied to *major* agricultural sources. The mismatch created in the applicable California SIP between the NSR rules and the authority vested in the District under State law with respect to minor agricultural sources was inadvertent, and section 110(k)(6) provides EPA with the broad discretionary authority to take action to fix the problem caused by the Agency's previous erroneous SIP action.

CRP&E Comment #1: The proposed rule conflicts with *Safe Air for Everyone* v. *EPA*, 488 F.3d 1088 (9th Cir. 2007) ("Safe Air"). The SIP means exactly that which the December 2002 version of District's NSR rules say it means, and EPA made no statement of administrative intent that would contradict that plain meaning. As such, the purported exemption in SB 700 cannot, as a matter of law, be part of the EPA-approved SIP.

Response to CRP&E Comment #1: We agree that we cannot simply interpret the California SIP to include statutory limitations not manifest in the SIP itself nor manifest in EPA's expressed intent or understanding at the time we conducted rulemaking to approve the December 2002 version of the District's NSR rules. However, agreement on this point simply highlights the need for EPA to take the action it is finalizing today. We have conducted this error correction action through a notice-and-comment rulemaking and have made our administrative intent manifest through that process. Also, we want to make clear that we are not changing the language of the District's NSR rules that

we approved in May 2004. Instead, our action will revise the scope of our approval in such a way as to align our approval with the limits of District permitting authority under State law at the time we approved the rules. In doing so, our action amounts to a revision to the California SIP applicable between June 2004 and June 2010. EPA is not changing the District rule component of the SIP. We believe that our action finalized today is the appropriate revision to make to the California SIP under CAA section 110(k)(6) to address the error that we made in our May 2004 final action.

CRP&E Comment #2: EPA lacks the power to amend the SIP to conform to EPA's interpretation of the District's state law permitting authority. Nothing in the CAA authorizes EPA to substantively amend a SIP or SIP revision, so EPA cannot accomplish that through a "correction" under section 110(k)(6).

Response to CRP&E Comment #2: Please see EPA's Response to Earthjustice Comment #6.

CRP&E Comment #3: Even if EPA could make an end-around *Safe Air* and could amend the SIP, SB 700 itself gives the District the authority to implement and enforce the December 2002 version of the District's NSR rules. EPA rationalizes its correction on the ground that the District lacked statutory authority to implement and enforce the December 2002 version of the District's NSR rules. EPA, however, fails to recognize the authority given to the District by CH&SC sections 39011.5(b) and (c).

Response to CRP&E Comment #3: Please see EPA's Response to Earthjustice Comment #4.

Dairy Cares Comment #1: Dairy Cares agrees that EPA erred in failing to expressly acknowledge the limitations imposed on the District's authority pursuant to SB 700, because the SB 700 exemptions plainly limited the District's permitting authority over agricultural sources and agrees that EPA's SIP correction is appropriate under section 110(k)(6) of the CAA. Dairy Cares, however, believes that because EPA's 2004 SIP action implicitly and necessarily included all of the expansion and limitation of District authority contained in SB 700, including the exemptions, the SIP, as it currently exists, should be read to include the exemptions.

Response to Dairy Cares Comment #1: EPA notes that the argument that limitations on authority under State law implicitly and necessarily determine the applicability of rules and regulations approved by EPA as part of a SIP, even if those statutory limitations are not also approved as part of the SIP, is not supported by case law. In *Safe Air for Everyone* v. *EPA* (488 F.3d 1088 (9th Cir. 2007), the Ninth Circuit held that "SIPs are interpreted based on their plain meaning when such a meaning is apparent, not absurd, and not contradicted by the manifest intent of EPA, as expressed in the promulgating documents available to the public." *Id.* at 1100. In this instance, the absence of limited exemptions for minor agricultural sources with respect to permitting and offsets in the version of the District's NSR rules approved in 2004 is plain, not absurd, nor contradicted by EPA in taking the action in 2004 to approve the rules. Moreover, SB 700 itself is not approved into the California SIP. Thus, we continue to believe that is appropriate to correct our previous approval of the District's NSR rules to reconcile that approval with the limitations on District authority that were established by the California legislature in SB 700.

III. Final Action

After due consideration of the comments submitted on our proposed action, and in light of California's interpretation of SB 700 as it applies to the District's NSR rules, we are taking final action under CAA section 110(k)(6) to correct our erroneous approval in May 2004 of San Joaquin Valley District NSR rules, Rule 2020 ("Exemptions") and Rule 2210 ("New and Modified Stationary Source Review Rule"), as amended by the District in December 2002. In doing so, we are determining that such previous approval was in error for the purposes of CAA section 110(k)(6) because we failed to recognize that the State could not provide the necessary assurances under CAA section 110(a)(2)(E) that the District had the authority to implement its amended NSR rules as those rules applied to agricultural sources given that the District's NSR rules, as adopted in 2002, did not reflect the qualified permitting and emissions offset exemptions provided in SB 700 with respect to minor agricultural sources.

To correct this error, we are revising our previous action by limiting our previous approval, as it relates to agricultural sources, to the extent that the permit requirements apply (1) to agricultural sources with potential emissions at or above a major source applicability threshold and (2) to agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold. We are also limiting our previous approval, as it relates to agricultural sources, to the extent that the emission offset requirements apply to major agricultural sources and major modifications of such sources.

To codify the new limitation on our previous approval, we are adding a new section to 40 CFR part 52 ("Approval and promulgation of implementation plans"), subpart F ("California"). The new section is 40 CFR 52.245 ("New Source Review Rules").

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because error correction actions under section 110(k)(6) of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this error correction action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed

into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the error-correction action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action aligns requirements under Federal law with those under state and local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, *Federalism*, (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely corrects an error in a previous EPA rulemaking, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 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 Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it corrects a previous EPA approval of a State rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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. section 804(2).

K. Petitions for Review of This Action

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 September 30, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 12, 2013.

Alexis Strauss,

Acting 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 52.245 is added to read as follows:

§52.245 New Source Review rules.

(a) Approval of the New Source Review rules for the San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201 as approved on May 17, 2004 in § 52.220(c)(311)(i)(B)(*1*), and in effect for Federal purposes from June 16, 2004 through June 10, 2010, is limited, as it relates to agricultural sources, to the extent that the permit requirements apply:

(1) To agricultural sources with potential emissions at or above a major source applicability threshold; and

(2) To agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold.

(b) Approval of the New Source Review rules for the San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201 as approved on May 17, 2004 in § 52.220(c)(311)(i)(B)(*1*), and in effect for Federal purposes from June 16, 2004 through June 10, 2010, is limited, as it relates to agricultural sources, to the extent that the emission offset requirements apply to major agricultural sources and major modifications of such sources.

[FR Doc. 2013–18413 Filed 7–31–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0884, FRL–9841–1]

Approval and Promulgation of Implementation Plans; Oregon: Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter and 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) submittals from the State of Oregon to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter ($PM_{2.5}$) on July 18, 1997, and October 17, 2006, and for ozone on March 12, 2008. The EPA is finding that the Federally-approved provisions currently in the Oregon SIP meet the CAA infrastructure requirements for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and the 2008 ozone NAAQS. The EPA is also finding that the Federally-approved provisions currently in the Oregon SIP meet the interstate transport requirements of the CAA related to prevention of significant deterioration for the 2008 ozone NAAQS, and related to visibility for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS. This action does not approve any additional provisions into the Oregon SIP but is a finding that the current provisions of the Oregon SIP are adequate to satisfy the above-mentioned infrastructure elements required by the CAA.

DATES: This action is effective on September 3, 2013.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2011–0884. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which 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 EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov*, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, it is intended to refer to the EPA. Information is organized as follows:

Table of Contents

I. Background

On March 21, 2013, the EPA proposed to approve the September 25, 2008, December 23, 2010, August 17, 2011, and December 19, 2011 SIP submittals from the State of Oregon to demonstrate that the SIP meets the requirements of CAA sections 110(a)(1) and (2) for the NAAQS promulgated for fine particulate matter ($PM_{2.5}$) on July 18, 1997, and October 17, 2006, and for ozone on March 12, 2008 (78 FR 17304). In our March 21, 2013, notice of proposed rulemaking (NPR), we proposed to approve the SIP submittals and to find that the Federally-approved provisions currently in the Oregon SIP meet the following CAA section 110(a)(2) infrastructure elements for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We also proposed to find that the Federally-approved provisions currently in the Oregon SIP meet the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration for the 2008 ozone NAAQS, and CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS. An explanation of the CAA requirements and implementing regulations that are met by these SIP submittals, a detailed explanation of the submittals, and the EPA's reasons for approving the submittals and making the above-described findings were provided in the NPR, and will not be restated here. The public comment period for this proposed rule ended on April 22, 2013. The EPA received one comment on the NPR.

II. Response to Comment

Comment: The commenter stated that "the Oregon SIP does not currently contain emission limits and other provisions which ensure that Oregon will attain and maintain the 2006 $PM_{2.5}$ NAAQS," and should be disapproved. In support of this conclusion, the commenter described the potential impact of future $PM_{2.5}$ emissions from Coyote Island Terminal, LLC's proposed Morrow Pacific Project in Oregon. The commenter included an air quality modeling analysis of the Morrow Pacific Project's potential future ambient $PM_{2.5}$ impacts, commissioned by the commenter's client. The analysis predicted that the Morrow Pacific Project will emit $PM_{2.5}$ in quantities that will cause violations of the 2006 $PM_{2.5}$ NAAQS. The commenter concluded that "if the Oregon Department of Environmental Quality issues an air pollution permit to the Coyote Island terminal, it will demonstrate that the Oregon SIP currently lacks emission limits and other measures to ensure attainment and maintenance of the 2006 $PM_{2.5}$ NAAQS." The commenter further stated that "[s]hould the Oregon Department of Environmental Quality deny the air pollution permit for the Coyote Island coal terminal, then these comments would no longer be applicable." The commenter did not identify any particular regulatory deficiencies in the Oregon SIP. The commenter's conclusion that the Oregon SIP should be disapproved is contingent upon the outcome of a future permitting decision.

Response: CAA section 110(a)(2)(A) requires that a SIP "include enforceable emission limitations and other control measures, means, or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter." The EPA notes that the commenter did not identify a specific absence of "enforceable emission limitations or other control measures" necessary to ensure attainment of the $PM_{2.5}$ NAAQS. Rather, the commenter's conclusion that the Oregon infrastructure SIP for $PM_{2.5}$ is deficient is contingent upon a particular decision being made under the existing SIP-approved regulations that the commenter anticipates will be applied in the case of the proposed Morrow Pacific Project, if that project is issued an air quality permit in the future.

The EPA disagrees with the commenter's conclusion that the Oregon SIP must, or can be disapproved contingent upon a particular, potential, future permitting decision. Rather, our analysis of the Oregon SIP as discussed in the NPR, set forth the EPA's basis for concluding that the current Federally-approved Oregon SIP meets the requirements of CAA section 110(a)(2)(A) for purposes of the 2006 $PM_{2.5}$ NAAQS. In our analysis we stated that the State of Oregon generally regulates emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors through its SIP-approved New Source Review (NSR) permitting programs, in addition to other rules and control programs. The EPA most recently approved revisions to the State's major and minor NSR permitting programs on December 27, 2011 (76 FR 80747), to regulate direct $PM_{2.5}$ emissions, in addition to nitrogen oxides (NO_X) and sulfur dioxide (SO_2) as precursors to $PM_{2.5}$. In addition to the State's NSR permitting regulations, the State's approved SIP contains rules that establish various controls on emissions of particulate matter, NO_X, and SO_2. These regulations address operational and work practice standards, fuel burning equipment and fuel sulfur content, grain loading, specific industry sectors, motor vehicle pollution, industrial emission management, residential wood heating, field burning, and banking of emission reduction credits.

As described above, the comment focused on the Coyote Island Terminal, LLC's proposed Morrow Pacific Project, asserting that if permitted, the source would, in the future, emit $PM_{2.5}$ in quantities that would violate the 2006 $PM_{2.5}$ NAAQS. Because the source in question is a new source which has not yet been permitted and is not currently operating, the comment does not provide a basis for finding that the SIP lacks emission limitations and other control measures necessary to support a disapproval of the State's infrastructure SIP submission.

The EPA finds that Oregon's SIP contains "emission limits and other control measures" that are appropriate to ensure attainment of the 2006 $PM_{2.5}$ NAAQS. Under the provisions of Oregon's Federally-approved SIP, owners and operators of new and modified major sources must satisfy the requirements of Oregon's Federally-approved major NSR program set forth at Oregon Administrative Rules (OAR) 340–224 "Major New Source Review." Oregon's major NSR program includes requirements for new and modified major sources located in attainment and unclassifiable areas (OAR 340–224–0070) and nonattainment areas (OAR 340–224–0050). Oregon's minor NSR program set forth at OAR 340–216 "Air Contaminant Discharge Permits" includes requirements for minor sources located in attainment, unclassifiable, and nonattainment areas and requires that increases in emissions from any new or modified source not cause or contribute to violations of ambient standards or applicable PSD increments. Oregon's Federally-approved major and minor NSR permitting programs regulate and control emissions from new and modified sources of regulated pollutants, including $PM_{2.5}$ and NO_X and SO_2 as precursors.

The commenter's conclusion that "if the Oregon Department of Environmental Quality issues an air pollution permit to the Coyote Island terminal, it will demonstrate that the Oregon SIP currently lacks emission limits and other measures to ensure attainment and maintenance of the 2006 $PM_{2.5}$ NAAQS" fails to account for the State's Federally-approved NSR permitting programs and the requirements that owners and operators must satisfy prior to obtaining a permit. A finding related to the legal adequacy of this SIP cannot be based solely on the outcome of this particular potential permitting action, as the commenter proffers.

The EPA believes the current, Federally-approved Oregon SIP includes enforceable emission limitations and other control measures, means, or techniques to attain and maintain the 2006 $PM_{2.5}$ NAAQS, and therefore, is taking final action to find that the Oregon SIP meets the requirements of CAA section 110(a)(2)(A) for the 2006 $PM_{2.5}$ NAAQS.

III. Action

The EPA has determined that the September 25, 2008, December 23, 2010, August 17, 2011, and December 19, 2011, SIP submittals from the State of Oregon are consistent with the requirements of section 110 of the CAA. Therefore, the EPA is approving the SIP submittals from the State of Oregon to demonstrate that the SIP meets the infrastructure requirements of the CAA for the NAAQS promulgated for $PM_{2.5}$ on July 18, 1997, and October 17, 2006, and for ozone on March 12, 2008. The EPA is finding that the Federally-approved provisions currently in the Oregon SIP meet the following CAA section 110(a)(2) infrastructure elements for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and the 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA is also finding that the Federally-approved provisions currently in the Oregon SIP meet the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration for the 2008 ozone

NAAQS, and CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS. This action is being taken under section 110 of the CAA.

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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's law. For that reason, this proposed action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in Oregon, and the 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 September 30, 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, Particulate matter, and Reporting and recordkeeping requirements.

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

Dated: July 19, 2013.

Michelle Pirzadeh,

Acting Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—[APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS]

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

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

Subpart MM—Oregon

■ 2. Section 52.1991 is amended by redesignating the undesignated text as paragraph (a), and by adding paragraph (b) to read as follows:

§ 52.1991 Section 110(a)(2) infrastructure requirements.

* * * * *

(b) On September 25, 2008, December 23, 2010, August 17, 2011, and December 19, 2011, the Oregon Department of Environmental Quality submitted SIP revisions to address the requirements of CAA sections 110(a)(1) and (2) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS. The EPA approves the submittals as meeting the following CAA section 110(a)(2) infrastructure elements for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and the 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA also approves the submittals as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration for the 2008 ozone NAAQS, and CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS.

* * * * *

[FR Doc. 2013–18314 Filed 7–31–13; 8:45 am]

BILLING CODE 6560–50–P

EVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA200–4204; FRL–9811–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is updating the materials that are incorporated by reference (IBR) into the Pennsylvania State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Pennsylvania Department of Environmental Protection (PADEP) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

DATES: This action is effective August 1, 2013.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room Number 3334, EPA West Building, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by email at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 **Federal Register** document. On February 25, 2005 (70 FR 9450), EPA published a document in the **Federal Register** beginning the new IBR procedure for Pennsylvania, including Philadelphia and Allegheny Counties. On January 3, 2007 (72 FR 200), March 25, 2009 (74 FR 13014), and July 5, 2011 (76 FR 38992), EPA published updates to the IBR material for Pennsylvania.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following regulations and sections for Pennsylvania and Allegheny County:

A. Added Regulations

1. Additions of the following regulations or sections in 25 PA Code, article III:

a. Chapter 123 (Standards for Contaminants, Particulate Matter Emissions), section 123.14 (Outdoor wood-fired boilers).

b. Chapter 126 (Standard for Motor Fuels), subchapter D (Motor Vehicle Emissions Control Program), section 126.451 (Responsibilities of the Department).

c. Chapter 127 (Construction, Modification, Reactivation, and Operation of Sources), subchapter B (Plan Approval Requirements), section 127.12d (Completeness determination).

d. Chapter 127, subchapter E (New Source Review), sections 127.201a, 127.203a, and 127.218.

e. Chapter 129 (Standards for Sources, Sources of VOCs), sections 129.52a, 129.52b, and 129.52c.

f. Chapter 129 (Standards for Sources, Control of Emissions from Glass Melting Furnaces), sections 129.301 through 129.310 inclusive.

g. Chapter 130 (Standards for Products), subchapter D (Adhesives, Sealants, Primers, and Solvents), sections 130.701 through 130.708 inclusive.

h. Chapter 145 (Interstate Pollution Transport Reduction), subchapter C (Emissions of NOx from Cement Manufacturing), sections 145.144, 145.145, and 145.146.

2. Addition of Title 35 (Health and Safety) of the Pennsylvania Statute (Pa. Cons. Stat. Ann.), Chapter 23B (Diesel-Powered Motor Vehicle Idling Act), sections 4601 through 4610 inclusive.

3. Additions of the following regulations or sections in Allegheny County Article XXI:

a. Part B (Permits Generally), Section 2102.07 (Prevention of Significant Deterioration).

b. Part E (Source Emission and Operating Standards), subpart 8 (Additional Miscellaneous VOC Sources), section 2105.88 (Consumer Products).

c. Part E, subpart 10 (NO_X Sources), section 2105.101 (Control of NO_X Emissions from Glass Melting Furnaces).

B. Revised Regulations

1. Revisions to the following regulations or sections in 25 PA Code, Article III:

a. Chapter 121 (General Provisions), section 121.1 (Definitions).

b. Chapter 126, subchapter D, sections 126.401, 126.411, 126.412, 126.413, 126.421 through 126.425 inclusive, 126.431, 126.432, and 126.441.

c. Chapter 127, subchapter B, sections 127.12b, 127.13, 127.44, 127.45, and 127.48.

d. Chapter 127, subchapter E, sections 127.201 through 127.215 inclusive and 127.217.

e. Chapter 129, Sources of VOCs, sections 129.51, 129.52, and 129.66.

f. Chapter 145, subchapter C, sections 145.142 and 145.143.

2. Revision to Allegheny County Article XXI, part B, section 2102.06 (Major Sources Locating In or Impacting a Nonattainment Area).

C. Removed Regulations

In 25 PA Code Article III, section 126.402 (NLEV scope and applicability) of chapter 126, subchapter D has been removed.

II. EPA Action

In this action, EPA is announcing the update to the IBR material as of April 1, 2013. EPA is also correcting typographical errors and omissions found in the table for paragraph 52.2020(c)(2), specifically adding a title entry for Part E, subpart 8 (Additional Miscellaneous VOC Sources) and removing the word "Section" in the "Article XX or XXI citation" column for entries 2105.88 and 2105.101. In the table for paragraph 52.2020(d)(1), EPA is revising the title heading in the second column from "Permit No." to "Permit Number." EPA has determined that the actual entries found in the table of paragraph 52.2020(d)(1) are correct in the Code of Federal Regulations (CFR) and need no additional editing at this time. EPA has further determined that the entries found in the tables of paragraphs 52.2020(c)(1), (c)(3), (d)(2) through (d)(4), (e)(1), and (e)(2) are correct in the CFR and need no additional editing at this time.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Pennsylvania SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" update action for Pennsylvania.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 25, 2013.

W. C. Early,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN Pennsylvania

■ 2. Section 52.2020 is amended by:

■ a. Revising paragraph (b).

■ b. In paragraph (c)(2), adding a title entry for Subpart 8—Additional Miscellaneous VOC Sources after the existing entry for 2105.79, and revising the entries for Sections 2105.88 and 2105.101.

■ c. In paragraph (d)(1), revising the table heading.

The amendments read as follows:

§ 52.2020 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section with an EPA approval date of April 1, 2013 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after April 1, 2013 will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region III certifies that the following rules and regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of April 1, 2013:

(A) Materials in Notebook "40 CFR 52.2020(c)(1)—1. PA Department of Environmental Protection (PA DEP); 2. PA Department of Transportation (PA DOT)."

(B) Materials in Notebook "1. 40 CFR 52.2020(c)(2)—Allegheny County Health Department (ACHD); 2. 40 CFR 52.2020(c)(3)—Philadelphia Air Management Services (AMS)."

(ii) EPA Region III certifies that the following source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State source-specific requirements which have been approved as part of the State implementation plan as of November 1, 2006. No additional revisions were made between November 1, 2006 and April 1, 2013:

(A) [Reserved.]

(B) Materials in Notebook "40 CFR 52.2020(d)(1)—Source-specific Requirements—Volume 1, Part 1."

(C) Materials in Notebook "40 CFR 52.2020(d)(1)—Source-specific Requirements—Volume 1, Part 2."

(D) Materials in Notebook "40 CFR 52.2020(d)(1)—Source-specific Requirements—Volume 2, Part 1."

(E) Materials in Notebook "40 CFR 52.2020(d)(1)—Source-specific Requirements—Volume 2, Part 2."

(F) Materials in Notebook "40 CFR 52.2020(d)(1)—Source-specific Requirements—Volume 3."

(G) Materials in Notebook "40 CFR 52.2020(d)(1)—Source-specific Requirements—Volume 4."

(H) Materials in Notebook "40 CFR 52.2020(d)(1)—Source-specific Requirements—Volume 5."

(I) Materials in Notebook "40 CFR 52.2020(d)(2)–(d)(4)—Source-specific Requirements."

(iii) EPA Region III certifies that the materials in Notebook "40 CFR 52.2020(d)(1)—Source-specific Requirements—Volume 6" provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State source-specific requirements which have been approved as part of the State implementation plan as of November 1, 2008. No additional revisions were made between November 1, 2008 and April 1, 2013.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814–2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20460. For further information, call (202) 566–1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) EPA-approved regulations.

EPA-Approved Regulations and Statutes

(c)(1) * * *

(2)

EPA-APPROVED ALLEGHENY COUNTY HEALTH DEPARTMENT (ACHD) REGULATIONS

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ §52.2063 citation
* * *	* * *	*	* * *	
Part E—Source Emission and Operating Standards				
* * *	* * *	*	* * *	
Subpart 8—Additional Miscellaneous VOC Sources				
2105.88	Consumer Products	4/3/12	11/29/12, 77 FR 71115	
* * *	* * *	*	* * *	
Subpart 10—NO_X Sources				
2105.101	Control of NO_X Emissions from Glass Melting Furnaces.	4/3/12	11/29/12, 77 FR 71117	
* * *	* * *	*	* * *	

(3) * * *

(d) EPA-Approved State Source-Specific Requirements

EPA-APPROVED SOURCE-SPECIFIC REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) REQUIREMENTS FOR VOLATILE ORGANIC COMPOUNDS (VOC) AND OXIDES OF NITROGEN (NO_X)

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ §52.2063 citation
For exceptions, see the applicable paragraphs in 40 CFR §52.2063(c)					
* * *	* * *	*	* * *		

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[FR Doc. 2013–18415 Filed 7–31–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0402; FRL–9834–4]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Permit Exemption Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) on April 23, 2008. WDNR submitted revisions exempting certain sources of air pollution from construction permit requirements. EPA is approving these revisions because they are consistent with Federal regulations governing state permit programs.

DATES: This final rule is effective on September 3, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2008–0402. 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andrea Morgan, Environmental Engineer, at (312) 353–6058 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6058, *morgan.andrea@epa.gov*.

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

I. What is being addressed in this document?

On May 15, 2013, at 78 FR 28547, EPA proposed to approve a SIP revision from Wisconsin exempting certain sources of air pollution from the requirement to obtain a construction permit. Sources with actual emissions of under 10 tons per year (tpy) of each criteria pollutant, particulate matter of 10 micrometers or less, sulfur dioxide, nitrogen oxides, carbon monoxide and volatile organic compounds, and less than 0.5 tpy of lead, and that are not subject to Federal air pollution requirements for hazardous air pollutants under section 111 or 112 of the Clean Air Act (Act) will be eligible for the exemption. The revisions will also exempt construction or modification projects that emit less than 1,666 pounds of criteria pollutants per month, averaged over a 12 consecutive month period, and less than 10 pounds of lead per month, averaged over a 12 consecutive month period from construction permitting requirements. EPA believes that the revisions to Wisconsin's SIP meet Federal requirements and will not interfere with attainment or reasonable further progress. As set forth in the proposed rule, this SIP revision satisfies the anti-backsliding provisions of section 110(l) of the Act.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period. The comment period closed on June 14, 2013. EPA received one comment supporting EPA's approval of these revisions. EPA received no adverse comments.

III. What action is EPA taking?

EPA is approving Wisconsin's April 23, 2008, SIP submittal and March 25, 2013 supplement to the submittal. Specifically, EPA is approving the following revisions to WDNR's SIP: (1) Renumber and create NR 406.02(1) and 406.04(4)(h); (2) create NR 406.04(1)(zh), NR 406.04(1q), NR 406.04(4)(i), NR 407.03(1m), and NR 410.03(1)(f); and (3) amend NR 410.03(1)(d). Wisconsin's submittal originally contained revisions to NR 407, which pertain to operation permit requirements. However, in the March 25, 2013, supplement to the submittal, Wisconsin withdrew the NR 407 revisions from the submittal.

IV. Statutory and Executive Order Reviews

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

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

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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 2, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2570 is amended by adding paragraph (c)(127) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(127) On April 23, 2008 and March 25, 2013, the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's air permitting program to exempt certain small sources of air pollution from construction permitting requirements.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, NR 406.02 Definitions. NR 406.02(1) "Clean fuel", and NR 406.02(1m) "Facility", as published in the Wisconsin Administrative Register May 2007, No. 617, effective June 01, 2007.

(B) Wisconsin Administrative Code, NR 406.04 Direct sources exempt from construction permit requirements. NR 406.04(1)(zh), NR 406.04(1q), NR 406.04(4)(h), NR 406.04(4)(i), and NR 406.04(4)(j), as published in the Wisconsin Administrative Register May 2007, No. 617, effective June 01, 2007.

(C) Wisconsin Administrative Code, NR 410.03 Application fee. NR 410.03(1)(d), and NR 410.03(1)(f), as published in the Wisconsin Administrative Register May 2007, No. 617, effective June 1, 2007.

[FR Doc. 2013–18417 Filed 7–31–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0659; FRL–9840–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Second 10-Year Carbon Monoxide Maintenance Plan for Colorado Springs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado. On March 31, 2010, the Governor of Colorado's designee submitted to EPA a Clean Air Act (CAA) section 175A(b) second 10-year maintenance plan for the Colorado Springs area for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). This limited maintenance plan (LMP) addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation. This action is being taken under sections 110 and 175A of the CAA.

DATES: This rule is effective on September 30, 2013 without further notice, unless EPA receives adverse comment by September 3, 2013. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0659, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2011–0659. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or

viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov*.

SUPPLEMENTARY INFORMATION:

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Definitions

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

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

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

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

(iv) The words *Colorado* and *State* mean the State of Colorado.

I. General Information

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

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

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

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

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

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

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

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

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

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

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

II. Background

Under the CAA Amendments of 1990, the Colorado Springs area was designated as nonattainment and classified as a "moderate" CO area, with a design value of less than or equal to 12.7 parts per million (ppm) (56 FR 56694, November 6, 1991). On August 19, 1998, the Governor of Colorado submitted to EPA a request to redesignate the Colorado Springs CO nonattainment area to attainment for the CO NAAQS. Along with this request, the Governor submitted a CAA section 175A(a) maintenance plan which demonstrated that the area would maintain the CO NAAQS for the first 10 years following EPA's approval of the redesignation request. On October 1, 1998, the Governor submitted revisions to Colorado Air Quality Control Commission (AQCC) Regulation No. 13, "Oxygenated Fuels Program." EPA approved the State's redesignation request, the CAA section 175A(a) 10-year maintenance plan, and the revisions to AQCC Regulation No. 13 on August 25, 1999 (64 FR 46279).

On May 10, 2000, the Governor of Colorado submitted a revised Colorado Springs CO maintenance plan to EPA which changed the attainment year from 1993 to 1990, provided a revised projected emissions inventory out to 2010, and demonstrated maintenance of the CO NAAQS in the Colorado Springs area through 2010. The Governor also submitted a transportation conformity motor vehicle emission budget (MVEB) for 2010, and revisions to AQCC Regulation No. 13, "Oxygenated Fuels Program," which allowed for the removal of the oxygenated fuels program in Colorado Springs. We approved all of these changes into the SIP on December 22, 2000 (65 FR 80779).

On April 12, 2004, the Governor of Colorado submitted to us a revised maintenance plan which demonstrated maintenance of the CO NAAQS in the Colorado Springs area through 2015 and revised the 2010 transportation conformity MVEB. The Governor also submitted revisions to AQCC Regulation No. 11, "Motor Vehicle Emissions Inspection Program," which allowed for the removal of the basic inspection/maintenance program in El Paso County, including the Colorado Springs area. We approved all of these changes into the SIP on September 7, 2004 (see 69 FR 54019).

Eight years after an area is redesignated to attainment, CAA section 175A(b) requires the state to submit a subsequent maintenance plan to EPA, covering a second 10-year period.[1] This second 10-year maintenance plan must demonstrate continued maintenance of the applicable NAAQS during this second 10-year period. To fulfill this requirement of the Act, the Governor of Colorado's designee submitted the second 10-year Colorado Springs CO maintenance plan (hereafter, "revised Colorado Springs Maintenance Plan") to us on March 31, 2010. With this action, we are approving the revised Colorado Springs Maintenance Plan.

The 8-hour CO NAAQS—9.0 ppm—is attained when such value is not exceeded more than once a year. 40 CFR 50.8(a)(1). The Colorado Springs area has attained the 8-hour CO NAAQS from 1990 to the present.[2] In October 1995, EPA issued guidance that

[1] In this case, the initial maintenance period extended through 2010. Thus, the second 10-year period extends through 2020.

[2] The 1-hour CO NAAQS of 35 ppm has not been exceeded in the Colorado Springs area since 1979.

provided nonclassifiable CO nonattainment areas the option of using a less rigorous "limited maintenance plan" (LMP) option to demonstrate continued attainment and maintenance of the CO NAAQS.[3] According to this guidance, areas that can demonstrate design values at or below 7.65 ppm (85% of exceedance levels of the CO 8-hour NAAQS) for eight consecutive quarters qualify to use an LMP. For the revised Colorado Springs Maintenance Plan, the State used EPA's LMP option to demonstrate continued maintenance of the CO NAAQS in the Colorado Springs area through 2020. We have determined that the Colorado Springs area qualifies for the LMP option for this plan revision because the area's maximum design value for the most recent eight consecutive quarters with certified data at the time the State adopted the plan (years 2007 and 2008) was 2.3 ppm.[4]

III. What was the State's Process?

Section 110(a)(2) of the CAA requires that a state provide reasonable notice and public hearing before adopting a SIP revision and submitting it to us.

The AQCC held a public hearing for the revised Colorado Springs Maintenance Plan on December 17, 2009. The AQCC adopted the revised Colorado Springs Maintenance Plan directly after the hearing. The Governor's designee submitted the revised plan to EPA on March 31, 2010.

We have evaluated the SIP revision and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. On September 30, 2010, by operation of law under CAA section 110(k)(1)(B), the SIP revision was deemed to have met the minimum "completeness" criteria found in 40 CFR part 51, appendix V.

IV. EPA's Evaluation of the Revised Colorado Springs Maintenance Plan

The following are the key elements of a LMP for CO: Emission Inventory, Maintenance Demonstration, Monitoring Network/Verification of Continued Attainment, Contingency Plan, and Conformity Determinations. Below, we describe our evaluation of each of these elements for the revised Colorado Springs Maintenance Plan.

A. Emission Inventory

The revised Colorado Springs CO Maintenance Plan contains an emission inventory for the base year 2007. The emission inventory is a list, by source category, of the air contaminants directly emitted into the Colorado Springs CO maintenance area on a typical winter day in 2007.[5] The data in the emission inventory were developed using EPA-approved emissions modeling methods. The State provided a more detailed description of the 2007 inventory in its Technical Support Document (TSD) and the supplemental TSD for the revised Colorado Springs Maintenance Plan.[6] Included in this inventory are aircraft, commercial cooking, fuel combustion, highway vehicle exhaust, non-road mobile sources, railroads, structure fires, woodburning, and non-oil-and-gas point sources. The revised maintenance plan and TSD contain detailed emission inventory information that was prepared in accordance with EPA guidance and is acceptable to us.[7]

B. Maintenance Demonstration

EPA considers the maintenance demonstration requirement to be satisfied for areas that qualify for and are using the LMP option. As mentioned above, a maintenance area is qualified to use the LMP option if that area's maximum 8-hour CO design value for eight consecutive quarters does not exceed 7.65 ppm (85% of the CO NAAQS). EPA maintains that if an area begins the maintenance period with a design value no greater than 7.65 ppm, the applicability of prevention of significant deterioration requirements, the control measures already in the SIP, and federal measures should provide adequate assurance of maintenance over the 10-year maintenance period. Therefore, EPA does not require areas using the LMP option to project emissions over the maintenance period. Because CO design values in the Colorado Springs area are consistently well below the LMP threshold (See Table 1 below), the State has adequately demonstrated that the Colorado Springs area will maintain the CO NAAQS into the future.

TABLE 1—8-HOUR CO DESIGN VALUES FOR COLORADO SPRINGS, COLORADO

Design Value (ppm)*	Year
3.1	2004
2.7	2005
2.4	2006
2.1	2007
2.3	2008
1.9	2009
2.1	2010
1.5	2011
1.4	2012

*Design Values were derived from the EPA AirData Web site (*http://www.epa.gov/airdata/*).

C. Monitoring Network/Verification of Continued Attainment

In the revised Colorado Springs Maintenance Plan, the State commits to continuing operation of an air quality monitoring network in accordance with 40 CFR Part 58 to verify continued attainment of the CO NAAQS. The State also commits to conducting an annual review of the air quality surveillance system in accordance with 40 CFR 58.10. Additionally, the plan indicates that if measured mobile source parameters change significantly over time, the State will perform appropriate studies to determine whether additional and/or re-sited monitors are necessary. We are approving these commitments as satisfying the relevant requirements.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of an area. To meet this requirement, the State has indentified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in the revised Colorado Springs Maintenance Plan, the contingency measures will be triggered by a violation of the CO NAAQS. No more than 60 days after notification from the Colorado Air Pollution Control Division (APCD) that a violation of the CO NAAQS has occurred, the Pikes Peak Area Council of Governments (PPACG), in conjunction with the APCD, AQCC, and local governments will initiate a process to begin evaluating potential contingency measures. The PPACG will present recommendations within 120 days of notification, and the recommended contingency measures will be presented to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the

[3] Memorandum "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph W. Paisie, Group Leader, EPA Integrated Policy and Strategies Group, to Air Branch Chiefs, October 6, 1995 (hereafter referred to as "LMP guidance").

[4] See Table 1 below. Additionally, according to the LMP guidance, an area using the LMP option must continue to have a design value "at or below 7.65 ppm until the time of final EPA action on the redesignation." Table 1, below, demonstrates that the area meets this requirement.

[5] Violations of the CO NAAQS are most likely to occur on winter weekdays.

[6] Both the TSD and the Supplemental TSD are available in the docket for this action.

[7] See "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, EPA, September 4, 1992.

recommended contingency measures along with any other contingency measures the AQCC believes may be appropriate to effectively address the violation. The necessary contingency measures will be adopted and implemented within one year after a violation occurs.

The potential contingency measures that are identified in the revised Colorado Springs CO maintenance plan include, but are not limited to: (1) A basic vehicle inspection and maintenance program, as such program existed in AQCC Regulation Number 11 before December 18, 2003; (2) a 2.7% oxygenated gasoline program, as such program existed in AQCC Regulation Number 13 before February 17, 2000; (3) re-establishing nonattainment new source review permitting for stationary sources; and (4) wood burning restrictions.

We find that the contingency measures provided in the revised Colorado Springs Maintenance Plan are sufficient and meet the requirements of section 175A(d) of the CAA.

E. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. To effectuate its purpose, the conformity rule requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance area.[8]

Under the LMP guidance, emissions budgets generally are treated as not constraining for the length of the maintenance period. While EPA's LMP guidance does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting a MVEB. According to the LMP guidance, it is unreasonable to expect that an LMP area will experience so much growth in that period that a violation of the CO NAAQS would result.[9] However, under our conformity regulations, consistency with existing MVEBs must be demonstrated as long as those MVEBs are within the timeframe of the transportation plan. See 40 CFR 93.118(b)(2)(i) and (d)(2).[10]

The CO maintenance plan for Colorado Springs that we approved in 2004 (69 FR 54019) contains MVEBs applicable only through 2010. As 2010 is no longer within the timeframe of the transportation plan, there is no longer a need to demonstrate conformity with the 2010 MVEB for the Colorado Springs CO maintenance area. For the reasons described in our LMP guidance, all actions that would require conformity determinations for the Colorado Springs CO maintenance area under our conformity rule provisions are considered to have already satisfied the regional emissions analysis and "budget test" requirements in 40 CFR 93.118 because of our approval of the Colorado Springs CO LMP.

However, since LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs and projects. Specifically, for such determinations, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and meet the criteria for consultation and Transportation Control Measure (TCM) implementation in the conformity rule provisions (40 CFR 93.112 and 40 CFR 93.113, respectively). In addition, projects in LMP areas still will be required to meet the applicable criteria for CO hot spot analyses to satisfy "project level" conformity determinations (40 CFR 93.116 and 40 CFR 93.123), which must also incorporate the latest planning assumptions and models available (40 CFR 93.110 and 40 CFR 93.111, respectively).

Our approval of the revised Colorado Springs Maintenance Plan affects future CO RTP and TIP conformity determinations prepared by PPACG, the Colorado Department of Transportation, the Federal Highway Administration, and the Federal Transit Administration.

V. Final Action

We are approving the revised Colorado Springs Maintenance Plan submitted on March 31, 2010. This maintenance plan meets the applicable CAA requirements, and we have determined it is sufficient to provide for maintenance of the CO NAAQS over the course of the second 10-year maintenance period out to 2020.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective September 30, 2013 without further notice unless we receive adverse comments by September 3, 2013. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by

[8] Further information concerning EPA's interpretations regarding MVEBs can be found in the preamble to EPA's November 24, 1993, transportation conformity rule (see 58 FR 62193–62196).

[9] LMP Guidance at 4. October 6, 1995.

[10] As required by our transportation conformity adequacy process, we made a finding in a March 4, 2011 letter to the Colorado Department of Public Health and Environment (CDPHE) that the revised Colorado Springs Maintenance Plan was adequate for transportation conformity purposes. This finding was based substantially on the fact that the Colorado Springs CO maintenance area meets the LMP criteria, and is therefore not required to project future emissions. In a **Federal Register** notice dated August 2, 2011, we notified the public of our finding that the revised Colorado Springs Maintenance Plan was adequate for transportation conformity purposes (see 76 FR 46288). This adequacy determination became effective on August 17, 2011.

state law. Accordingly, the Administrator certifies that this rule will 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*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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 September 30, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See Clean Air Act section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: July 16, 2013.

Judith Wong,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52 [AMENDED]

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

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

Subpart G—Colorado

■ 2. Section 52.349 is amended by adding paragraph (o) to read as follows:

§ 52.349 Control strategy: Carbon monoxide.

* * * * *

(o) Revisions to the Colorado State Implementation Plan, revised Carbon Monoxide Maintenance Plan for Colorado Springs, as adopted by the Colorado Air Quality Control Commission on December 17, 2009 and submitted by the Governor's designee on March 31, 2010.

[FR Doc. 2013–18438 Filed 7–31–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[LLNM910000–L102000000.PH0000]

RIN 1004–AE33

Application Procedures, Execution and Filing of Forms: Correction of State Office Address for Filings and Recordings, Including Proper Offices for Recording of Mining Claims; New Mexico/Oklahoma/Texas/Kansas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations pertaining to execution and filing of forms in order to reflect the new address of the New Mexico/Oklahoma/Texas/Kansas State Office of the Bureau of Land Management (BLM). All filings and other documents relating to public lands in the States of New Mexico, Oklahoma, Texas, and Kansas must be filed at the new address of the State Office.

DATES: This rule is effective August 1, 2013.

ADDRESSES: You may send inquiries or suggestions to the Chief, Office of Communications (912), Bureau of Land Management, P.O. Box 27115, Santa Fe, NM 87502–0115.

FOR FURTHER INFORMATION CONTACT: Donna Hummel, 505–954–2018. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week, to leave a message for Ms. Hummel.

SUPPLEMENTARY INFORMATION:

I. Background

II. Procedural Matters

I. Background

This final rule reflects the administrative action of changing the street address of the New Mexico/Oklahoma/Texas/Kansas State Office of the BLM. Both the postal mailing address (P.O. Box 27115, Santa Fe, NM 87502–0115) and the phone number (505–954–2000) remain the same. This rule changes the street address for the personal filing of documents relating to public lands in New Mexico, Oklahoma, Texas, and Kansas, but makes no other changes in filing requirements. The BLM has determined that the rule has no substantive impact on the public, imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public. The Department of the Interior, therefore, for good cause finds that under 5 U.S.C. 553(b)(B) and 553(d)(3) notice and public comment procedures are unnecessary and that the rule may take effect immediately.

II. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This final rule is an administrative action to change the address for one BLM State Office. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. The rule imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public.

National Environmental Policy Act

The BLM has found that the final rule is of a procedural nature and thus is categorically excluded from environmental review under Section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), pursuant to 43 CFR 46.210(i). In addition, the final rule does not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental regulations, policies, and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. This final rule is a purely administrative regulatory action having no effect upon the public or the environment and it has been determined that the rule will not have a significant effect on the economy or small entities.

Small Business Regulatory Enforcement Fairness Act

This final rule is a purely administrative regulatory action having no effects upon the public or the economy. This is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). The rule will not have an annual effect on the economy of $100 million or more. The rule will not cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to complete with foreign-based enterprises.

Unfunded Mandate Reform Act

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995 because the rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, the final rule will not significantly or uniquely affect small governments. It does not require action by any non-Federal government entity. Therefore, the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), is not required.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights would be affected by a rule that merely reports an address change for the New Mexico/Oklahoma/Texas/Kansas State Office. The Department therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the BLM finds that the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The final rule does not have substantial direct effects on the States, on the relationship between the national governments and the States, or the distribution of power and the responsibilities among the various levels of government. This final rule does not preempt State law.

Executive Order 12988, Civil Justice Reform

This final rule is a purely administrative regulatory action having no effects upon the public and will not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with the Executive Order 13175, the BLM finds that the rule does not include policies that have tribal implications. This final rule is purely an administrative action having no effects upon the public or the environment, imposing no costs, and merely updating the BLM, New Mexico/Oklahoma/Texas/Kansas State Office address included in the Code of Federal Regulations.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that the final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This final rule is a purely administrative action and has no implications under Executive Order 13211.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Archives and records, Public lands.

Dated: July 22, 2013.

Tommy P. Beaudreau,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons discussed in the preamble, the Bureau of Land Management amends 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

■ 1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

■ 2. Amend § 1821.10 in paragraph (a) by removing the entry for New Mexico and adding in its place an entry for New Mexico/Oklahoma/Texas/Kansas to read as follows:

§ 1821.10 Where are BLM offices located?

(a) * * *

STATE OFFICES AND AREAS OF JURISDICTION

* * * * * *

New Mexico State Office, 310 Dinosaur Trail, Santa Fe, NM 87508, P.O. Box 27115, Santa Fe, New Mexico 87502–0115—Kansas, New Mexico, Oklahoma, and Texas.

* * * * * *

[FR Doc. 2013–18523 Filed 7–31–13; 8:45 am]

BILLING CODE 4310–FB–P

Proposed Rules

Federal Register
Vol. 78, No. 148
Thursday, August 1, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN 3245–AG56

Surety Bond Guarantee Program

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would conform the regulations governing the Surety Bond Guarantee Program to certain provisions of the National Defense Authorization Act for Fiscal Year 2013 (NDAA), including the provisions that increase the contract amounts for which SBA is authorized to guarantee bonds, grant SBA the authority to partially deny liability under its bond guarantee, and prohibit SBA from denying liability based on material information that was provided as part of the guarantee application in the Prior Approval Program. In addition, changes are proposed with respect to the Quick Bond Guarantee Application and Agreement, the timeframes for taking certain actions related to claims, the dollar threshold for determining when a change in the Contract or bond amounts meets certain criteria or requires certain action, and the elimination of references to the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act) that have expired.

DATES: Comments must be received on or before September 30, 2013.

ADDRESSES: You may submit comments, identified by RIN 3245–AG56, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Surety Guarantees, Suite 8600, 409 Third Street SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Office of Surety Guarantees, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Office of Surety Guarantees, 409 Third Street SW., Washington, DC 20416 or send an email to the Office of Surety Guarantees. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Barbara J. Brannan, Office of Surety Guarantees, 202–205–6545, email: *Barbara.brannan@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The U.S. Small Business Administration (SBA) guarantees bid, payment and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee gives Sureties an incentive to provide bonding for small businesses and, thereby, assists small businesses in obtaining greater access to contracting opportunities. SBA's guarantee is an agreement between a Surety and SBA that SBA will assume a certain percentage of the Surety's loss should a contractor default on the underlying contract. This proposed rule would make the following changes to the program:

A. Conform Regulations to NDAA

This proposed rule would conform the regulations governing the Surety Bond Guarantee Program to the following changes enacted by the National Defense Authorization Act for Fiscal Year 2013, Public Law 112–239, 126 Stat. 1632:

(1) Increasing the contract amount for which SBA is authorized to guarantee bonds from $2 million to $6.5 million (as adjusted for inflation in accordance with 41 U.S.C. 1908);

(2) increasing the contract amount for which SBA is authorized to guarantee bonds to $10 million with a Federal contracting officer's certification that the guarantee is necessary for the small business to obtain bonding;

(3) authorizing SBA to deny liability under its bond guarantee in whole or in part within its discretion; and

(4) prohibiting SBA from denying liability based on material information that was provided as part of the guarantee application in the Prior Approval Program.

B. Partial Subcontract

The existing regulation, 13 CFR 115.13(a)(5), states that SBA will not guarantee bonds for Principals "who are primarily brokers or who have effectively transferred control over the project to one or more subcontractors." Surety companies and agents have questioned the meaning of the phrase "effectively transferred control over the project", and SBA agrees that clearer guidance is needed to determine when the use of subcontractors becomes objectionable. SBA recognizes that many small general contractors may subcontract a high percentage of the work under a contract, and this is not necessarily objectionable. However, SBA does not want the subcontracting to result in the Principal—the Person primarily liable to complete the Contract—losing control over the project. In the most egregious cases, the Principal may be acting as a front for the subcontractor. This objectionable activity may not be discernible solely from the percentage of work subcontracted on a project. Although that is often a good indicator, SBA believes that control is also a function of who has responsibility for overseeing and managing the work performed under the Contract. Accordingly, SBA is proposing to revise the second sentence of this provision to clarify that, to be eligible for a bond guaranteed by SBA, the Principal must retain full responsibility for the oversight and management of the Contract, including any work performed by any subcontractor, and may not subcontract the full scope of the statement of work.

C. Quick Bond

The proposed rule would revise the regulations governing the Quick Bond Guarantee Application and Agreement. Under 13 CFR 115.30(d)(2)(ii)(C), the Quick Bond Application and Agreement (SBA Form 990A) may not be used for any contract that includes a warranty/maintenance period exceeding 12 months. However, the definition of Contract in 13 CFR 115.10 allows for the Contract to include a maintenance agreement of 2 years or less (for

defective workmanship or materials only), and also allows, with SBA's written approval, for longer maintenance agreements and broader coverage. SBA has reassessed the need for this exclusion, and is proposing to delete the 12 month warranty/maintenance exclusion from 13 CFR 115.30(d)(2)(ii)(C).

In addition, under 13 CFR 115.30(d)(2)(ii)(D), SBA Form 990A may not be used if the contract includes a provision for liquidated damages that exceed $250 per day. The proposed rule would increase to $1,000 per day the amount of liquidated damages subject to the exclusion. SBA received suggestions from the surety industry for this increase, which is consistent with industry standards for a streamlined application process.

By making the above changes, the Agency hopes to encourage greater use of the Quick Bond Guarantee Application and Agreement.

D. Increasing Certain Dollar Thresholds

The rule proposes to amend the following provisions to change the dollar threshold for determining when a change in the Contract or bond amounts may result in denial of liability or requires certain action. Currently, these provisions provide that the thresholds are met when the Contract or bond amount changes by 25% or $50,000, whichever is less. This formula means that the $50,000 threshold is always the lesser amount for contracts that are greater than $200,000, and the average amount of a Contract is now approximately twice this amount, or $400,000. In addition, for some of the provisions, the $50,000 threshold has not changed since 1989. Further, SBA would expect the average contract amount to increase with the recent increase in the maximum contract amount to $6.5 million. Thus, SBA is proposing to update the dollar threshold to $100,000 for the following provisions:

(1) Under 13 CFR 115.19(c)(1), SBA is relieved of liability if the Surety has committed a material breach of one or more terms or conditions of its agreement with SBA. A material breach is considered to have occurred if such breach (or such breaches in the aggregate) causes an increase in the Contract amount or in the bond amount of at least 25% or $50,000. The proposed rule would increase the dollar threshold to $100,000.

(2) Under 13 CFR 115.19(d), SBA is relieved of liability if the Surety has committed a substantial violation of SBA regulations, which is defined in part as a violation which causes an increase in the bond amount of at least 25% or $50,000 in the aggregate. The proposed rule would increase the dollar threshold to $100,000.

(3) Under 13 CFR 115.19(e)(2), SBA is relieved of liability if the Surety agrees to or acquiesces in any material alteration in the terms, conditions, or provisions of the bond. For a Prior Approval Surety, such alteration includes any increase in the bond amount of at least 25% or $50,000. The proposed rule would increase the dollar threshold to $100,000.

(4) Under 13 CFR 115.32(d), a Prior Approval Surety must notify SBA of any increases or decreases in the Contract or bond amount that aggregate 25% or $50,000 as soon as the Surety acquires knowledge of the change, and also must obtain SBA's prior written approval of an increase in the original bond amount as a result of a single change order of at least 25% or $50,000. The proposed rule would increase these dollar thresholds to $100,000.

(5) Under 13 CFR 115.67(a), a PSB Surety must pay the additional fees due from the Principal and the Surety on increases aggregating 25% of the contract or bond amount or $50,000. The proposed rule would increase the dollar threshold to $100,000.

E. Reducing Certain Timeframes

With the wide-spread use of electronic processing of claims and payments, SBA believes that the timeframes for taking the following actions could be reduced:

(1) Under 13 CFR 115.17(b), the Surety is required to pursue all possible sources of salvage and recovery, and SBA is entitled to its guaranteed percentage of all salvage and recovery. Currently, 13 CFR 115.17(b)(2) requires the Surety to reimburse or credit SBA with its share within 90 days of receipt of any recovery by the Surety; the proposed rule would reduce this timeframe to 45 days. Similarly, the proposed rule would reduce the timeframe for the Surety to pay SBA its share of any settlement amount under 13 CFR 115.36(a)(3) from 90 days to 45 days.

(2) Under 13 CFR 115.35(c)(4) and 115.70(a), SBA pays its share of the loss to both the Prior Approval Surety and the PSB Surety within 90 days of receipt of the requisite information. The proposed rule would reduce this timeframe to 45 days.

In addition, under 13 CFR 115.35(c)(1) and 115.70(a), both the Prior Approval Surety and the PSB Surety must submit to SBA a claim for reimbursement for losses paid by the Surety within 1 year from the time of each disbursement. The proposed rule would reduce this timeframe to 90 days. This reduction would facilitate SBA's ability to review and verify the claim without unnecessary delay.

II. Section-by-Section Analysis

Section 115.10. SBA is proposing to revise the definition of "Applicable Statutory Limit" to include the maximum amounts of any Contract or Order for which SBA is authorized by the NDAA to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond. The statutory limits set by the NDAA are: (1) $6.5 million (as adjusted for inflation in accordance with 41 U.S.C. 1908); and (2) $10 million if a contracting officer of a Federal agency certifies that such guarantee is necessary. In addition, SBA is proposing to include a reference in the definition to the maximum amounts of any Contract or Order when SBA guarantees the bond in connection with a procurement related to a major disaster pursuant to section 12079 of Public Law 110–246. Under this provision, which was enacted on June 18, 2008, the maximum amounts are (1) $5 million, and (2) $10 million on Federal Contracts or Orders at the request of the Head of any Federal agency involved in reconstruction efforts in response to a major disaster. The authority to guarantee bonds under this provision is subject to the availability of funds appropriated in advance specifically for the purpose of guaranteeing bonds for any Contract or Order related to a major disaster. SBA does not expect this authority to be often used, given NDAA's increase in the maximum amounts for any Contract or Order up to $6.5 million (and $10 million if a Federal contracting officer certifies that such guarantee is necessary) and the requirement that funds be appropriated in advance specifically for guaranteeing bonds related to a major disaster.

Section 115.12(b). SBA is proposing to delete the reference to the "Contract Bonds" section of the current "Manual of Rules, Procedures and Classifications of the Surety Association of America", and to replace this reference with two specific types of bonds, Commercial and Fidelity bonds, that are not eligible for an SBA guarantee.

Section 115.12(e)(3). SBA is proposing to delete this provision in its entirety, as it relates to requirements imposed by the Recovery Act that expired on September 30, 2010.

Section 115.12(e)(4). SBA is proposing to renumber this provision as (e)(3), and to revise this provision to reflect the authority to guarantee bonds on Federal Contracts or Orders greater

than $6.5 million, but not exceeding $10 million, upon a signed certification of a Federal contracting officer.

Section 115.12(e)(5). SBA is proposing to renumber this provision as (e)(4), to revise the introductory paragraph to clarify that this paragraph implements an alternative statutory authority for guaranteeing bonds for procurements related to a major disaster, and to delete paragraph (B)(iii) of this provision, as it relates to requirements imposed by the Recovery Act that expired on September 30, 2010.

Section 115.13(a)(5). SBA is proposing to revise this provision to clarify that, to be eligible for a bond guaranteed by SBA, the Principal must retain full responsibility for the oversight and management of the Contract, including any work performed by any subcontractor, and may not subcontract the full scope of the statement of work.

Section 115.17(b)(2). SBA is proposing to reduce the time frame allowed for a Surety to reimburse or credit SBA for salvage and recovery from 90 days to 45 days after the Surety receives any salvage and recovery.

Section 115.19. SBA is proposing to revise the introductory paragraph of this provision to conform it to current law by deleting the time frame reference required by the Recovery Act, which has expired, and by inserting the relevant requirements of the NDAA, including the authority of SBA to deny liability, in whole or in part, within its discretion if any of the circumstances in paragraphs (a) through (h) of this section exist, and the prohibition on denying liability based on material information that was provided as part of the guarantee application in the Prior Approval Program. SBA is also proposing to amend section 115.19(c)(1) by increasing the dollar threshold for determining whether the Surety has committed a material breach of one or more terms or conditions of its Prior Approval or PSB Agreement from $50,000 to $100,000. In addition, SBA is proposing to amend section 115.19(d) by increasing the dollar threshold for determining whether the Surety has committed a substantial violation of SBA regulations from $50,000 to $100,000, and proposing to amend section 115.19(e)(2) by increasing the dollar threshold for determining whether a Prior Approval Surety has agreed to or acquiesced in any material alternation in the terms, conditions, or provisions of the bond from $50,000 to $100,000. In each of these sections, the phrase "whichever is less" is being added after the $100,000 to clarify the meaning of this requirement.

Section 115.30(d)(2). Under the current 13 CFR 115.30(d)(2)(ii)(C), the Quick Bond Application and Agreement (SBA Form 990A) may not be used for any contract where the time for completion of the Contract or the warranty/maintenance period exceeds 12 months. SBA is proposing to delete the phrase "or the warranty/maintenance period" from this provision. In addition, under current 115.30(d)(2)(ii)(D), SBA Form 990A may not be used for any contract that includes a provision for liquidated damages that exceed $250 per day. SBA is proposing to increase the allowable liquidated damages provision from $250.00 per day to $1,000.00 per day.

Section 115.31(d). SBA is proposing to revise the final sentence of this provision by basing the example on the current statutory limit of $6.5 million.

Section 115.32(d). SBA is proposing to amend this provision by changing the dollar threshold for determining when the Prior Approval Surety must notify SBA of the change and/or obtain SBA's approval from at least $50,000 to $100,000. The phrase "whichever is less" is being added to clarify the meaning of this requirement.

Section 115.35(c)(1). SBA is proposing to reduce the time frame allowed for a Prior Approval Surety to submit a claim to SBA from one year to 90 days after the Surety pays the claim. In addition, the title of the SBA Form 994H, "Default Report, Claim for Reimbursement and Record of Administrative Action," is being changed to "Default Report, Claim for Reimbursement and Report of Recoveries," to reflect the current version of the form. This form is used to process recoveries, and adding "Recoveries" to the title of the form promotes its proper use.

Section 115.35(c)(4). SBA is proposing to reduce the time frame for SBA to pay a claim submitted by a Surety in the Prior Approval Program from 90 days to 45 days after receipt of the requisite information.

Section 115.36(a)(3). SBA is proposing to reduce the time frame allowed for a Surety to reimburse SBA its share of a settlement from 90 days to 45 days after receipt.

Section 115.67(a). SBA is proposing to increase the dollar threshold for determining when a PSB Surety must present checks for additional fees due from the Principal and the Surety from $50,000 to $100,000. The phrase "whichever is less" is being added to clarify the meaning of this requirement.

Section 115.69. This provision currently provides that SBA will reimburse a PSB Surety for the guaranteed portion of payments the Surety makes to avoid or attempt to avoid an Imminent Breach of the terms of a Contract, and that the PSB Surety does not need SBA approval to make Imminent Breach payments. It also provides that the aggregate of the payments by SBA cannot exceed 10% of the Contract amount, unless SBA finds that a greater payment is necessary and reasonable. For payments that exceed 10% of the Contract amount, SBA is proposing to revise this provision to give the PSB Surety the opportunity to request SBA to approve the amount prior to the Surety making the Imminent Breach payment. SBA will approve such payment if SBA finds that the payment is necessary and reasonable. If the Surety does not request prior SBA approval for such payments, SBA may refuse to reimburse the Surety if SBA finds that the payment that exceeds 10% of the Contract amount was not necessary and reasonable.

Section 115.70(a). SBA is proposing to reduce the time frame allowed for a PSB Surety to submit a claim to SBA from one year to 90 days after the Surety pays the claim. SBA is also proposing to reduce the time frame for SBA to pay a claim submitted by a Surety in the PSB Program from 90 days to 45 days after receipt of the requisite information.

Compliance with Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule does not constitute a significant regulatory action under Executive Order 12866.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that the rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA determines that this proposed rule has no federalism

implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this proposed rule imposes no additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. There are approximately one dozen Sureties that participate in the SBA program, and no part of this proposed rule would impose any significant additional cost or burden on them. Consequently, this rule does not meet the substantial number of small businesses criterion anticipated by the Regulatory Flexibility Act.

List of Subjects in 13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

For the reasons cited above, the Small Business Administration proposes to amend 13 CFR part 115 as follows:

PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for part 115 is revised to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b note; and Pub. L. 110–246, Sec. 12079, 122 Stat. 1651.

■ 2. In § 115.10, revise the definition of "Applicable Statutory Limit" to read as follows:

§ 115.10 Definitions.

* * * * *

Applicable Statutory Limit means the maximum amount, set forth below, of any Contract or Order for which SBA is authorized to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond:

(1) $6.5 million (as adjusted for inflation in accordance with 41 U.S.C. 1908);

(2) $10 million if a contracting officer of a Federal agency certifies, in accordance with section 115.12(e)(3), that such guarantee is necessary; or

(3) if SBA is guaranteeing the bond in connection with a procurement related to a major disaster pursuant to section 12079 of Public Law 110–246, see section 115.12(e)(4).

* * * * *

■ 3. Amend § 115.12 as follows;

■ (a) Revise paragraph (b) to read as set forth below;

■ (b) Remove paragraph (e)(3);

■ (c) Redesignate paragraph (e)(4) as paragraph (e)(3);

■ (d) In redesignated paragraph (e)(3), revise the heading and first sentence as set forth below;

(e) Redesignate paragraph (e)(5) as paragraph (e)(4) and revise the heading and introductory paragraph as set forth below;

(f) In redesignated paragraph (e)(4), remove paragraph (B)(iii) and redesignate paragraph (B)(iv) as paragraph (B)(iii).

The additions and revisions read as follows:

§ 115.12 General program policies and provisions.

* * * * *

(b) *Eligibility of bonds.* Bid Bonds and Final Bonds are eligible for an SBA guarantee if they are executed in connection with an eligible Contract, as defined in § 115.10, Definitions. Commercial and Fidelity bonds are not eligible for SBA guarantees. Ancillary Bonds may also be eligible for SBA's guarantee. A performance bond must not prohibit a Surety from performing the Contract upon default of the Principal. * * *

* * * * *

(e) * * *

(3) *Federal Contracts or Orders in excess of $6,500,000 (as adjusted for inflation in accordance with section 1908 of title 41, United States Code).* SBA is authorized to guarantee bonds on Federal Contracts or Orders greater than $6,500,000 (as adjusted for inflation in accordance with 41 U.S.C. 1908), but not exceeding $10,000,000, upon a signed certification of a Federal contracting officer. * * *

* * * * *

(4) *Alternative authority to guarantee bonds for Contracts and Orders related to a major disaster area.* Subject to the availability of funds appropriated in advance specifically for the purpose of guaranteeing bonds for any Contract or Order related to a major disaster, SBA may, as an alternative to the authority otherwise set forth in this Part, guarantee bonds on any Contract or Order under the following terms and conditions:

* * * * *

■ 4. Amend § 115.13 paragraph (a)(5) by revising the second sentence and adding a third sentence to read as follows:

§ 115.13 Eligibility of Principal

(a) * * *

(5) * * * SBA will not guarantee bonds for Principals who are primarily brokers. In addition, the Principal must retain full responsibility for the oversight and management of the Contract, including any work performed by any subcontractor, and may not subcontract the full scope of the statement of work.

* * * * *

■ 5. Amend § 115.17 paragraph (b)(2) by removing "90 days" and adding "45 days" in its place.

■ 6. Amend § 115.19 as follows:

■ (a) Revise the introductory paragraph as set forth below;

■ (b) Remove "$50,000" wherever it appears in paragraphs (c)(1), (d), and (e)(2) and add in its place "$100,000, whichever is less."

§ 115.19 Denial of liability.

In addition to equitable and legal defenses and remedies under contract law, the Act, and the regulations in this part, SBA is relieved of liability in whole or in part within its discretion if any of the circumstances in paragraphs (a) through (h) of this section exist, except that SBA shall not deny liability on Prior Approval bonds based solely upon material information that was provided as part of the guarantee application.

* * * * *

■ 7. Amend § 115.30 as follows:

■ (a) In paragraph (d)(2)(ii)(C), remove the phrase "or the warranty/maintenance period";

■ (b) In paragraph (d)(2)(ii)(D), remove "$250" and add "$1,000" in its place.

■ 8. Amend § 115.31 by revising the final sentence of paragraph (d) to read as follows:

§ 115.31 Guarantee Percentage.

* * * * *

(d) * * * For example, if a contract amount increases to $6,800,000, SBA's share of the loss under an 80% guarantee is limited to 76.5% [6,500,000/6,800,000 = 95.6% × 80% = 76.5%].

* * * * *

■ 9. Amend § 115.32 paragraph (d) by removing "$50,000" and adding "$100,000, whichever is less" in its place.

■ 10. Amend § 115.35 as follows:
■ (a) Revise paragraph (c)(1) as set forth below;
■ (b) In paragraph (c)(4), remove "90 days" and add "45 days" in its place.

§ 115.35 Claims for reimbursement of Losses.

* * * * *

(c) *Claim reimbursement requests.* (1) Claims for reimbursement for Losses which the Surety has paid must be submitted (together with a copy of the bond, the bonded Contract, and any indemnity agreements) with the initial claim to OSG on a "Default Report, Claim for Reimbursement and Report of Recoveries" (SBA Form 994H), within 90 days from the time of each disbursement. Claims submitted after 90 days must be accompanied by substantiation satisfactory to SBA. The date of the claim for reimbursement is the date of receipt of the claim by SBA, or such later date as additional information requested by SBA is received.

* * * * *

■ 11. Amend § 115.36 paragraph (a)(3) by removing "90 days" and adding "45 days" in its place.
■ 12. Amend § 115.67 paragraph (a) by removing "$50,000" and adding "$100,000, whichever is less" in its place.
■ 13. Revise § 115.69 to read as follows:

§ 115.69 Imminent Breach.

(a) *No Prior Approval Requirement.* SBA will reimburse a PSB Surety for the guaranteed portion of payments the Surety makes to avoid or attempt to avoid an Imminent Breach of the terms of a Contract covered by an SBA guaranteed bond. The aggregate of the payments by SBA under this section cannot exceed 10% of the Contract amount, unless the Administrator finds that a greater payment (not to exceed the guaranteed portion of the bond penalty) is necessary and reasonable. The PSB Surety does not need to obtain prior SBA approval to make Imminent Breach payments, except that the PSB Surety may request SBA to approve payments that exceed 10% of the Contract amount prior to the Surety making the payment. In no event will SBA make any duplicate payment under any provision of these regulations in this part.

(b) *Recordkeeping Requirement.* The PSB Surety must keep records of payments made to avoid Imminent Breach.

■ 14. Amend § 115.70 paragraph (a) as follows:
■ (a) Remove the term "1 year" in the first sentence and add the term "90 days" in its place; and
■ (b) Remove the term "90 days" in the third sentence and add "45 days" in its place.

Dated: July 26, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–18530 Filed 7–31–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0616; Directorate Identifier 2007–NM–353–AD]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all The Boeing Company Model 767 airplanes. That NPRM proposed to require repetitive operational tests of the engine fuel suction feed of the fuel system, and other related testing if necessary. That NPRM was prompted by reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. This action revises that NPRM by proposing to revise the maintenance program to incorporate a revision to the Airworthiness Limitations Section of the maintenance planning data (MPD) document, and to remove airplanes from the applicability. We are proposing this supplemental NPRM to detect and correct failure of the engine fuel suction feed capability of the fuel system, which could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane. Since these actions impose an additional burden over that proposed in the previous NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by September 16, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5280; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, Washington 98057–3352; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0616; Directorate Identifier 2007–NM–353–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 issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to all The Boeing Company Model 767 airplanes. That NPRM published in the **Federal Register** on June 6, 2008 (73 FR 32252). That NPRM proposed to require repetitive operational tests of the engine fuel suction feed of the fuel system, and other related testing if necessary, according to a method approved by the FAA.

Actions Since Previous NPRM (73 FR 32252, June 6, 2008) Was Issued

Since we issued the previous NPRM (73 FR 32252, June 6, 2008), we have received comments from operators indicating a high level of difficulty performing the actions in the previous NPRM during maintenance operations. It is standard practice for operators to revise maintenance tasks to incorporate actions into their individual maintenance manuals as part of the maintenance program. Based on these comments, and a review of the previous NPRM, we determined a revision to the procedures was necessary. In conjunction with Boeing we developed an airworthiness limitation for the engine fuel suction feed system to address this issue.

Relevant Service Information

We reviewed Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision October 2012 and Revision January 2013, of the Boeing 767 Maintenance Planning Data (MPD) Document. Among other things, Section 9 describes AWL No. 28–AWL–101, Engine Fuel Suction Feed Operational Test, of Section E., AWLS—Fuel Systems, which provides procedures for performing repetitive operational tests of the engine fuel suction feed of the fuel system.

Comments

We gave the public the opportunity to comment on the previous NPRM (73 FR 32252, June 6, 2008). The following presents the comments received on the previous NPRM and the FAA's response to each comment.

Request To Withdraw the Previous NPRM (73 FR 32252, June 6, 2008)

ABX Air asked that we withdraw the previous NPRM (73 FR 32252, June 6, 2008). ABX stated that there have been no incidents recorded in the NTSB or FAA databases for a Model 767 flameout due to the loss of fuel system suction feed capability. ABX added that it does not believe the subject unsafe condition is a critical safety concern.

We do not agree with the request to withdraw the previous NPRM (73 FR 32252, June 6, 2008), because, together with the manufacturer, we have evaluated this issue and determined it to be an important safety concern. Although the fuel system on Model 767 airplanes differs from the Model 737 with respect to the engine fuel feed system design, service data of transport category airplanes indicates that multi-engine flameouts have generally resulted from a common cause, such as fuel mismanagement, crew action that inadvertently shut off the fuel supply to the engines, exposure to common environmental conditions, or engine deterioration on all engines of the same type. Successful in-flight restart of the engines is dependent on adequate fuel being supplied to the engines, solely through engine fuel suction feed. Deterioration of the fuel plumbing system can lead to line (vacuum) losses, reducing the engine fuel suction feed capability; therefore, directed maintenance is necessary to ensure this system is functioning correctly in order to maintain continued safe flight of the airplane. We have not changed the supplemental NPRM in this regard.

Request To Incorporate CMR Task Into the Maintenance Program Instead of Issuing an NPRM

ABX, Japan Airlines International (JAL), and Qantas Airways Ltd. asked that a CMR task be developed for incorporation into the maintenance program instead of issuing an NPRM (73 FR 32252, June 6, 2008). The commenters stated that the maintenance program is already in use by operators and the procedures are understood and followed. Qantas added that the task associated with this action will generate an administrative burden for operators, with no benefit.

We do not agree with the requests to develop a CMR task. CMRs are developed by the Certification Maintenance Coordination Committee (CMCC) during the type certification process. The CMCC is made up of manufacturer representatives (typically maintenance, design, and safety engineering personnel), operator representatives designated by the Industry Steering Committee chairperson, FAA Aircraft Certification Office specialists, and the Maintenance Review Board (MRB) chairperson. CMRs developed during this process become a part of the certification basis of the airplane upon issuance of the type certificate. We do not have a process for convening the CMCC outside of the type certification process; based on this, the CMR is not an option for replacing this AD. Therefore, if the airworthiness limitation items (ALIs) were not in the maintenance program at the time of initial certification, an AD is required to make the ALI task a required action. We have not changed the supplemental NPRM in this regard.

Requests To Allow the Use of Later Revisions of the Maintenance Documents

Air New Zealand (ANZ), ABX, Continental Airlines (CAL), and Boeing asked that we allow using later revisions of the referenced maintenance documents, because those documents could be revised over time and would require frequent requests for alternative methods of compliance (AMOCs).

We do not agree with the request. Allowing later revisions of service documents in an AD is not allowed by the Office of the Federal Register regulations for approving materials incorporated by reference. We have made no change to the supplemental NPRM in this regard.

Request To Clarify Reason for the Unsafe Condition

Boeing asked that we clarify the reason for the unsafe condition identified in the previous NPRM (73 FR 32252, June 6, 2008). Boeing asked that the AD include the results from a report of in-service occurrences of loss of fuel system suction feed capability on one engine, due to two in-service engine flameout events on a Model 737–400 airplane while operating on suction feed with undetected air leak failures. Boeing stated that there are no known reports of any engine flameout related to events on Model 767 airplanes. Boeing acknowledged that undetected air leaks could exist and that this maintenance procedure is a proactive measure to ensure engine flameout will not occur during suction feed operation.

We agree to clarify the unsafe condition. We have revised the Summary section and paragraph (e) of this supplemental NPRM accordingly.

Requests for Changes To Certain Maintenance Document References

JAL, ANZ, and Boeing asked that we remove the airplane maintenance manual (AMM) reference to Section 28–22–00 specified in paragraph (f) of the previous NPRM (73 FR 32252, June 6, 2008). The commenters stated that the AMM is covered in Boeing 767 Task Card 28–020–02, and noted that having fewer references included lessens the chance of errors.

We acknowledge and agree with the commenters concerns regarding the maintenance documents referenced in the previous NPRM (73 FR 32253, June 6, 2008). However, these maintenance documents are not FAA-approved and we do not have the publication controls associated with AD-related service documents. We do not agree with the requested changes because we have decided to mandate an FAA-approved document which should eliminate these concerns. We changed paragraph (f) of the previous NPRM (paragraph (g) in this supplemental NPRM) to require revising the maintenance program to incorporate new procedures into the maintenance documents.

Requests To Extend Repetitive Test Intervals

CAL and Air Canada asked that we extend the repetitive operational test interval specified in paragraph (f) of the previous NPRM (73 FR 32252, June 6, 2008).

CAL stated that a re-evaluation of the proposed repetitive interval limit after doing the initial inspection should be done, since CAL's service history has revealed no reported engine flameout events or related operational discrepancies. CAL asked that the repetitive interval be extended to a normal maintenance 2C-check or within 12,000 flight hours, whichever occurs first.

Air Canada asked that the repetitive interval be extended to a calendar time of 24 months. Air Canada does not understand the logic behind a repetitive frequency of 7,500 flight hours.

We do not agree with the requests that the repetitive intervals be extended. In developing an appropriate compliance time for the actions specified in paragraph (g) of this supplemental NPRM (paragraph (f) of the previous NPRM (73 FR 32252, June 6, 2008)), we considered the safety implications and normal maintenance schedules for the timely accomplishment of the specified actions. We have determined that the proposed compliance time will ensure an acceptable level of safety and allow the actions to be done during scheduled maintenance intervals for most affected operators. However, affected operators may request an AMOC to request an extension of the repetitive operational test interval under the provisions of paragraph (h) of this supplemental NPRM by submitting data substantiating that the change would provide an acceptable level of safety. We have not changed the supplemental NPRM in this regard.

Request To Clarify That Engine Fuel Suction Feed Test Is Allowed in Lieu of the Operational Test

JAL asked that we clarify that the engine fuel suction feed test procedure in the Boeing 767 Maintenance Planning Data (MPD) document is an option for performing the operational test in the previous NPRM (73 FR 32252, June 6, 2008). JAL asked that we consider adding the pressure leak check of the fuel lines and fittings procedure as an alternative procedure to performing the operational test specified in Section 28–22–00 of the Boeing 767 Aircraft Maintenance Manual (AMM).

We agree to provide clarification. The pressure leak check is not equivalent to the operational test (Task 28–22–00–710–802) since certain fuel line seal details may function normally under positive pressure, but fail to hold in-line vacuum when under fuel suction feed. Additionally, a fuel suction feed test would be required after reconnecting the fuel line to the manifold to verify final system integrity. Therefore, we have not changed the supplemental NPRM in this regard.

Request To Include Warning Information

CAL suggested that the Boeing service manuals include a critical design configuration control limitation (CDCCL) warning identification statement to alert maintenance personnel of the importance of regulatory compliance, as well as the configuration control requirement. CAL did not include any justification for this request.

We agree that a CDCCL warning statement would serve as direct communication to maintenance personnel that there is an AD associated with certain maintenance actions. New service information has been added to this supplemental NPRM since issuance of the previous NPRM (73 FR 32252, June 6, 2008), which should eliminate the commenter's concern. The airplane maintenance manual will be a "referred to" document within the AWL task, which gives operators flexibility in developing maintenance programs based on equivalent procedures. We have made no change to the supplemental NPRM in this regard.

Request To Include Corrective Action

CAL asked that the related testing language specified in paragraph (f) of the previous NPRM (73 FR 32252, June 6, 2008) be changed. CAL stated that the language should specify correcting discrepancies before further flight if the engine fails the operational test. CAL added that the corrective actions should be done in accordance with the procedures in the "Right (Left) Engine Fails the Suction Feed Test" procedure in the Boeing 767 Fault Isolation Manual (FIM) 28–22–00/101.

We acknowledge and agree with the commenters concern. However, as stated previously, we are issuing this supplemental NPRM to revise the maintenance program to incorporate a revision to the Airworthiness Limitations Section of the MPD document to include the "Engine Fuel Suction Feed Operational Test" procedure. Therefore, the language identified by the commenter has been removed from this supplemental NPRM. We have made no change to the supplemental NPRM in this regard.

FAA's Determination

We are proposing this supplemental NPRM 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. Certain changes described above expand the scope of the previous NPRM (73 FR 32252, June 6, 2008). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM revises the previous NPRM (73 FR 32252, June 6, 2008) by proposing to remove the actions in paragraph (f) of the previous NPRM and replace with a revision to the maintenance program to incorporate procedures for the Engine Fuel Suction Feed Operational Test Airworthiness Limitations Section of the MPD document, and to remove airplanes from the applicability.

This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and/or CDCCLs. Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this

AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i)(1) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Costs of Compliance

We estimate that this proposed AD affects 406 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise airworthiness limitations	1 work-hour × $85 per hour = $85	$0	$85	$34,510

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2008–0616; Directorate Identifier 2007–NM–353–AD.

(a) Comments Due Date

We must receive comments by September 16, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, that have received a certificate of airworthiness or foreign export before November 2, 2012.

Note 1 to paragraph (c) of this AD: November 2, 2012, is the original publication date of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision October 2012, of the Boeing 767 Maintenance Planning Data (MPD) Document, or Revision January 2013 of the Boeing 767 Maintenance Planning Data (MPD) Document; including Airworthiness Limitations (AWLS)—Fuel Systems of Airworthiness Limitation (AWL) No. 28–AWL–101, Engine Fuel Suction Feed Operational Test.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2800, Aircraft Fuel System.

(e) Unsafe Condition

This AD results from reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. We are issuing this AD to detect and correct failure of the engine fuel suction feed capability of the fuel system, which could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

(f) Compliance

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

(g) Maintenance Program Revision

Within 90 days after the effective date of this AD: Revise the maintenance program to incorporate AWL No. 28–AWL–101, Engine Fuel Suction Feed Operational Test, of Section E., AWLS—Fuel Systems of Section 9, AWLs and CMRs, D622T001–9, Revision October 2012 or Revision January 2013, of the Boeing 767 MPD Document.

(h) No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., tests), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager

of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, Washington 98057–3352; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5280; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 21, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–18511 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0668; Directorate Identifier 2013–NM–017–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A300 B4–600 and A300 B4–600R series airplanes. This proposed AD was prompted by reports of cracks found in the bottom wing skin stringers at rib 14 during full-scale fatigue testing and in service. This proposed AD would require modifying the profile of stringer run-outs at rib 14 of both wings, including a high frequency eddy current inspection of the fastener holes for defects and repair if necessary. We are proposing this AD to prevent cracking in the bottom wing skin stringers, which could result in reduced structural integrity of the wings.

DATES: We must receive comments on this proposed AD by September 16, 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 Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2013–0668; Directorate Identifier 2013–NM–017–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0008R1, dated January 22, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During full-scale fatigue testing, cracks were detected in the bottom wing skin stringers at rib 14. In addition, A300 aeroplane operators have also reported finding cracks in the same area.
>
> This condition, if not detected and corrected, could impair the structural integrity of the wings.
>
> Additional analysis results showed that the improved design of the stringer run-out is necessary for aeroplanes operating beyond the ESG 1 [extended service goal 1: 42,500 flight cycles].
>
> For the reasons described above, this [EASA] AD requires the removal of the stringer end run-out plate at stringer 19 on the bottom wing skin and the re-profiling modification of the stringers 10, 11, 12, 17 and 19.
>
> * * * * *
>
> The modification also includes doing a high frequency eddy current inspection of the fastener holes for defects and repair if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A300–57–6046, Revision 01, dated April 18, 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.

Differences Between This Proposed AD and the MCAI or Service Information

Although Airbus Mandatory Service Bulletin A300–57–6046, Revision 01, dated April 18, 2011, specifies to contact the manufacturer for instructions to repair certain conditions, this proposed AD would require repairing those conditions using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent).

Costs of Compliance

We estimate that this proposed AD affects 29 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification of the profile of stringer run-outs.	60 work-hours × $85 per hour = $5,100.	None	$5,100	$147,900

We have received no definitive data that would enable us to provide cost estimates for any on-condition actions specified in this proposed AD. We have no way of determining the number of aircraft that might need this repair.

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 adding the following new AD:

Airbus: Docket No. FAA–2013–0668; Directorate Identifier 2013–NM–017–AD.

(a) Comments Due Date

We must receive comments by September 16, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; and Airbus Model A300 B4–605R and B4–622R airplanes; certificated in any category, except airplanes on which Airbus Modification 10324 or 10325 has been embodied in production.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracks found in the bottom wing skin stringers at rib 14 during full-scale fatigue testing and in service. We are issuing this AD to prevent cracking in the bottom wing skin stringers, which could result in reduced structural integrity of the wings.

(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) Modification of Rib 14

Before the accumulation of 42,500 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, modify the profile of stringer run-outs at rib 14 of both wings, including a high frequency eddy current inspection of the fastener holes for defects and all applicable repairs, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–6046, Revision 01, dated April 18, 2011, except as required by paragraph (h) of this AD.

(h) Exception to the Service Information

Where Airbus Mandatory Service Bulletin A300–57–6046, Revision 01, dated April 18, 2011, specifies to report defects to Airbus, this AD requires contacting the Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent) for repair instructions and doing those repairs before further flight.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A300–57–6046, dated January 18, 1994 (which is not incorporated by reference).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2013–0008R1, dated January 22, 2013, for related information.

(2) For service information identified in this AD that is not incorporated by reference, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 21, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–18556 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0666; Directorate Identifier 2013–NM–060–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 727 airplanes. This proposed AD was prompted by reports indicating that a standard fuel tank access door was located where an impact-resistant access door was required, and stencils were missing from some impact-resistant access doors. This proposed AD would require an inspection of the left- and right-hand wing fuel tank access doors to determine that impact-resistant access doors are installed in the correct locations, and to replace any door with an impact-resistant access door if necessary. This proposed AD also would require an inspection for stencils and index markers on impact-resistant access doors, and application of new stencils or index markers if necessary. This proposed AD would also require revising the maintenance program to incorporate changes to the airworthiness limitations section. We are proposing this AD to prevent foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes), consequently leading to a fuel-fed fire.

DATES: We must receive comments on this proposed AD by September 16, 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 Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may 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 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: Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@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–2013–0666; Directorate Identifier 2013–NM–060–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received reports of a standard fuel tank access door located where an impact-resistant access door is required, and stencils missing from some spare impact-resistant access doors. This condition, if not corrected, could result in foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes), consequently leading to a fuel-fed fire.

Relevant Service Information

We reviewed Boeing Service Bulletin 727–28–0134, dated January 12, 2012; and Critical Design Configuration Control Limitation (CDCCL) Task 57–AWL–01, "Impact-Resistant Fuel Tank Access Door," of Section 1, Airworthiness Limitations (AWLs) of Boeing 727–100/200 Airworthiness Limitations (AWLs) Document D6–

8766–AWL, Revision September 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0666.

FAA's Determination

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

Proposed AD Requirements

The FAA issued section 121.316 of the Federal Aviation Regulations (14 CFR 121.316) requiring that each turbine powered transport category airplane meet the requirements of section 25.963(e) of the Federal Aviation Regulations (14 CFR 25.963(e)). Section 25.963(e) outlines the certification requirements for fuel tank access covers on turbine powered transport category airplanes.

This proposed AD would require inspecting fuel tank access doors to determine that impact-resistant access doors are installed in the correct locations and replacing any door with an impact-resistant access door if necessary; inspecting application of stencils and index markers of impact-resistant access doors and application of new stencils or index markers if necessary; and revising the maintenance program.

This proposed AD requires revisions to certain operator maintenance documents to include a new CDCCL. Compliance with CDCCLs is required by section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator might not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to the procedures specified in paragraph (j) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (j) of this AD.

Costs of Compliance

We estimate that this proposed AD affects 139 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 3 work-hours × $85 per hour = $255	$0	$255	$35,445
Maintenance Program Revision	1 work-hour × $85 per hour = $85	0	85	11,815

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement per door	3 work-hours × $85 per hour = $255	$8,000	$8,255
Stencil and index marker	Up to 2 work-hours × $85 per hour = $170	0	170

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Is not a "significant rule" under the DOT Regulatory Policies and

Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0666; Directorate Identifier 2013–NM–060–AD.

(a) Comments Due Date

We must receive comments by September 16, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes; certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by reports indicating that a standard fuel tank access door was located where an impact-resistant access door was required, and stencils were missing from some impact-resistant access doors. We are issuing this AD to prevent foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes), consequently leading to a fuel-fed fire.

(f) Compliance

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

(g) Inspections

Within 72 months after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–28–0134, dated January 12, 2012.

(1) Do either a general visual inspection or ultrasonic non-destructive test of the left- and right-hand wing fuel tank access doors to determine whether impact-resistant access doors are installed in the correct locations. If any standard access door is found, before further flight, replace with an impact-resistant access door, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–28–0134, dated January 12, 2012.

(2) Do a general visual inspection of the left- and right-hand wing fuel tank impact-resistant access doors to verify stencils and index markers are applied. If a stencil or index marker is missing, before further flight, apply stencil or index marker, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–28–0134, dated January 12, 2012.

(h) Maintenance Program Revision

Within 60 days after the effective date of this AD, revise the maintenance program to incorporate Critical Design Configuration Control Limitation (CDCCL) Task 57–AWL–01, "Impact-Resistant Fuel Tank Access Door," of Section 1, Airworthiness Limitations (AWLs) of Boeing 727–100/200 Airworthiness Limitations (AWLs) Document D6–8766–AWL, Revision September 2012.

(i) No Alternative CDCCLs

After accomplishing the revision required by paragraph (h) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

(1) For more information about this AD, contact Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may 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 July 21, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–18507 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0667; Directorate Identifier 2013–NM–062–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–400 airplanes. This proposed AD was prompted by reports of fasteners missing on an airplane undergoing a passenger-to-freighter conversion. This proposed AD would require doing a general visual inspection of the station 1920 splice clip for correct fastener installation, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct missing or incorrect fasteners, which can lead to cracking and loss of load carrying capacity, resulting in a possible decompression event.

DATES: We must receive comments on this proposed AD by September 16, 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 Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may 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 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: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.ashforth@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–2013–0667; Directorate Identifier 2013–NM–062–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 have received a report of an airplane, while undergoing a passenger-to-freighter conversion, missing fasteners on the station 1920 splice clip. The possibility of this discrepancy exists on airplanes already delivered. This condition, if not corrected, could result in cracking and loss of load carrying capacity, resulting in a possible decompression event.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–53A2844, Revision 1, dated July 30, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0667.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Information."

The phrase "related investigative actions" might be used in this proposed AD. "Related investigative actions" are follow-on actions that: (1) Are related to the primary actions, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase "corrective actions" might be used in this proposed AD. "Corrective actions" are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the Proposed AD and the Service Information

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions in accordance with a method approved by the FAA.

Costs of Compliance

We estimate that this proposed AD affects 3 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for correct fastener installation	2 work-hours × $85 per hour = $170	$0	$170	$510

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspections for cracking	3 work-hours × $85 per hour = $255	$0	$255
Fastener installation	2 work-hours × $85 per hour = $170	0	170
Repair	2 work-hours × $85 per hour = $170	0	170

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0667; Directorate Identifier 2013–NM–062–AD.

(a) Comments Due Date

We must receive comments by September 16, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2844, Revision 1, dated July 30, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of fasteners missing on an airplane undergoing a passenger-to-freighter conversion. We are issuing this AD to detect and correct missing or incorrect fasteners, which can lead to cracking and loss of load carrying capacity, resulting in a possible decompression event.

(f) Compliance

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

(g) Inspection

Except as required by paragraph (h)(1) of this AD, at the times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2844, Revision 1, dated July 30, 2012: Do a general visual inspection for correct installation of the station 1920 splice clip common to the auxiliary sill web and the tie clip, and do all applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2844, Revision 1, dated July 30, 2012, except as required by paragraph (h)(2) of this AD. Do all applicable related investigative and corrective actions before further flight.

(h) Exceptions to the Service Information

(1) Where Boeing Alert Service Bulletin 747–53A2844, Revision 1, dated July 30, 2012, specifies a compliance time "after the original issue date of the service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2844, Revision 1, dated July 30, 2012, specifies contacting Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2844, dated September 15, 2011, except the detailed inspection for cracking of the auxiliary sill outer chord tee and attached parts and all applicable related investigative and corrective actions must be done in accordance with Boeing Alert Service Bulletin 747–53A2844, Revision 1, dated July 30, 2012, at the times specified in paragraph (g) of this AD. Boeing Alert Service Bulletin 747–53A2844, dated September 15, 2011, is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.ashforth@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may 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 July 21, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–18564 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0665; Directorate Identifier 2012–NM–082–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330–300 series airplanes and Model A340–200 and –300 series airplanes. This proposed AD was prompted by reports of corrosion found on certain trimmable horizontal stabilizer actuators (THSA), affecting the ballscrew lower splines between the tie bar and the screw-jack. This proposed AD would require repetitive detailed inspections for corrosion of certain THSAs, ballscrew integrity tests if necessary; and replacing any affected THSA with a serviceable or new and improved THSA, if necessary. We are proposing this AD to detect and correct corrosion of the THSAs, which could lead, in the case of ballscrew rupture, to the loss of transmission of THSA torque loads from the ballscrew to the tie-bar, prompting THSA blowback, and possibly resulting in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by September 16, 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 Airbus service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* For Goodrich service information identified in this proposed AD, contact Goodrich Corporation, Actuation Systems, Product Support Department 13, Avenue de L'Eguillette—Saint-Ouen L'Aumone Boite Postale 7186 95056, Cergy Pontoise Cedex, France; fax: 33–1–34326310. 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2013–0665; Directorate Identifier 2012–NM–082–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0061R1, dated November 30, 2012 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Some Trimmable Horizontal Stabilizer Actuators (THSA), Part Number (P/N) 47147–500, have been found with corrosion, affecting the ballscrew lower splines between the tie bar and the screw-jack.
>
> The results of the technical investigations have identified that the corrosion was caused by a combination of:
>
> —Contact/friction between the tie bar and the inner surface of the ballscrew leading to the removal of Molykote (corrosion protection) at the level of the tie bar splines,
>
> —Humidity ingress initiating surface oxidation starting from areas where Molykote is removed, and
>
> —Water retention in THSA lower part leading to corrosion spread out and to the creation of a brown deposit (iron oxide).
>
> The results of the technical investigations have also concluded that THSA P/N 47147–500 and P/N 47147–700 ballscrews might be affected by this corrosion issue.
>
> THSA P/N 47147–400 ballscrews might be affected as well, but should no longer be in service, and modified into P/N 47147–500, as required by EASA AD 2010–0192 and EASA AD 2010–0193 [and as required by FAA AD 2005–07–04, Amendment 39–14028 (70 FR 16104, March 30, 2005)].
>
> This condition, if not detected and corrected, may lead, in case of ballscrew rupture, to loss of transmission of THSA torque loads from the ballscrew to the tie-bar, prompting THSA blowback, possibly resulting in loss of control of the aeroplane.
>
> To correct this potential unsafe condition, EASA issued AD 2012–0061 to require repetitive [detailed] visual inspections of the ballscrew lower splines of THSA having P/N 47147–500 or P/N 47147–700 to detect corrosion and, depending on findings [ballscrew integrity tests], the accomplishment of applicable corrective actions [replacing the affected THSA with a serviceable or improved THSA].
>
> Since that [EASA] AD [2012–0061] was issued, Airbus published new Service Bulletin (SB) A330–27–3194 or Airbus SB A340–27–4187 (Airbus modification 202802), which allow installation in service of an improved THSA P/N 47172–530.
>
> For the reasons described above, this [EASA] AD [2012–0061R1] is revised to specify that installation of THSA P/N 47172–

530 is an alternative (optional) terminating action to the repetitive inspections required by this AD.

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

Relevant Service Information

Airbus has issued the following service information.

- Airbus Mandatory Service Bulletin A330–27–3179, including Appendix 01, dated February 14, 2012.
- Airbus Service Bulletin A330–27–3182, dated February 14, 2012.
- Airbus Service Bulletin A330–27–3194, dated October 8, 2012.
- Airbus Mandatory Service Bulletin A340–27–4175, including Appendix 01, dated February 14, 2012.
- Airbus Service Bulletin A340–27–4178, dated February 14, 2012.
- Airbus Service Bulletin A340–27–4187, dated October 8, 2012.

Goodrich Actuation Systems has issued Service Bulletin 47147–27–18, dated February 17, 2012.

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 30 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $15,300, or $510 per product.

In addition, we estimate that any necessary follow-on actions would take about 13 work-hours and require parts costing up to $722,556 for a cost of up to $723,661 per product. We have no way of determining the number of products that may need these actions.

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 adding the following new AD:

Airbus: Docket No. FAA–2013–0665; Directorate Identifier 2012–NM–082–AD.

(a) Comments Due Date

We must receive comments by September 16, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of corrosion found on certain trimmable horizontal stabilizer actuators (THSA), affecting the ballscrew lower splines between the tie bar and the screw-jack. We are issuing this AD to detect and correct corrosion of the THSAs, which could lead, in the case of ballscrew rupture, to loss of transmission of THSA torque loads from the ballscrew to the tie-bar, prompting THSA blowback, and possibly resulting in loss of control 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) Repetitive Inspections

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, except as required by paragraphs (h)(1) and (h)(2) of this AD: Do a detailed inspection of the gaps between the screw shaft and tie rod teeth of any THSA having part numbers (P/N) 47147–500 and 47147–700, to determine if the corrosion condition is Type I, Type II, or Type III, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3179 (for Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes); or A340–27–4175 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes); both dated February 14, 2012; and the Accomplishment Instructions and flowchart following the Accomplishment Instructions of Goodrich Actuation Systems Service Bulletin 47147–27–18, dated February 17, 2012. Repeat the inspection thereafter at intervals not to exceed 24 months until the

modification specified in paragraph (k) is done.

(1) For any THSA, which, as of the effective date of this AD, has accumulated less than 156 months since first flight on an airplane as THSA P/N 47147–400 or since its first flight after modification has been done as specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3052 or A340–27–4059: Do the inspection before the accumulation of 156 months but not before the accumulation of 132 months since first flight on an airplane as THSA P/N 47147–400 or since the THSA first flight after its modification was done as specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3052 or A340–27–4059; or within 3 months after the effective date of this AD; whichever occurs later.

(2) For any THSA, which, as of the effective date of this AD, has accumulated 156 months or more since first flight on an airplane as THSA P/N 47147–400 or since the THSA first flight after modification has been done as specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3052 or A340–27–4059: Do the inspection within 3 months after the effective date of this AD.

(h) Compliance Time Exceptions

(1) Some THSAs having P/N 47147–500 (and further derivative with P/N 47147–700) were originally THSA P/N 47147–400 and were subsequently modified in service. In this case, the time accumulated by any THSA must be calculated from the first installation on airplanes as THSA P/N 47147–400.

(2) Some THSAs having P/N 47147–500 (and further derivative with P/N 47147–700) were originally THSA P/N 47147–200, –210, –213, –300, –303, or –350 and were subsequently modified in service as specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3052 or A340–27–4059. In this case, the time accumulated by any THSA must be calculated from the first flight on an airplane after the THSA has been modified as specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3052 or A340–27–4059.

(i) Ballscrew Integrity Test and Corrective Actions

If, during any inspection required by paragraph (g) of this AD, it is determined that a THSA has Type II or Type III corrosion, before further flight: Do a ballscrew integrity test, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3179 (for Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes); or A340–27–4175 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes); both dated February 14, 2012.

(1) For THSAs having Type II or Type III corrosion, and the results of the ballscrew integrity test were not correct, as specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3179 (for Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes); or A340–27–4175 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes); both dated February 14, 2012: Before further flight, replace the affected THSA with a new or serviceable THSA, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3179 (for Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes); or A340–27–4175 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes); both dated February 14, 2012.

(2) For THSAs having Type III corrosion, and the results of the ballscrew integrity test are correct, as specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3179 (for Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes); or A340–27–4175 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes); both dated February 14, 2012: Within 10 days after the most recent inspection, replace the THSA with a new or serviceable THSA, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3179 (for Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes); or A340–27–4175 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes); both dated February 14, 2012.

(3) For THSAs having Type II corrosion and the results of the ballscrew integrity test are correct: Within 24 months or 4,400 flight cycles after the most recent inspection, whichever occurs first, replace the THSA with a new or serviceable THSA, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3179 (for Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes); or A340–27–4175 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes); both dated February 14, 2012.

(j) Replacement of a THSA Is Not Terminating Action

Replacement of a THSA with a THSA having P/N 47147–500 or 47147–700 does not constitute a terminating action for the repetitive inspections required by paragraph (g) of this AD.

(k) Optional Terminating Modification

(1) Replacing any THSA having P/N 47147–500 with a new improved THSA having P/N 47172–300 (Airbus modification 200238), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3182 (for Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes); or A340–27–4178 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes); both dated February 14, 2012; terminates the repetitive inspections required by paragraph (g) of this AD.

(2) Replacing any THSA having P/N 47147–700 with a new improved THSA having P/N 47172–530 (Airbus modification 202802), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3194 (for Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes); or A340–27–4187 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes); both dated October 8, 2012; terminates the repetitive inspections required by paragraph (g) of this AD.

(l) Parts Installation Limitation

As of the effective date of this AD, no person may install a THSA, P/N 47147–500 or P/N 47147–700, on any airplane, unless the THSA is classified as Type I (no corrosion), in accordance with the criteria defined in Goodrich Actuation Systems Service Bulletin 47147–27–18, dated February 17, 2012; and thereafter inspected in accordance with the requirements of paragraph (g) of this AD and any applicable actions required by paragraph (i) of this AD are accomplished.

(m) Reporting

Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) of this AD to Airbus, at the applicable time specified in paragraph (m)(1) or (m)(2) of this AD, using Appendix 01 of Airbus Mandatory Service Bulletins A330–27–3179 (for Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes); or A340–27–4175 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes); both dated February 14, 2012.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(o) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2012–0061R1, dated November 30, 2012; and the service information identified in paragraphs (o)(1)(i) through (o)(1)(vii) of this AD; for related information.

(i) Airbus Mandatory Service Bulletin A330–27–3179, dated February 14, 2012.

(ii) Airbus Service Bulletin A330–27–3182, dated February 14, 2012.

(iii) Airbus Service Bulletin A330–27–3194, dated October 8, 2012.

(iv) Airbus Mandatory Service Bulletin A340–27–4175, dated February 14, 2012.

(v) Airbus Service Bulletin A340–27–4178, dated February 14, 2012.

(vi) Airbus Service Bulletin A340–27–4187, dated October 8, 2012.

(vii) Goodrich Actuation Systems Service Bulletin 47147–27–18, dated February 17, 2012.

(2) For Airbus service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* For Goodrich Actuation Systems service information identified in this AD, contact Goodrich Corporation, Actuation Systems, Product Support Department 13, Avenue de L'Eguillette—Saint-Ouen L'Aumone Boite Postale 7186 95056, Cergy Pontoise Cedex, France; fax: 33–1–3432631C. 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 July 21, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–18566 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 636

[Docket No. FHWA–2013–0043]

RIN 2125–AF58

Design-Build Contracting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This NPRM provides interested parties with the opportunity to comment on proposed changes to the FHWA requirements related to the use of alternative technical concepts (ATC) in design-build project delivery of highway construction. The revisions are intended to eliminate the requirement to submit a base proposal when a contracting agency allows design-build proposers to submit ATCs in their technical and price proposals. The FHWA seeks comments on the proposals contained in this notice.

DATES: Comments must be received on or before September 30, 2013. Late comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov* (follow the on-line instructions for submitting comments).

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. All comments received into any docket may be searched in electronic format by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments 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 view the statement at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Yakowenko, Contract Administration Team Leader, Office of Program Administration, (202) 366–2221, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: *http:www.regulations.gov.* The Web site is available 24 hours each day of the year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

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Background

Over the past 20 years, contracting agencies have been gaining valuable experience with the design-build project delivery method for highway construction. In conjunction with this delivery method, some agencies have encouraged design-build proposers to submit ATCs as a way to encourage innovation, promote efficiency, reduce risk, accelerate project delivery schedules, and reduce project costs.

An ATC is a request by a proposer to modify a contract requirement, specifically for that proposer's use in the proposal process. The ATC must provide a solution that is equal or better to the requirements in the Request for Proposals (RFP) document. Proposers submit ATCs for the contracting agency's conceptual approval during the procurement process. The contracting agency may conduct confidential meetings with each proposer to review and discuss that proposer's ATCs. If the concept is approved by the contracting agency, the proposer may use the ATC in its technical and price proposal, thus providing the contracting agency with the potential for increased value at reduced costs.

The FHWA's current regulatory policy in 23 CFR Part 636 allows contracting agencies to use ATCs in their procurement process subject to two conditions: (1) The ATC must not

conflict with the criteria agreed upon in the environmental decisionmaking process, and (2) the contracting agency must require proposers to submit a base proposal in addition to supplemental ATC-based proposals. Specifically, 23 CFR 636.209(b) states: "At your discretion, you may allow proposers to submit alternative technical concepts in their proposals as long as these alternative concepts do not conflict with criteria agreed upon in the environmental decision making process. Alternative technical concept proposals may supplement, but not substitute for base proposals that respond to the RFP requirements."

Thus the current policy allows proposers to submit proposals based on an approved ATC, but not as a substitute for the base proposal. The requirement for a base proposal and a supplemental ATC-based proposal was founded on the perception that this would allow for a fair comparison of proposals. In 2002, the FHWA believed that requiring every proposer to submit a base proposal would provide contracting agencies with quality and price information for each proposer for comparison purposes. In addition, contracting agencies could evaluate ATC-based proposals from firms desiring to submit innovative concepts. The underlying principle in existing policy is to ensure fairness and open competition by making certain that all proposers are competing for the same project.

Since 2002, the FHWA has authorized several Special Experimental Projects No. 14 (SEP–14) proposals involving 23 CFR 636.209(b). The SEP–14 Program permits States and the FHWA to evaluate promising non-traditional contracting techniques, which may otherwise deviate from established policy. The post-project evaluations received from agencies with SEP–14 authorization (which can be viewed at: *http://www.fhwa.dot.gov/programadmin/contracts/sep14list.cfm*) indicate that the procurement procedures that allowed for the submission and evaluation of ATCs were fair, transparent, and could be conducted in a manner that encouraged competition and innovation. The fact that base proposals were not available from all proposers did not lead to a perception of unfairness or a situation where agencies were evaluating significantly different projects. In fact, all contracting agency evaluations indicated that the ATC process was a significant factor in encouraging innovation, cost savings, and increasing the overall value to the agency through the best-value selection process.

Under the authority of SEP–14, 23 CFR 636.209(b) project or program requirement waivers were requested and approved for the following contracting agencies:

- East End Crossing-Ohio River Bridge—the Indiana Finance Authority and the Indiana Department of Transportation;
- Gerald Desmond Bridge Replacement Project—the California Department of Transportation (Caltrans) and the city of Long Beach;
- I–10 widening—the Louisiana Department of Transportation and Development;
- I–15/I–215 Interchange Improvement Project—Caltrans;
- I–95—Contee Road Interchange, US 113, Intercounty Connector, and programmatic approval by Maryland State Highway Administration;
- Longfellow, Whittier, and Braga Bridges—the Massachusetts Department of Transportation;
- Louisville-Southern Indiana Ohio River Bridges Project—the Kentucky Transportation Cabinet;
- Programmatic approval by the Colorado High Performance Transportation Enterprise and the Colorado Department of Transportation;
- Programmatic approval by the Idaho Transportation Department;
- SR–91 Corridor Improvement Project—the Riverside County Transportation Commission;
- Tappan Zee Bridge—the New York State Thruway Authority and the New York State Department of Transportation;
- Programmatic approval by the Michigan Department of Transportation;
- Programmatic approval by the South Carolina Department of Transportation; and
- Programmatic approval by the Texas Department of Transportation.

Evaluations provided by these agencies concluded that the use of ATCs in the procurement process provides the following benefits:

- A strong potential for increased value at a lower cost by allowing contractors to provide innovative cost effective solutions in a competitive procurement process,
- increased competition and innovative approaches early in the design process, giving contracting agencies the opportunity to select proven design and construction solutions,
- consideration and use of innovative solutions through early contractor involvement,
- further innovation and competition fostered through confidential meetings with proposers and contracting agencies, which provided proposers with a degree of comfort that their concepts would be accepted, and
- increased use of advanced technology, new materials, and innovative construction methods.

The evaluation reports provided by various contracting agencies through the SEP–14 process have been very positive regarding the use and implementation benefits of ATCs for design-build project delivery.

In the April 19, 2010, SEP–14 evaluation of the I–10 widening project, the LaDOTD stated:

> This ATC process gives the LaDOTD the ability to factor the proposers' technical solutions into the selection process and gives the LaDOTD access to solutions from all proposers. It also gives the successful proposer a head start on implementation of its ATCs, and avoids unnecessary costs for proposers to advance a base design that ultimately will not be used. . . . The opportunity to introduce innovative concepts resulted in greater competition among the proposers by allowing the LaDOTD to consider a broader spectrum of technical solutions for the Project. Overall, we feel that the ATC process utilized for the I–10 Widening Design-Build Project was a success.

The December 21, 2011, SEP–14 evaluation submitted by MDSHA for the I–95/Contee Road interchange project included the following findings:

> The proposed ATC process gave the SHA the ability to factor each proposer's technical solutions into the selection process, allowing a true "Best-Value" selection and gave the SHA access to solutions from all proposers. It also gave the successful proposer a head start on implementation of its ATCs and avoided unnecessary costs and risks for proposers to advance a base design that may not [be] used.
>
> As part of the ATC submittal and review process, the Proposer was required to provide details concerning how the ATC would impact vehicular traffic, environmental impacts (favorable or unfavorable) identified on appropriate environmental documents, community impacts, and safety and life-cycle project and infrastructure costs (including impacts on the cost of repair and maintenance). The ATC process, therefore, led to approved ATCs that minimized the impact on the environment, did not reduce the overall quality of the final product, and would provide the "Best-Value" for the contract.

The December 4, 2008, SEP–14 evaluation by the MDSHA for the Intercounty Connector Contracts A, B, and C stated:

> Over the past three years and procurement of approximately $1.5 billion in design-build contracts, the Administration has received numerous benefits from using the ATC process. SHA believes that these compelling benefits included not only permitting

flexibility and innovation from the design-build teams, but they have also allowed opportunities for cost saving measures in a very complex and expensive program, in addition to reductions in environmental impacts on a highly sensitive project. Seven short listed design build firms competed for three contracts and submitted 133 ATCs. We did not receive any complaints regarding the ATC process and specifications used on these three contracts from the seven short listed forms. The ATC process and specifications used by SHA allowed for fair and open competition and ensured that all propose[r]s were competing for the same project.

The 2011 Annual Report, titled "Alternate Technical Concepts in Design Build Contracting at WSDOT," stated the following:

The ATC process, as practiced at WSDOT, is a valuable and effective tool that helps to further refine our design build projects and obtain the best value for taxpayers. It is well established and accepted by industry as evidenced by the level of participation during procurement. The experience documented in this report confirms this success by both statistical and anecdotal data. This ATC process provides another avenue for application of the competitive market influence to the design build procurement method within the bounds of the level playing field and to the benefit of our taxpayers. Additionally, this process makes use of the FHWA waiver authorization to avoid extra, duplicative efforts by our proposers and evaluation teams associated with the preparation and review of a second, unaltered proposal.

In consideration of the successful deployment of ATC by various contracting agencies, the FHWA is proposing to revise its requirements to eliminate the base proposal submittal requirement in 23 CFR 636.209(b). The use of ATCs is acceptable so long as the RFP document clearly describes the contracting agency's requirements for ATC content, submission, review procedures, confidential meetings procedures (if used), and how ATCs will be evaluated in the proposal review process.

Section-by-Section Discussion of the Proposed Changes

Part 636—Design-Build Contracting

The FHWA proposes to revise 23 CFR part 636—Design-Build Contracting as follows:

In relation to 23 CFR 636.209, the FHWA proposes to revise paragraph (b) to delete the submission requirement for base proposals, where a contracting agency is allowing the submission of ATC proposals. Contracting agencies may allow proposers to submit ATCs, as long as the RFP document clearly describes the contracting agency's requirements for ATC content, submission, review, confidential meeting procedures (if used), and how ATC will be evaluated in the proposal review process.

Additionally, a sentence is proposed to be added to paragraph (b) stating that the confidentiality of ATCs will be maintained, except to the extent disclosure is required in order for the contracting agency to maintain compliance with a Federal or State permit or other legal requirement necessary for the delivery of the project. Contracting agencies and design-build proposers need to be aware that, in certain instances, it may be necessary for the contracting agency to issue addenda to the RFP, to inform all proposers of a RFP revision that was prompted by another proposer's ATC submission. For instance, if an ATC submitted by a proposer demonstrates that a feasible and prudent 4(f) alternative exists on a project for which a 4(f) determination had already concluded that there was no feasible and prudent 4(f) alternative, the contracting agency and FHWA must disclose the alternative to maintain 4(f) compliance.

Rulemaking Analyses and Notices

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

The FHWA has determined that this action would not be a significant regulatory action within the meaning of Executive Order 12866, or within the meaning of DOT's regulatory policies and procedures. After the consideration of alternatives and analysis of impacts, the FHWA anticipates that the economic impact of this rulemaking would be minimal and would not adversely affect any sector of the economy in a material way. Additionally, this action complies with the principles of Executive Order 13563. Interested parties are invited to comment on the anticipated economic impact. In addition, these changes would not interfere with any action taken or planned by another agency, and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (RFA), the FHWA has evaluated the effects of this NPRM on small entities and anticipates that this action will not have a significant economic impact on a substantial number of small entities. The proposed amendment provides procedures for use of ATCs in design-build project delivery of highway construction. As such, it primarily affects States, which are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, States do not meet the definition of a small entity and the RFA does not apply. The FHWA further certifies that the proposed action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The FHWA has determined that this NPRM will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (UMRA). Section 202 of the UMRA, 2 U.S.C. 1531–1538, requires Federal agencies to prepare a written assessment of proposed Federal mandates likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. The FHWA anticipates that this proposed rulemaking will not result in the expenditure by State, local, or tribal governments, or by the private sector, of more than $100 million annually. Thus, the FHWA is not required to prepare a written assessment under the UMRA.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on the States. The FHWA has also determined that this proposed action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to

this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information. Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

The FHWA has analyzed this proposed rule under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et seq.) and has determined preliminarily that this proposal does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), and has determined that this action would not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20).

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses obligations of Federal funds to States for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this rule is not a significant energy action because the rule is not a significant regulatory action under Executive Order 12866, and the rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this rule does not raise any environmental justice issues.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 636

Construction, Construction manager, General contractor, Grant programs, Transportation, Highways, and Roads.

Issued on: July 16, 2013.

Victor M. Mendez,

Administrator.

In consideration of the foregoing, the FHWA proposes to revise title 23, Code of Federal Regulations, part 636 as follows:

PART 636—DESIGN-BUILD CONTRACTING

■ 1. The authority citation for part 636 is revised to read as follows:

Authority: Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; Sec. 1307 of Pub. L. 105–178, 112 Stat. 107; 23 U.S.C. 101, 109, 112, 113, 114, 115, 119, 128, and 315; 49 CFR 1.85(b).

■ 2. Amend § 636.209 by revising paragraph (b) to read as follows:

§ 636.209 What items must be included in a phase-two solicitation?

* * * * *

(b)(1) At your discretion, you may allow proposers to submit alternative technical concepts (ATCs) in their proposals if:

(i) The alternative concepts do not conflict with criteria agreed upon in the environmental decision making process, and

(ii) The RFP document clearly describes the contracting agency's requirements for ATC:

(A) Content,

(B) Submission,

(C) Review,

(D) Confidential meetings procedures (if used), and

(E) Evaluation in the proposal review process.

(2) The confidentiality of ATCs will be maintained, except to the extent disclosure is necessary to maintain compliance with Federal or State permitting or other legal requirements necessary for the delivery of the project.

[FR Doc. 2013–18514 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket EPA–R10–OAR–2013–0548; FRL–9842–1]

Approval and Promulgation of Implementation Plans; Idaho: State Board Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of Idaho for parallel processing on July 16, 2013, for purposes of meeting the state board requirements of the Clean Air Act (CAA). The EPA is also proposing to approve the submittal as meeting the corresponding state board infrastructure requirements of the CAA for the 1997 ozone National Ambient Air Quality

Standards (NAAQS). If the final SIP revision submitted by the State to the EPA is consistent with the July 16, 2013, submittal, the State's SIP will, upon final approval, contain the required provisions regarding board composition and disclosure of potential conflicts of interest.

DATES: Comments must be received on or before September 3, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2013–0548, by any of the following methods:

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

B. *Email: R10-Public_Comments@epa.gov.*

C. *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

D. *Hand Delivery:* EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2013–0548. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov*, or by using the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used, it is intended to refer to the EPA.

Table of Contents

I. Background

CAA section 128, titled "State Boards," requires each SIP "to contain requirements that (1) any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed." 42 U.S.C. 7428.

On July 18, 1997, the EPA issued a revised NAAQS for ozone.[1] This action triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of CAA section 110(a)(2) within three years of issuance of the new or revised NAAQS. CAA section 110(a)(2) includes a list of specific elements that each such plan submittal must meet, including section 110(a)(2)(E)(ii), which requires compliance with the state board requirements of CAA section 128.

On March 27, 2008, EPA issued a finding that the State of Idaho had failed to make a complete submittal to satisfy the requirements of CAA section 110(a)(2) for the 1997 ozone NAAQS (73 FR 16205). On September 15, 2008, the State of Idaho made a SIP submittal to the EPA for purposes of meeting the requirements of CAA section 110(a)(2) for the 1997 ozone NAAQS. On April 11, 2012, we proposed to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M) for the 1997 ozone NAAQS (77 FR 21702). In the notice, we stated that Idaho's SIP submission did not address all of the requirements of CAA section 110(a)(2)(E)(ii), which requires that infrastructure SIPs meet the requirements of CAA section 128, and that we would address the requirements of CAA section 110(a)(2)(E)(ii) in a separate action (77 FR at 21710). On July 17, 2012, we took final action to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M) for the 1997 ozone NAAQS (77 FR 41916).

II. The State's Submittal

On July 16, 2013, the State submitted a SIP revision[2] for purposes of meeting the state board requirements of CAA section 128 and the corresponding state board infrastructure SIP requirements for the 1997 ozone NAAQS. Specifically, the State submitted Executive Order 2013–06, dated June 26, 2013, and Idaho Code §§ 59–701 through 705, Ethics in Government Act, and requested parallel processing on the submittal. Under the parallel processing procedure, a State submits a SIP revision to the EPA before final adoption by the State. The EPA reviews this proposed State action and prepares a notice of proposed rulemaking. The EPA publishes its notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the State is completing its rulemaking action. For Idaho's SIP submittal, the State provided a schedule for finalizing the SIP revision, including public review and submittal of the final SIP package to the EPA. If changes are made to the SIP revision after this proposal, such changes will be

[1] The eight-hour averaging period replaced the previous one-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856).

[2] The letter accompanying the submittal was dated July 9, 2012.

described in the EPA's final rulemaking action and, if such changes are significant, the EPA may re-propose the action and provide an additional public comment period.

In this action, we are proposing to approve the July 16, 2013, submittal as meeting the requirements of CAA section 128 and CAA section 110(a)(2)(E)(ii) for the 1997 ozone NAAQS, if the final SIP revision submitted by the State to the EPA is consistent with the July 16, 2013, submittal. The EPA's proposed determination that Idaho's SIP, as amended, meets the CAA section 128 requirements for purposes of CAA section 110(a)(2)(E)(ii) with respect to the 1997 ozone NAAQS is also applicable to CAA section 110(a)(2)(E)(ii) requirements for other infrastructure SIP submittals for Idaho. Our evaluation of the State's submittal is presented below.

III. The EPA's Evaluation

A. Evaluation of Board Composition Requirements

Idaho Code § 39–107, Board—Composition—Officers—Compensation—Powers—Subpoena—Depositions—Review, was originally approved into the Idaho SIP on July 28, 1982 (47 FR 32530), and subsequently approved on January 16, 2003 (68 FR 2217). Idaho Code § 39–107(1)(a) establishes compositional requirements of the Idaho Board of Environmental Quality (Board), namely, that it consist of seven members who shall be appointed by the governor and further that:

> Each member of the board shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector, and shall be appointed to assure appropriate geographic representation of the state of Idaho. No more than four (4) members of the board shall be from any one (1) political party. Two (2) members of the board shall be chosen with due regard to their knowledge of and interest in solid waste; two (2) members shall be chosen for their knowledge of and interest in air quality; two (2) members shall be chosen for their knowledge of and interest in water quality; and one (1) member shall be chosen with due regard for his knowledge of and interest in air, water and solid waste issues.

To meet the requirements of CAA section 128(a)(1), Idaho has submitted Executive Order 2013–06, dated June 26, 2013, which orders that "the appointment of members to the Idaho board of environmental quality shall be made in conformance with the requirements of Idaho Code section 39–107(1)(a), and section 128 of the Clean Air Act." The EPA believes that Executive Order 2013–06 meets the requirements of CAA section 128(a)(1). Thus, if the final SIP revision submitted by Idaho is consistent with the July 16, 2013, submittal, the EPA proposes to find that Idaho's SIP revision meets the requirements of that CAA section 128(a)(1) and the corresponding board infrastructure requirements of CAA section 110(a)(2)(E)(ii) for the 1997 ozone NAAQS.

The EPA notes, however, that as provided in Idaho Code § 67–802, executive orders in Idaho cease to be effective four calendar years from the date of issuance unless an earlier termination date is specified in the order or unless the order is renewed by subsequent executive order. Because Executive Order 2013–06 does not specify an earlier termination date, it will expire on June 26, 2017, unless it is renewed by subsequent executive order. The EPA therefore notes that if Executive Order 2013–06 is not renewed, or if it is not replaced with legislation or some other legal authority meeting the requirements of CAA section 128(a)(1) and submitted to and approved by EPA as a SIP revision, Idaho's SIP will no longer meet the requirements of CAA section 128(a)(1). At that time, the EPA will consider appropriate action.

B. Evaluation of Disclosure Requirements

The July 16, 2013, submittal also includes the Idaho statutes governing disclosure of conflicts of interest for public officials, specifically, Idaho Code §§ 59–701 through 59–705, Ethics in Government. Idaho Code § 59–704 is the heart of these disclosure provisions and establishes required action in the case of conflicts of interest. That section provides that "A public official shall not take any official action or make a formal decision or formal recommendation concerning any matter where he has a conflict of interest and has failed to disclose such conflict as provided in this section." Under Idaho Code § 59–703(10), "public official" is defined to include "any person holding public office of a governmental entity by virtue of formal appointment as required by law" and "any person holding public office of a governmental entity by virtue of employment, or a person employed by a governmental entity on a consultive basis." Thus, the disclosure requirements in Idaho Code § 59–704 apply to Board members and the Director of the Idaho Department of Environmental Quality (IDEQ). In conjunction with the definition of "official action" in Idaho Code § 59–703(1), the EPA believes that Idaho Code § 59–704 requires the disclosure of conflicts of interest by a member of the Board or the Director of the IDEQ in their approvals of permits and enforcement orders and is thus consistent with the requirements of CAA section 128(a)(2). Therefore, if the final SIP revision submitted by Idaho is consistent with the July 16, 2013, submittal, the EPA proposes to approve Idaho's final SIP revision as meeting the requirements of CAA section 128(a)(2) and the corresponding board infrastructure requirements of CAA section 110(a)(2)(E)(ii) for the 1997 ozone NAAQS.

IV. Proposed Action

Pursuant to CAA sections 110 and 128, if the final SIP revision submitted by Idaho to address the requirements of CAA section 128 is consistent with Idaho's July 16, 2013, submittal, the EPA is proposing to approve Idaho's SIP revision as meeting the requirements of CAA sections 128 and also the requirements of CAA section 110(a)(2)(E)(ii) for the 1997 ozone NAAQS. This approval, once finalized, would also serve as a determination that Idaho meets the CAA section 128 requirements for purposes of CAA section 110(a)(2)(E)(ii) for other infrastructure SIP submittals for Idaho.

V. Statutory and Executive Order Reviews

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

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, and Reporting and recordkeeping requirements.

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

Dated: July 25, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2013–18538 Filed 7–31–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0659; FRL–9840–6]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Second Ten-Year Carbon Monoxide Maintenance Plan for Colorado Springs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Colorado. On March 31, 2010, the Governor of Colorado's designee submitted to EPA a Clean Air Act (CAA) section 175A(b) second 10-year maintenance plan for the Colorado Springs area for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). This limited maintenance plan (LMP) addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation. This action is being taken under sections 110 and 175A of the CAA.

DATES: Written comments must be received on or before September 3, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0659, by one of the following methods:

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

Please see the direct final rule which is located in the Rules and Regulations section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, EPA is approving Colorado's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: July 16, 2013.

Judith Wong,

Acting Regional Administrator, Region 8.

[FR Doc. 2013–18436 Filed 7–31–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0446; A–1–FRL–9842–2]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Regulations Limiting Emissions of Volatile Organic Compounds and Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These are revisions to existing air pollution control requirements for stationary sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_X). This action is being taken under the Clean Air Act..

DATES: Written comments must be received on or before September 3, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2008–0446 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* "Docket Identification Number EPA–R01–OAR–2008–0446," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5

Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier:* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2008–0446. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1046, fax number (617) 918–0046, email *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. Additionally, the phrase "the Commonwealth" refers to the Commonwealth of Massachusetts.

Organization of this document. The following outline is provided to aid in locating information contained in this preamble.

I. Background and Purpose

On July 11, 2001, and September 14, 2006, the Massachusetts Department of Environmental Protection (DEP) submitted two separate requests for proposed revisions to its SIP. The July 11, 2001 submittal was supplemented with two additional submittals, one on August 9, 2001, and a second on January 18, 2002 (collectively referred to herein as the July 11, 2001 submittal).

The July 11, 2001 submittal includes revisions to Title 310 of the Code of Massachusetts Regulations (CMR), section 7.19, Reasonably Available Control Technology (RACT) for Sources of Nitrogen Oxides (NO_X). Public hearings were held on July 25, 2000 and July 27, 2000 regarding the Commonwealth's July 11, 2001 submittal.

The September 14, 2006 submittal included revisions to 310 CMR 7.00, Definitions; 7.05, Fuels All Districts; 7.19, RACT for Sources of NO_X; and 7.24, Organic Material Storage and Distribution.[1] Public hearings were held on February 11, 2004, and February 12, 2004, regarding the proposed revisions to 310 CMR 7.00, 7.05, 7.18, and 7.19 submitted by the Commonwealth on September 14, 2006. Public hearings were held on October 18, 2005 and October 19, 2005, regarding the proposed revisions to 310 CMR 7.00 and 7.24 submitted by the Commonwealth on September 14, 2006.

II. Summary of State's Submittal

a. Revisions to 310 CMR 7.00, Definitions

The Commonwealth's submittal includes a number of terms to be added or revised to 310 CMR 7.00, Definitions. The terms are defined to facilitate interpretation and understanding, and enhance enforceability, of the state's air pollution control regulations. Definitions for 81 terms are included in the Commonwealth's submittal and we are proposing to incorporate these terms into the Massachusetts SIP. A list of these terms and the Commonwealth's definitions for them are included in the Docket for this rulemaking. These definitions as used in the Commonwealth's regulations that are currently approved into the Massachusetts SIP are consistent with the applicable requirements of the Clean Air Act. Among the more significant definitions being amended are several which pertain to the Commonwealth's new source review program, as follows: "Federal potential to emit"; "nonattainment area"; and "Potential emissions or potential to emit." These definitions were strengthened and are consistent with federal requirements under the Clean Air Act.

b. Revisions to 310 CMR 7.05, Fuels All Districts

The Commonwealth's September 16, 2006 submittal included a minor change

[1] Note that the September 14, 2006 submittal included additional revisions (such as 310 CMR 7.06) that were subsequently withdrawn in a letter from MA DEP to EPA dated January 18, 2013.

to 310 CMR 7.05(2), Use of Residual Fuel Oil or Hazardous Waste Fuel. The change consists of removing landfill gas from the requirements of the section, as applicability to that fuel source appears to have been unintentional, and several minor, technical wording changes.

c. Revisions to 310 CMR 7.18, Volatile and Halogenated Organic Compounds

Massachusetts' September 14, 2006 submittal included changes to previously adopted portions of 310 CMR 7.18, Volatile and Halogenated Organic Compounds. The majority of the changes were minor and designed to improve the clarity of the regulation. A brief summary of the more substantive changes is provided below.

Within 310 CMR 7.18(1), Applicability and Handling Requirements, the requirements for coating mixing tanks were strengthened by adding tank cover requirements.

Within 310 CMR 7.18(2), Compliance with Emission Limits, a provision allowing daily-weighted averaging of coating limits was inserted to provide greater flexibility to operators. This compliance option is consistent with EPA's policy for coating regulations. See EPA's "Model VOC Rules for RACT," dated June, 1992.

Within 310 CMR 7.18(8), Solvent Metal Degreasing, an exemption was added for aqueous cleaners that meet specified criteria. This is a non-significant amendment because the exemption applies to water-based cleaners.

Within 310 CMR 7.18(11), Surface Coating of Miscellaneous Metal Parts and Products, revised wording was provided to clarify exemption eligibility requirements.

Within 310 CMR 7.18(19), Synthetic Organic Chemical Manufacture, revised language was provided to clarify the submittal date for quarterly reporting.

Within 310 CMR 7.18(20), Emission Control Plans for Implementation of RACT, revised language clarifies an exemption for certain facilities issued approvals pursuant to 310 CMR 7.02, Plan Approvals. A provision allowing for additional requirements, such as stack testing or emissions monitoring, that would be added to emission control plans was also incorporated into this section.

Within 310 CMR 7.18, language that strengthens compliance obligations by adding federally-enforceable emission limits, was added to the following sections: of 310 CMR 7.18: (21), Surface Coating of Plastic Parts; (22), Leather Surface Coating; (23), Wood Products Surface Coating, (24), Flat wood Paneling Surface Coating; (25), Offset Lithographic Printing; and, (26), Textile Finishing.

Section 7.18(27), Coating Mixing Tanks, within which several minor wording changes were made to improve the clarity of the regulation.

Within 310 CMR 7.18(28), Automotive Refinishing, new emission limits were established for multi-colored topcoats. Additionally, new labeling and recordkeeping requirements were added, and exemptions for touch up coatings, stencil coatings, and coatings sold in non-refillable aerosol containers were added to the automotive refinishing requirements. The exempted applications are reasonable and all pertain to very low volume applications.

EPA's automotive refinishing regulation similarly exempts such coatings. See 40 CFR Part 59 Subpart B.

d. Revisions to 310 CMR 7.19, RACT for Sources of Oxides of Nitrogen

As noted earlier in this notice, on July 11, 2001, the Commonwealth submitted proposed SIP revisions to EPA. This submittal was supplemented with additional materials sent to EPA on August 9, 2001 and January 18, 2002. Included within these submittals was an addition to the list of sources exempt from NO_X RACT. Specifically, an exemption from NO_X RACT requirements was added for any source that obtained a plan approval under 310 CMR 7.02 establishing best available control technology (BACT) or lowest achievable emission rate (LAER) that is no less stringent than what would be required for RACT under 7.19. This amendment is consistent with the requirements of the Clean Air Act because it ensures a level of NO_X control at least as stringent as that required by RACT. The Commonwealth's September 16, 2006 submittal contained further revisions to 7.19 which consisted of minor editorial changes.

e. Revisions to 310 CMR 7.24, Organic Material Storage and Distribution

The Commonwealth's September 16, 2006 submittal contained a change to the tank inspection requirements located at 310 CMR 7.24(1)(d)(7). The change removed the requirement that the covers and seals of double seal system tanks be inspected once every five years. These inspections must now occur whenever the tank is emptied for non operational reasons or once every 10 years, whichever is sooner.[2]

[2] Emptying of such tanks during inspections causes a release of VOCs, therefore minimizing the occurrence of such is beneficial. For example, the EPA document "Gasoline Distribution Industry—Stage 1—Background Information for Promulgated Standards" (November, 1994), notes that emptying and refilling a 150 foot diameter tank will generate approximately 7 tons of VOC emissions.

Prior versions of 310 CMR 7.00, 7.05, 7.18, 7.19, and 7.24 have previously been approved by EPA into the Massachusetts SIP. See 40 CFR 52.1120 and 52.1167. Today's amendments clarify and/or enhance the enforceability of the existing regulations and on balance would not result in any increases in VOC or NO_X emissions. Therefore, the anti-backsliding requirements of section 110(l) of the Clean Air Act are met.

EPA's review of this material indicates that the Commonwealth's requests are approvable and consistent with the requirements of the Clean Air Act, and we are therefore proposing approval of them. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

III. Proposed Action

As noted earlier in this notice, EPA is proposing to approve SIP revisions submitted by the Commonwealth of Massachusetts pertaining to the following sections of 310 CMR: 7.00, Definitions; 7.05, Fuels All Districts; 7.18, Volatile and Halogenated Organic Compounds; 7.19, RACT for Sources of Oxides of Nitrogen (NO_X); and 7.24, Organic Material Storage and Distribution.

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 proposed 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 proposed action:

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

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

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

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

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

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

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

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: July 23, 2013.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2013–18532 Filed 7–31–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[XXXD4523WT DWT000000.000000 DS65101000]

RIN 1090–AB02

Privacy Act Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of the Interior is proposing to amend its regulations to exempt certain records in the Incident Management, Analysis and Reporting System from one or more provisions of the Privacy Act because of criminal, civil, and administrative law enforcement requirements.

DATES: Submit written comments on or before September 30, 2013.

ADDRESSES: Send written comments, identified by RIN number 1090–AB02, by one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* David Alspach, Office of the Secretary Privacy Act Officer, 1849 C Street NW., Mail Stop 2650 MIB, Washington, DC 20240.

• *Email:* David Alspach, Privacy Act Officer, Office of the Secretary, *privacy@nbc.gov*

FOR FURTHER INFORMATION CONTACT: David Alspach, Office of the Secretary Privacy Act Officer, 1849 C Street NW., Mail Stop 2650 MIB, Washington, DC 20240. Email at *privacy@nbc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Privacy Act of 1974, as amended (Privacy Act), 5 U.S.C. 552a, governs the means by which the U.S. Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

An individual may request access to records containing information about him or herself, 5 U.S.C. 552a(b), (d). However, the Privacy Act authorizes Government agencies to exempt systems of records from access by individuals under certain circumstances, such as where the access or disclosure of such information would impede national security or law enforcement efforts. Exemptions from Privacy Act provisions must be established by regulation, 5 U.S.C. 552a(j) and (k).

The Department of the Interior (DOI), Office of the Secretary, maintains the Incident Management, Analysis and Reporting System (IMARS) system of records. IMARS is an incident management and reporting system which will enhance and improve the following capabilities to the Department: Preventing, detecting and investigating known and suspected criminal activity; protecting natural and cultural resources; capturing, integrating and sharing law enforcement and related information and observations from other sources; identifying needs such as training and resources; measuring performance of law enforcement programs and operations; meeting reporting requirements; providing Department of Homeland Security and National Incident Based Reporting System interface frameworks; analyzing and prioritizing protection efforts; justifying requests and expenditures; assisting in managing visitor use and protection programs, including training; investigating, detaining and apprehending those committing crimes on DOI properties or tribal reservations (for the purpose of this system of records notice, tribal reservations include contiguous areas policed by tribal or Bureau of Indian Affairs law enforcement offices) managed by a Native American tribe under DOI's Bureau of Indian Affairs; and investigating and preventing visitor accident injuries on DOI properties or tribal reservations.

Incident and non-incident data related to criminal and civil activity will be collected in support of law enforcement, homeland security, and security (physical, personnel and stability, information, and industrial) activities. This may include data documenting all investigations and law enforcement activities, traffic safety and traffic accidents. Data relating to emergency management, sharing and analysis activities of the Department will also be collected.

In accordance with the Privacy Act of 1974, as amended, DOI proposes to consolidate the following DOI Privacy Act systems of records: Bureau of Reclamation Law Enforcement Management Information System (RLEMIS)—Interior, WBR–50 (73 FR 62314, October 20, 2008); Fish and Wildlife Service Investigative Case File

System—Interior, FWS–20 (48 FR 54719, December 6, 1983); Bureau of Land Management Criminal Case Investigation—Interior, BLM–18 (73 FR 17376, April 1, 2008); Bureau of Indian Affairs Law Enforcement Services—Interior, BIA–18 (70 FR 1264, January 6, 2005); and National Park Service Case Incident Reporting System, NPS–19 (70 FR 1274, January 6, 2005) into one Department of the Interior system of records, titled the Incident Management, Analysis and Reporting System (IMARS).

In this notice of proposed rulemaking, the Office of the Secretary is proposing to exempt the IMARS system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Certain Department of the Interior bureaus and offices currently have published exemptions for law enforcement records, and these exemptions will continue to be applicable until the final rule has been completed.

Under 5 U.S.C. 552a(j)(2),the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control or reduce crime or to apprehend criminals." Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is "investigatory material complied for law enforcement purposes, other than material within the scope of subsection (j)(2)," or "investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information."

Because this system of records contains law enforcement and investigative material within the provision of 5 U.S.C. 552a(j)(2) and (k)(2), the Department of the Interior proposes to exempt the IMARS System of Records from one or more of the following provisions: 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1) through (e)(3), (e)(4)(G) through (e)(4)(I), (e)(5), (e)(8), (f), and (g). Where a release would not interfere with or adversely affect law enforcement activities, including but not limited to revealing sensitive information or compromising confidential sources, the exemption may be waived on a case-by-case basis. Exemptions from these particular subsections are justified for the following reasons:

1. 5 U.S.C. 552a(c)(3). This section requires an agency to make the accounting of each disclosure of records available to the individual named in the record upon request. Release of accounting of disclosures would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

2. 5 U.S.C. 552a(c)(4); (d); (e)(4)(G) and (e)(4)(H); (f); and (g). These sections require an agency to provide notice and disclosure to individuals that a system contains records pertaining to the individual, as well as providing rights of access and amendment. Granting access to records in IMARS could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, as well as their families; lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential information and could constitute an unwarranted invasion of the personal privacy of others.

3. 5 U.S.C. 552a(e)(1). This section requires the agency to maintain information about an individual only to the extent that such information is relevant or necessary. The application of this provision could impair investigations and law enforcement, because it is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, an investigator may obtain information concerning the violation of laws outside the scope of the investigator's jurisdiction. In the interest of effective law enforcement, DOI investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

4. 5 U.S.C. 552a(e)(2). This section requires the agency to collect information directly from the individual to the greatest extent practical when the information may result in an adverse determination. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation of the existence of the investigation, enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. In addition, in certain circumstances, the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

5. 5 U.S.C. 552a(e)(3). This section requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation, which could interfere with the investigation. Moreover, providing such information to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the

physical safety of confidential sources, witnesses, and investigators by revealing their identities.

6. 5 U.S.C. 552a(e)(4)(I). This section requires an agency to provide public notice of the categories of sources of records in the system. The application of this section could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promise(s) of anonymity and confidentiality. This could compromise DOI's ability to conduct investigations and to identify, detect and apprehend violators.

7. 5 U.S.C. 552a(e)(5). This section requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Material that may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

8. 5 U.S.C. 552a(e)(8). This section requires an agency to make reasonable efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when that process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

Procedural Requirements

1. Regulatory Planning and Review (E.O. 12866)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rulemaking is not significant.

Executive Order 13563 reaffirms the principles of E.O. 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. E.O. 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 proposed rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This proposed rule would not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rulemaking. The exemptions to the Privacy Act apply to individuals, not to entities covered under the Regulatory Flexibility Act.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule would not be a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

(a) Would not have an annual effect on the economy of $100 million or more.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rulemaking would not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. This proposed rule would make only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rulemaking would not have significant takings implications. This proposed rule would make only minor changes to 43 CFR part 2. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this proposed rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule is not associated with, nor would it 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. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this proposed rule:

(a) Would not unduly burden the judicial system.

(b) 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

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, the Department of the Interior has evaluated this proposed rule and determined that it would have no substantial effects on federally recognized Indian Tribes.

9. Paperwork Reduction Act

This rulemaking does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act

This rulemaking does not constitute a major Federal action and would not have a significant effect on the quality of the human environment. Therefore, this proposed rule does not require the preparation of an environmental assessment or environmental impact statement under the requirements of the National Environmental Policy Act of 1969.

11. Effects on Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

12. Clarity of This Regulation

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (H.R. 946), and the Presidential Memorandum of June 1, 1998, to write all rulemaking in plain language. This means each rule we publish must:

—Be logically organized;

—Use the active voice to address readers directly;

—Use clear language rather than jargon;

—Be divided into short sections and sentences; and

—Use lists and table wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Classified information, Courts, Freedom of information, Government employees, Privacy.

Dated: July 18, 2013.

Rhea Suh,

Assistant Secretary for Policy, Management and Budget.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR part 2 as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

■ 2. Revise § 2.254 to read as follows:

§ 2.254 Exemptions.

(a) *Criminal law enforcement records exempt under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C. 552a(j)(2) the following systems of records have been exempted from all of the provisions of 5 U.S.C. 552a and the regulations in the subpart except paragraphs (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) of 5 U.S.C. 552a and the portions of the regulations in this subpart implementing these paragraphs:

(1) Investigative Records, Interior/Office of Inspector General—2.

(2) Incident Management, Analysis and Reporting System, DOI–10.

(b) *Law enforcement records exempt under 5 U.S.C. 552a(k)(2).* Pursuant to 5 U.S.C. 552a(k)(2), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) Investigative Records, Interior/Office of Inspector General—2.

(2) Permits System, Interior/FWS–21.

(3) Civil Trespass Case Investigations, Interior/BLM–19.

(4) Employee Conduct Investigations, Interior/BLM–20.

(5) [Reserved]

(6) [Reserved]

(7) Employee Financial Irregularities, Interior/NPS–17.

(8) Trespass Cases, Interior/Reclamation-37.

(9) Litigation, Appeal and Case Files System, Interior/Office of the Solicitor-1 to the extent that it consists of investigatory material compiled for law enforcement purposes.

(10) Endangered Species Licenses System, Interior/FWS–19.

(11) Timber Cutting and Trespass Claims Files, Interior/BIA–24.

(12) Incident Management, Analysis and Reporting System, DOI–10.

(c) Investigatory records exempt under 5 U.S.C. 552a(k)(5), the following systems of records have been exempted from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these subsections:

(1) [Reserved]

(2) National Research Council Grants Program, Interior/GS–9

(3) Committee Management Files, Interior/Office of the Secretary—68.

[FR Doc. 2013–18223 Filed 7–31–13; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Subtitle A

RIN 0945–ZA01

Request for Information Regarding Nondiscrimination in Certain Health Programs or Activities

AGENCY: Office for Civil Rights (OCR), HHS.

ACTION: Request for Information.

SUMMARY: Section 1557 of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act) (42 U.S.C. 18116) prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. Section 1557(c) of the Affordable Care Act authorizes the Secretary of the Department of Health and Human Services (Department) to promulgate regulations to implement the nondiscrimination requirements in Section 1557. This notice is a request for information (RFI) to inform the Department's rulemaking for Section 1557. This RFI seeks information on a variety of issues to better understand individuals' experiences with discrimination in health programs or activities and covered entities' experiences in complying with Federal civil rights laws.

DATES: Comments must be received at one of the addresses provided below, no later than 5p.m. on September 30, 2013.

ADDRESSES: Written comments may be submitted through any of the methods specified below. Please do not submit duplicate comments.

- *Federal eRulemaking Portal:* You may submit electronic comments at *http://www.regulations.gov*. Follow the instructions for submitting electronic comments. Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.
- *Regular, Express, or Overnight Mail:* You may mail written comments (one original and two copies) to the following address only: U.S. Department of Health and Human Services, Office for Civil Rights, Attention: 1557 RFI (RIN 0945–AA02), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue SW., Washington, DC 20201. Mailed comments may be subject to delivery delays due to security procedures. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.
- *Hand Delivery or Courier:* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to the following address only: Office for Civil Rights, Attention: 1557 RFI (RIN 0945–AA02), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)
- *Inspection of Public Comments:* All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the comment period at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Carole Brown, 202–619–0805.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1557 is consistent with and promotes several of the Administration's and Department's key initiatives that promote health and equal access to health care. In 2011, the Department adopted the Health and Human Services Action Plan to Reduce Racial and Ethnic Health Disparities (HHS Disparities Action Plan). With the HHS Disparities Action Plan, the Department commits to continuously assessing the impact of all policies and programs on health disparities and promoting integrated approaches, evidence-based programs and best practices to reduce these disparities. The HHS Action Plan builds on the strong foundation of the Affordable Care Act and is aligned with programs and initiatives such as Healthy People 2020, the First Lady's Let's Move initiative and the President's National HIV/AIDS Strategy. In addition, Exchanges or Health Insurance Marketplaces established under the Affordable Care Act must also comply with all applicable Federal laws prohibiting discrimination.

Section 1557 provides that an individual shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the grounds prohibited under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d et seq. (race, color, national origin), Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq. (sex), the Age Discrimination Act of 1975 (Age Act), 42 U.S.C. 6101 et seq. (age), or Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794 (disability), under any health program or activity, any part of which is receiving Federal financial assistance, or under any program or activity that is administered by an Executive Agency or any entity established under Title I of the Affordable Care Act or its amendments. Section 1557 states that the "enforcement mechanisms provided for and available under" Title VI, Title IX, Section 504, or the Age Act shall apply for purposes of violations of Section 1557. The Department is responsible for developing regulations to implement Section 1557.

In developing a regulation to implement Section 1557, the Department recognizes that Section 1557 builds on a landscape of existing civil rights laws. For example, the prohibitions against discrimination on the grounds of race, color, national origin, age, and disability in Title VI, the Age Act, and Section 504, respectively, apply to all programs and activities covered by those statutes, including those related to health; however, the prohibition of sex discrimination in Title IX applies only to education programs and activities of covered entities. Section 1557 is the first Federal civil rights statute that prohibits sex discrimination in health programs and activities of covered entities. Section 1557 also applies to entities created under Title I of the Affordable Care Act, such as the Health Insurance Marketplaces.

Additionally, Section 1557 is the first broad based Federal civil rights statute incorporating the grounds prohibited by four distinct civil rights statutes. Although Title VI, Title IX, the Age Act, and Section 504 have similarities in their purpose, structure, requirements, and enforcement mechanisms, they also have notable differences.

Moreover, almost 50 years have passed since Title VI was enacted and roughly 40 years have passed since Title IX, Section 504, and the Age Act were enacted. Since the enactment of these civil rights laws, the demographics of the United States have increasingly diversified, major advances in electronic and information technology have occurred, and the health care landscape has changed, particularly with the enactment of the Affordable Care Act.

Recognizing the significant issues implicated by the development of a regulation to implement Section 1557, the Department is requesting information through this notice from stakeholders on a range of issues to better inform our rulemaking. The Department welcomes comments from all interested stakeholders, including individuals potentially protected from discrimination under Section 1557, organizations serving or representing the interests of such individuals, the legal community, State, Tribal, and local health agencies, health care providers, health insurers, and other health programs.

II. Solicitation of Comments

The Department is requesting information regarding the following issues. In responding, please indicate in your response the corresponding question number and provide the basis or reasoning for your answers with as much specificity and detail as possible, as well as any supporting documentation, including research or analyses, to ensure we have the most helpful information for our rulemaking.

Understanding the Current Landscape

1. The Department is interested in experiences with, and examples of, discrimination in health programs and activities. Please describe experiences that you have had, or examples of which you are aware, with respect to the following types of discrimination in health programs and activities: (a) Race, color, or national origin discrimination; (b) Sex discrimination (including discrimination on the basis of gender identity, sex stereotyping, or pregnancy); (c) Disability discrimination; (d) Age discrimination; or (e) discrimination on one or more bases, where those bases intersect.

2. There are different types of health programs and activities. These include health insurance coverage, medical care in a physician's office or hospital, or home health care, for example. What are examples of the types of programs and activities that should be considered health programs or activities under Section 1557 and why?

3. What are the impacts of discrimination? What studies or other evidence documents the costs of discrimination and/or the benefits of equal access to health programs and activities for various populations? For example, what information is available regarding possible consequences of unequal access to health programs and services, such as delays in diagnosis or treatment, or receipt of an incorrect diagnosis or treatment? We are particularly interested in information relevant to areas in which Section 1557 confers new jurisdiction.

Ensuring Access to Health Programs and Activities

4. In the interest of ensuring access to health programs and activities for individuals with limited English proficiency (LEP):

(a) What are examples of recommended or best practice standards for the following topics: (1) Translation services, including thresholds for the translation of documents into non-English languages and the determination of the service area relevant for the application of the thresholds; (2) oral interpretation services, including in-person and telephonic communications, as well as interpretation services provided via telemedicine or telehealth communications; and (3) competence (including certification and skill levels) of oral interpretation and written translation providers and bilingual staff?

(b) What are examples of effective and cost-efficient practices for providing language assistance services, including translation, oral interpretation, and taglines? What cost-benefit data are available on providing language assistance services?

(c) What are the experiences of individuals seeking access to, or participating in, health programs and activities who have LEP, especially persons who speak less common non-English languages, including languages spoken or understood by American Indians or Alaska Natives?

(d) What are the experiences of covered entities in providing language assistance services with respect to: (1) Costs of services, (2) cost management, budgeting and planning, (3) current state of language assistance services technology, (4) providing services for individuals who speak less common non-English languages, and (5) barriers covered entities may face based on their types or sizes?

(e) What experiences have you had developing a language access plan? What are the benefits or burdens of developing such a plan?

(f) What documents used in health programs and activities are particularly important to provide in the primary language of an individual with LEP and why? What factors should we consider in determining whether a document should be translated? Are there common health care forms or health-related documents that lend themselves to shared translations?

5. Title IX, which is referenced in Section 1557, prohibits sex discrimination in federally assisted education programs and activities, with certain exceptions. Section 1557 prohibits sex discrimination in health programs and activities of covered entities. What unique issues, burdens, or barriers for individuals or covered entities should we consider and address in developing a regulation that applies a prohibition of sex discrimination in the context of health programs and activities? What exceptions, if any, should apply in the context of sex discrimination in health programs and activities? What are the implications and considerations for individuals and covered entities with respect to health programs and activities that serve individuals of only one sex? What other issues should be considered in this area?

6. The Department has been engaged in an unprecedented effort to expand access to information technology to improve health care and health coverage. As we consider Section 1557's requirement for nondiscrimination in health programs and activities, what are the benefits and barriers encountered by people with disabilities in accessing electronic and information technology in health programs and activities? What are examples of innovative or effective and efficient methods of making electronic and information technology accessible? What specific standards, if any, should the Department consider applying as it considers access to electronic and information technology in these programs? What, if any, burden or barriers would be encountered by covered entities in implementing accessible electronic and information technology in areas such as web-based health coverage applications, electronic health records, pharmacy kiosks, and others? If specific accessibility standards were to be applied, should there be a phased-in implementation schedule, and if so, please describe it.

Compliance and Enforcement Approaches

7. Section 1557 incorporates the enforcement mechanisms of Title VI, Title IX, Section 504 and the Age Act. These civil rights laws may be enforced in different ways. Title VI, Title IX, and Section 504 have one set of established administrative procedures for investigation of entities that receive Federal financial assistance from the Department. The Age Act has a separate administrative procedure that is similar, but requires mediation before an investigation. There is also a separate administrative procedure under Section 504 that applies to programs conducted by the Department. Under all these laws, parties also may file private litigation in Federal court, subject to some restrictions.

(a) How effective have these different processes been in addressing discrimination? What are ways in which we could strengthen these enforcement processes?

(b) The regulations that implement Section 504, Title IX, and the Age Act also require that covered entities conduct a self-evaluation of their compliance with the regulation. What experience, if any, do you have with self-evaluations? What are the benefits and burdens of conducting them?

(c) What lessons or experiences may be gleaned from complaint and grievance procedures already in place at many hospitals, clinics, and other covered entities?

8. Are there any other issues important to the implementation of Section 1557 that we should consider? Please be as specific as possible.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble.

Dated: June 5, 2013.

Leon Rodriguez,

Director, Office for Civil Rights.

[FR Doc. 2013–18707 Filed 7–31–13; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket ID PHMSA–2013–0161]

Pipeline Safety: Class Location Requirements

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: PHMSA is seeking public comment on whether applying the integrity management program (IMP) requirements, or elements of IMP, to areas beyond current high consequence areas (HCAs) would mitigate the need for class location requirements for gas transmission pipelines.

Section 5 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 requires the Secretary of Transportation to evaluate and issue a report on whether IMP requirements should be expanded beyond HCAs and whether such expansion would mitigate the need for class location requirements.

DATES: The public comment period for this notice ends September 30, 2013.

ADDRESSES: You may submit comments identified by the Docket ID PHMSA–2013–0161 by any of the following methods:

- *E-Gov Web site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590.

Hand Delivery: DOT Docket Management System, Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the Docket ID at the beginning of your comments. If you submit your comments by mail, submit

two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov*.

Note: Comments will be posted without changes or edits to *http://www.regulations.gov* including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: Mike Israni at 202–366–4571 or by email at *mike.israni@dot.gov*.

SUPPLEMENTARY INFORMATION: Section 5 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 requires the Secretary of Transportation to evaluate and issue a report on whether IMP requirements, or elements of IMP, should be expanded beyond HCAs and, with respect to gas transmission pipeline facilities, whether applying IMP requirements to additional areas would mitigate the need for class location requirements. The 2011 Act requires that in conducting the evaluation, the Secretary shall consider, at a minimum, the following:

(1) The continuing priority to enhance protections for public safety.

(2) The continuing importance of reducing risk in high consequence areas.

(3) The incremental costs of applying integrity management (IM) standards to pipelines outside of high-consequence areas where operators are already conducting assessments beyond what is required under chapter 601 of Title 49, United States Code.

(4) The need to undertake IM assessments and repairs in a manner that is achievable and sustainable, and that does not disrupt pipeline service.

(5) The options for phasing in the extension of IM requirements beyond high-consequence areas, including the most effective and efficient options for decreasing risks to an increasing number of people living or working in proximity to pipeline facilities.

(6) The appropriateness of applying repair criteria, such as pressure reductions and special requirements for scheduling remediation, to areas that are not high-consequence areas.

Class Location

Regulations for gas transmission pipelines establish pipe strength requirements based on population density near the pipeline. Locations along gas pipelines are divided into classes from 1 (rural) to 4 (densely populated) and are based upon the number of buildings or dwellings for human occupancy. Allowable pipe stresses, as a percentage of specified minimum yield strength (SMYS), decrease as class location increases from Class 1 to Class 4 locations.

Class locations were an early method of differentiating risk along gas pipelines. The class location concept pre-dates Federal regulation of pipelines. These designations were previously included in the ASME International standard, "Gas Transmission and Distribution Pipeline Systems," (ASME B31.8) from which the initial pipeline safety regulations were derived.

Class location is determined by counting the number of dwellings within 660 feet of the pipeline for 1 mile (for Classes 1–3) or by determining that four-story buildings are prevalent along the pipeline (Class 4). Design factors, which are used in the formula to determine the design pressure for steel pipe and which generally reflect the maximum allowable percentage of SMYS, are 0.72 for Class 1, 0.60 for Class 2, 0.50 for Class 3, and 0.40 for Class 4. Pipelines are designed based on population along their route, and thus class location.

A class location can change as population grows and more people live or work near the pipeline. When a class location changes, pipeline operators must either reduce the pipe's operating pressure to reduce stress levels in the pipe; replace the existing pipe with pipe that has thicker walls or higher yield strength to yield a lower operating stress at the same operating pressure; or where the class is changing only one class rating, such as from a Class 1 to Class 2 location, conduct a pressure test at a higher pressure. Operators can apply for special permits to prevent the need for pipe replacement or pressure reduction after a class location changes. Based on certain operating safety criteria and periodic integrity evaluations, PHMSA has approved some class location special permits.

Integrity Management Approach

Gas IM requirements use a different approach to identify areas of higher risk along pipelines. The term "high consequence area" is used to identify pipelines that are subject to ongoing pipeline integrity assessments. HCAs are defined by counting the number of dwellings for human occupancy or identified sites where people congregate or where they are confined, such as a hospital, daycare facility, or a retirement or assisted-living facility, within a calculated impact circle that a potential pipeline failure could affect. Operators must periodically inspect the condition of their pipelines in an HCA and remediate any degradation that might affect the pipeline's integrity.

Comparison of Class Location and IM Approaches

The class location requirements provide an additional safety margin for more densely populated areas. However, class location does not address the potential reduction of that safety margin over the course of time due to corrosion or other types of pipe degradation. IM requirements and HCA calculations provide additional safety for more densely populated areas because operators are required to conduct periodic inspections of the pipe and because repair timelines are specified for the anomalies identified within an HCA. Substituting an IM approach for the use of class locations would allow the operation of the pipeline at higher pressures while conducting integrity inspections and remediation to maintain safety.

On August 25, 2011, PHMSA published an Advance Notice of Proposed Rulemaking to seek comments on revising the pipeline safety regulations applicable to the safety of gas transmission and gas gathering pipelines. At that time, PHMSA requested comments on whether existing HCA criteria should be revised to potentially include more mileage or whether IMP requirements should be strengthened or expanded beyond the HCAs.

The comments received on this topic are summarized as follows:

From Industry:

An industry commenter stated that no change to the regulations is needed and suggested applying IM principles to non-HCA areas should be left to industry as a voluntary effort. This commenter maintained that because the current definition is based on sound science and is serving its purpose, no fundamental change is needed.

The Texas Pipeline Association and the Texas Oil & Gas Association commented that no change should be made until the studies required by the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 are completed.

From State Representatives:

The National Association of Pipeline Safety Representatives (NAPSR) suggested that PHMSA eliminate IM requirements and instead require all transmission pipelines to meet Class 3

and 4 requirements. NAPSR suggested that alternatively, PHMSA should revise HCA criteria to include all Class 3 and 4 locations and segments that could affect critical infrastructure.

The Jersey City Mayor's office submitted a petition for rulemaking dated March 15, 2012, contending that the current Class Location system "does not sufficiently reflect high density urban areas, as the regulations fail to contemplate either (1) the dramatic differences in population densities between highly congested areas and other less dense class 4 locations, or (2) the full continuum of population densities found in urban areas themselves." Based on this, Jersey City petitioned PHMSA to add three (3) new class locations, which would be defined as follows:

- A Class 5 location is any class location unit that includes one or more building(s) with between four and eight stories; (design factor—0.3);
- A Class 6 location is any class location unit that includes one or more building(s) with between 9 and 40 stories; (design factor—0.2); and
- A Class 7 location is any class location unit that includes at least 1 building with at least 41 stories. (design factor—0.1)

The Alaska Natural Gas Development Authority stated that their experience has shown that improved pipeline design and construction requirements are needed to assure pipeline integrity. The Authority also commented that design requirements need to accommodate likely changes in class location, noting that explosive growth in some Alaska areas has resulted in certain class locations rapidly changing from Class 1 to Class 3.

From the Public:

A comment from the public suggested that PHMSA revise the IM requirements to potentially include more mileage (e.g., include entire Class 3 and 4 area in lieu of only the potentially impacted area inside Class 3 & 4) and critical infrastructure. The commenter further stated that PHMSA should expand IM principles to non-HCA areas, improve public awareness and involvement in HCAs, make maps publicly available, redefine class locations for high population areas, clarify Class 4, and establish a Class 5.

The same commenter suggested that IM plans for densely populated areas (Class 4) and for a new Class 5 encompassing cities with population greater than 100,000, be developed in consultation with local emergency responders. The commenter further suggested that these plans should be available for review during the Federal Energy Regulatory Commission's environmental impact study and should be reviewed with local authorities.

Part 192 Regulations Impacted by Class Location

There are indirect or secondary links to class location throughout Part 192. These links include sections that do not specifically mention class location; however, the sections may reference maximum allowable operating pressure (MAOP). If the use of class location designation were to be eliminated or merged, many regulatory sections will need to be reevaluated. The following Subparts would be affected:

Subpart A—General
Subpart B—Materials
Subpart C—Pipe Design
Subpart D—Design of Pipeline Components
Subpart E—Welding of Steel in Pipelines
Subpart G—General Construction Requirements for Transmission Lines and Mains
Subpart I—Requirements for Corrosion Control
Subpart J—Test Requirements
Subpart K—Uprating
Subpart L—Operations
Subpart M—Maintenance
Subpart O—Gas Transmission Pipeline Integrity Management

PHMSA is inviting comment on the following:

1. Should PHMSA increase the existing class location design factors in densely populated areas where buildings are over four stories?

2. Should class locations be eliminated and a single design factor used if IM requirements are expanded beyond HCAs?

3. Should there only be a single design factor for areas where there are large concentrations of populations, such as schools, hospitals, nursing homes, multiple-story buildings, stadiums, and shopping malls, as opposed to rural areas like deserts and farms where there are fewer people?

4. Should operators be allowed to increase the MAOP of a pipeline from the present MAOP if a single design factor is created for all levels of population density?

5. If class locations are eliminated and a single design factor used, should that single design factor be applied to existing pipelines:

a. Installed before 1970 (pre-Federal regulation);

b. That use low-frequency electric resistance welded pipe, electric flash welded pipe, lap-welded pipe, or other pipe manufactured with a seam factor less than 1.0 in accordance with Section 192.113;

c. That include pipe without mechanical (strength) and chemical properties reports;

d. That include pipe that has not been tested at or above 1.25 times MAOP;

e. That include pipe that operates without a pressure test in accordance with the Grandfather Clause in Section 192.619(c);

f. That include pipe that is presently operating above the design factor of a Class 1 location due to the Grandfather Clause in Section 192.619(c); and

g. That include pipe with external coatings that shield cathodic protection?

6. Should a pipeline that is operated with a single design factor be subject to periodic operational IM measures, similar to the criteria for HCA locations, including:

a. Close interval surveys;

b. Coating surveys and remediation;

c. Stress corrosion cracking surveys (SCC) and segment replacement (if a SCC threat is found and not remediated);

d. An ongoing monitoring program for DC currents and induced AC currents in high-voltage power transmission line corridors (including proper remediation plans);

e. In-line tool inspections (ILI) to inspect for pipe metal loss (corrosion), cracks, hard spots, weld seams, and other integrity threats in steel pipe (ILI tool evaluations for metal loss must use specified-or-greater interaction criteria to ensure defects meet a minimum integrity criterion);

f. Repairs to defects within a periodic time interval that is based on maintaining the pipeline design safety factor with a maximum pipe wall loss;

g. Pipe surveys of the depth of cover over buried pipelines;

h. Data integration of all surveys, excavations, remediation, and other integrity threats; and

i. Pipeline remediation based on assessment and data integration findings.

7. Should pipelines where a single design factor is used for establishing the MAOP be required to ensure that:

a. Pipe seam quality issues are assessed and those pipes with quality or integrity concerns are removed from service;

b. Pipe coatings on the pipeline and girth weld joints are non-shielding to cathodic protection;

c. Pipe in a cased crossing can be assessed for metallic and electrolytic shorts;

d. Pipe defects or anomalies that cause the pipeline to not meet the pipeline's MAOP are remediated based on the design factor of the pipeline with a maximum pipe wall loss;

e. All girth welds are nondestructively tested at the time of construction;

f. Minimum pipeline hydrostatic test pressures, based on MAOP and pipe yield strength, are met;

g. Maximum spacing for cathodic protection pipe-to-soil test stations exists;

h. Additional safety measures are implemented in areas with reduced depth of cover over buried pipelines;

i. Line-of-sight markings on the pipeline are maintained, except in agricultural areas or at large water crossings (such as lakes) where line-of-sight signage is not practical;

j. Monthly ground or aerial right-of-way patrols are performed;

k. The applicable best practices of the Common Ground Alliance are included in the operator's damage prevention program; and

l. The pipeline is incorporated into an IM program as a "covered segment" in a HCA in accordance with Section 192.903, which will include seven-year maximum periodic reassessment intervals according to § 192.939.

8. Should a root cause analysis be required to determine the cause of all in-service and hydrostatic test failures or leaks?

9. Should pipelines without documented and complete material strength, wall thickness and seam records for pipe, fittings, flanges, fabrications, and valves, in accordance with Sections 192.105, 192.107, and 192.109 be allowed to operate at the single design factor?

10. Should operators of pipelines that are allowed to operate at the single design factor complete hydrostatic tests as required by Part 192, Subpart J, and maintain records as required in Section 192.517?

11. Should pipelines, under a single design factor, be required to meet additional pipe manufacturing quality controls to minimize defects such as low-strength pipe, steel laminations, and pipe seam defects?

12. Should pipeline construction personnel who would work in areas subject to the single design factor be required to take a construction operator qualification program?

13. For emergency response and pipeline isolation purposes in the event of a rupture or leak, if a single design factor is allowed, what should the maximum spacing be between the mainline valves on a pipeline?

a. Should all mainline valves be remotely or automatically activated if there is a rupture or leak on the pipeline?

b. If, during a rupture or a leak, the mainline valves are not remotely or automatically activated, what should the maximum time be for a pipeline crew to isolate the mainline section?

14. What should pressure limiting devices be set to for a pipeline operating with a single design factor?

15. If the design factors of class locations were to be eliminated, and a single design factor used instead, what additional design, construction, and operational criteria are required to maintain pipeline safety in urban areas and in rural areas?

Issued in Washington, DC, on July 25, 2013.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2013–18286 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 130513467–3467–01]

RIN 0648–BD27

Endangered and Threatened Species: Proposed Rule To Designate Critical Habitat for the Northwest Atlantic Ocean Loggerhead Sea Turtle Distinct Population Segment (DPS) and Proposed Determination Regarding Critical Habitat for the North Pacific Ocean Loggerhead DPS; Correction

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

ACTION: Proposed rule; request for comments; correction.

SUMMARY: In the proposed rule that we, the National Marine Fisheries Service (NMFS), published on July 18, 2013, to designate critical habitat for the loggerhead sea turtle Northwest Atlantic Ocean Distinct Population Segment (DPS) and make a determination regarding critical habitat for the loggerhead sea turtle in the North Pacific Ocean DPS, a map was omitted. This document corrects that oversight and adds the map LOGG–N–17. All other information in the July 18, 2013 document remains unchanged.

DATES: Comments and information regarding this proposed rule must be received by September 16, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0079, by any of the following methods:

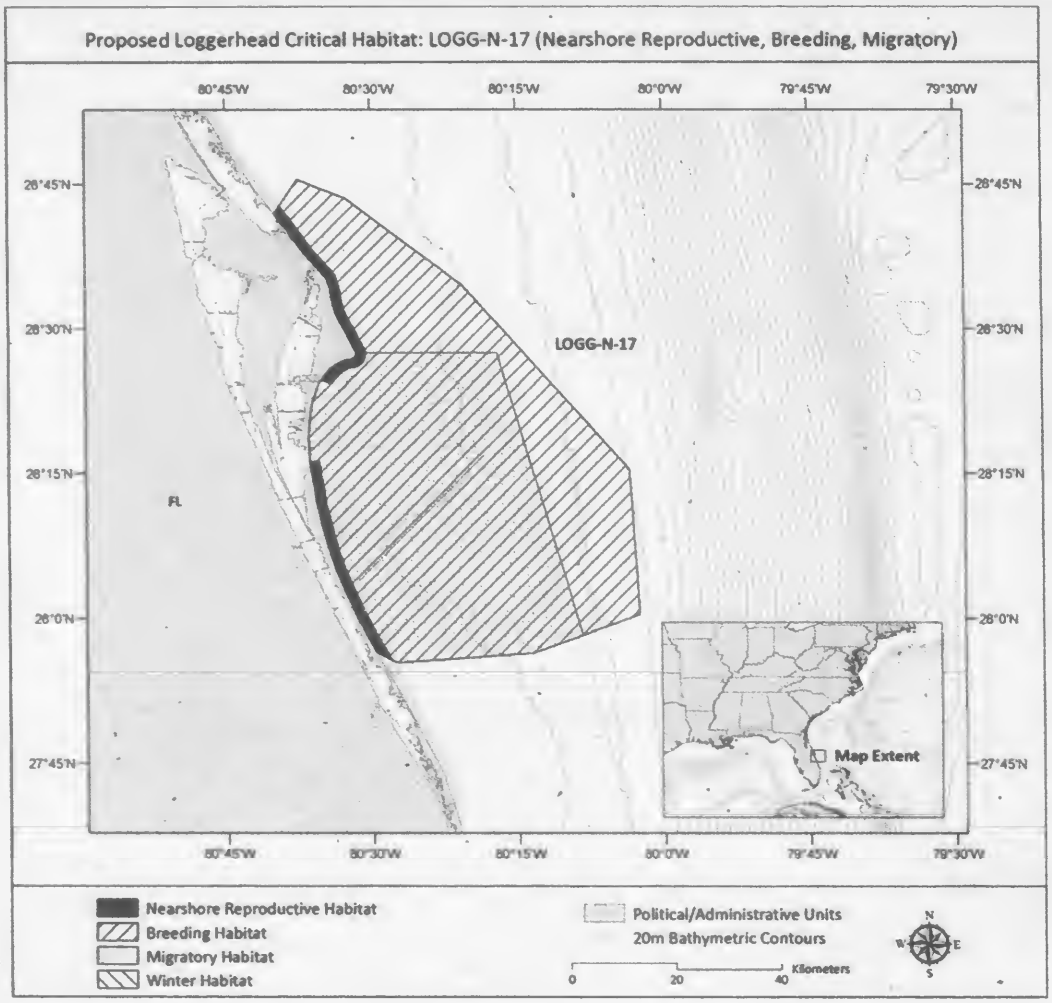
- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0079*, click the "Comment Now!" icon, complete the required fields, and enter or attach our comments.
- *Mail:* Submit written comments to Susan Pultz, NMFS, Office of Protected Resources, 1315 East West Highway, Silver Spring, MD 20910.
- *Fax:* 301–713–0376; Attn: Susan Pultz.

FOR FURTHER INFORMATION CONTACT: Susan Pultz, NMFS, Office of Protected Resources 301–427–8472 or *susan.pultz@noaa.gov;* or Angela Somma, NMFS, Office of Protected Resources 301–427–8474 or *angela.somma@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the Proposed Rule to Designate Critical Habitat for the Northwest Atlantic Ocean Loggerhead Sea Turtle Distinct Population Segment (DPS) and Proposed Determination Regarding Critical Habitat for the North Pacific Ocean Loggerhead DPS that published at (78 FR 43005) on July 18, 2013, the map entitled, "Proposed Loggerhead Critical Habitat: LOGG–N–17 (Nearshore Reproductive, Breeding, Migratory)" was inadvertently omitted. This map should have appeared in the regulatory text for 50 CFR part 226.223 in numerical sequence with the maps of other units. This document corrects that oversight. All information in the proposed rule other than the additional map remains exactly the same as that previously published.



This rule proposes designation of critical habitat for the threatened Northwest Atlantic Ocean Distinct Population Segment (DPS) of the loggerhead sea turtle (*Caretta caretta*), and also constitutes NMFS' proposed determination that there are no areas meeting the definition of "critical habitat" for the endangered North Pacific Ocean DPS of the loggerhead sea turtle.

Authority: 16 U.S.C. 1533.

Dated: July 26, 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. 2013–18446 Filed 7–31–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 148
Thursday, August 1, 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

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2014 Tariff-Rate Import Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces a fee of $200 to be charged for the 2014 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles, which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule (HTS) of the United States.

DATES: August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Abdelsalam El-Farra, Dairy Import Licensing Program, Import Policies and Export Reporting Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–1021 or telephone at (202) 720–9439 or email at *abdelsalam.el-farra@fas.usda.gov*.

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Quota Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.37 provides for the issuance of licenses to import certain dairy articles that are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff-rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of such licenses is monitored by the Dairy Import Licensing Program, Import Programs and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture, and the U.S. Customs and Border Protection, U.S. Department of Homeland Security.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to defray the Department of Agriculture's costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2014 calendar year.

Notice: The total cost to the Department of Agriculture of administering the licensing system for 2014 has been estimated to be $440,280.00 and the estimated number of licenses expected to be issued is 2,200. Of the total cost, $315,000.00 represents staff and supervisory costs directly related to administering the licensing system, and $125,280.00 represents other miscellaneous costs, including travel, postage, publications, forms, and ADP system support.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2014 calendar year, in accordance with 7 CFR 6.33, will be $200 per license.

Issued at Washington, DC, the 3rd day of July 2013.

Ronald Lord,

Licensing Authority.

[FR Doc. 2013–18581 Filed 7–31–13; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule will meet in West Valley City, UT on August 27–29, 2013. Attendees may also participate via webinar and conference call. The Committee operates in compliance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). The purpose of the Committee is to provide advice and recommendations on the implementation of the National Forest System Land Management Planning Rule. The purpose of this meeting is to continue the formulation of advice to the Secretary on the Proposed Land Management Planning Directives. This meeting is open to the public.

DATES: The meeting will be held from August 27–29, 2013, begin at 8:00 a.m. and end at 6:00 p.m. on Tuesday and Wednesday, and begin at 8:00 a.m. and end at 11:30 a.m. on Thursday, Mountain Standard Time.

ADDRESSES: The meeting will be held at the Embassy Suites Salt Lake/West Valley City, 3524 South Market Street, West Valley City, Utah, 84119. Attendees may also participate via webinar and conference call. For anyone who would like to attend via webinar and conference call, please contact Chalonda Jasper at *cjasper@fs.fed.us* or visit the following Web site: *http://www.fs.usda.gov/main/planningrule/committee*.

Written comments must be sent to USDA Forest Service, Ecosystem Management Coordination, 201 14th Street SW., Mail Stop 1104, Washington, DC 20250–1104. Comments may also be sent via email to Chalonda Jasper at *cjasper@fs.fed.us*, or via facsimile to 703–235–0138.

All comments are placed in the record and are available for public inspection and copying, including names and addresses when provided. The public may inspect comments received at 1601 N Kent Street, Arlington, VA 22209, 6th Floor. Please contact, Chalonda Jasper at 202–260–9400, *cjasper@fs.fed.us*, to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Chalonda Jasper, Ecosystem Management Coordination, 202–260–9400, *cjasper@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted:

1. Continue formulation of advice to the Secretary for the Proposed Land Management Planning Directives,

2. Discuss Committee working groups findings, and

3. Administrative tasks.

Further information will be posted on the Planning Rule Advisory Committee Web site at *http://www.fs.usda.gov/main/planningrule/committee*, including the meeting agenda and webinar and conference call information. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/planningrule/committee* within 21 days of the meeting.

If you require sign language interpreting, assistive listening devices or other reasonable accommodation, please submit request prior to the meeting by contacting Chalonda Jasper at 202–260–9400, *cjasper@fs.fed.us*. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: July 25, 2013.

Greg Smith,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2013–18469 Filed 7–31–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review ("POR"), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended ("Act"). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be "collapsed" (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day

deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2014.

	Period to be reviewed
Antidumping Duty Proceedings	
Japan: Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Over 4½ Inches), A–588–850	6/1/12–5/31/13
JFE Steel Corporation	
Nippon Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
Spain: Chlorinated Isocyanurates, A–469–814	6/1/12–5/31/13
Ecros, S.A. of Spain	
The People's Republic of China: Chlorinated Isocyanurates [3] A–570–898	6/1/12–5/31/13
Arch Chemicals (China) Co., Ltd.	
Hebei Jiheng Chemical Co., Ltd.	
Heze Huayi Chemical Co. Ltd.	
Juancheng Kangtai Chemical Co. Ltd.	
Zhucheng Taisheng Chemical Co., Ltd.	
The People's Republic of China: High Pressure Steel Cylinders [4] A–570–977	12/15/11–5/31/13
Beijing Tianhai Industry Co., Ltd.	
The People's Republic of China: Polyester Staple Fiber [5] A–570–905	6/1/12–5/31/13
Takayasu Industrial (Jiangyin) Co., Ltd.	
Zhaoqing Tifo New Fibre Co., Ltd.	
The People's Republic of China: Silicon Metal [6] A–570–806	6/1/12—5/31/13

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.*, an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Shanghai Jinneng International Trade Co. Ltd.	
The People's Republic of China: Tapered Roller Bearings[7][8] A–570–601	6/1/12–5/31/13
Changshan Peer Bearing Co., Ltd.	
GGB Bearing Technology (Suzhou) Co., Ltd.	
Xiangyang Automobile Bearing Co., Ltd.	
Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd.	
Countervailing Duty Proceedings	
The People's Republic of China: High Pressure Steel Cylinders C–570–978	10/18/11–12/31/12
Beijing Tianhai Industry Co., Ltd.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States*, 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.*, the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://ia.ita.doc.gov/frn/2013/1304frn/2013 08227.txt*, prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. Ongoing segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011 should use the formats for the revised certifications provided at the end of the *Interim Final Rule*. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings:*

[3] If one of the above-named companies does not qualify for a separate rate, all other exporters of Chlorinated Isocyanurates from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of High Pressure Steel Cylinders from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of Polyester Staple Fiber from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above-named companies does not qualify for a separate rate, all other exporters of Silicon Metal from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If one of the above-named companies does not qualify for a separate rate, all other exporters of Tapered Roller Bearings from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] The Department has received a review request for one company not shown above, Shanghai Bearing Company Ltd. ("SGBC"). In 1997, the Department revoked the antidumping duty order on tapered roller bearings from the People's Republic of China produced and exported by SGBC. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 62 FR 6189 (Feb. 11, 1997). Therefore, we are not initiating a review for this company.

Interim Final Rule, 76 FR 7491 (February 10, 2011) ("*Interim Final Rule*"), amending 19 CFR 351.303(g)(1) and (2); *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule*, 76 FR 54697 (September 2, 2011). All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*. *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) ("*Final Rule*"); *see also* the frequently asked questions regarding the *Final Rule*, available at *http://ia.ita.doc.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf*. The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 24, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–18555 Filed 7–31–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–855]

Diamond Sawblades and Parts Thereof From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010–2011: Amended Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is amending the final results of the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the Republic of Korea (Korea) to correct certain ministerial errors.[1] In addition, the Department is correcting the assessment language published in the *Final Results*. The period of review (POR) is November 1, 2010, through October 23, 2011.

DATES: *Effective Date:* August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–482–6478.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 2013, the Department disclosed to interested parties its calculations for the *Final Results*. On June 19, 2013, we received a ministerial error allegation from Ehwa Diamond Industrial Co., Ltd. (Ehwa).

Scope of the Order

The merchandise subject to the order is diamond sawblades. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under 6804.21.00. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, entitled "Issues and Decision Memorandum for the Final Results in the Second Antidumping Duty Order Administrative Review of Diamond Sawblades and Parts Thereof from the Republic of Korea" dated June 10, 2013.[2] The written description is dispositive.

Ministerial Error

Section 751(h) of the Tariff Act of 1930, as amended (Act), and 19 CFR 351.224(f) define a "ministerial error" as an error "in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial." We have analyzed Ehwa's ministerial error comments and have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we, in fact, made ministerial errors in our calculations for the *Final Results: See* Memorandum from Sergio Balbontin to Susan H. Kuhbach, Antidumping Duty Administrative Review: Diamond Sawblades and Parts Thereof from the Republic of Korea; Ministerial Error Allegation for the Final Results," dated concurrent with this notice, and hereby incorporated by reference.

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the administrative review of diamond sawblades from Korea. The revised weighted-average dumping margins are detailed below.

Final Results of the Review

As a result of this amended administrative review, we determine that the following weighted-average dumping margins exist for the period November 1, 2010, through October 23, 2011:

Exporter/Manufacturer	*Margin (%)*
Ehwa Diamond Industrial Co., Ltd. ..	0.00
Hyosung Diamond Industrial Co., Ltd, Western Diamond Tools Inc., and Hyosung D&P Co., Ltd.	120.90
Shinhan Diamond Industrial Co., Ltd. and SH Trading, Inc. (collectively, Shinhan)	0.00

Disclosure

We will disclose the calculations performed for these amended final results to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

We are amending the assessment rate language published in the *Final Results*, which contained erroneous assessment information for companies with a weighted-average margin of zero or *de minimis* (*i.e.*, 0.50 percent or more).

The Department shall determine, and U.S. Customs and Border Protection (CBP) will assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). On October 24, 2011, the U.S. Court of International Trade preliminarily enjoined liquidation of entries that are subject to the final determination.[3] Accordingly, the Department will not instruct CBP to

[1] *See Diamond Sawblades and Parts Thereof From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2010–2011*, 78 FR 36524 (June 18, 2013) (*Final Results*).

[2] The memorandum is a public document and is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*.

[3] *See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006).

assess antidumping duties pending resolution of the associated litigation.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis*, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*,[4] or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The Department clarified its "automatic assessment" regulation on May 6, 2003.[5] This clarification will apply to entries of subject merchandise during the POR produced by Ehwa and Shinhan for which these companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate involved in the transaction. For a full discussion of this clarification, *see Assessment Policy Notice*.

Cash Deposit Requirements

Effective October 24, 2011, the Department revoked the antidumping duty order on diamond sawblades from Korea, pursuant to a proceeding under section 129 of the Uruguay Round Agreements Act to implement the findings of the World Trade Organization dispute settlement panel in United States—*Use of Zeroing in Anti-Dumping Measures Involving Products from Korea* (WTIDS402/R) (January 18, 2011).[6] Consequently, no cash deposits are required on imports of subject merchandise.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of 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.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 25, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–18525 Filed 7–31–13; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8102 (February 14, 2012).

[5] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[6] *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof From the Republic of Korea*, 76 FR 66892 (October 28, 2011), and accompanying Issues and Decision Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From Ukraine; Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 1, 2013.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that Metinvest Holding LLC (Metinvest) and its affiliated companies, Azovstal Iron & Steel Works (Azovstal) and Ilyich Iron and Steel Works (Ilyich), are in compliance with the agreement suspending the antidumping investigation of certain cut-to-length carbon steel plate (CTL plate) from Ukraine for the period November 1, 2011 through October 31, 2012. The preliminary results are set forth in the section titled "Methodology and Preliminary Results," *infra*. We intend to issue the final results within 120 days after publication of these preliminary results in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or Anne D'Alauro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0192 or (202) 482–4830.

SUPPLEMENTARY INFORMATION:

Scope of Review

The products covered by the Agreement are hot-rolled iron and non-alloy steel universal mill plates, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Excluded from the subject merchandise within the scope of this Agreement is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of the Agreement is dispositive. For a full description of the scope of this Agreement, see *Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 73 FR 57602 (October 3, 2008) (Agreement), Appendix A.

Methodology and Preliminary Results

On September 29, 2008, the Department signed an agreement under section 734(b) of the Tariff Act of 1930, as amended (the Act), with Ukrainian steel producers/exporters, including Azovstal and Ilyich, suspending the antidumping duty investigation on CTL plate from Ukraine. *See* Agreement. On November 30, 2012, Nucor Corporation submitted a request for an administrative review of the Agreement for CTL plate produced by Metinvest or any of its affiliates. Metinvest owns the Ukrainian CTL plate producers, Azovstal and Ilyich, and sells the companies' products to the United States.[1]

[1] See, *e.g.*, the Public Version of the February 4, 2011, "Verification Report: Metinvest International, SA" at pages 1 and 2 and Public Version of Metinvest's September 7, 2012, Narrative Section A Questionnaire Response at pages 8–10.

The review was initiated on December 31, 2012, for the November 1, 2011 through October 31, 2012 period of review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 77017 (December 31, 2012). On January 22, 2013, the Department issued its questionnaire to Metinvest, the common parent of Azovstal and Ilyich (collectively, the companies). The companies submitted their joint response on March 1, 2013.

The Department has conducted this review in accordance with section 751(a)(1)(C) of the Act, which specifies that the Department shall "review the current status of, and compliance with, any agreement by reason of which an investigation was suspended." In this case, the Department, Azovstal and Ilyich signed the Agreement suspending the underlying antidumping duty investigation on September 29, 2008. Pursuant to the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of the subject merchandise exceeds the U.S. price of its merchandise subject to the Agreement. *See* Agreement, 73 FR 57602, 57603. Our review of the information submitted by the companies indicates that they have adhered to the terms of the Agreement and that the Agreement is functioning as intended. For a full description of the methodology underlying our conclusions, see "Decision Memorandum for Preliminary Results of Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Certain Cut-to-Length Carbon Steel Plate from Ukraine" from Lynn Fischer Fox, Deputy Assistant Secretary of Policy and Negotiations to Paul Piquado, Assistant Secretary for Import Administration (Preliminary Decision Memorandum), dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *https://iaaccess.trade.gov* and in the Department's Central Records Unit, located in room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found on the Internet at *http://www.trade.gov/ia.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Public Comment

Interested parties may submit case briefs not later than 30 days after the date of publication of this notice.[2] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[3] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to provide: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[4]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 26, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–18543 Filed 7–31–13; 8:45 am]

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[2] See 19 CFR 351.309(c)(1)(ii).

[3] See 19 CFR 351.309(d)(1).

[4] See 19 CFR 351.309(c)(2) and (d)(2).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–801]

Solid Urea From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on solid urea from the Russian Federation (Russia). The period of review (POR) is July 1, 2011, through June 30, 2012. The review covers one producer/exporter of the subject merchandise, MCC EuroChem (EuroChem). We preliminarily find that EuroChem has not sold subject merchandise at less than normal value during the POR.

DATES: *Effective Date:* August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is solid urea. The product is currently classified under the Harmonized Tariff Schedules of the United States (HTSUS) item number 3102.10.00.00. The HTSUS subheading is provided for convenience and customs purposes. A full description of the scope of the order is contained in the memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Solid Urea from the Russian Federation" dated concurrently with this notice ("Preliminary Decision Memorandum"), which is hereby adopted by this notice. The written description is dispositive.

The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). Access to IA ACCESS is available to registered users at *http://*

iaaccess.trade.gov and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Methodology

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. To determine the appropriate comparison method, the Department applied a "differential pricing" analysis and has preliminarily determined to use the average-to-average method in making comparisons of constructed export price and normal value for EuroChem. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a dumping margin of 0.00 percent exists for EuroChem for the period July 1, 2011, through June 30, 2012.

Disclosure and Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[1] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[2]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically *via* IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If EuroChem's weighted-average dumping margin is not zero or *de minimis* in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). If EuroChem's weighted-average dumping margin continues to be zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.*, "{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis*, no antidumping duties will be assessed."[3]

The Department clarified its "automatic assessment" regulation on May 6, 2003.[4] This clarification will apply to entries of subject merchandise during the POR produced by EuroChem for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of solid urea from Russia entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for EuroChem will be the rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the manufacturer of the merchandise for the most recently completed segment of this proceeding; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 64.93 percent, the all-others rate established in *Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value*, 52 FR 19557 (May 26, 1987). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this 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.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 26, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

[1] *See* 19 CFR 351.309(d).

[2] *See* 19 CFR 351.309(d)(2) and (d)(2).

[3] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[4] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

A. Home Market Viability as Comparison Market
B. Level of Trade
C. Calculation of Normal Value Based on Comparison Market Prices
Currency Conversion

[FR Doc. 2013–18551 Filed 7–31–13; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with 19 CFR 351.213, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be "collapsed" (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2013, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its "Opportunity to Request Administrative Review" notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity To Request a Review: Not later than the last day of August 2013,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
Antidumping Duty Proceedings	
Germany:	
Seamless Line and Pressure Pipe A–428–820	8/1/12–7/31/13
Sodium Nitrite A–428–841	8/1/12–7/31/13
Italy: Granular Polytetrafluoroethylene Resin A–475–703	8/1/12–7/31/13
Japan:	
Brass Sheet & Strip A–588–704	8/1/12–7/31/13
Tin Mill Products A–588–854	8/1/12–7/31/13
Malaysia: Polyethylene Retail Carrier Bags A–557–813	8/1/12–7/31/13
Mexico: Light-Walled Rectangular Pipe and Tube A–201–836	8/1/12–7/31/13
Republic of Korea:	
Light-Walled Rectangular Pipe and Tube A–580–859	8/1/12–7/31/13
Large Power Transformers A–580–867	2/16/12–7/31/13
Romania: Carbon and Alloy Seamless Standard, Line, And Pressure Pipe (Under 4½ Inches) A–485–805	8/1/12–7/31/13
Thailand: Polyethylene Retail Carrier Bags A–549–821	8/1/12–7/31/13
The People's Republic of China:	
Floor-Standing, Metal-Top Ironing Tables and Parts Thereof A–570–888	8/1/12–7/31/13
Laminated Woven Sacks A–570–916	8/1/12–7/31/13
Light-Walled Rectangular Pipe and Tube A–570–914	8/1/12–7/31/13
Petroleum Wax Candles A–570–504	8/1/12–7/31/13
Polyethylene Retail Carrier Bags A–570–886	8/1/12–7/31/13
Sodium Nitrite A–570–925	8/1/12–7/31/13
Sulfanilic Acid A–570–815	8/1/12–7/31/13
Steel Nails A–570–909	8/1/12–7/31/13
Tetrahydrofurfuryl Alcohol A–570–887	8/1/12–7/31/13
Tow-Behind Lawn Groomers and Parts Thereof A–570–939	8/1/12–7/31/13
Woven Electric Blankets A–570–951	8/1/12–7/31/13
Ukraine: Silicomanganese A–823–805	8/1/12–7/31/13
Vietnam: Frozen Fish Fillets A–552–801	8/1/12–7/31/13
Countervailing Duty Proceedings	
Republic of Korea:	
Corrosion-Resistant Carbon Steel Flat Products C–580–818	1/1/12–2/14/12
Stainless Steel Sheet and Strip in Coils C–580–835	1/1/12–12/31/12
The People's Republic of China:	
Laminated Woven Sacks C–570–917	1/1/12–12/31/12
Light-Walled Rectangular Pipe and Tube C–570–915	1/1/12–12/31/12
Sodium Nitrite C–570–926	1/1/12–12/31/12
Tow-Behind Lawn Groomers and Parts Thereof C–570–940	1/1/12–12/31/12
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://trade.gov/ia*.

All requests must be filed electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS") on the IA ACCESS Web site

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

at *http://iaaccess.trade.gov. See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of August 2013. If the Department does not receive, by the last day of August 2013, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 23, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–18567 Filed 7–31–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for September 2013

The following Sunset Reviews are scheduled for initiation in September 2013 and will appear in that month's Notice of Initiation of Five-Year Sunset Review ("Sunset Review").

	Department contact
Antidumping Duty Proceedings	
Electrolytic Manganese Dioxide from Australia (A–602–806) (1st Review)	Jennifer Moats (202) 482–5047.
Electrolytic Manganese Dioxide from China (A–570–919) (1st Review)	Jennifer Moats (202) 482–5047.
Steel Wire Garment Hangers from China (A–570–918) (1st Review)	Jennifer Moats (202) 482–5047.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in September 2013.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in September 2013.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 23, 2013

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–18569 Filed 7–31–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year reviews ("Sunset Reviews") of the antidumping and countervailing duty ("AD/CVD") orders listed below. The International Trade Commission ("the Commission") is publishing

concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* (August 1, 2013).

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998), and in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–570–912	731–TA–1117	China	New Pneumatic Off-The-Road Tires (1st Review)	Jennifer Moats (202) 482–5047.
C–570–913	701–TA–448	China	New Pneumatic Off-The-Road Tires (1st Review)	Dana Mermelstein (202) 482–1391.
A–570–922	731–TA–1129	China	Raw Flexible Magnets (1st Review)	David Goldberger (202) 482–4136.
C–570–923	701–TA–452	China	Raw Flexible Magnets (1st Review)	Jennifer Moats (202) 482–5047.
A–583–842	701–TA–453	Taiwan	Raw Flexible Magnets (1st Review)	David Goldberger (202) 482–4136.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: "*http://ia.ita.doc.gov/sunset/*." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"), can be found at 19 CFR 351.303. *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011) ("*Interim Final Rule*") amending 19 CFR 351.303(g)(1) and (2) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule*, 76 FR 54697 (September 2, 2011). The formats for the revised certifications are provided at the end of the *Interim Final Rule*. The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://ia.ita.doc.gov/frn/2013/1304frn/2013-08227.txt*, prior to submitting factual information in this segment. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition

as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 18, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–18554 Filed 7–31–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC773

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program

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

ACTION: Notification of fee percentage.

SUMMARY: NMFS publishes a notification of a 0.69-percent fee for cost recovery under the Bering Sea and Aleutian Islands Crab Rationalization Program. This action is intended to provide holders of crab allocations with the fee percentage for the 2013/2014 crab fishing year so they can calculate the required payment for cost recovery fees that must be submitted by July 31, 2014.

DATES: The Crab Rationalization Program Registered Crab Receiver permit holder is responsible for submitting the fee liability payment to NMFS on or before July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the Bering Sea and Aleutian Islands Crab Rationalization Program (Program) in the North Pacific. Fishing under the Program began on August 15, 2005. Regulations implementing the Program can be found at 50 CFR part 680.

The Program is a limited access system authorized by section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Program includes a cost recovery provision to collect fees to recover the actual costs directly related to the management, data collection, and enforcement of the Program. NMFS developed the cost recovery provision to conform to statutory requirements and to partially reimburse the agency for the actual costs directly related to the management, data collection, and enforcement of the Program. Section 313(j) of the Magnuson-Stevens Act provided supplementary authority to section 304(d)(2)(A) and additional detail for cost recovery provisions specific to the Program. The cost recovery provision allows collection of 133 percent of the actual management, data collection, and enforcement costs up to 3 percent of the ex-vessel value of crab harvested under the Program. Additionally, section 313(j) requires the harvesting and processing sectors to each pay half the cost recovery fees. Catcher/processor quota share holders are required to pay the full fee percentage for crab processed at sea.

A crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. The crab allocations include Individual Fishing Quota, Crew Individual Fishing Quota, Individual Processing Quota, Community Development Quota, and the Adak community allocation. The Registered Crab Receiver (RCR) permit holder must collect the fee liability from the crab allocation holder who is landing crab. Additionally, the RCR permit holder must collect his or her own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before the due date of July 31, in the year following the crab fishing year in which landings of crab were made.

The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed three percent) by the ex-vessel value of crab debited from the allocation. Specific details on the Program's cost recovery provision may be found in the implementing regulations at 50 CFR 680.44.

Fee Percentage

Each year, NMFS calculates and publishes in the **Federal Register** the fee percentage according to the factors and methodology described in Federal regulations at § 680.44(c)(2). The formula for determining the fee percentage is the "direct program costs" divided by "value of the fishery," where "direct program costs" are the direct program costs for the Program for the previous fiscal year, and "value of the fishery" is the ex-vessel value of the

catch subject to the crab cost recovery fee liability for the current year. Fee collections for any given year may be less than, or greater than, the actual costs and fishery value for that year, because, by regulation, the fee percentage is established in the first quarter of a crab fishery year based on the fishery value and the costs of the prior year.

Using this fee percentage formula, the estimated percentage of costs to value for the 2012/2013 fishery was 0.69 percent. Therefore, the fee percentage will be 0.69 percent for the 2013/2014 crab fishing year.

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

Dated: July 29, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–18562 Filed 7–31–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC731

Caribbean Fishery Management Council; Scoping Meetings Correction

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

ACTION: Notice of correction to a public scoping meeting.

SUMMARY: The Caribbean Fishery Management Council will hold scoping meetings to obtain input from fishers, the general public, and the local agencies representatives on the development of island-specific fishery management plans for Puerto Rico, St. Thomas/St. John, USVI and St. Croix, USVI.

DATES AND ADDRESSES: Due to the tropical storm Chantel the scoping meetings in these locations could not be held. The rescheduled scoping meetings will be held on the following dates and locations:

In Puerto Rico:

August 5, 2013—7 p.m.–10 p.m.—Mayaguez Resort & Casino, Route 104, Km 0.3, Mayagüez 00680, Puerto Rico

August 6, 2013—7 p.m.–10 p.m.—at the Holiday Inn Ponce & Tropical Casino, 3315 Ponce By Pass, Ponce, Puerto Rico.

In the U.S. Virgin Islands:

August 5, 2013—7 p.m.–10 p.m.—Windward Passage Hotel, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on July 22, 2013 (78 FR 43860). This notice corrects the date for the meeting in the U.S. Virgin Islands. The date was published as August 6th but should be August 5, 2013. All other previously-published information remains unchanged.

Dated: July 29, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–18487 Filed 7–31–13; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No CFPB–2013–0024]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing a new information collection titled, "Evaluations of Financial Capability Programs for Economically-Vulnerable Consumers: Two Randomized Evaluations."

DATES: Written comments are encouraged and must be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. In general, all comments received will be posted without change to regulations.gov, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluations of Financial Capability Programs for Economically-Vulnerable Consumers: Two Randomized Evaluations.

OMB Control Number: 3170–XXXX.

Type of Review: Regular.

Affected Public: Individuals.

Estimated Number of Respondents: 2,700.

Estimated Total Annual Burden Hours: 1,350.

Abstract: The aim of this data collection effort is to understand the impact of bundled products and services on the financial decision-making of economically-vulnerable consumers in the United States. The information will be collected from economically-vulnerable consumers who consent to participate in these research studies. The target population for this survey collection is low-income, underserved consumers who are considered unbanked, underbanked, or have thin or no credit files and therefore have financial services needs that are not being met. We will collect information about the financial health of these consumers, such as the amount of money they hold in savings, their credit score, and the size of their debt to income ratio. We will also collect information about their financial capability. The purpose of this data collection effort is to understand whether bundled products and services that are designed to build savings and credit for economically-vulnerable consumers have an impact on assets building and financial capability.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: July 24, 2013.

Matthew Burton,

Acting Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2013–18484 Filed 7–31–13; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 13–30 with attached transmittal, and policy justification.

Dated: July 26, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 18 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-30, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost $452 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001-06-C

Transmittal No. 13-30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Republic of Korea

(ii) *Total Estimated Value:*

Major Defense Equipment *	$438 million
Other	$ 14 million
TOTAL	$452 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 260 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), containers, missile support and test equipment, provisioning, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering and technical support, and other related elements of program support.

(iv) *Military Department:* Air Force (YAK).

(v) *Prior Related Cases, if any:* FMS case YAD-$22M-16Jan10.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* 18 July 2013.

POLICY JUSTIFICATION

Republic of Korea—AIM–120C–7 Advanced Medium Range Air-to-Air Missiles

The Government of the Republic of Korea (ROK) has requested a possible sale of 260 AIM–120C–7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), containers, missile support and test equipment, provisioning, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering and technical support, and other related elements of program support. The estimated cost is $452 million.

This proposed sale will contribute to the foreign policy goals and national security objectives of the United States by meeting the legitimate security and defense needs of an ally and partner nation. The ROK continues to be an important force for peace, political stability, and economic progress in North East Asia.. The proposed sale will provide the ROK with a contingency stock of AMRAAM AIM–120C–7 missiles to be used on its KF–16 and F–15K aircraft.

The proposed sale will provide the ROK with a credible defense capability to deter aggression in the region and ensure interoperability with U.S. forces. Additionally, operational control (OPCON) will transfer from US Forces Korea/Combined Forces Command (USFK/CFC) to the ROK's Korea Command (KORCOM) in 2015. This acquisition will enhance the capabilities needed to support the OPCON transfer.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missile Systems Company in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips to Korea involving U.S. Government and contractor representatives for technical reviews/support, program management, and training over a period of eight years. U.S. contractor representatives will be required in the ROK to conduct modification kit installation, testing, and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2013–18453 Filed 7–31–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2012–0026]

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 September 3, 2013.

Title, Associated Form and OMB Number: AFROTC Scholarship Program On-line Application, OMB Number 0701–0101.

Type of Request: Reinstatement

Number of Respondents: 15,000

Responses per Respondent: 1

Annual Responses: 15,000

Average Burden per Response: 30 minutes

Annual Burden Hours: 7,500 hours

Needs and Uses: The AFROTC scholarship application is required for completion by high school seniors and recent graduates for the purpose of competing for an AFROTC 4 year scholarship. Respondents must complete and submit their application via the AFROTC.com Web site. Submitted data will be evaluated by AFROTC scholarship selections boards to determine eligibility and to select individuals for the award of a college scholarship.

Affected Public: Individuals or households

Frequency: Annually

Respondent's Obligation: Required to obtain or retain benefits

OMB Desk Officer: Ms. Jasmeet Seehra. Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra 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: July 26, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–18429 Filed 7–31–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Orders Granting Authority To Import and Export Natural Gas, and To Import Liquefied Natural Gas During June 2013

	FE Docket Nos.
CONOCOPHILLIPS COMPANY.	13–66–NG
CONOCOPHILLIPS COMPANY.	13–67–LNG
APACHE CORPORATION	13–68–NG
BIG SKY GAS LLC	13–61–NG
PACIFIC SUMMIT ENERGY LLC.	13–63–NG
EMERA ENERGY SERVICES, INC.	13–70–NG
REPSOL ENERGY NORTH AMERICA CORPORATION.	13–73–NG
OXY ENERGY CANADA, INC	13–74–NG

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2013, it issued orders granting authority to import and export natural gas and to import liquefied natural gas. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fossil.energy.gov/programs/gasregulation/authorizations/Orders-2012.html*. They are also available for inspection and copying in the Office of Fossil Energy, Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between

the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 25, 2013.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	FE docket No.	Authorization holder	Description of action
3295	06/18/13	13–66–NG	ConocoPhillips Company	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3296	06/18/13	13–67–LNG	ConocoPhillips Company	Order granting blanket authority to export LNG to Canada/Mexico by vessel, and to import LNG from various international sources by vessel.
3297	06/18/13	13–68–NG	Apache Corporation	Order granting blanket authority to import/export natural gas from/to Canada.
3298	06/18/13	13–61–NG	Big Sky Gas LLC	Order granting blanket authority to import natural gas from Canada.
3299	06/18/13	13–63–NG	Pacific Summit Energy LLC	Order granting blanket authority to import/export natural gas from/to Canada/Mexico, and to import LNG from various international sources by vessel.
3300	06/18/13	13–70–NG	Emera Energy Services, Inc.	Order granting blanket authority to import/export natural gas from/to Canada.
3301	06/18/13	13–73–NG	Repsol Energy North America Corporation.	Order granting blanket authority to export natural gas to Canada.
3302	06/18/13	13–74–NG	Oxy Energy Canada, Inc.	Order granting blanket authority to import/export natural gas from/to Canada.

[FR Doc. 2013–18517 Filed 7–31–13; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL13–80–000]

Missouri River Energy Services; Notice of Petition for Waiver

Take notice that on July 23, 2013, Missouri River Energy Services, on behalf of itself and its member, City of Pella, Iowa, filed a petition for waiver of certain regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 292.303(a) and 292.303(b), implementing section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), as amended by the Energy Policy Act of 2005.

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 FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 August 22, 2013.

Dated: July 24, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–18473 Filed 7–31–13; 8:45 am]
BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) IV will hold its first meeting.

DATES: September 12, 2013.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal

Officer, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (email); or Lauren Kravetz, Deputy Designated Federal Officer, (202) 418–7944 (voice) or *lauren.kravetz@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: The meeting will be held on September 12, 2013, from 1:00 p.m. to 5:00 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW., Washington, DC 20554. The CSRIC is a Federal Advisory Committee that will provide recommendations to the FCC regarding best practices and actions the FCC can take to ensure the security, reliability, and interoperability of communications systems. On March 19, 2013, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years through March 18, 2015. The meeting on September 12, 2013, will be the first meeting of the CSRIC under the current charter. The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live*. The public may submit written comments before the meeting to Jeffery Goldthorp, CSRIC Designated Federal Officer, by email to *jeffery.goldthorp@fcc.gov* or U.S. Postal Service Mail to Jeffery Goldthorp, Associate Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW., Room 7–A325, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–18519 Filed 7–31–13; 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 August 16, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *George W. Cummings, III and Nanette Weaver Cummings,* both of Monroe, Louisiana, to acquire voting shares of Progressive Bancorp, Inc., and thereby indirectly acquire voting shares of Progressive Bank, both in Monroe, Louisiana.

Board of Governors of the Federal Reserve System, July 29, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–18504 Filed 7–31–13; 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 August 26, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *A.N.B. Holding Company, Ltd.,* Terrell, Texas; to acquire no more than 38 percent of the voting shares of The ANB Corporation, and thereby indirectly acquire voting shares of The American National Bank of Texas, both in Terrell, Texas; Lakeside Bancshares, Inc.; and Lakeside National Bank, both in Rockwall, Texas.

Board of Governors of the Federal Reserve System, July 29, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–18505 Filed 7–31–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (OMB) to extend through November 30, 2016, the current Paperwork Reduction Act (PRA) clearance for the FTC's shared enforcement with the Consumer Financial Protection Bureau (CFPB) of the information collection requirements in Regulation N (Mortgage Acts and Practices—Advertising). That clearance expires on November 30, 2013. The FTC's current PRA clearance (OMB Control Number 3084–0156) for Regulation N is under the FTC's Mortgage Acts and Practices—Advertising Rule, which was republished by the CFPB as Regulation N on December 16, 2011, and became effective December 30, 2011. The

Commission rescinded the Mortgage Acts and Practices—Advertising Rule on, and effective, April 13, 2012.

DATES: Comments must be received by September 30, 2013.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Carole L. Reynolds, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3230.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. "Collection of information" means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 USC 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the CFPB's Regulation N (Mortgage Acts and Practices—Advertising), 12 CFR 1014.

The FTC invites comments 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. All comments must be received on or before September 30, 2013.

The FTC's Mortgage Acts and Practices—Advertising Rule, 16 CFR 321, was issued by the FTC on July 19, 2011, at *www.ftc.gov*, published in the **Federal Register**, 76 FR 43845, and became effective on August 19, 2011.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)[1] substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the CFPB the Commission's rulemaking authority under section 626 of the 2009 Omnibus Appropriations Act on July 21, 2011. As a result, the CFPB republished the Mortgage Acts and Practices—Advertising Rule, at 12 CFR 1014, which became effective December 30, 2011. 76 FR 78130. Thereafter, the Commission rescinded its Rule, on and effective April 13, 2012. 77 FR 22200. Under the Dodd-Frank Act, the FTC retains its authority to bring law enforcement actions to enforce Regulation N.[2] The FTC and the CFPB share enforcement authority for Regulation N and thus the CFPB has incorporated into its recently approved burden estimates[3] for Regulation N one half of the FTC's pre-existing cleared burden estimates.

Regulation N's recordkeeping requirements constitute a "collection of information"[4] for purposes of the PRA.[5] The Rule does not impose a disclosure requirement.

Regulation N requires covered persons to retain: (1) Copies of materially different commercial communications and related materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period; (2) documents describing or evidencing all mortgage credit products available to consumers during the relevant time period; and (3) documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the relevant time period. A failure to keep such records would be an independent violation of the Rule.

Commission staff believes these recordkeeping requirements pertain to records that are usual and customary and kept in the ordinary course of business for many covered persons, such as mortgage brokers, lenders, and servicers.[6] As to these persons, the retention of these documents does not constitute a "collection of information," as defined by OMB's regulations that implement the PRA.[7] Other covered persons, however, such as real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others, may not currently maintain these records in the ordinary course of business. Thus, the recordkeeping requirements for those persons would constitute a "collection of information."

The information retained under the Rule's recordkeeping requirements is used by the Commission to substantiate compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule's requirements or to bring enforcement actions based on violations of the Rule.

Burden Statement

Estimated total annual hours burden: 1,800,000 hours (for the FTC).

Commission staff estimates that the Rule's recordkeeping requirements will affect approximately 1.2 million persons[8] who would not otherwise retain such records in the ordinary

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] The Commission also retained its authority to enforce the Mortgage Acts and Practices—Advertising Rule from the Rule's issuance in July 2011 until the CFPB's republished rule, Regulation N, became effective on December 30, 2011. *See infra* note 10.

[3] The CFPB clearance for their information collections associated with Regulation N was approved by the OMB on July 25, 2012 (OMB Control Number 3170–0009) through July 31, 2015.

[4] Section 1014.5 of the Rule sets forth the recordkeeping requirements.

[5] *See* 44 U.S.C. 3502(3)(A).

[6] Some covered persons, particularly mortgage brokers and lenders, are subject to state recordkeeping requirements for mortgage advertisements. See, e.g., Fla. Stat. 494.00165 (2012); Ind. Code Ann. 23–2–5–18 (2012); Kan. Stat. Ann. 9–2208 (2012); Minn. Stat. 58.14 (2012); Wash. Rev. Code 19.146.060 (2013). Many mortgage brokers, lenders, and servicers are also subject to state recordkeeping requirements for mortgage transactions and related documents, and these may include descriptions of mortgage credit products. See, e.g., Mich. Comp. Laws Serv. 445.1671 (2013); N.Y. Banking Law 597 (Consol. 2012); Tenn. Code Ann. 45–13–206 (2013). In addition, lenders and mortgagees approved by the FHA must retain copies of all print and electronic advertisements and promotional materials for a period of two years from the date the materials are circulated or used to advertise. *See* 24 CFR 202.

[7] *See* 44 U.S.C. 3502(3)(A); 5 CFR 1320.3(b)(2).

[8] No general source provides precise numbers of the various categories of covered persons. Commission staff, therefore, has used the following sources and inputs to arrive at this estimated total: (1) 1 million real estate brokers and agents—from the National Association of Realtors, *see http://www.realtor.org* (last visited June 24, 2013); (2) 140,000 home builders—from the National Association of Home Builders, *see http://www.NAHB.org* (last visited June 24, 2013); (3) 350 finance companies—from the American Financial Services Association, *see http://www.afsaonline.org* (last visited June 24, 2013); (4) 29,770 advertising agencies—from the North American Industry Classification System Association's database of U.S. businesses, see *http://www.naics.com* (last visited June 24, 2013); (5) 1,000 lead generators and rate aggregators—based on staff's administrative experience. These inputs add to 1,171,120; for rounding, and to account further for potentially unspecified other covered persons, however, staff has increased the resulting total to 1.2 million.

course of business. As noted, this estimate includes real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others that may provide commercial communications regarding mortgage credit product terms.[9] Although the Commission cannot estimate with precision the time required to gather and file the required records, it is reasonable to assume that covered persons will each spend approximately 3 hours per year to do these tasks, for a total of 3.6 million hours (1.2 million persons × 3 hours). Since the FTC shares enforcement authority with the CFPB for Regulation N, the FTC's allotted PRA burden is 1,800,000 annual hours.[10]

Estimated labor costs: $24,264,000 (rounded to the nearest thousand).

Commission staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. Staff further assumes that office support file clerks will handle the Rule's record retention requirements at an hourly rate of $13.48.[11] Based upon the above estimates and assumptions, the total annual labor cost to retain and file documents, for the FTC's allotted burden, is $24,264,000 (1.8 million hours × $13.48 per hour).

Absent information to the contrary, staff anticipates that existing storage media and equipment that covered persons use in the ordinary course of business will satisfactorily accommodate incremental recordkeeping under the Rule. Accordingly, staff does not anticipate that the Rule will require any new capital or other non-labor expenditures.

Request for Comments

You can file a comment online or on paper. Write "Regulation N: FTC File No. P134811; K05" 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 "[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). 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, the Commission encourages 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/regulationnpra*, by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov*, you also may file a comment through that Web site.

If you file your comment on paper, write "Regulation N: FTC File No. P134811; K05" 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 J), 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. 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 September 30, 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.*

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2013–18455 Filed 7–31–13; 8:45 am]

BILLING CODE 6750–01–P

[9] The Commission does not know what percentage of these persons are, in fact, engaged in covered conduct under the Rule, i.e., providing commercial communications about mortgage credit product terms. For purposes of these estimates, the Commission has assumed all of them are covered by the recordkeeping provisions and are not retaining these records in the ordinary course of business.

[10] This burden estimate includes recordkeeping requirements of the FTC's Mortgage Acts and Practices Rule for the period from December 1, 2013–December 29, 2013. The Commission retained its authority to enforce the Mortgage Acts and Practices—Advertising Rule from the Rule's issuance in July 2011 until the CFPB's republished rule, Regulation N, became effective on December 30, 2011. Thus, the Commission's Rule had a correlative two-year recordkeeping for the above period concluding on December 29, 2013. Burden imposed on covered entities after that time are covered by the same recordkeeping requirements under Regulation N, which commenced December 30, 2011.

[11] This estimate is based on mean hourly wages for office support file clerks provided by the Bureau of Labor Statistics. *See* U.S. Bureau of Labor Statistics, *Occupational Employment and Wages—May 2012*, table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation," released Mar. 29, 2013, *available at http://www.bls.gov/news.release/pdf/ocwage.pdf.*

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission ("Commission" or "FTC").

ACTION: Notice.

SUMMARY: The FTC intends to conduct a preliminary and exploratory study on consumer susceptibility to fraudulent and deceptive marketing. This research will be conducted to further the FTC's mission of protecting consumers from unfair and deceptive practices. The information collection requirements described below are being submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA").

DATES: Comments must be submitted on or before September 3, 2013.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment sub-part of the **SUPPLEMENTARY INFORMATION** section below. Write "Fraud Susceptibility Internet Panel Study, FTC File No. P095500" on your comment, and file your comment online at *https://public.commentworks.com/ftc/fraudinternetpanelstudypra2*, 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 J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Keith B. Anderson, Economist, Bureau of Economics, Federal Trade Commission, 600 Pennsylvania Avenue NW., Mail Stop NJ–4136, Washington, DC 20580. Telephone: (202) 326–3428.

SUPPLEMENTARY INFORMATION:

I. Background

As part of its consumer protection mission, the FTC has brought hundreds of cases against consumer fraud and has committed significant resources to educating consumers to avoid such frauds. To ensure that its anti-fraud efforts are as effective as possible, the Commission seeks to better understand what makes some consumers more susceptible to becoming fraud victims. The Commission has conducted several previous studies that, in whole or in part, examined this issue.[1] The current proposed study will add to this knowledge.

Understanding when and why people are vulnerable to fraud would better inform the FTC's ongoing efforts to fight fraud through law enforcement and consumer education. The study is not intended to lead to enforcement actions; rather, study results should help the Commission better target its enforcement actions and consumer education initiatives. Understanding why some consumers are more vulnerable to fraud may allow the Commission to improve its consumer education materials to address specific vulnerabilities, more efficiently target our education materials to particularly vulnerable populations, and adapt disclosures to address critical vulnerabilities that lead to fraud victimization.

II. Paperwork Reduction Act

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must get OMB approval for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c).

On June 11, 2009, the FTC sought public comment on the information collection requirements associated with the proposed study.[2] No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, the Commission is providing this second opportunity for public comment.

As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment while pursuing OMB approval for the study.

A. Description of the Collection of Information and Proposed Use

The FTC proposes to use a private survey firm's panel of consumers who have agreed to complete online surveys and will obtain responses from 5,000 members of the contractor's panel. The proposed study is a limited but focused exploration of the determinants of fraud susceptibility. The study focuses on individual traits and behaviors that may contribute to fraud susceptibility. Given the convenience sample, we do not intend to make population-wide projections from our results. Further, the study is intended to focus on individuals' traits and not on the characteristics of advertisements that contribute to fraud susceptibility.

Participants in the study will first be shown two advertisements and will be asked to evaluate the credibility of the ads. Participants will also be asked to indicate how likely they would be to purchase the product if it was a real product and how likely they would be to recommend the product to friends. Understanding the variation in participants' responses to these questions will be the key focus of the analysis in the study.

The two ads shown to each participant will be drawn from a set of six ads. The ads will be for three types of products or services—a diet product or plan, a job offer, and a vacation. For each of the three products, there will be two ads—one that contains claims that are implausible and likely fraudulent, and one that contains only plausible claims. Participants will be shown advertisements for two of the three products. The advertisement for one of the products shown to each participant will be a fraudulent version; the other may be either fraudulent or plausible.

Participants will also be asked questions designed to learn whether they have been a victim of weight-loss, business-opportunity, or work-at-home frauds. These types of fraud are obviously related to the advertisements participants will have evaluated—specifically, the weight-loss and job ads. The responses to these questions can serve both as the focus of an alternative analysis and also to see whether those who find the fraudulent ads to be more credible are more likely to have been victimized in the past.

The survey will also collect information on the participant's personal characteristics and behavior. Responses to these questions will be examined to see whether they are correlated with the ad credibility ratings. These variables will include, for example, whether the person is impulsive or willing to wait, and whether the person is willing to take risks. Questions designed to measure how skeptical a person is of claims made in advertisements, both generally and in specific settings, and the participant's knowledge of how markets work—consumer literacy—are also included. Participants will also be asked questions designed to provide some information on how interested the person would be in the products that are the subject of the ads presented in the first section of the study. The study also asks for demographic information.

B. Estimated Burden Hours

The FTC plans to seek information from 100 participants in the pre-test phase and 5,000 participants in the final data collection phase. For those who participate in the final data collection phase, the time to complete the survey is estimated at 30 minutes. An additional 5 minutes may be needed to complete the pre-test version. Thus, the overall burden for this study will be approximately 2,558 hours—2,500 hours for the 5,000 who participate in

[1] The Commission has conducted three surveys designed to estimate the prevalence of consumer fraud among U.S. adults. The most recent survey was conducted between November 2011 and February 2012. A report describing the findings of that survey—*Consumer Fraud in the United States, 2011: The Third FTC Survey*—was released in April of this year and can be found at *www.ftc.gov/os/2013/04/130419fraudsurvey.pdf*. While the primary focus of these studies was measuring the extent of the problem of fraud, the surveys included questions designed to help address questions of whether consumers with certain characteristics were more likely to have been victims. In addition, the Commission conducted an exploratory experimental study in a university economics laboratory that was aimed at identifying consumer characteristics that were correlated with whether consumers found fraudulent and plausible advertisements to be credible—a possible precursor to falling victim to fraud. The results of that experiment are still being analyzed.

[2] 74 FR 27796 (June 11, 2009). While the Commission announced the instant study at the same time as the study that was conducted in the university economics laboratory (*see supra* note 1), as the studies were further developed, FTC staff concluded that it would be better to wait until the laboratory experiment was largely completed before moving forward with the current study. Similarly, staff decided to wait for the completion of the most recent fraud survey. As discussed above, that survey has now been completed and the results published. The analysis of the results of the laboratory experiment is largely complete and the findings are being prepared for publication.

the final data collection and 58 hours for the 100 who participate in the pre-test.

C. Estimated Costs

The cost per respondent should be negligible. Participation is voluntary, and will not require any labor expenditures by respondents. There are no capital, start up, operation, maintenance, or other similar costs to the respondents.

D. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 3, 2013. Write "Fraud Susceptibility Internet Panel Study, FTC File No. P095500" 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 obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[3] Your comment will be kept confidential only if the FTC General Counsel, 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://public.commentworks.com/ftc/fraudinternetpanelstudypra2*, 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 "Fraud Susceptibility Internet Panel Study, FTC File No. P095500" 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 J), 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 September 3, 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.*

The FTC invites comments 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.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

[3] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2013–18560 Filed 7–31–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier HHS–OS–20165–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for revision of a previously-approved information collection assigned OMB control number 0937–0025, which expired on 08/31/2013. Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate below or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before September 30, 2013.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–20165–60D for reference. Information Collection Request Title: Application for

Appointment as a Commissioned Officer in the PHS Commission Corps.

Abstract: The information collected will include personal information such as name, social security number, and date of birth. Other information will be responses to various questions regarding an applicants' qualifications to join the Commissioned Corps of the U.S. Public Health Service.

Need and Proposed Use of the Information: The Commissioned Corps of the U.S. Public Health Service has a need for the information in order to assess the qualifications of each applicant and make a determination whether the applicant meets the requirements to receive a commission. The information is used to make determinations on candidates/applicants seeking appointment to the Corps to assess their whether they are suitable for life in the uniformed services based upon a review of a variety of assessment factors including, but not limited to: Personal adjustment, employment history, character, suitability investigation clearance, and a candidate's prior history of service in one of the uniformed services. Their potential for leadership as a commissioned officer and their ability to deal effectively with people is evaluated.

Likely Respondents: Respondents would be applicants/candidates for a commission in the Commissioned Corps of the United States Public Health Service.

Burden Statement: The time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Prequalification Review	8,000	1	15/60	2,000
PHS–50	1,000	1	1.0	1,000
PHS–1813	4,000	1	15/60	1,000
Addendum: Commissioned Corps Personal Statement	1,000	1	45/60	.750
Total				4,750

The Office of the Secretary (OS), Department of Health and Human Services specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Deputy Information Collection Clearance Officer.

[FR Doc. 2013–18459 Filed 7–31–13; 8:45 am]

BILLING CODE 4150–49–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Written Comments on the Global Immunizations Working Group's Draft Report and Draft Recommendations for Enhancing the Work of the HHS National Vaccine Program in Global Immunizations for Consideration by the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Vaccine Advisory Committee (NVAC) was established in 1987 to comply with Title XXI of the Public Health Service Act (Pub. L. 99–660) (§ 2105) (42 U.S. Code 300aa–5 (PDF–78 KB)). Its purpose is to advise and make recommendations to the Director of the National Vaccine Program on matters related to program responsibilities. The Assistant Secretary for Health (ASH) has been designated by the Secretary of Health and Human Services (HHS) as the Director of the National Vaccine Program.

The ASH charged the NVAC with reviewing the role of HHS in global vaccination, the effects of global vaccination on global populations, the effects of global vaccination on U.S. populations, and recommending how HHS can best continue to contribute, consistent with its newly established Global Health Strategy and Goal 5 of the National Vaccine Plan. The NVAC was also asked to make recommendations on how to best communicate this information to decision makers and the general public to ensure continued sufficient resources for the global vaccination efforts. The NVAC established the Global Immunizations Working Group to assist in addressing these charges.

A draft report and draft recommendations have been developed by the working group for consideration by the NVAC and will be deliberated on by the NVAC when developing NVAC's final recommendations to the ASH. The National Vaccine Program Office (NVPO) is soliciting public comment on the draft report and draft recommendations from a variety of stakeholders, including the general public, for consideration by the NVAC as they develop their final recommendations to the ASH. It is anticipated that the draft report and draft recommendations, as revised with consideration given to public comment

and stakeholder input, will be presented to the NVAC for adoption in September 2013 at the quarterly NVAC meeting.

DATES: Comments for consideration by the NVAC should be received no later than 5:00 p.m. EDT on August 16, 2013.

ADDRESSES: (1) The draft report and draft recommendations are available on the web at *http://www.hhs.gov/nvpo/nvac/index.html.*

(2) Electronic responses are preferred and may be addressed to: *Jennifer.gordon@hhs.gov.*

(3) Written responses should be addressed to: National Vaccine Program Office, U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 733G, Washington, DC 20201. Attn: HHS Global Immunizations c/o Dr. Jennifer Gordon.

FOR FURTHER INFORMATION CONTACT: Jennifer Gordon, Ph.D., National Vaccine Program Office, Office of the Assistant Secretary for Health, Department of Health and Human Services; telephone (202) 260–6619; fax (202) 260–1165; email: *Jennifer.Gordon@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National Vaccine Program Office (NVPO) is located within the Office of the Assistant Secretary for Health (OASH), Office of the Secretary, U.S. Department of Health and Human Services (HHS). NVPO provides leadership and fosters collaboration among the various Federal agencies involved in vaccine and immunization activities. These coordinated efforts are aimed to achieve the strategic goals outlined in the National Vaccine Plan. The National Vaccine Plan provides a framework, including goals, objectives, and strategies, for pursuing the prevention of infectious diseases through immunizations. The NVPO also supports the National Vaccine Advisory Committee (NVAC). The NVAC advises and makes recommendations to the Assistant Secretary for Health in his capacity as the Director of National Vaccine Program on matters related to vaccine program responsibilities.

Global immunization efforts save millions of lives every year and are deemed one of the most cost-effective strategies in public health. The global health community has the potential to substantially reduce childhood mortality and alleviate the economic and societal burdens vaccine preventable diseases impose on nations through immunization. However, continued efforts are needed to strengthen and optimize routine immunization systems to ensure the full benefits of immunization are extended to all people, regardless of where they are born, who they are, or where they live.

Global immunization efforts are also important to protecting the health and economic investments of the U.S. Globalization, frequent travel, and the ongoing threat of disease outbreaks due to importations of infectious diseases bring global health to the forefront of HHS efforts to protect the health and well-being of Americans as well as populations across the globe. This is reflected in the Secretary's 2010–2015 HHS Strategy, the HHS Global Health Strategy, the 2010 National Vaccine Plan, and a number of strategic plans specific to the individual HHS agencies and offices.

Through a series of teleconferences and electronic communications, the NVAC Global Immunizations working group identified a number of draft recommendations that fell into six priority areas, which represent both opportunities for improving global immunizations, as well as areas that will benefit the most from continued and enhanced HHS participation. These priority areas include:

1. Tackling time-limited opportunities to complete polio eradication and to advance measles mortality reduction and regional measles/rubella elimination goals
2. Strengthening Global Immunization Systems
3. Enhancing Global Capacity for Vaccine Safety Monitoring and Post-Marketing Surveillance
4. Building Global Immunization Research and Development Capacity
5. Strengthening Capacity for Vaccine Policy and Decision Making
6. HHS Leadership and Coordination.

The NVAC draft report details the background and rationale for each of the recommendations, how HHS is currently contributing to these global efforts, and how the ASH can support and further HHS activities in these areas. The NVAC intends for the recommendations to serve as a potential roadmap for better coordination and tracking of HHS global immunization efforts. The continued participation of HHS in the six priority areas identified by NVAC will make certain that global immunizations remain at the forefront of HHS global health priorities.

II. Request for Comment

NVPO, on behalf of the NVAC Global Immunizations Working Group, requests input on the draft report and draft recommendations. In addition to general comments on the draft report and draft recommendations, NVPO is seeking input on activities not represented in the report where HHS efforts can offer a comparative advantage or where HHS efforts could enhance other USG efforts in alignment with the HHS Global Health Strategy and the National Vaccine Plan. Please limit your comments to six (6) pages.

III. Potential Responders

HHS invites input from a broad range of stakeholders including individuals and organizations that have interests in global immunization efforts and the role of HHS in enhancing those efforts.

Examples of potential responders include, but are not limited to, the following:

—General public;
—Advocacy groups and public interest organizations;
—Academics and professional societies;
—Global organizations, governmental, and non-governmental organizations;
—Development partners, foundations, and philanthropic organizations;
—Representatives from the private sector.

When responding, please self-identify with any of the above or other categories (include all that apply) and your name. Anonymous submissions will not be considered. Written submissions should not exceed six pages. Please do not send proprietary, commercial, financial, business, confidential, trade secret, or personal information.

Dated: July 24, 2013.

Bruce Gellin,

Deputy Assistant Secretary for Health, Director, National Vaccine Program Office.

[FR Doc. 2013–18479 Filed 7–31–13; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Written Comments on the Draft Report of the National Adult Immunization Standards of Practice for Consideration by the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Vaccine Advisory Committee (NVAC) was established in 1987 to comply with Title XXI of the Public Health Service Act (Pub. L. 99–660) (§ 2105) (42 U.S. Code 300aa–5 (PDF–78 KB)). Its purpose is to advise and make recommendations to

the Director of the National Vaccine Program on matters related to program responsibilities. The Assistant Secretary for Health (ASH) has been designated by the Secretary of Health and Human Services (HHS) as the Director of the National Vaccine Program. The ASH has charged the NVAC with examining the current adult immunization environment by updating adult immunization standards of practice with the intention of ultimately impacting Healthy People 2020 goals. A review group was established to address this charge on behalf of the NVAC. Through discussion and careful review, the group has developed draft recommendations for consideration by the NVAC to achieve this charge. It is anticipated that the draft report, as revised with consideration given to public comment and stakeholder input, will be presented in at the NVAC at the September 2013 meeting for deliberation and decision on their final recommendation. The draft report will be made available for public review and written comment.

DATES: To receive consideration, comments should be received no later than 5:00 p.m. EST on August 16, 2013.

ADDRESSES:

1. The draft report is available on the web at: *http://www.hhs.gov/nvpo/nvac/*
2. Electronic responses are preferred and may be addressed to *nvpo@hhs.gov*
3. Written responses should be addressed to: National Vaccine Program Office, U.S. Department of Health and Human Services, 200 Independence Ave. SW., Room 745.H.5, Washington, DC 20201, Attention: Adult Immunization Standards, c/o Shary Jones.

FOR FURTHER INFORMATION CONTACT: Shary Jones, PharmD, MPH, National Vaccine Program Office, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Ave. SW., Room 745H.5, Washington, DC 20201, Attention: National Adult Immunization Standards, telephone (202) 205–4862, fax (202) 260–1165, email: *nvpo@hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

August is National Immunization Awareness Month and while the United States has made significant progress toward eliminating vaccine-preventable diseases among children, unacceptably low immunization rates still exist among many adults. Many adults are aware of annual influenza vaccination, but fewer are aware of other recommended adult vaccines. Additionally, there are many types of immunization providers and sites, as well as many missed-opportunities occurring to assess patient vaccination needs. An updated version of the National Adult Immunization Standards provides a framework with the purpose of collaboration, coordination, and communication among immunization stakeholders dedicated to meeting the immunization needs of the patient and protecting the community from vaccine preventable diseases.

II. Request for Comment

NVPO, on behalf of the NVAC, requests input on the draft report located on the NVAC Web site at *http://www.hhs.gov/nvpo/nvac/*. In addition to general comments, NVPO is seeking input on additional gaps not addressed in the National Adult Immunization Standards of Practice draft report, and/or prioritization criteria and its application. Please limit comments to 6 pages.

III. Potential Responders

The Department of Health and Human Services invites input from a broad range of individuals and organizations that have interests in adult immunizations and ways to increase vaccine coverage in adults. Examples of potential responders include, but are not limited to the following:

—general public;

—advocacy groups and public interest organizations;

—state and local governments;

—state and local health departments;

—healthcare professional societies and organizations;

—healthcare organizations.

When responding, please self-identify with any of the above or other categories (include all that apply) and your name. All comments submitted will be publicly available. Anonymous submissions will not be considered and will not be posted.

Written submission should not exceed 6 pages. Any information submitted will be made public. Consequently, do not send proprietary, commercial, financial, business, confidential, trade secret, or personal information that you do not wish to be made public.

Dated: July 24, 2013.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. 2013–18480 Filed 7–31–13; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Advisory Council on Alzheimer's Research, Care, and Services

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

ACTION: Request for nominations.

SUMMARY: HHS is soliciting nominations for six non-Federal members of the Advisory Council on Alzheimer's Research, Care, and Services. The six positions are for each of the following categories, as specified in the National Alzheimer's Project Act: Alzheimer's patient advocate, Alzheimer's caregiver, health care provider, representative of state health department, researcher with Alzheimer's-related expertise, and voluntary health association representative. Nominations should include the nominee's contact information (current mailing address, email address, and telephone number) and current curriculum vitae or resume.

DATES: Submit nominations by email or FedEx or UPS before COB on August 16, 2013.

ADDRESSES: Nominations should be sent to Helen Lamont at *helen.lamont@hhs.gov;* Helen Lamont, Ph.D., Office of the Assistant Secretary for Planning and Evaluation, Room 424E, Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Helen Lamont (202) 690–7996, *helen.lamont@hhs.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Council on Alzheimer's Research, Care, and Services meets quarterly to discuss programs that impact people with Alzheimer's disease and related dementias and their caregivers. The Advisory Council makes recommendations about ways to reduce the financial impact of Alzheimer's disease and related dementias and to improve the health outcomes of people with these conditions. The Advisory Council provides feedback on the National Plan to Address Alzheimer's Disease. On an annual basis, the Advisory Council shall evaluate the implementation of the recommendations through an updated national plan.

The Advisory Council consists of designees from Federal agencies including the Centers for Disease

Control and Prevention, Administration on Aging, Centers for Medicare and Medicaid Services, Indian Health Service, Office of the Director of the National Institutes of Health, National Science Foundation, Department of Veterans Affairs, Food and Drug Administration, Agency for Healthcare Research and Quality, and the Surgeon General. The Advisory Council also consists of 13 non-federal members selected by the Secretary who are Alzheimer's patient advocates (2), Alzheimer's caregivers (2), health care providers (2), representatives of State health departments (2), researchers with Alzheimer's-related expertise in basic, translational, clinical, or drug development science (2), voluntary health association representatives (2), and a person with a diagnosis of Alzheimer's disease or a related dementia. Members serve as Special Government Employees.

Donald B. Moulds,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2013–18482 Filed 7–31–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received within 30 days of this notice.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The Teaching Health Center Graduate Medical Education (THCGME) Program Eligible Resident/Full-Time Equivalent (FTE) Chart.

OMB No. 0915–xxxx NEW.

Abstract: The THCGME Program Eligible Resident/FTE Chart published in the THCGME Funding Opportunity Announcements (FOAs) is a means for determining the number of eligible residents/FTEs in an applicant's primary care residency program. The chart requires applicants to provide data related to the size and/or growth of the residency program over previous academic years, the number of residents enrolled in the program during the baseline academic year, and a projection of the program's proposed expansion over the next four academic years.

Need and Proposed Use of the Information: The THCGME Program Eligible Resident/FTE Chart published in the THCGME FOAs is a means for determining the number of eligible residents/FTEs in an applicant's primary care residency program. The chart requires applicants to provide data related to the size and/or growth of the residency program over previous academic years, the number of residents enrolled in the program during the baseline academic year, and a projection of the program's proposed expansion over the next four academic years. It is imperative that applicants complete this chart and provide evidence of a planned expansion, as per the statute, THCGME program funding may only be used to support residents in new approved graduate medical residency training programs or an expanded number of residents in existing residency training programs (Section 340H(a) of the Public Health Service Act). Utilization of a chart to gather this important information has decreased the number of errors in the eligibility review process resulting in a more accurate review and funding process. Likely Respondents: The likely respondents are applicants for the THCGME Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Teaching Health Center GME program Eligible Resident FTE Chart	25	1	25	.5	12.5
Total	25	1	25	.5	12.5

Dated: July 26, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–18493 Filed 7–31–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received within 30 days of this notice.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Children's Hospital Graduate Medical Education Payment Program (CHGME PP) Annual Report; OMB No. 0915–0313—Extension.

Abstract: The CHGME Payment Program was enacted by Public Law 106–129 to provide federal support for graduate medical education (GME) to freestanding children's hospitals, similar to Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

The CHGME Payment Program statute Public Law 109–307 requires that CHGME-participating hospitals provide information about their residency training programs in an annual report to HRSA that will be an addendum to the hospitals' annual applications for funds.

Data are required to be collected on the: (1) Types of training programs that the hospital provided for residents such as general pediatrics, internal medicine/pediatrics, and pediatric subspecialties including both medical subspecialties certified and non-medical subspecialties; (2) the number of training positions for residents, the number of such positions recruited to fill, and the number of positions filled; (3) the types of training that the hospital provided for residents related to the health care needs of different populations such as children who are underserved for reasons of family income or geographic location, including rural and urban areas; (4) changes in residency training including changes in curricula, training experiences, and types of training programs, and benefits that have resulted from such changes and changes for purposes of training residents in the measurement and improvement of the quality and safety of patient care; (5) and the numbers of residents (disaggregated by specialty and subspecialty) who completed training in the academic year and care for children within the borders of the service area of the hospital or within the borders of the state in which the hospital is located.

Need and Proposed Use of the Information: The CHGME Payment Program statute Public Law 109–307 requires that CHGME-participating hospitals continue to provide information about their residency training programs in an annual report to HRSA that must address statutory reporting requirements including types of training, number of training positions, types of training to care for underserved children, changes in residency training, and practice location of graduates.

Likely Respondents: CHGME Payment Program participating children's hospitals.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Screening Instrument (HRSA 100–1)	54	1	54	10.4	561.6
Annual Report: Hospital and Program Level Information (HRSA 100–2 and 100–3)	54	1	54	74.0	3996.0
Total	54		54	84.4	4557.6

Dated: July 26, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–18492 Filed 7–31–13; 8:45 am]

BILLING CODE 4165–15–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 Member Conflict: Molecular and Cellular Neurobiology.

Date: August 12, 2013.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter B Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@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: July 26, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18450 Filed 7–31–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 Eye Institute Special Emphasis Panel; NEI K99 Review.

Date: July 31, 2013.

Time: 1:00 p.m. to 1:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian Hoshaw, Ph.D. Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.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. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 26, 2013.

Melanie Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18451 Filed 7–31–13; 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: Kits for the Detection of Human Interferon-Alpha Subtypes and Allotypes

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR 404, 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: US provisional application No. 61/116,563, filed November 20, 2008, PCT application No. PCT/US2009/65382, filed November 20, 2009; and corresponding National Phase filings in the US, EP, AU, CA, IL, JP and HK (NIH Ref. E–157–2008/0), titled "Compositions for Detecting Human Interferon-Alpha Subtypes and Methods of Use", to IES Diagnostics, LLC having a place of business at 12 Upper Drive, Watchung, NJ 07069. The patent rights in these inventions 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 August 16, 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: Cristina Thalhammer-Reyero, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: *thalhamc@mail.nih.gov*; Telephone: 301–435–4507; Facsimile: 301–402–0220.

SUPPLEMENTARY INFORMATION: The prospective start-up 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. 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 part 404.

This technology relates to use of kits for the detection of human interferon-alpha subtypes and allotypes.

The proposed field of exclusivity may be limited to the commercialization of the kits for diagnostic and prognostic uses that are regulated by the FDA or equivalent agencies in other countries.

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: July 26, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 2013–18452 Filed 7–31–13; 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: Topical Antibiotic With Immune Stimulating Oligodeoxynucleotide Molecules To Speed Wound Healing; and Use of CpG Oligodeoxynucleotides To Induce Epithelial Cell Growth

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, 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: US provisional Applications 61/639,688 (E–294–2011/0–US–01) filed April 27, 2012 and PCT application PCT/US2013034639 (E–294–2011/0–PCT–02) filed March 29, 2013, each entitled "Topical Antibiotic with Immune Stimulating oligodeoxynucleotide Molecules to Speed Wound Healing" and US application 12/205,756 (E–328–2001/1–US–01) filed September 2008 and issued as US patent 8,466,116, each entitled "Use of CpG Oligodeoxynucleotides to Induce Epithelial Cell Growth" to Tollgene having a place of business at 2429 Ginny Way, Lafayette, CO 80026. The patent rights in these inventions 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 August 16, 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: *Tedd.Fenn@mail.nih.gov;* Telephone: 424–500–2005; Facsimile: 301–402–0220.

SUPPLEMENTARY INFORMATION: The prospective start-up exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404. 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 part 404.

These technologies relate to relate to use of CpG oligodeoxynucleotides (ODNs) to accelerate wound healing. The E–294–2011/0, technology relates to an antibiotic composition containing the toll-like receptor-7 (TLR7) ligand (imidazoquinoline) and an immunostimulatory K ODN. There is evidence that this formulation may produce more rapid wound healing versus standard antibiotic formulations. Because standard antibiotics eliminate bacteria at a wound site, they also eliminate the molecular signals present in bacterial DNA that stimulate the immune system's wound healing processes. The ODN and imidazoquinoline act as artificial immune stimulants that mimic the bacterial signals to improve healing rates. The E–328–2001/1 technology relates to a method of inducing epithelial cell growth by administration of immunostimulatory ODNs. The stimulation of epithelial cell growth also promotes wound healing.

The proposed field of exclusivity may be limited to human and veterinary therapeutics for treatment of wounds.

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: July 26, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–18449 Filed 7–31–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0013, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 30, 2013, 78 FR 32416. The collection involves surveying travelers to measure customer satisfaction of aviation security in an effort to more efficiently manage its security screening performance at airports.

DATES: Send your comments by September 3, 2013. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Susan L. Perkins, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3398; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is

available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0013.

Forms(s): Survey.

Affected Public: Travelling public.

Abstract: OMB Control Number 1652–0013; Aviation Security Customer Satisfaction Performance Measurement Passenger Survey: TSA, with OMB's approval, has conducted surveys of passengers and now seeks approval to continue this effort. TSA plans to conduct passenger surveys at airports nationwide. The surveys will be administered using an intercept methodology. The intercept methodology uses TSA personnel who are not in uniform to hand deliver paper survey forms to passengers immediately following the passenger's experience with TSA's checkpoint security functions. Passengers are invited, though not required, to complete and return the survey using either an online portal or by responding in writing to the survey questions on the customer satisfaction card and depositing the card in a drop-box at the airport or using U.S. mail; TSA personnel decide the method by which passengers will be asked to complete and return the survey. TSA uses the intercept methodology to randomly select passengers to complete the survey in an effort to gain survey data representative of all passenger demographics, including passengers who—

- Travel on weekdays or weekends;
- Travel in the morning, mid-day, or evening;
- Pass through each of the different security screening locations in the airport;
- Are subject to more intensive screening of their baggage or person; and
- Experience different volume conditions and wait times as they proceed through the security checkpoints.

The survey includes 10 to 15 questions. Each question promotes a quality response so that TSA can identify areas in need of improvement. All questions concern aspects of the passenger's security screening experience.

TSA intends to collect this information in order to continue to assess customer satisfaction in an effort to more efficiently manage its security screening performance at airports. In its future surveys, TSA wishes to obtain more detailed, airport-specific data that TSA can use to enhance customer experiences and its performance at specific airports. In order to gain more detailed information regarding customer experiences, TSA is submitting 84 questions to OMB for approval. Eighty-one questions have been previously approved by OMB and three questions are being submitted to OMB for the first time. The new questions will allow TSA to better measure customer satisfaction with Risk-Based Security, an effort to focus TSA resources and improve the passenger experience at security checkpoints by applying new intelligence-driven, risk-based screening procedures and enhancing the use of technology. Since there are some passengers who present a low level of risk, Risk-Based Security allows TSA to focus resources on higher-risk or unknown travelers, thereby increasing the level of security. Each survey question seeks to gain information regarding one of the following categories:

- Confidence in Personnel
- Confidence in Screening Equipment
- Confidence in Security Procedures
- Convenience of Divesting
- Experience at Checkpoint
- Satisfaction with Wait Time
- Separation from Belongings
- Separation from Others in Party
- Stress Level

TSA personnel use random procedures to select passengers to voluntarily participate in the survey until TSA obtains the desired sample size. The samples may be selected with one randomly selected time and location or span multiple times and locations. Designated TSA personnel at each airport may choose one or more of the following sample methods when planning the survey, which include a business card that directs customers to an online portal, a customer satisfaction card with survey questions on the card, or a customer satisfaction card with survey questions on the card and a link to the online portal. All responses are voluntary and there is no burden on passengers who choose not to respond.

Number of Respondents: 25,000.

Estimated Annual Burden Hours: An estimated 2083.3 hours annually.

Dated: July 26, 2013.

Susan L. Perkins,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2013–18483 Filed 7–31–13; 8:45 am]

BILLING CODE9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation of SGS North America, Inc., as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of SGS North America, Inc., as a commercial laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of April 19, 2013.

DATES: *Effective Dates:* The accreditation of SGS North America, Inc., as commercial laboratory became effective on April 19, 2013. The next triennial inspection date will be scheduled for April 2016.

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, that SGS North America, Inc., 101 Corporate Pl, Vallejo, CA 94590, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that

it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited 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: July 26, 2013.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2013–18486 Filed 7–31–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DR5A311IA000113]

Secretarial Commission on Indian Trust Administration and Reform

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Office of the Secretary is announcing that the Secretarial Commission on Indian Trust Administration and Reform (the Commission) will hold a public meeting on August 19, 2013. During the public meeting, the Commission will: attend to operational activities of the Commission; gain insights and knowledge from invited speakers and attendees about the trust relationship, other trust models, and trust reform, and aspects of trust that are unique to Alaska; review Commission action items; and gain insights and perspectives from members of the public.

DATES: The Commission's public meeting will begin at 8:30 a.m. and end at 1 p.m. Alaska Daylight Time on August 19, 2013. Members of the public who wish to attend in person should RSVP by August 16, 2013, to: *trustcommission@ios.doi.gov* to ensure adequate meeting packets will be made available. Members of the public who wish to participate via teleconference and Webinar should register at *https://www1.gotomeeting.com/register/358286632* by August 16, 2013, and instructions on how to join the meeting will be sent to your email address. Teleconference/Webinar participation is limited to 100 participants.

ADDRESSES: The public meeting will be held at the Sheraton Anchorage Hotel & Spa, Kuskokwim Ballroom, 401 E. 6th Avenue, Anchorage, Alaska 99501. We encourage you to RSVP to *trustcommission@ios.doi.gov* by August 16, 2013.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Sarah Harris, Chief of Staff to the Assistant Secretary-Indian Affairs, Department of the Interior, 1849 C Street NW., Room 4141, Washington, DC 20240; or email to *Sarah.Harris@bia.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Secretarial Commission on Indian Trust Administration and Reform was established under Secretarial Order No. 3292, dated December 8, 2009. The Commission plays a key role in the Department's ongoing efforts to empower Indian nations and strengthen nation-to-nation relationships.

The Commission will complete a comprehensive evaluation of the Department's management and administration of the trust assets within a two-year period and offer recommendations to the Secretary of the Interior of how to improve in the future. The Commission will:

(1) Conduct a comprehensive evaluation of the Department's management and administration of the trust administration system;

(2) Review the Department's provision of services to trust beneficiaries;

(3) Review input from the public, interested parties, and trust beneficiaries which should involve conducting a number of regional listening sessions;

(4) Consider the nature and scope of necessary audits of the Department's trust administration system;

(5) Recommend options to the Secretary to improve the Department's management and administration of the trust administration system based on information obtained from these Commission's activities, including whether any legislative or regulatory changes are necessary to permanently implement such improvements; and

(6) Consider the provisions of the American Indian Trust Fund Management Reform Act of 1994 providing for the termination of the Office of the Special Trustee for American Indians, and make recommendations to the Secretary regarding any such termination.

Comprehensive Evaluation

The Commission's purpose is to provide a thorough evaluation of the existing Indian trust management and Trust Administration System to support a reasoned and factually based set of options for potential management improvements. Grant Thornton LLP in partnership with Cherokee Services Group has been awarded a contract to perform a comprehensive evaluation of the Department's management of the Trust Administration System in support of the Commission's efforts.

The management consultant will be attending the upcoming Indian Trust Commission's meeting in Anchorage and will be available to speak with if you wish to provide input and recommendations. The Commission encourages individuals to take the opportunity to provide Grant Thornton with your perspective on how the trust administration system currently operates. To contact Grant Thornton directly, you may send an email to *Trust.Commission@us.gt.com*.

Public Meeting Details

On Monday, August 19, 2013, the Commission will hold a meeting open to the public. The following items will be on the agenda:

Monday, August 19, 2013

- Invocation;
- Welcome, introductions, agenda review;
- Remarks from Sarah Harris, Designated Federal Official;
- Commission Operations Reports and Decision Making
- Insights and lessons learned regarding trust responsibility, Alaska Native Claims Settlement Act (ANSCA) and the role of tribes going forward;
- Panel session regarding trust land and trust responsibility in Alaska;
- Review of draft recommendations of Commission and public comment;
- Review action items, meeting accomplishments; and
- Closing blessing, adjourn.

Written comments may be sent to the Designated Federal Official listed in the **FOR FURTHER INFORMATION CONTACT** section above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public. To review all related material on the Commission's work, please refer to *http://www.doi.gov/cobell/commission/index.cfm*.

Dated: July 25, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–18526 Filed 7–31–13; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[USGS–GX13LR000F60100]

Agency Information Collection Activities: Comment Request for the Production Estimate (2 Forms)

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of a currently approved information collection (1028–0065).

SUMMARY: We (the USGS) will ask the Office of Management and Budget (OMB) to approve the information collection request (ICR) described below. This collection consists of 2 forms. The collection is a revision with a title change because it includes the previous transfer of USGS Form 9–4142–Q to Information Collection 1028–0062. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This collection is scheduled to expire on July 31, 2013.

DATE: To ensure that your comments on this IC are considered, we must receive them on or before September 3, 2013.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with OMB Control Number 1028–0065. Please also send a copy of your comments to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, 807 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192 (mail); 703–648–7195 (fax); or *dgovoni@usgs.gov* (email). Reference Information Collection 1028–0065 in the subject line.

FOR FURTHER INFORMATION CONTACT: Shonta E. Osborne at 703–648–7960 (telephone); *sosborne@usgs.gov* (email); or by mail at U.S. Geological Survey, 985 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (Information Collection Review, Currently under Review).

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public. This information will be published in the "Mineral Commodity Summaries," the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

II. Data

OMB Control Number: 1028–0065.

Form Numbers: 9–4042–A and 9–4124–A.

Title: Production Estimate.

Type of Request: Extension of a currently approved collection.

Affected Public: Private sector: U.S. nonfuel minerals producers.

Respondent Obligation: Voluntary.

Frequency of Collection: Annually.

Estimated Number of Annual Responses: 1,614.

Annual Burden Hours: 403 hours. We expect to receive 1,614 annual responses. We estimate an average of 15 minutes per response.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have not identified any "non-hour cost" burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden time to the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. 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 we will be able to do so.

Dated: July 26, 2013.

Steven D. Textoris,

Acting Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2013–18431 Filed 7–31–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX13CD00B951000]

Agency Information Collection Activities: State Water Resources Research Institute Program Annual Application and Reporting

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of currently approved information Collection, 1028–0097.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is inviting comments on an information collection request (ICR) that we have sent to the Office of Management and Budget (OMB) for review and approval. The ICR concerns the paperwork requirements for the *National Institutes for Water Resources (NIWR) USGS Competitive Grant Program.* As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This collection is scheduled to expire on July 31, 2013.

DATES: Submit written comments by September 3, 2013.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your

submission with OMB Control Number 1028–0097. Please also submit a copy of your comments to Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 807 National Center, Reston, VA 20192 (mail); *dgovoni@usgs.gov* (email); or (703) 648–7195 (fax). Please reference Information Collection 1028–0097.

For Further Information Please Contact: Earl Greene by mail at U. S. Geological Survey, 5522 Research Park Drive, 436, Baltimore, MD 21228, email: *eagreene@usgs.gov*. You may also find information about this ICR at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Title: State Water Resources Research Institute Program Annual Application and Reporting.

OMB Control Number: 1028–0097.

Type of Request: Notice of an extension of a currently approved information collection.

Respondent Obligation: Required to obtain or retain benefits.

Abstract

The Water Resources Research Act of 1984, as amended (42 U.S.C. 10301 et seq.), authorizes a water resources research institute or center in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Federated States of Micronesia, the Commonwealth of the Northern Marina Islands, and American Samoa. There are currently 54 such institutes, one in each state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. The institute in Guam is a regional institute serving Guam, the Federated States of Micronesia, and the Commonwealth of the Northern Mariana Islands. Each of the 54 institutes submits an annual application for an allotment grant and provides an annual report on its activities under the grant. The State Water Resources Research Institute Program issues an annual call for applications from the institutes to support plans to promote research, training, information dissemination, and other activities meeting the needs of the States and Nation. The program also encourages regional cooperation among institutes in research into areas of water management, development, and conservation that have a regional or national character.

The U.S. Geological Survey has been designated as the administrator of the provisions of the Act.

Frequency of Collection: Annually.

Estimated Number and Description of Respondents: We expect to receive 54 applications and 54 annual reports.

Estimated Annual Responses: 108.

Estimated Annual Burden Hours: 8,640 (including 100 hours per application and 60 hours per report).

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There is no non-hour cost burden associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an 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.

Comments: To comply with the public consultation process, on April 18, 2013, we published a **Federal Register** notice (78 FR 2422) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day public comment period, which ended June 19, 2013. We did not receive any comments in response to that notice. We again invite comments concerning this information collection on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: July 26, 2013.

Earl A. Greene,

Acting, Water Resources Research Act Program Coordinator.

[FR Doc. 2013–18427 Filed 7–31–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMPO0000 L17110000.FV0000]

Notice of Availability of the Draft Rob Jaggers Camping Area Business Plan and Expanded Amenity Fee Schedule for the Fort Stanton/Snowy River National Conservation Area, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Lands Recreation Enhancement Act (REA), the Bureau of Land Management (BLM), Roswell Field Office, has prepared and is making available to the public the Draft Rob Jaggers Camping Area Business Plan and Expanded Amenity Fee Schedule. The Rob Jaggers Camping Area is located in the Fort Stanton/Snowy River National Conservation Area, NM. The Act authorizes the BLM to charge fees at developed recreation sites that meet certain criteria.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft Business Plan by December 15, 2013.

ADDRESSES: Copies of the Draft Rob Jaggers Camping Area Business Plan are available at the BLM Pecos District Office, 2909 W 2nd St., Roswell NM 88201 or online at: *www.blm.gov/nm/roswell*. You may submit comments related to the Draft Rob Jaggers Camping Area Business Plan by any of the following methods: Email: *cjbrown@blm.gov*; Fax: 575–627–0276, Attention: Christopher Brown; Mail: BLM Roswell Field Office, Attention: Christopher Brown, 2909 W 2nd St., Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: Christopher Brown, Roswell Field Office, telephone 575–627–0220 (7:45 a.m. to 4:30 p.m.), Monday through Friday; email *cjbrown@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–833. The FIRS is available 24 hours a day, 7 days a week, to leave a message for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Roswell Field Office (Field Office) has proposed an expanded amenity fee schedule for services at the Rob Jaggers Camping Area located at the Fort Stanton/Snowy River National Conservation Area. The REA requires

that an expanded amenity fee be considered by a Recreation Resource Advisory Council (RAC). The Roswell Field Office has complied with the REA by presenting the Business Plan to the Pecos District RAC for consideration. The final Business Plan decision process will be made after the six month public comment period. Section 3(g) of REA provides for levy of an "expanded amenity recreation fee" at developed campgrounds characterized by nine standards of available facilities. Having all nine required amenities, the Rob Jaggers Camping Area meets the Congressional criteria for an expanded amenity fee site. While overnight camping would remain free of charge, the use of the amenities at the campground would be available for an expanded amenity fee. The proposed fees are for electric hookup, water hookup, reservation of the group shelter for exclusive use, and use of the dump station. The collected fees would be used for onsite maintenance, improvements, and incidental expenses associated with the volunteer program, such as meals and transportation to and from the worksite. Possible improvements include additional water and electrical stations, fire rings, picnic tables, restrooms, cook grills, and equestrian facilities. The amenity fees are scheduled to be implemented after the December 15, 2013, deadline for public comment.

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 may 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.

Authority: The Federal Lands Recreation Enhancement Act 2005 as authorized under 16 U.S.C. 6801–6814.

Aden L. Seidlitz,

Associate State Director, New Mexico.

[FR Doc. 2013–18575 Filed 7–31–13; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO2600000 L10600000 XQ0000]

Wild Horse and Burro Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting that will provide an opportunity for the Advisory Board to attend presentations and engage with authors of the June 2013 National Research Council of the National Academies (NRC/NAS) Report entitled: "Using Science to Improve the WHB Program: A Way Forward."

DATES: The Advisory Board will meet on Monday, September 9, 2013, from 1 p.m. until 5 p.m.; Tuesday, September 10, 2013, from 8 a.m. until 5 p.m.; and Wednesday, September 11, 2013, from 8 a.m. until noon. This will be a 3-day meeting.

ADDRESSES: This Advisory Board meeting will take place at the Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209, 703–524–6400.

Written comments pertaining to the September 9–11, 2013, Advisory Board meeting can be mailed to National Wild Horse and Burro Program, WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, NV 89502–7147, or sent electronically to *wildhorse@blm.gov.* Please include "Advisory Board Comment" in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775–861–6583. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the BLM Director, the Secretary of Agriculture, and the Chief of the Forest Service on matters pertaining to the management and protection of wild, free-roaming horses and burros on the Nation's public lands. The Wild Horse and Burro Advisory Board operates under the authority of 43 CFR 1784. The tentative agenda for the 3-day event is:

I. Advisory Board Public Meeting

Monday, September 9, 2013 (1:00 p.m.–5:00 p.m.)

1:00 p.m. Welcome and Introductions
1:30 p.m. Agenda Review
1:45 p.m. Approval of March 2013 Minutes
BLM's responses to March meeting recommendations with brief updates
2:00 p.m. (NRC/NAS) Presentations
2:45 p.m. Break
5:00 p.m. Adjourn

Tuesday, September 10, 2013 (8:00 a.m. to 5:00 p.m.)

8:00 a.m. (NRC/NAS) Presentations
9:30 a.m. Break
11:30 a.m. Lunch
1:00 p.m. (NRC/NAS) Presentations
2:30 p.m. Break
3:00 p.m. Public Comment Period Begins
5:00 p.m. Public Comment Period Ends
Adjourn

Wednesday, September 11, 2013 (8:00 a.m.–Noon)

8:00 a.m. BLM Presentation on Report
9:00 a.m. Advisory Board discussion and recommendations to the BLM
Noon Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify Ms. DeLorme 2 weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations at 41 CFR 101–6.1015(b), requires the BLM to publish in the **Federal Register** notice of a public meeting 15 days before the meeting date.

II. Public Comment Procedures

On Tuesday, September 10, 2013, at 3 p.m., members of the public will have the opportunity to make comments to the Board on the Wild Horse and Burro Program. Persons wishing to make comments during the Tuesday meeting should register in person with the BLM by 2 p.m. on September 10, 2013, at the meeting location. Depending on the number of commenters, the Advisory Board may limit the length of comments. At previous meetings, comments have been limited to 3 minutes in length; however, this time may vary. Commenters should address the specific wild horse and burro-related topics listed on the agenda. Speakers are requested to submit a written copy of their statement to the address listed in the **ADDRESSES** section above or bring a written copy to the meeting. There may be a webcam

present during the entire meeting and individual comments may be recorded.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments. The BLM considers comments that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations to be the most useful and likely to influence the BLM's decisions on the management and protection of wild horses and burros.

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.

Edwin L. Roberson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 2013–18571 Filed 7–31–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560.L58530000. EU0000.241A00; N–91073; 13–08807; MO# 4500052481; TAS: 14X5232]

Notice of Realty Action: Direct Sale of Public Land (N–91073) for Affordable Housing Purposes in Las Vegas, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a 5-acre public land parcel located in the southern portion of the Las Vegas Valley in Clark County, Nevada, under the authorities of Sections 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and the BLM land sale conveyance regulations. In compliance with Section 7b of the Southern Nevada Public Land Management Act of 1998 (SNPLMA), the BLM proposes that the parcel be sold by direct sale to the Nevada Housing Division, a division of the State of Nevada, Department of Business and Industry, at a discounted rate based upon the appraised fair market value (FMV).

DATES: Comments regarding the proposed sale must be received by the BLM on or before September 16, 2013. The sale would not be held prior to September 30, 2013.

ADDRESSES: Written comments concerning the proposed sale are to be sent to the BLM Las Vegas Field Office, Assistant Field Manager, Division of Lands, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Michelle Leiber at 702–515–5168, or email at *mleiber@blm.gov*. For information on the SNPLMA Section 7b affordable housing land sale program go to: *http://www.blm.gov/nv/st/en/snplma/affordable_housing.html*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Nevada Housing Division submitted a sale nomination application to the BLM for the proposed affordable housing project called the Agate Avenue Senior Apartments. In response, the BLM proposes to sell a 5-acre parcel of public land located in the southern portion of the Las Vegas Valley in Clark County, Nevada, further described as:

Mount Diablo Meridian

T. 22 S., R. 61 E.,
Sec. 20, Lot 25.

The area described contains 5 acres, in Clark County, Nevada.

The parcel is identified as a portion of Clark County Assessor Parcel Number 177–20–601–003. A map delineating the parcel proposed for sale to the Nevada Housing Division is available for public review at the BLM Las Vegas Field Office or at the Web site *http://www.blm.gov/nv/st/en/snplma/affordable_housing.html*. The parcel is located at the intersection of Agate Avenue and Kimo Street within the Las Vegas Boulevard and Interstate 15 corridor south of Blue Diamond Road. The southern and eastern boundaries of the parcel abut developed residential and commercial properties and the northern and western boundaries abut BLM-managed public land. Access is provided by Agate Avenue located along the northern boundary of the parcel. The parcel would be sold using the direct sale procedures, and under such terms, covenants, or conditions as determined necessary for affordable housing purposes by the BLM authorized officer pursuant to SNPLMA Section 7(b), Public Law 105–263, 112 Stat. 2343, as amended, and the Nevada Guidance Policy and Procedures for Affordable Housing Disposals (Nevada Guidance) approved on August 8, 2006.

The BLM, in consultation with the Department of Housing and Urban Development (HUD), may make BLM-managed public lands available for affordable housing purposes in the State of Nevada at less than the appraised FMV. The amount administratively discounted from the FMV is calculated according to the Nevada Guidance provisions. Under Section 7(b) of the SNPLMA, housing is "affordable housing" if it serves low-income families as defined in Section 104 of the Cranston-Gonzales National Affordable Housing Act, 42 U.S.C. 12704. In the Cranston-Gonzales Act, the term "low-income families" means families whose incomes do not exceed 80 percent of the median income for the area as determined by HUD, or as otherwise adjusted by statute. The State of Nevada's proposed project would use 100 percent of the parcel to serve senior citizens, including seniors with special needs, with income at or below 60 percent of the area median income, which represents extremely low income based on the Nevada Guidance.

The appraised FMV for the 5-acre parcel is $1,040,000. Under the Nevada Guidance, and after consultation with HUD, the BLM authorized officer has determined that discount percentages for the respective median income category would be administratively applied to the FMV to establish the price of the public land to be sold under these provisions. The FMV for this property would be 95 percent discounted consistent with the Nevada Guidance resulting in a federally approved sale price of $52,000, so long as the property is used for affordable housing purposes consistent with the covenants, terms and conditions described in the patent.

Consistent with the Nevada Guidance, the preferred method of sale is direct sale. Such method is appropriate under regulation when "A tract is identified for transfer to State or local government . . ." (43 CFR 2711.3–3(1)), and the SNPLMA Section 7(b) which requires lands made available for affordable housing purposes to be made available only to State or local government entities, including local public housing authorities. The direct sale method is

also supported when, "A tract is identified for sale that is an integral part of a project or public importance and speculative bidding would jeopardize a timely completion and economic viability of the project" (43 CFR 2711.3–3(2)).

The Clark County, North Las Vegas, Boulder City, and Mesquite 2010–2014 HUD Consolidated Plan identified both rental housing serving low-income and extremely low-income households and housing for persons with special needs, including the elderly and frail elderly, as its top two priorities. The consolidated plan identifies a significant housing need for elderly persons including those with special needs and physically disabled in southern Nevada. Since the SNPLMA was passed in 1998, the State of Nevada has invested considerable time and substantial resources in finding eligible properties for affordable housing projects. Consistent with the SNPLMA joint selection process, the Nevada Housing Division consulted with the BLM and Clark County concerning selection of this parcel for disposal for affordable housing purposes. According to the consolidated plan, the need for affordable housing is an issue of public importance and this tract of land would provide a key piece of a project meant to address that need.

The Nevada Housing Division's application includes a comprehensive plan for assessment and evaluation of the need for and the feasibility of this affordable housing project. HUD, a required consultation party for sales proposed under the SNPLMA Section 7(b), reviewed the Agate Project and provided the BLM its approval recommendation dated May 28, 2013. HUD's recommendation confirmed that the Agate Project as proposed would use 100 percent of the parcel to serve senior citizens, including seniors with special needs, with income at or below 60 percent of the area median income. HUD further confirmed that the Agate Project location and need are consistent with Section 7(b) of SNPLMA, and the Cranston-Gonzales Act, as well as the 2010–2014 Clark County Consolidated Plan. HUD conditioned its approval recommendation on two continuing requirements: (1) The Nevada Housing Division and Clark County, as appropriate, are to report the proposed Agate Project, including public and private funding sources, in HUD required documents and plans; and (2) Submittal by the Nevada Housing Division of a disposition and development agreement (DDA) and final site plan to the BLM for review and concurrence in consultation with HUD. A DDA will be executed between the Nevada Housing Division and its co-developers, Ovation Development Corporation, and Accessible Space, Inc., to ensure that the terms and conditions for development of the project are consistent with previously submitted comprehensive plan and other applicable regulations and procedures.

The parcel is within the disposal boundary identified by the U.S. Congress in the SNPLMA, and is in conformance with the BLM Las Vegas Resource Management Plan (RMP) and decision LD–1, approved by Record of Decision on October 5, 1998. The parcel was also analyzed in the Las Vegas Valley Disposal Boundary Final Environmental Impact Statement and approved by Record of Decision on December 23, 2004. The BLM has completed a site specific Determination of National Environmental Act Adequacy document number DOI–BLM–NV–S010–2012–0144–DNA. The parcel is not required for any Federal purpose. Consistent with 43 CFR 2711.3–1(d), a deposit of not less than 20 percent of the federally approved sale price, as discounted consistent with the Nevada Guidance, must be submitted on or before 30 days from the sale offer, by 4:00 p.m. Pacific Time at the BLM Las Vegas Field Office. Payment(s) will reference BLM serial number N–91073, and must be made in the form of certified check, postal money order, bank draft, cashier's check, or any combination thereof, made payable in U.S. dollars to the order of the Department of the Interior, Bureau of Land Management (or DOI, BLM).

Failure to submit the deposit will result in forfeiture of the sale offer. The remainder of the sale price must be paid within 180 days following the date of the sale offer. Failure to pay the full price within the 180 days will disqualify the sale offer and cause the entire 20 percent deposit to be forfeited to the BLM, 43 CFR 2711.3–1(d) and 2711.3–3(d). No exceptions will be made. The BLM cannot accept the full sale price at any time following the expiration of the 180th day after the sale offer. Payment may be provided electronically through escrow by Electronic Fund Transfer (EFT), or in the form of a certified check, postal money order, bank draft, cashier's check, or any combination thereof, made payable in U.S. dollars to the order of the DOI, BLM. Arrangements for EFT through escrow to the BLM shall be made a minimum of 14 days prior to the date of payment. The patent would be issued following receipt of final payment, as appropriate.

If patented, the patent will include the following numbered terms, covenants, and conditions:

1. *Affordable Housing:* Pursuant to Section 7(b) of the SNPLMA, the term "affordable housing" as used in the sale patent, means housing that serves low-income families as defined in Section 104 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12704).

2. *Affordable Housing Purpose:* For purposes of this proposed sale patent, the term "affordable housing purpose" means for an affordable housing project which commits 100 percent of living space to affordable housing, and which overall is used for no purpose other than residential use and related residential use amenities.

3. *Construction:* For purposes of the sale patent, the term "construction" means ongoing and substantial work dedicated to the building of the dwelling structures and other improvements necessary for the realization of the low-income affordable housing project located on these lands conveyed under Section 7(b) of the SNPLMA.

4. *Project:* For purposes of this patent, the term "Project" means the construction and resulting dwelling structures and other improvements on these lands conveyed under Section 7(b) of the SNPLMA, as approved by the BLM in consultation with HUD, that are necessary for the realization of the low-income affordable housing purposes.

5. *Covenant and Restriction:* The Nevada Housing Division is hereby bound and covenants for its self and all successors-in-interest to use the land as approved by the BLM in consultation with HUD, and as conveyed by the sale patent, only for affordable housing purposes for a period of 40 years (period of affordability). Such period will commence upon the issuance of a certificate of occupancy or its equivalent by the appropriate local governmental authority (i.e. Clark County). The Nevada Housing Division further hereby covenants and binds its self and all successors-in-interest to develop the subject parcel according to a disposition and development agreement (DDA) between the Nevada Housing Division and its co-developers that has received concurrence by the BLM in consultation with the HUD. As in this patent, the DDA shall have a provision stating that in the event of any conflict between the terms of the DDA and the patent and applicable laws, the patent and applicable laws will control. This affordable housing and DDA covenant will be deemed appurtenant to and to run with the land.

6. *Time Limit: Reversion and Fair Market Value.* If, at the end of 5 years from the date of the sale patent, the Agate Project is not under construction in accordance with a DDA and a final site plan approved by the BLM in consultation with the HUD then, at the option of the United States, the lands, or parts thereof, will revert to the United States, or, in the alternative, the United States may require payment by the owner to the United States of the then fair market value.

7. *Use Restriction: Reversion and Fair Market Value.* All land conveyed by the sale patent will be used only for affordable housing purposes as approved by the BLM in consultation with the HUD during the period of affordability. If at any time during the period of affordability any portion of the land conveyed by the sale patent is used for any purpose other than affordable housing purposes by the Nevada Housing Division, or its successor-in-interest, then at the option of the United States, those lands not used for affordable housing purposes will revert to the United States; or, in the alternative, the United States may, at that time, require payment to the United States of the then FMV, or institute a proceeding in a court of competent jurisdiction to enforce the covenant set forth above to use the land conveyed only for affordable housing purposes.

8. *Enforcement:* The covenant/use restriction and the reversionary interest may be enforced by the BLM or the HUD, or their successors-in-interest, as deemed appropriate by agreement of these two Federal agencies at the time of enforcement, after reasonable notice including an opportunity to cure any default (90 days) to the Nevada Housing Division and the landowner of record. If any necessary cure has not been completed and is shown to be impossible by the end of the 90 days, and diligent and substantial efforts are underway to cure such default, the Federal agencies may consider a request for a reasonable extension of time to complete cure of such default.

9. *Simultaneous Transfer:* The Nevada Housing Division, upon issuance and acceptance of the sale patent, will simultaneously transfer by deed the land conveyed by this sale patent to its successor-in-interest, as reviewed and approved by the BLM in consultation with HUD.

10. *Indemnification and Hold Harmless:* By accepting this patent, the Nevada Housing Division, subject to the limitations of law and to the extent allowed by law, will be responsible for the acts or omissions of its officers, directors and employees in connection with the use or occupancy of the patented real property. Upon simultaneous transfer as described above, successors-in-interests to the Nevada Housing Division of the patented real property, will indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the successors-in-interest, or its employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the successor-in-interest's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the successor-in-interest, and its employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant will be construed as running with the parcel of land patented or otherwise conveyed by the United States, and may be enforced against successors-in-interest, by the United States in a court of competent jurisdiction.

No representation or warranty of any kind, express or implied, is given or will be given by the United States as to the title, the physical condition or the past, present, or potential uses of the land proposed for sale. However, to the extent required by law, such land is subject to the requirements of Section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended (42 U.S.C. 9620(h)).

If patented, title to the land will be subject to the following numbered reservations to the United States:

1. All minerals are reserved to the United States. Permittees, licensees, and lessees of the United States retain the right to prospect for, mine, and remove such leasable and saleable minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights;

2. A right-of-way for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945); and

3. A reversionary interest as further defined in the above terms, covenants, and conditions.

If patented, title to the land will be subject to:

1. Valid existing rights [of record], including, but not limited to those documented on the BLM public land records at the time of sale and as defined below;

2. A right-of-way for public county road (Agate Avenue) purposes reserved to Clark County, its successors and assigns, by right-of-way number N–59284, pursuant to Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);

3. A right-of-way for flood control (#00–29559) purposes reserved to Clark County, its successors and assigns, by right-of-way number N–73298, pursuant to Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);

4. A right-of-way for sanitary sewer pipeline purposes reserved to the Clark County Water Reclamation District, its successors and assigns, by right-of-way numbers N–61105 and N–61394, pursuant to Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761); and

5. A right-of-way for water pipeline purposes reserved to the Las Vegas Valley Water District, its successors and assigns, by right-of-way number N–61409, pursuant to Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Pursuant to Section 4(c) of the SNPLMA, subject to valid existing rights, the subject land is withdrawn from location and entry under the mining laws and from operation under the mineral and geothermal leasing laws until Secretarial termination of the withdrawal or patenting of the land. Such withdrawal is documented under case file number N–66364, effective as

of October 19, 1998. In addition, by operation of regulation 43 CFR 2711.1–2(d), through publication of this notice, the lands are segregated and not subject to appropriation under the public land laws, including the mining laws. Through either the withdrawal or the segregation, any subsequent application for an appropriative use will not be accepted, will not be considered as filed, and will be returned to the applicant.

Documents concerning the sale, appraisal, reservations, procedures, and conditions, and other environmental review are available for review at the BLM Las Vegas Field Office at the address in the **ADDRESSES** section. If you wish to submit a written comment concerning the sale, before including personal identifying information in your comment such as your address, phone number, email address, etc., 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. The BLM Las Vegas Field Manager will review the comments of all interested parties concerning the sale. To be considered, comments must be received at the BLM Las Vegas Field Office on or before the date stated in the **DATES** section.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Vanessa L. Hice,

Assistant Field Manager, Division of Lands.

[FR Doc. 2013–18563 Filed 7–31–13; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA 942000 L57000000 BX0000]

Final Agency Action To Transfer Title From the United States to the Pechanga Band of Luiseño Mission Indians and to San Diego Gas & Electric Company, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the legal description of the boundaries of the Federal lands to be held by the Secretary of the Interior in trust for the benefit of the Pechanga Band of Luiseño Mission Indians of the State of California and the Federal lands transferred to San Diego Gas & Electric Company as mandated by Congress in Section 2(f) of the Pechanga Band of Luiseño Mission Indians Land Transfer Act of 2007.

ADDRESSES: A copy of the plats may be obtained from the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825, upon required payment.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way, Room W–1623, Sacramento, CA 95825, 916–978–4310.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of Section 2 of Public Law 110–383, dated October 10, 2008, and the approval of the survey completed under subsection (c) by the duly elected tribal council of the Pechanga Band of Luiseño Mission Indians, and subject to valid existing rights, all right, title, and interest of the United States in the land transferred into trust and held by the Secretary of the Interior for the benefit of the Pechanga Band of Luiseño Mission Indians of California and as part of the Pechanga Indian Reservation, is described as follows:

San Bernardino Meridian, California

T. 8 S., R. 2 W.,
Sec. 24, S½SW¼, NE¼SE¼, and S½SE¼;
Sec. 29, lot 2 and SW¼SW¼;
Sec. 31, lot 4, NE¼, SE¼NW¼, NE¼SW¼, SE¼SW¼, and SE¼;
Sec. 32, NW¼, NE¼SW¼, and N½SE¼.
Per official plat accepted January 6, 2011.

T. 9 S., R. 2 W.,
Sec. 6, lots 2, 3, 13, and 15.
Per official plat accepted July 12, 2010.

T. 5 S., R. 4 W.,
Sec. 22, lot 5.
Per official plat accepted June 29, 1994.
The areas described aggregate 1,166.87 acres.

Pursuant to the provisions of Section 2 of Public Law 110–383, dated October 10, 2008 the lands transferred to San Diego Gas & Electric Company by Patent Number 04–2010–0012 (July 23, 2010) are described as follows:

San Bernardino Meridian, California

T. 9 S., R. 2 W.,
Sec. 6, lots 14 and 16.
Per official plat accepted July 12, 2010.
The area described contains 11.04 acres.

Authority: Public Law 110–383, 122 STAT. 4090–4093.

Dated: January 22, 2013.

Lance J. Bishop,

Chief Cadastral Surveyor, California.

[FR Doc. 2013–18572 Filed 7–31–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–CUVA–13282; PPMWMWROW2/PPMPSAS1Y.YP0000]

Notice of Availability of a Draft White-Tailed Deer Management Plan, Environmental Impact Statement, Cuyahoga Valley National Park, Ohio

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) announces the availability of the Draft White-tailed Deer Management Plan/Environmental Impact Statement (Plan/EIS), Cuyahoga Valley National Park (Park), Ohio.

DATES: The Draft Plan/EIS will remain available for public review and comment for 60 days following the publishing of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Copies of the Draft Plan/EIS may be picked up in-person or may be obtained by making a request in writing to Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, Ohio 44141. A limited number of hard-copies will be available at the Park. The document is also available on the internet at the NPS Planning, Environment, and Public Comment Web site at: *http://www.parkplanning.nps.gov/cuva.*

FOR FURTHER INFORMATION CONTACT: Chief of the Resource Management Division Lisa Petit at the address above, or by telephone at (440) 546–5903.

SUPPLEMENTARY INFORMATION: The Draft Plan/EIS considers four alternatives for the management of white-tailed deer at the Park. Under Alternative A (No Action), existing management actions would continue, including deer and vegetation monitoring, data management, and research. No new actions would occur to reduce the effects of deer overbrowsing. Alternative B (Combined Non-lethal Actions) would include all actions described under Alternative A, and would incorporate a

combination of nonlethal actions, including the construction of large-scale deer exclosures (fencing) for the purposes of forest regeneration. In addition, nonsurgical reproductive control of does would be used to restrict population growth when this technology meets certain criteria. Alternative C (Lethal Actions) would include all actions described under Alternative A, and would add lethal deer management actions (sharpshooting with firearms or capture and euthanasia of individual deer) to reduce the herd size.

Alternative D (Combined Lethal and Non-lethal Actions) is the NPS preferred alternative. Alternative D would include all actions described under Alternative A, and would incorporate a combination of lethal and nonlethal actions from Alternatives B and C. These actions would include the reduction of the deer herd through sharpshooting with firearms or capture and euthanasia and nonsurgical reproductive control of does with an acceptable reproductive control agent to maintain the population.

If you wish to comment on the Draft Plan/EIS, we encourage you to comment via the Internet at the address above, or mail comments directly to the Superintendent at the address above.

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. We will make all submissions from organizations or businesses, from individuals identifying themselves as representatives or officials, of organizations or businesses, available for public inspection in their entirety.

Dated: June 18, 2013.

Patricia S. Trap,

Deputy Regional Director, Midwest Region.

[FR Doc. 2013–18536 Filed 7–31–13; 8:45 am]

BILLING CODE 4310–MA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–IATR–13283; PPMWMWROW2/PPMPSAS1Y.YP0000]

Notice of Availability of the Record of Decision for the General Management Plan/Environmental Impact Statement for the Ice Age National Scenic Trail Interpretive Site, Wisconsin

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the General Management Plan/Environmental Impact Statement (GMP/EIS) for the Ice Age National Scenic Trail (Trail) Interpretive Site, Wisconsin.

ADDRESSES: Copies may be picked up in person or by mailing a request in writing to the Ice Age National Scenic Trail Headquarters Office, 700 Rayovac Drive, Suite 100, Madison, WI 53711, by telephone at (608) 441–5610, or by email at: *IATR_Superintendent@nps.gov*. Copies of the ROD are available at the NPS Planning, Environment, and Public Comment Web site *http://www.parkplanning.nps.gov/iatr* or at the Trail Web site *http://www.nps.gov/iatr*.

FOR FURTHER INFORMATION CONTACT: Superintendent John Madden, at the address above or by telephone at (608) 441–5610.

SUPPLEMENTARY INFORMATION: We, the NPS, have issued a ROD for the GMP/EIS for the Trail Interpretive Site near Cross Plains, Wisconsin. As soon as practicable, the NPS will begin to implement the selected alternative.

We have selected Alternative 5 as described in the Final GMP/EIS. The selected alternative (which was the preferred alternative) will provide visitors with interpretation of the evolution of the complex from the last glacial retreat and opportunities to enjoy appropriate low-impact outdoor recreation. Ecological resources will largely be managed to reveal the glacial landscape. The most sensitive ecological areas will be carefully protected, and visitor access will be highly controlled in these areas. Visitors will experience a wide variety of indoor and outdoor interpretive programming. Under this alternative, the Ice Age Complex will serve as the headquarters for the Trail.

Other alternatives considered included Alternative 1, no action, which described a continuation of existing management at the Trail and provides a baseline for evaluating the changes and impacts of the other alternatives. In Alternative 1, the Ice Age Complex would have remained undeveloped for visitor use and minimally maintained. The segment of the Trail would still have been built (by the Ice Age Trail Alliance) within the identified corridor under this alternative, but other trails would not have been constructed.

Alternative 2 emphasized ecosystem management and restoration. Vegetation would have been restored to conditions prior to the settlement of Europeans and managed to reveal glacial landscapes. Visitors would have experienced a sense of remoteness through hikes and trails.

Alternative 3 emphasized interpretation and education on how the Ice Age Complex evolved over time since the retreat of the last glacier. Throughout most of the complex, ecological resources would have been managed to reveal the glacial landscape. Visitors would have had an opportunity to experience a wide variety of resources, both ecological and geological, as well as remnants of human use of the site. The visitor experience would have involved sheltered and indoor settings at the core of the property and hiking throughout most other areas of the site. The Ice Age Complex would have served as the headquarters for the Trail.

Alternative 4 emphasized low impact outdoor recreation experiences in support of, and compatible with, preserving and interpreting the glacial significance of the complex and restoring and managing the ecosystem. Visitors would have experienced resources in diverse ways, participating in interpretive programming in indoor and outdoor settings. The Ice Age Complex would have served as the headquarters for the Trail under this alternative.

Dated: July 19, 2013.

Patricia S. Trap,

Deputy Regional Director, Midwest Region.

[FR Doc. 2013–18513 Filed 7–31–13; 8:45 am]

BILLING CODE 4310–MA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–452 and 731–TA–1129–1130 (Review)]

Raw Flexible Magnets From China and Taiwan; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on raw flexible magnets from China and the revocation of the antidumping duty orders on raw flexible magnets from China and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is September 3, 2013. Comments on the adequacy of responses may be filed with the Commission by October 15, 2013. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On September 17, 2008, the Department of Commerce published antidumping and countervailing duty orders on imports of raw flexible magnets from China and an antidumping duty order on raw flexible magnets from Taiwan (73 FR 53847–53850). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined a single *Domestic Like Product* as coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* consisting of the U.S. producers of raw flexible magnets. The Commission did not include fabricators in the domestic industry in the original determinations.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is September 17, 2008.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 13–5–293, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 3, 2013. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 15, 2013. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2012, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 24, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18107 Filed 7–31–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–448 and 731–TA–1117 (Review)]

Certain Off-The-Road Tires From China Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping and countervailing duty orders on certain off-the-road tires from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission [1]; to be assured of consideration, the deadline for responses is September 3, 2013. Comments on the adequacy of responses may be filed with the Commission by October 15, 2013. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 4, 2008, the Department of Commerce published antidumping and countervailing duty orders on imports of certain off-the-road tires from China (73 FR 51624–51629). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 13–5–292, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined one *Domestic Like Product* coextensive with Commerce's scope. The Commission did not include C&M tires of 39 inches and higher in the original determinations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined one *Domestic Industry* consisting of producers of the *Domestic Like Product*.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is September 4, 2008.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 3, 2013. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 15, 2013. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party

(including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2012, except as noted (report quantity data in pounds and in number of tires and report value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in pounds and in number of tires and report value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in pounds and in number of tires and report value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions,

please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 24, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18108 Filed 7–31–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1105–1106 (Review)]

Lemon Juice From Argentina and Mexico

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that termination of the suspended antidumping duty investigation on lemon juice from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] The Commission also determines that termination of the suspended antidumping duty investigation on lemon juice from Mexico would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on August 1, 2012 (77 FR 45653) and determined on November 5, 2012 that it would conduct full reviews (77 FR 67833, November 14, 2012). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 5, 2012 (77 FR 72384). The hearing was held in Washington, DC, on May 16, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission completed and filed its determinations in these reviews on July 26, 2013. The views of the Commission are contained in USITC Publication 4418 (July 2013), entitled *Lemon Juice from Argentina and Mexico: Investigation Nos. 731–TA–1105–1106 (Review).*

By order of the Commission.

Issued: July 26, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18467 Filed 7–31–13; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson made a negative determination with respect to the suspended investigation on lemon juice from Argentina.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–833]

Certain Digital Models, Digital Data, and Treatment Plans for Use in Making Incremental Dental Appliances, the Appliances Made Therefrom, and Methods of Making Same; Notice of Commission Determination To Review the Final Initial Determination of the Administrative Law Judge; Schedule for Filing Written Submissions on Review

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination ("final ID" or "ID") in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on April 5, 2012, based upon a complaint filed on behalf of Align Technology, Inc., of San Jose, California ("Align"), on March 1, 2012, as corrected on March 22, 2012. 77 FR 20648 (April 5, 2012). The complaint alleged violations of Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 ("Section 337") in the sale for importation, importation, or sale within the United States after importation of certain digital models, digital data, and treatment plans for use in making incremental dental appliances, the appliances made therefrom, and methods of making the same by reason of infringement of certain claims of U.S. Patent No. 6,217,325 ("the '325 patent"); U.S. Patent No. 6,471,511 ("the '511 patent"); U.S. Patent No. 6,626,666; U.S. Patent No. 6,705,863 ("the '863 patent"); U.S. Patent No. 6,722,880 ("the '880 patent"); U.S. Patent No. 7,134,874 ("the '874 patent"); and U.S. Patent No. 8,070,487 (the '487 patent"). The notice of institution named as respondents ClearCorrect Pakistan (Private), Ltd. of Lahore, Pakistan and ClearCorrect Operating, LLC of Houston, Texas (collectively, "the Respondents").

On May 6, 2013, the administrative law review issued the final ID, finding a violation of Section 337 with respect to the '325 patent, the '880 patent, the '487 patent, the '511 patent, '863 patent, and the '874 patent. The ALJ recommended the issuance of cease and desist orders.

On May 20, 2013, Align, the Respondents, and the Commission investigative attorney each filed a petition for review. On May 28, 2013, each of the parties filed a response thereto. On June 5, 2013, Align filed a statement on the public interest. On June 13, 2013, the Respondents filed a statement on the public interest.

After considering the ID and the relevant portions of the record, the Commission has determined to review the ID in its entirety.

The parties should brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

Question 1: Does the language and legislative history of Section 337 provide a basis for interpreting "articles" to cover electronic transmissions? Does the Commission's remedial cease and desist order in *Certain Hardware Logic Emulation Systems and Components Thereof*, Inv. No.

337–TA–383 (1998), which prohibited the electronic transmission of data, necessarily mean that electronic transmission is importation for purposes of violation within the meaning of Section 337(a)(1)(B)?

Question 2: Is the use of a computer to perform an operation (such as interpolation), which was previously performed in an analog manner, the type of advance which does not render the asserted patent claims nonobvious over the prior art on the facts of this case? Please answer with regard to the factual record in this investigation.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in a respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 9 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the United States Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *FR* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patents expire and the HTSUS subheadings under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on August 8, 2013. Reply submissions must be filed no later than the close of business on August 15, 2013. The written submissions must be no longer than 20 pages and the reply submissions must be no longer than 10 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 CFR 210.4(f), which requires electronic filing. The original document and 8 true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: July 25, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18458 Filed 7–31–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–833]

Certain Digital Models, Digital Data, and Treatment Plans for Use in Making Incremental Dental Appliances, the Appliances Made Therefrom, and Methods of Making Same; Notice of Commission Determination To Review the Final Initial Determination of the Administrative Law Judge; Schedule for Filing Written Submissions on Review

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination ("final ID" or "ID") in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on April 5, 2012, based upon a complaint filed on behalf of Align Technology, Inc., of San Jose, California ("Align"), on March 1, 2012, as corrected on March 22, 2012. 77 *FR* 20648 (April 5, 2012). The complaint alleged violations of Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 ("Section 337") in the sale for importation, importation, or sale within

the United States after importation of certain digital models, digital data, and treatment plans for use in making incremental dental appliances, the appliances made therefrom, and methods of making the same by reason of infringement of certain claims of U.S. Patent No. 6,217,325 ("the '325 patent"); U.S. Patent No. 6,471,511 ("the '511 patent"); U.S. Patent No. 6,626,666; U.S. Patent No. 6,705,863 ("the '863 patent"); U.S. Patent No. 6,722,880 ("the '880 patent"); U.S. Patent No. 7,134,874 ("the '874 patent"); and U.S. Patent No. 8,070,487 (the '487 patent"). The notice of institution named as respondents ClearCorrect Pakistan (Private), Ltd. of Lahore, Pakistan and ClearCorrect Operating, LLC of Houston, Texas (collectively, "the Respondents").

On May 6, 2013, the administrative law review issued the final ID, finding a violation of Section 337 with respect to the '325 patent, the '880 patent, the '487 patent, the '511 patent, '863 patent, and the '874 patent. The ALJ recommended the issuance of cease and desist orders.

On May 20, 2013, Align, the Respondents, and the Commission investigative attorney each filed a petition for review. On May 28, 2013, each of the parties filed a response thereto. On June 5, 2013, Align filed a statement on the public interest. On June 13, 2013, the Respondents filed a statement on the public interest.

After considering the ID and the relevant portions of the record, the Commission has determined to review the ID in its entirety.

The parties should brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

Question 1: Does the language and legislative history of Section 337 provide a basis for interpreting "articles" to cover electronic transmissions? Does the Commission's remedial cease and desist order in *Certain Hardware Logic Emulation Systems and Components Thereof,* Inv. No. 337–TA–383 (1998), which prohibited the electronic transmission of data, necessarily mean that electronic transmission is importation for purposes of violation within the meaning of Section 337(a)(1)(B)?

Question 2: Is the use of a computer to perform an operation (such as interpolation), which was previously performed in an analog manner, the type of advance which does not render the asserted patent claims nonobvious over the prior art on the facts of this case? Please answer with regard to the factual record in this investigation.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in a respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 9 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the United States Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *FR* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patents expire and the HTSUS subheadings under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on August 8, 2013. Reply submissions must be filed no later than the close of business on August 15, 2013. The written submissions must be no longer than 20 pages and the reply submissions must be no longer than 10 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 CFR 210.4(f), which requires electronic filing. The original document and 8 true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: July 25, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18437 Filed 7–31–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Siegfried (USA), LLC

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 10, 2013, Siegfried (USA), LLC., 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Opium raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR § 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than September 30, 2013.

Dated: July 23, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–18338 Filed 7–31–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,598]

Amphenol Backplane Systems, Nashua, New Hampshire; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated June 24, 2013, workers requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Amphenol Backplane Systems, Nashua, New Hampshire (subject firm). The negative determination was issued on June 14, 2013 and the Department's Notice of determination was published in the **Federal Register** on July 2, 2013 (78 FR 39774). Workers at the subject firm were engaged in activities related to the production of electrical connectors and backplane assemblies.

The initial investigation resulted in a negative determination based on the Department's findings that sales and production at the subject firm increased during that period; that there was no shift in production to a foreign country or acquisition of production from a foreign country; that imports by the subject firm have decreased; that Amphenol Backplane Systems, Nashua, New Hampshire, is neither a Supplier nor Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a); and that the workers' firm has not been publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in an affirmative finding of serious injury, market disruption, or material injury, or threat thereof.

The request for reconsideration alleges a shift in production/services to a foreign country, that the subject firm increased imports, that the subject firm experienced a loss of business with a TAA-certified firm, that the subject firm has factories in Mexico and China.

The Department has carefully reviewed the request for reconsideration and the existing record, and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 22nd day of July 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–18489 Filed 7–31–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,442]

Deluxe Laboratories, Inc., a Division of Deluxe Entertainment Services Group, Inc., Hollywood, California; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated June 20, 2013, a state workforce official requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Deluxe Laboratories, Inc., a division of Deluxe Entertainment Services Group, Inc., Hollywood, California (subject firm). The negative determination was issued on May 2, 2013 and the Notice of Determination was published in the **Federal Register** on May 24, 2013 (78 FR 31593–31596). Workers at the subject firm were engaged in activities related to the production of release and trailer prints.

The initial investigation resulted in a negative determination based on the Department's findings that with respect to Section 222(a)(2)(A)(ii) of the Act, imports of articles like or directly competitive with release and trailer prints have not increased from 2011 to 2012 or from 2012 to 2013 by the workers' firm or customers of the workers' firm.

With respect to Section 222(a)(2)(B) of the Act, the investigation revealed that the workers' firm did not shift the production of articles like or directly competitive with release and trailer prints to a foreign country or acquire like or directly competitive articles from a foreign country during 2011, 2012, or 2013. Rather, the investigation confirmed that the worker separations are attributable to decreased demand for movies and trailers that are printed on 35mm film.

With respect to Section 222(b)(2) of the Act, the investigation revealed that Deluxe Laboratories, Inc. is not 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, 19 U.S.C. 2272(a).

Finally, the group eligibility requirements under Section 222(e) of the Act, have not been satisfied because the workers' firm has not been publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in an affirmative finding of

serious injury, market disruption, or material injury, or threat thereof.

The request for reconsideration alleges that other products such as trailer celluloid prints in the form of digital drives, and other storage media used for digital projections, are like and directly competitive with the products produced by the workers of the subject firm. The request for reconsideration alleges that the workers' firm shifted production to a foreign country and acquired products from a foreign country that are like and directly competitive with release and trailer prints, including the aforementioned products. The request for reconsideration also alleges that the subject firm "is a supplier and a downstream producer to Cinetech and also Technicolor, TA–W–82,166, whom received TAA certification."

The Department has carefully reviewed the request for reconsideration and the existing record, and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of July, 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–18491 Filed 7–31–13; 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 August 12, 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 August 12, 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 25th day of July 2013.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[19 TAA petitions instituted between 7/15/13 and 7/19/13]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
82903	Optum—United Health Group—Remote Medical Transcription/Editing Workers (State/One-Stop).	Minnetonka, MN	07/15/13	07/12/13
82904	Factiva, Inc/Dow Jones & Company (State/One-Stop)	Princeton, NJ	07/15/13	07/12/13
82905	Philips Lighting Company (Company)	Bath, NY	07/15/13	07/13/13
82906	NIDEC Motor Corporation (State/One-Stop)	Paragould, AR	07/16/13	07/15/13
82907	Omega Engineering (State/One-Stop)	Stanford, CT	07/16/13	06/26/13
82908	Joy Global, Inc. (Union)	Frankin, PA	07/16/13	07/15/13
82909	Jabil (Company)	Tempe, AZ	07/16/13	07/12/13
82910	Thermtrol MGI Global LLC (State/One-Stop)	Cary, IL	07/17/13	07/08/13
82911	CompuCom Systems (Workers)	Dallas, TX	07/17/13	07/16/13
82912	Flextronics Americas (State/One-Stop)	Stafford, TX	07/17/13	07/15/13
82913	Transportal (State/One-Stop)	Charlotte, NC	07/17/13	07/11/13
82914	Sealed Air Corporation (Workers)	Duncan, SC	07/18/13	07/12/13
82915	Micron Technology—Data Center Solutions Group (Workers).	Beaverton, OR	07/18/13	07/09/13
82916	Motorola Solutions, Inc. (State/One-Stop)	Louisville, KY	07/19/13	07/18/13
82917	Sensata Technologies Inc. (Company)	Phoenix, AZ	07/19/13	07/15/13
82918	Hartford Financial Services Group, Inc., Corporate/IT/Consumer Markets (Company).	Simsbury, CT	07/19/13	07/18/13
82919	Hartford Financial Services Group, Inc., 2 Locations: Windsor, CT & Overland (Company).		07/19/13	07/18/13
82920	Cooper Interconnect (Company)	Salem, NJ	07/19/13	07/18/13
82921	Staples Incorporated, HR Services (Workers)	Framingham, MA	07/19/13	07/18/13

[FR Doc. 2013–18490 Filed 7–31–13; 8:45 am]
BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2013–040]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 3, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Defense Contract Management Agency (N1–558–10–3, 11 items, 9 temporary items). Records include responses to congressional inquiries, biographies of agency personnel, clearances of speeches and testimony, responses to information requests, legal opinions, and litigation files. Proposed for permanent retention are congressional hearing and testimony records, agency publications, significant public affairs releases, and speeches of high level officials.

2. Department of Defense, Defense Contract Management Agency (N1–558–10–6, 6 items, 6 temporary items). Routine audiovisual, cartographic, architectural, and engineering records, as well as documents related to the production and maintenance of such records.

3. Department of Defense, Defense Logistics Agency (DAA–0361–2013–0003, 1 item, 1 temporary item). Routine surveillance recordings of facilities and equipment.

4. Department of Health and Human Services, Office of the Secretary (DAA–0468–2013–0003, 7 items, 2 temporary items). Regulatory applications, site audit reports, and stakeholder engagement records related to medical countermeasures operations. Proposed for permanent retention are medical countermeasures development records, acquisition records, facilities and engineering records, analytical decision support records, and significant committee records.

5. Department of Health and Human Services, Office of the Secretary (DAA–0468–2013–0004, 4 items, 2 temporary items). Working files and a tracking index for the Office of the Secretary's delegations of authority. Proposed for permanent retention are the delegations of authority.

6. Department of State, Bureau of Administration (DAA–0059–2012–0006, 11 items, 8 temporary items). Records of the Office of Directives Management including forms management records, internal information technology records,

routine administrative files, and correspondence related to proposed rules of other agencies. Proposed for permanent retention are rules initiated by the Department, regulatory and procedural issuances, and associated docket files.

7. Department of Transportation, National Highway Traffic Safety Administration (N1–416–11–3, 18 items, 18 temporary items). Records related to vehicle safety compliance including correspondence, reports, and case files.

8. Department of the Treasury, Treasury Inspector General for Tax Administration (DAA–0056–2012–0001, 1 item, 1 temporary item). Master files of an electronic information system used to manage workflow for the Office of Audit.

Dated: July 15, 2013.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2013–18553 Filed 7–31–13; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338, 50–339; 50–280 and 50–281; NRC–2013–0172]

Virginia Electric and Power Company; North Anna Power Station, Units 1 and 2; Surry Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering changes to the Emergency Plan, "Conditions of licenses," for North Anna Power Station, Units 1 and 2 (NAPS), for Renewed Facility Operating License Nos. NPF–4 and NPF–7, and Surry Power Station, Units 1 and 2 (Surry) for Renewed Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee), for operation of NAPS and Surry located in Louisa County, Virginia, and Surry County, Virginia, respectively.

ADDRESSES: Please refer to Docket ID NRC–2013–0172 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0172. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Dr. V. Sreenivas, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2597, email: *V.Sreenivas@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Further Information

The NRC is considering changes to the Emergency Plan, pursuant to § 50.54(q) of Title 10 of the *Code of Federal Regulations* (10 CFR), "Conditions of licenses," for North Anna Power Station, Units 1 and 2 (NAPS), for Renewed Facility Operating License Nos. NPF–4 and NPF–7, and Surry Power Station, Units 1 and 2 (Surry) for Renewed Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee), for operation of NAPS and Surry located in Louisa County, Virginia, and Surry County, Virginia, respectively. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

II. Environmental Assessment

Identification of the Proposed Action

The proposed action is a license amendment that would change the Emergency Action Levels (EALs), by adding a 15-minute threshold for isolation of reactor coolant system leaks based on NEI 99–01, Revision 5, "Methodology for Development of Emergency Action Levels," using the guidance of NRC Regulatory Issue Summary 2003–18, Supplement 2, "Use of Nuclear Energy Institute (NEI) 99–01, Methodology for Development of Emergency Action Levels." The proposed action is in accordance with the licensee's application, dated September 27, 2012, can be found in ADAMS under Accession No. ML12283A069.

The Need for the Proposed Action

The proposed action is needed because amendments would change an EAL scheme based on NUREG–0654, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plan and Preparedness in Support of Nuclear Power Plants," to one based on NEI 99–01, "Methodology for Development of Emergency Action Levels," Revision 4. This change would add 15 minutes to the EAL to preclude classification for brief and readily isolatable RCS leaks. The addition of a 15-minute period would allow plant operators to isolate the RCS leaks using readily accessible means available in the Control Room.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed EAL changes to NAPS and Surry. The staff has concluded that the changes would not affect plant safety and would not have an adverse effect on the probability of an accident occurring. The proposed change has no effect on the consequences of any analyzed accident since the change does not affect any equipment related to accident mitigation. The addition of a 15-minute criteria to the emergency action level only serves to ensure the emergency action level declaration is based upon plant conditions that are more indicative of a (Notice of) Unusual Event (UE) emergency classification level. The brief delay in declaring the proposed action would not result in radiological hazard beyond those previously analyzed in the Updated Final Safety Analysis Report, as this emergency classification level is based upon plant events that have no radiological consequences. There will

be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. No changes will be made to plant buildings or the site property. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed changes.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historic and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the "Final Environmental Statement Related to the Continuation of Construction and the Operation," for NAPS dated April 1973, and Surry dated May 1972 and June 1972, respectively, as supplemented through the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplements 6 and 7 Regarding Surry and NAPS—Final Report (NUREG–1437, Supplements 6 and 7)," dated November 2002.

Agencies and Persons Consulted

In accordance with its stated policy, on July 3, 2013, the staff consulted with the Virginia State official, Steven A. Harrison, Director of the Division of Radiological Health, regarding the proposed EAL revision. The State official had no comments.

III. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Dated at Rockville, Maryland, this 24th day of July 2013.

For the Nuclear Regulatory Commission.

V. Sreenivas,

Project Manager, Plant Licensing Branch 2–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–18518 Filed 7–31–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Vogtle Electric Generating Station, Units 3 and 4; Southern Nuclear Operating Company; Change to the Containment Structure for Additional Electrical Penetration Assemblies

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and License Amendment No. 11 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption were submitted by letter dated September 28, 2012 (ADAMS Accession No. ML12275A457). The licensee supplemented this request on March 8, 2013 (ADAMS Accession No. ML13070A201).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6185; email: *Anthony.Minarik@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Further Information

The amendment changes requested to add four electrical penetration assemblies to the containment vessel and shield building in order to support the current electrical loads. The requested changes did not add new electrical loads or modify the currently approved electrical loads. This request includes changes to Tier 1 information located in Tables 2.2.1–1 and 2.2.3–6 as well as Figure 2.2.1–1, as well as the corresponding information in Appendix C of the COL. The granting of the exemption allows the requested Tier 1 changes. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

The NRC is issuing an exemption from Paragraph B of Section III, "Scope and Contents," of Appendix D, "Design Certification Rule for the AP1000," to part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and License Amendment No. 11 to COLs, NPF–91

and NPF–92, issued to the licensee. The exemption is required by Paragraph A.4 of Section VIII, "Processes for Changes and Departures," Appendix D to 10 CFR Part 52 to allow the licensee to depart from Tier 1 information. The licensee sought to change the Tier 1 information located in Table 2.2.1–1, Figure 2.2.1–1, and Table 2.2.3–6 of its Updated Final Safety Analysis Report (UFSAR). These changes sought to add four non-Class 1E electrical penetration assemblies to the containment vessel and shield building.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4. of Appendix D to 10 CFR Part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML13158A324.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for Vogtle Units 3 and 4 (COLs NPF–91 and NPF–92). These documents can be found in ADAMS under Accession Nos. ML13158A314 and ML13158A317. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML13158A321 and ML13158A322. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to Vogtle Units 3 and 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated September 28, 2012, and as supplemented by letter dated March 8, 2013, the licensee requested from the Commission an exemption from the provisions of 10 CFR Part 52, Appendix D, Section III.B, as part of license amendment request 12–010, "Additional Electrical Penetration Assemblies" (LAR 12–010).

For the reasons set forth in Section 3.1, "Evaluation of Exemption," of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML13158A324, the Commission finds that:

A. The exemption is authorized by law;

B. The exemption presents no undue risk to public health and safety;

C. The exemption is consistent with the common defense and security;

D. Special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. The special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. The exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR part 52, Appendix D, Section III.B, to allow deviations from the Tier 1 certification information in Table 2.2.1–1, Figure 2.2.1–1, and Table 2.2.3–6 of the certified Design Control Document, as described in the licensee's request dated September 28, 2012, and as supplemented on March 8, 2013. This exemption is related to, and necessary for the granting of License Amendment No. 11, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, "Environmental Consideration," of the NRC staff's Safety Evaluation (ADAMS Accession No. ML13158A324), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of July 10, 2013.

III. License Amendment Request

By letter dated September 28, 2012, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The licensee supplemented this application on March 8, 2013. The proposed amendment would depart from the UFSAR Tier 1 material, and would revise the associated material that has been included in Appendix C of each of the VEGP, Units 3 and 4, COLs. Specifically the requested amendment will revise the Tier 1 information located in Table 2.2.1–1, Figure 2.2.1–1, and Table 2.2.3–6 in order to add four non-Class 1E electrical penetration assemblies to the containment vessel and shield building.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on November 27, 2012 (77 FR 70843). The supplements had no effect on the no significant hazards consideration determination and no comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need to be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on September 28, 2012, and supplemented by letter dated March 8, 2013. The exemption and amendment were issued on July 10, 2013 as part of a combined package to the licensee (ADAMS Accession No. ML13158A295).

Dated at Rockville, Maryland, this 25th day of July 2013.

For the Nuclear Regulatory Commission.

Lawrence Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–18521 Filed 7–31–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–228; NRC–2012–0286; License No. R–98; EA–13–097]

Order Prohibiting Operation of Aerotest Radiography and Research Reactor

I.

Aerotest Operations, Inc. (Aerotest, the licensee), is the holder of Facility Operating License No. R–98, issued on

July 2, 1965, by the U.S. Atomic Energy Commission, now the U.S. Nuclear Regulatory Commission (NRC). Facility Operating License No. R–98 was issued pursuant to Section 104c. of the Atomic Energy Act of 1954, as amended (AEA), and part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Domestic Licensing of Production and Utilization Facilities." The license authorizes the operation of the Aerotest Radiography and Research Reactor (ARRR) in accordance with the conditions specified therein. The ARRR is located on the licensee's site in San Ramon, California. Autoliv, Inc. is the ultimate corporate parent of Aerotest and, therefore, has ultimate control of Aerotest's license.

II.

Section 104d., "Medical Therapy and Research and Development," of the AEA and 10 CFR 50.38, "Ineligibility of Certain Applicants," prohibit the issuance of any license for a utilization and production facility useful in the conduct of research and development "to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government."

Autoliv, Inc. is headquartered in Stockholm, Sweden. The majority of Autoliv, Inc.'s board of directors and executive officers are non-U.S. citizens. The majority of Autoliv, Inc.'s outstanding stock is held by non-U.S. citizens. Thus, Autoliv, Inc. is a foreign corporation for the purposes of the AEA, and its ownership of ARRR is prohibited. Nonetheless in 2000, Autoliv, Inc. acquired Aerotest through intermediate acquisition of several wholly owned companies. As a result, Autoliv, Inc. now has indirect control of the Aerotest license. Although Autoliv, Inc.'s acquisition of Aerotest constituted an indirect transfer of control of the Aerotest license, this transfer was not the subject of an application for prior consent of the NRC as required by 10 CFR 50.80, "Transfer of Licenses," and, therefore, the transfer was neither reviewed nor approved by the NRC.

On October 7, 2003 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML040430495), the NRC staff issued a letter to Autoliv instructing Autoliv to develop a full divestiture plan or partial divestiture and negation action plan and to report progress on the plan every six months thereafter. Autoliv developed a plan but was not able to divest Aerotest of foreign ownership and control.

By letter dated February 28, 2005, as supplemented by letters dated May 5, 2008; March 9, July 21, and September 4, 2009; and January 7, 2010 (ADAMS Accession Nos. ML13120A434, ML103370137, ML120900629, ML092080163, ML092600267, ML100140375, respectively), Aerotest applied for renewal of the ARRR operating license. The licensee has been operating under the timely renewal provisions of 10 CFR 2.109, "Effect of Timely Renewal Application," since the expiration of the license on April 16, 2005. Upon review of the renewal application, the NRC staff noted that Aerotest still did not satisfy the requirements of Section 104d. of the AEA and 10 CFR 50.38. On July 9, 2009 (ADAMS Accession No. ML090830578), the NRC issued a proposed denial of the license renewal because of the foreign ownership issue.

On July 21, 2009 (ADAMS Accession No. ML092080163), Aerotest notified the NRC that Autoliv ASP, Inc. (which is wholly owned by Autoliv, Inc.) and X-Ray Industries, Inc., had entered into a non-binding letter of intent for the sale of the ARRR to X-Ray Industries, Inc. On January 7, 2010, as amended by letters dated January 19, February 2, March 23, and April 1, 2010 (ADAMS Accession Nos. ML100140375, ML100490068, ML100880295, ML100880338, ML100980153, respectively), the NRC received a license transfer application from Autoliv and X-Ray Industries. An NRC Order, dated July 6, 2010 (ADAMS Accession No. ML101380228), approved the license transfer and provided 60 days (extended to October 15, 2010, through letter dated September 13, 2010 (ADAMS Accession No. ML102460245)), for the transfer to be consummated. The Order expired without the transfer of the license.

On October 15, 2010, Aerotest voluntarily ceased day-to-day operations (reactor operation continued for surveillances). On February 26, 2011 (ADAMS Accession No. ML103640183), the NRC responded to a January 7, 2011 (ADAMS Accession No. ML1101180463), letter from Aerotest by issuing Confirmatory Action Letter (CAL) No. NRR–2011–001 to Aerotest. The CAL confirmed actions Aerotest would take to prepare a decommissioning plan, manage and provide funding for the disposition of fuel, and file an application for a possession-only license amendment.

Aerotest did not submit a decommissioning plan and possession-only license amendment application as discussed in the CAL. Consequently, on January 18, 2012 (ADAMS Accession No. ML120200203), the NRC held a public meeting with Aerotest to discuss the status of the decommissioning plan and possession-only license amendment application. At the conclusion of the meeting, Aerotest agreed to provide the NRC with milestones and deliverables as part of a CAL status report due on January 24, 2012.

In a letter dated January 24, 2012 (ADAMS Accession No. ML12027A010), Aerotest stated that by March 31, 2012, it would inform the NRC that either negotiations for acquisition of the reactor had ended or negotiations had resulted in a selected buyer. In a letter dated March 30, 2012 (ADAMS Accession No. ML12093A399), Aerotest informed the NRC that it had selected a buyer, Nuclear Labyrinth, LLC, and that a license transfer application would be submitted by May 30, 2012. Aerotest and Nuclear Labyrinth, LLC, submitted a license transfer application on May 30, 2012 (ADAMS Accession Nos. ML12152A233 and ML12180A384). The NRC accepted the application for review on August 14, 2012 (ADAMS Accession No. ML12213A486), after the applicants submitted supplemental information on July 19, 2012 (ADAMS Accession No. ML122021201). The NRC sent requests for additional information to the applicants on two occasions and reviewed the applicants' responses, dated October 15, 2012, and January 10, 2013 (ADAMS Accession Nos. ML12291A508 and ML13015A395). A public meeting was held on December 19, 2012 (ADAMS Accession No. ML13018A003), because the October 15, 2012, submission was insufficient. During the meeting, the NRC staff reiterated the financial information required for NRC approval of the indirect transfer.

III.

The NRC staff has completed its safety evaluation (ADAMS Accession No. ML13129A001) of the license transfer request. The NRC staff has concluded that it does not have reasonable assurance, as required by 10 CFR 50.33, "Contents of Applications; General Information," that Nuclear Labyrinth, LLC, or Aerotest Operations, Inc., would have sufficient funding to conduct the activities authorized by the ARRR license if the license were transferred. Consequently, the NRC staff is denying the license transfer request. Therefore, the ARRR remains under Autoliv, Inc.'s foreign ownership, control, and domination. Based on the information provided above, the NRC finds that Aerotest is in violation of Section 104d. of the AEA and 10 CFR 50.38, which prohibit foreign ownership, control, or domination of licenses issued under 10 CFR part 50.

Aerotest has been out of compliance with Section 104d. of the AEA and 10 CFR 50.38 since Autoliv, Inc. took control in 2000. Despite the licensee's and the NRC's efforts, Aerotest continues to be out of compliance. The NRC cannot renew the Aerotest license because Aerotest is not authorized to hold a 10 CFR part 50 license.

Therefore, the NRC staff is denying the license renewal application and is hereby prohibiting the licensee from operating the ARRR. In addition, Aerotest must begin the process of decommissioning the ARRR.

IV.

Accordingly, pursuant to Sections 104c., 104d., 161b., 161i., 161o., 182, and 186 of the AEA and the Commission's regulations in 10 CFR 2.202, "Orders," and 10 CFR Part 50, *it is hereby ordered that:*

I. Facility Operating License R–98 is Modified as Follows:
   a. The licensee is prohibited from operating the ARRR. The licensee shall maintain the ARRR in a shutdown condition.
   b. Facility Operating License No. R–98 is amended to possession-only status as follows:
   1. Pursuant to Section 104c of the AEA and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," the licensee shall possess, but neither use nor operate, the reactor at the designated location in San Ramon, California, in accordance with the procedures and limitations set forth in its license;
   2. Pursuant to the AEA and 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," the licensee shall possess, but neither receive nor use, up to 5.0 kilograms of contained uranium 235 in connection with possession of the reactor; and
   3. Pursuant to the AEA and 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," the licensee shall:
   i. Possess, but neither receive nor use, a 2 curie americium-beryllium neutron startup source; and
   ii. possess, but neither use or separate, byproduct material produced by past operation of the reactor.

II. Within 30 days of the date of this order, the licensee shall submit to the NRC:
   a. An updated decommissioning plan for the ARRR that contains the elements required by 10 CFR 50.82(b), including:
   1. A decommissioning funding plan, and
   2. A fuel management plan that describes the means for funding the management of the fuel until permanent disposal.
   b. If necessary, a license amendment request to modify the technical specifications to reflect the possession-only license conditions.

V.

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register** (FR). In addition, the licensee and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the FR. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director of the Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and include a statement of good cause for the extension.

VI.

All documents filed in NRC adjudicatory proceedings, including a request for hearing; a petition for leave to intervene, any motion or other document filed in the proceeding before the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet or, in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days before the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating, and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online Web-based submission form. To serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on

those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request or petition to intervene is filed so that they can obtain access to the document through the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call to 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and marked "Attention: Rulemaking and Adjudications Staff;" or (2) courier, express mail, or expedited delivery service addressed to the Office of the Secretary, 16th Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, and marked "Attention: Rulemaking and Adjudications Staff." Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd*, unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include private personal information such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d). If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or any written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date this Order is published in the FR without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

It is so ordered.

Dated at Rockville, Maryland, this 24th day of July 2013.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2013–18516 Filed 7–31–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0170]

Status of the Office of New Reactors' Implementation of Electronic Distribution of Advanced Reactor Correspondence

AGENCY: Nuclear Regulatory Commission.

ACTION: Implementation of electronic distribution of advanced reactor correspondence; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing this Federal Register notice to inform the public that, in the future, publicly available correspondence originating from the Division of Advanced Reactors and Rulemaking (DARR) in the Office of New Reactors (NRO) will be transmitted only by a computer-based email distribution system listserv to addressees and subscribers. This change does not affect the availability of official agency records in the NRC's Agencywide Documents Access and Management System (ADAMS), which may be accessed through NRC's Web page at *www.nrc.gov*.

ADDRESSES: Please refer to Docket ID NRC–2013–0170 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0170. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search*." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Cameron S. Goodwin, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6146; email: *Cameron.Goodwin@nrc.gov*.

Further information

This electronic distribution process was first utilized by the Division of Operating Reactor Licensing (DORL) in October 2008. All four regions are also utilizing this process for their operating reactor correspondence. Region 2 was the final region to convert to electronic distribution in June of 2013. Public feedback regarding this process has been positive. This process distributes correspondence documents to the addressees and members of the listserv at the same time. Distribution of documents containing safeguards, proprietary or security-related

information, or other information that is withheld from public disclosure will not be affected by this initiative.

This initiative will be implemented by August 2013. Individuals may subscribe to receive DARR generated correspondence by entering the following URL into their web browser address bar: *http://www.nrc.gov/public-involve/listserver.html*, Or through NRC's Web site, *www.nrc.gov*. as described below:

1. Go to the NRC's public Web site (*www.nrc.gov*).
2. Click on the "Public Meetings and Involvement" tab.
3. On this page, under the heading "Information and Meeting Schedules to Help You Participate," click on "Subscribe to Email Updates."
4. On this page, scroll down to the Lyris Subscription Services.
5. Enter your email address.
6. You have the option to select "All Advanced Reactor Correspondence" or the individual designs.
7. Once you have selected the designs, click on the "Subscribe" button.

Dated at Rockville, Maryland, this 22nd day of July 2013.

For the Nuclear Regulatory Commission.

Cameron S. Goodwin,

Project Manager, Small Modular Reactor Licensing Branch 2, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2013–18522 Filed 7–31–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70050; File No. 10–209]

Application of Topaz Exchange, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission

July 26, 2013.

I. Introduction

On July 3, 2012, Topaz Exchange, LLC ("Topaz Exchange" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") an Application for Registration as a National Securities Exchange ("Form 1 Application") [1] under Section 6 of the Securities Exchange Act of 1934 ("Act").[2] On December 19, 2012, Topaz Exchange submitted Amendment No. 1 to its Form 1 Application.[3] On December 31, 2012, Topaz Exchange submitted Amendment No. 2 to its Form 1 Application.[4] Notice of the Form 1 Application, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on March 7, 2013.[5] The Commission received four comment letters regarding the Form 1 Application.[6] Topaz Exchange submitted a detailed response to comments on July 11, 2013.[7] On July 11, 2013, Topaz Exchange submitted Amendment No. 3 to the Form 1 Application.[8]

[1] On March 1, 2013, the Commission issued an order granting Topaz Exchange exemptive relief, subject to certain conditions, in connection with the filing of its Form 1 Application. *See* Securities Exchange Act Release No. 69011, 78 FR 14844 (March 7, 2013). Because Topaz Exchange's Form 1 Application was incomplete without the exemptive relief, the date of filing of such application is March 1, 2013. *Id.*

[2] 15 U.S.C. 78f.

[3] Amendment No. 1, among other things, includes changes to the Limited Liability Company Agreement of Topaz Exchange, LLC ("Topaz Exchange LLC Agreement") and the Constitution of Topaz Exchange, LLC ("Topaz Exchange Constitution") concerning board composition and size, the initial director election process, and the use of regulatory funds. Amendment No. 1 also includes revisions to proposed rules of Topaz Exchange to remove rules relating to complex orders; to respond to comments on the Form 1 application from Commission staff; and to reflect recent changes to comparable rules of International Securities Exchange, LLC ("ISE"). Amendment No. 1 further provides additional descriptions in the Form 1 Application regarding proposed allocation procedures, auction mechanisms, execution of qualified contingent crosses, and the interim and initial director election processes, and removes references to complex orders.

[4] Amendment No. 2, among other things, provides updated information regarding the board of directors of ISE and the Corporate Governance Committee of ISE and includes information regarding Longitude S.A., a newly incorporated affiliate of Topaz Exchange, which information includes the Articles of Incorporation and financial information for Longitude S.A. Finally, Amendment No. 2 provides an updated organizational chart that reflects the affiliates of Topaz Exchange.

[5] *See* Securities Exchange Act Release No. 69012 (March 1, 2013), 78 FR 14847 ("Notice").

[6] *See* Letter from Angelo Evangelou, Associate General Counsel, Chicago Board Options Exchange, Incorporated, to Elizabeth M. Murphy, Secretary, Commission, dated April 23, 2013 ("CBOE Letter"); Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX Group, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated April 25, 2013 ("NASDAQ Letter"); Letter from Janet McGinness, EVP and Corporate Secretary, NYSE Euronext, General Counsel, NYSE Markets, to Elizabeth M. Murphy, Secretary, Commission, dated May 10, 2013 ("NYSE Euronext Letter I"); and Letter from Janet McGinness, EVP and Corporate Secretary, NYSE Euronext, General Counsel, NYSE Markets, to Elizabeth M. Murphy, Secretary, Commission, dated June 20, 2013 ("NYSE Euronext Letter II").

[7] *See* Letter from Michael Simon, General Counsel and Secretary, Topaz Exchange, to Elizabeth M. Murphy, Secretary, Commission, dated July 10, 2013 ("Topaz Exchange Response Letter").

[8] Amendment No. 3, among other things, includes changes to proposed Topaz Exchange rules to respond to concerns raised by the commenters and to reflect changes to comparable ISE rules since the filing of Amendment No. 1. The changes are discussed below in Section II.D. Amendment No. 3 also provides further descriptions or updates information in the Form 1 Application. The changes proposed in Amendment No. 3 are not substantive, are consistent with the existing rules of other registered national securities exchanges, or are responsive to the concerns of the commenters and do not raise any new or novel regulatory issues.

II. Discussion

Under Sections 6(b) and 19(a) of the Act,[9] the Commission shall by order grant an application for registration as a national securities exchange if the Commission finds, among other things, that the proposed exchange is so organized and has the capacity to carry out the purposes of the Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that Topaz Exchange's application for exchange registration meets the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of Topaz Exchange are consistent with Section 6 of the Act in that, among other things, they assure a fair representation of the exchange's members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer; [10] and that they are 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, and remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, or broker-dealers.[11] Finally, the Commission finds that Topaz Exchange's proposed rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[12]

A. Overview of Ownership of Topaz Exchange

Topaz Exchange is structured as a Delaware limited liability company

[9] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

[10] *See* 15 U.S.C. 78f(b)(3).

[11] *See* 15 U.S.C. 78f(b)(5).

[12] *See* 15 U.S.C. 78f(b)(8).

("LLC"), and is a wholly-owned subsidiary of International Securities Exchange Holdings, Inc. ("ISE Holdings").[13] In December 2007, ISE Holdings became a direct, wholly-owned subsidiary of various German companies and Swiss companies[14] through an intermediary holding company, U.S. Exchange Holdings, Inc. ("U.S. Exchange Holdings").[15] U.S. Exchange Holdings is wholly-owned by a German stock corporation, Eurex Frankfurt AG ("Eurex Frankfurt"). Eurex Frankfurt is a wholly-owned subsidiary of a Swiss stock corporation, Eurex Zurich AG ("Eurex Zurich"), which, in turn, was in 2007 jointly owned by Deutsche Börse and SWX Swiss Exchange AG ("SWX")[16] ("Eurex Acquisition"). In 2012, SWX transferred its interest in Eurex Zurich to a Swiss subsidiary of Deutsche Börse ("Deutsche Börse Acquisition"), such that Eurex Zurich is now jointly owned by Deutsche Börse (together with Eurex Frankfurt, the "German companies") and EGD (together with Eurex Zurich, the "Swiss companies," and the Swiss companies and the German companies are referred to collectively as the "Non-U.S. Upstream Owners," and collectively with U.S. Exchange Holdings, the "Upstream Owners"). As Deutsche Börse holds a 100% direct ownership interest in EGD, it therefore holds a 100% indirect ownership interest in Eurex Zurich.

[13] Following any Commission grant of registration to Topaz Exchange, ISE Holdings will be: (1) The sole holding company of two registered national securities exchanges, ISE and Topaz Exchange; and (2) the holder of a 31.54% ownership interest of a holding company, DE Holdings, that in turn owns two registered national securities exchanges, EDGX Exchange, Inc. ("EDGX") and EDGA Exchange, Inc. ("EDGA"). See Exhibit C to Topaz Exchange Form 1 Application, Section R ("Organizational Chart of Affiliates of Deutsche Börse AG").

[14] See Organizational Chart of Affiliates of Deutsche Börse, Exhibit C. Section R. to Topaz Exchange Form 1 Application.

[15] See Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (File No. SR–ISE–2007–101) (order approving a transaction in which ISE Holdings became a wholly-owned indirect subsidiary of Eurex Frankfurt) ("Eurex Acquisition Order").

[16] At the time, SWX was owned by SWX Group AG (later became part of SIX Group AG), which in turn was owned by Verein SWX Swiss Exchange. In 2008, SWX changed its name to SIX. In 2012, SIX transferred its interest to Eurex Global Derivatives AG ("EGD"). See Securities Exchange Act Release No. 66834 (April 19, 2012), 77 FR 24752 (April 25, 2012) (File Nos. SR–EDGA–2012–08; SR–EDGX–2012–07; and SR–ISE–2012–21) (order approving a transaction in which Eurex Frankfurt became a wholly-owned indirect subsidiary of Deutsche Börse) ("Deutsche Börse Acquisition Order").

B. Governance of Topaz Exchange

1. Topaz Exchange Board of Directors

The board of directors of Topaz Exchange ("Topaz Exchange Board" or "Board") will be its governing body and will possess all of the powers necessary for the management of its business and affairs, including governance of Topaz Exchange as a self-regulatory organization ("SRO").[17] Topaz Exchange will be governed by a board of directors comprised of no fewer than 8, but no more than 16, directors.[18] Specifically:

- At least 50% of Topaz Exchange Board must be comprised of Non-Industry Directors;[19]
- At least one of the Non-Industry Directors must be a Public Director;[20]
- Topaz Exchange Board will include the President/Chief Executive Officer as a director;[21] and
- At least 30% of Topaz Exchange Board must be officers, directors or partners of Topaz Exchange members, and must be elected by a plurality of holders of Exchange Rights ("Industry Directors"), of which at least one must be elected by a plurality of holders of Primary Market Maker ("PMM") Exchange Rights, one must be elected by a plurality of holders of Competitive Market Maker ("CMM") Exchange Rights, and one must be elected by a plurality of holders of Electronic Access Member ("EAM") Exchange Rights, provided that the number of each type of Industry Director shall always be equal to one another.[22]

As part of the process to elect members of the Board, the Nominating Committee will nominate the proposed Industry Directors and the Corporate Governance Committee[23] or ISE Holdings will nominate the proposed Non-Industry Directors.[24] A petition process will allow Topaz Exchange members to nominate alternative candidates for consideration as Industry Directors.[25] At the first annual meeting and at each annual meeting thereafter, ISE Holdings will elect all of the members of the Topaz Exchange Board (except the Industry Directors which are elected by Topaz Exchange members[26]), but it will be required to do so in compliance with the compositional requirements for the Board outlined in the Topaz Exchange Constitution.

The Commission believes that the requirement in the Topaz Exchange Constitution that at least 30% of the directors be Industry Directors and the means by which they will be chosen by Topaz Exchange members[27] provide for the fair representation of members in the selection of directors and the administration of Topaz Exchange and therefore is consistent with Section 6(b)(3) of the Act.[28] Section 6(b)(3) of the Act requires that "the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the

[17] See Topaz Exchange Constitution, Article III, Section 3.1.

[18] See Topaz Exchange Constitution, Article III, Section 3.2(a).

[19] See Topaz Exchange Constitution, Article III, Section 3.2(b)(ii). In no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors. ISE Holdings, Inc. may, in its sole discretion, elect one additional director who shall meet the requirements of Non-Industry Directors, except that such person was employed by Topaz Exchange at any time during the three-year period prior to his or her initial election. See Topaz Exchange Constitution, Article III, Section 3.2(b)(iv). This provision is similar to a provision in ISE's Constitution and has been used in the past to place a former president/chief executive officer of ISE on its board of directors ("ISE Board").

[20] See Topaz Exchange Constitution, Article III, Section 3.2(b)(ii).

[21] See Topaz Exchange Constitution, Article III, Section 3.2(b)(iii).

[22] See Topaz Exchange Constitution, Article III, Section 3.2(b)(i).

[23] See *infra* Section II.B.2. for a description of Topaz Exchange's Nominating Committee and Corporate Governance Committee.

[24] See, e.g., Topaz Exchange Constitution, Article III, Section 3.10(a)–(b). ISE Holdings, as the Sole LLC Member of Topaz Exchange, is permitted to petition the Corporate Governance Committee to propose alternative Non-Industry Directors and Public Directors. See Topaz Exchange Constitution, Article III, Section 3.10(b)(ii).

[25] See, e.g., Topaz Exchange Constitution, Article III, Section 3.10(a)(ii). Specifically, as proposed in Amendment No. 1, in addition to the Industry Director nominees named by the Nominating Committee, persons eligible to serve as such may be nominated for election to the Topaz Exchange Board by a petition, signed by the holders of not less than five percent (5%) of the outstanding Exchange Rights of the series entitled to elect such person if there are more than eighty (80) Exchange Rights in the series entitled to vote, ten percent (10%) of the outstanding rights of such series entitled to elect such person if there are between eighty (80) and forty (40) Exchange Rights in the series entitled to vote, and twenty-five percent (25%) of the outstanding Exchange Rights of such series entitled to elect such person if there are less than forty (40) Exchange Rights in the series entitled to vote. For purposes of determining whether a person has been nominated for election by petition by the requisite percentage, no Topaz Exchange member, alone or together with its affiliates, may account for more than 50% of the signatures of the holders of outstanding Exchange Rights of the series entitled to elect such person, and any such signatures by such Exchange Members, alone or together with its affiliates, in excess of such 50% limitation shall be disregarded. *Id.* This process is identical to the process in place at ISE. See ISE Constitution, Article III, Section 3.10(a)(ii).

[26] See Topaz Exchange Constitution, Article III, Sections 3.2(b)(i) and (c).

[27] *Id.*

[28] 15 U.S.C. 78f(b)(3).

exchange, broker, or dealer." As the Commission previously has noted, this statutory requirement helps to ensure that members have a voice in the exchange's use of self-regulatory authority, and that the exchange is administered in a way that is equitable to all those persons who trade on its market or through its facilities.[29] In addition, with respect to the requirement that the number of Non-Industry Directors, including at least one Public Director, will at all times be at least 50% of the Board, the Commission believes that the proposed composition of the Topaz Exchange Board satisfies the requirements of Section 6(b)(3) of the Act.[30]

Interim Board

After Topaz Exchange is granted registration by the Commission, but prior to commencing operations, ISE Holdings, as the sole shareholder of Topaz Exchange,[31] will appoint an interim board of directors for Topaz Exchange that will serve only until the first annual meeting ("Interim Topaz Exchange Board"). The Interim Topaz Exchange Board will include the same individuals as the then-serving ISE Board and will consist of 15 directors: the President/Chief Executive Officer Director; [32] 6 Industry Directors; and 8 Non-Industry Directors.[33] Topaz Exchange represents that it anticipates that there will be a significant overlap between its membership and the membership of ISE.[34] Topaz Exchange further represents that it does not expect to receive a meaningful number of applications for membership from non-ISE members during the tenure of the Interim Topaz Exchange Board.[35] Thus, the 6 interim Industry Directors to be appointed to the Topaz Exchange Board likely will have been elected by Topaz Exchange members in their capacity as ISE members.[36]

These interim Industry Directors will serve until the first initial Topaz Exchange Board is elected pursuant to the full nomination, petition, and voting process set forth in the Topaz Exchange Constitution and described above.[37] Topaz Exchange will complete such process as promptly as possible and within 90 days after its application for registration as a national securities exchange is granted by the Commission.[38]

The Commission believes that the process for electing the interim Topaz Exchange Board, as proposed, is consistent with the requirements of the Act, including that the rules of the exchange assure fair representation of the exchange's members in the selection of its directors and administration of its affairs.[39] The Interim Topaz Exchange Board will be filled by current ISE Board members (which currently include Industry Directors who were elected by current ISE members) until the first annual meeting of Topaz Exchange. As noted above, Topaz Exchange represents that it anticipates that there will be significant overlap between the initial members of Topaz Exchange and the current members of ISE.[40] Topaz Exchange further represents that it will complete the full nomination, petition, and voting process as set forth in the Topaz Exchange Constitution,[41] as promptly as possible and within 90 days of when Topaz Exchange's application for registration as a national securities exchange is granted.[42] As noted above, as part of this process, members of Topaz Exchange will be able to petition for alternative candidates to be considered for Industry Director positions.[43] This process will provide persons who are approved as members of Topaz Exchange after the effective date of this Order with the opportunity to participate in the selection of the Industry Directors within 90 days of when Topaz Exchange's application for registration as a national securities exchange is granted.

The Commission believes that the Interim Topaz Exchange Board process is designed to provide member representation sufficient to allow Topaz Exchange to commence operations for an interim period prior to going through the process to elect a new Board pursuant to the full nomination, petition, and voting process set forth in the Topaz Exchange Constitution.

2. Exchange Committees

Topaz Exchange will have a number of Board committees,[44] including an Executive Committee (consisting of six directors, including three Non-Industry Directors),[45] a Finance and Audit Committee (consisting of between three and five directors, all of whom must be Non-Industry Directors),[46] a Compensation Committee (consisting of between three and five directors, all of whom must be Non-Industry Directors),[47] and a Corporate Governance Committee (consisting of at least three directors, all of whom must be Non-Industry Directors),[48] and such other additional committees as may be approved by the Topaz Exchange Board.[49]

Topaz Exchange also will have a Nominating Committee, which will be a

[29] *See*, e.g., Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (order granting the exchange registration of Nasdaq Stock Market, Inc.) ("Nasdaq Order"); and 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.) ("BATS Order"). *See also* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (File No. SR–NYSE–2005–77) ("NYSE/Archipelago Merger Approval Order").

[30] 15 U.S.C. 78f(b)(3). *See also* Securities Exchange Act Release No. 68341, p.8, (December 3, 2012), 77 FR 73065, 73067 (December 7, 2012) (File No. 10–207) (order granting the registration of Miami International Securities Exchange, LLC) ("MIAX Order") and Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Release").

[31] *See infra* Section II.C.1. for a discussion of the ownership of Topaz Exchange.

[32] *See* Exhibit J to Topaz Exchange Form 1 Application.

[33] *See* Exhibit J to Topaz Exchange Form 1 Application. *See also* Amendment No. 3.

[34] *See* Exhibit L to Topaz Exchange Form 1 Application. Based on discussions with ISE members, Topaz Exchange represented that it currently expects that Topaz Exchange's membership will consist substantially of current ISE members, including, but not limited to, those ISE members that have representatives serving as industry directors on the ISE Board. *See* Exhibit J to Topaz Exchange Form 1 Application.

[35] *See* Exhibit J to Topaz Exchange Form 1 Application.

[36] *See id.*

[37] *See* Topaz Exchange Constitution, Article III, Sections 3.2(c) and 3.10; see *also* Exhibit J to Topaz Exchange Form 1 Application.

[38] *See* Exhibit J to Topaz Exchange Form 1 Application.

[39] *See* 15 U.S.C. 78f(b)(3). Topaz Exchange's proposed timeline for the interim Topaz Exchange Board process comports with the interim board process recently approved by the Commission for the Boston Options Exchange ("BOX") and Miami International Securities Exchange, LLC ("MIAX"). BOX, which previously operated as a facility of NASDAQ OMX BX, Inc., recently was granted registration as a national securities exchange. *See* Securities Exchange Act Release No. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (File No. 10–206) ("BOX Order"). NASDAQ OMX BX recently received approval for a new options market. *See* Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (File No. SR–BX–2012–030) ("BX Order"). MIAX recently was granted registration as a national securities exchange. *See* MIAX Order, *supra* note 30.

[40] Topaz Exchange will have a streamlined waive-in process for existing ISE members to apply for membership on Topaz Exchange. *See* Topaz Exchange Rule 302(a).

[41] *See*, e.g., Topaz Exchange Constitution, Article III, Section 3.10(a)–(b).

[42] *See* Topaz Exchange Constitution, Article III, Sections 3.2(c) and 3.10.

[43] *See* Topaz Exchange Constitution, Article III, Section 3.10(a)(ii).

[44] *See* Topaz Exchange Constitution, Article V, Section 5.1(a).

[45] *See* Topaz Exchange Constitution, Article V, Section 5.2.

[46] *See* Topaz Exchange Constitution, Article V, Section 5.5.

[47] *See* Topaz Exchange Constitution, Article V, Section 5.6.

[48] *See* Topaz Exchange Constitution, Article V, Section 5.4.

[49] *See* Topaz Exchange Constitution, Article V, Section 5.1(a).

committee of Topaz Exchange and not a committee of the Board.[50] The Nominating Committee will be composed of three industry representatives, and will be responsible for nominating candidates for Industry Director positions.[51] As noted above, there will be a petition process by which members of Topaz Exchange can nominate their own nominees for the Industry Director positions.[52] These nomination processes are consistent with processes that the Commission has approved for other exchanges.[53]

The Commission believes that Topaz Exchange's proposed committees, which are similar to committees maintained by other exchanges,[54] are designed to help enable Topaz Exchange to carry out its responsibilities under the Act and are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[55]

C. Regulation of Topaz Exchange

When Topaz Exchange commences operations as a national securities exchange, Topaz Exchange will have all the attendant regulatory obligations under the Act. In particular, Topaz Exchange will be responsible for the operation and regulation of its trading system and the regulation of its members. Certain provisions in the Topaz Exchange and ISE Holdings governance documents are designed to facilitate the ability of Topaz Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act. The discussion below summarizes some of these key provisions.

1. Ownership Structure: Ownership and Voting Limitations

As noted above in Section II.A, Topaz Exchange will be structured as a Delaware LLC and will be a wholly-owned subsidiary of ISE Holdings[56] following any Commission grant of registration to Topaz Exchange as a national securities exchange.[57] ISE Holdings is owned by German companies and Swiss companies through an intermediary holding company, U.S. Exchange Holdings.[58] ISE Holdings' governing documents impose limits on any direct or indirect change in control of ISE Holdings, which are to be enforced through the creation of a statutory trust.[59]

First, ISE Holdings' governing documents prohibit any Topaz Exchange member (alone or together with its Related Persons[60]) from owning more than 20% of any class of Voting Shares of ISE Holdings.[61] A second limit prohibits any other person (alone or together with its related persons) from owning more than 40% of any class of Voting Shares of ISE Holdings.[62] A third limit prohibits any person (alone or together with its Related Persons) from voting or causing the voting of shares representing more than 20% of the voting power of the then outstanding Voting Shares of ISE Holdings.[63] As described more fully below, if a person exceeds an ISE Holdings' ownership or voting limit, a majority of the capital stock of ISE Holdings that has the right by its terms to vote in the election of the ISE Holdings board of directors ("ISE Holdings Board") or on other matters (other than matters affecting the rights, preferences or privileges of the capital stock) automatically will be transferred to a Delaware statutory trust ("Trust").[64]

Consistent with the governance structure of other exchanges, ISE Holdings' Board may waive the 40% ownership limitation and the 20% voting restriction for persons other than Topaz Exchange members, subject to certain specified conditions,[65] but such waiver will not be effective unless approved by the Commission.[66]

The Topaz Exchange LLC Agreement and Topaz Exchange Constitution do not include change of control provisions that are similar to those in the ISE Holdings Certificate and ISE Holdings Bylaws. However, the Topaz Exchange LLC Agreement and the Topaz Exchange Constitution explicitly provide that ISE Holdings is the Sole LLC Member of Topaz Exchange.[67] ISE Holdings is permitted under the Topaz Exchange LLC Agreement to assign all but not less than all of its interest in Topaz Exchange (and therefore no longer would be its sole owner), but the assignment of all of ISE Holdings' interest in Topaz Exchange will be subject to the rule filing procedures under Section 19 of the Act.[68]

As detailed above, ISE Holdings is owned by various Upstream Owners, none of which have similar ownership

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[50] See Topaz Exchange Constitution, Article V, Section 5.3.

[51] See *id.* The Interim Topaz Exchange Board shall appoint the initial members of the Nominating Committee in accordance with the qualifications prescribed in Section 5.3 of the Topaz Exchange Constitution.

[52] See Topaz Exchange Constitution, Article III, Section 3.10(a)(ii). See also *supra* note 25 and accompanying text.

[53] See, e.g., ISE Constitution, Articles III and V, Sections 3.10 and 5.3; MIAX By-laws Articles II and V, Sections 2.4 and 5.3.

[54] See, e.g., MIAX Order, *supra* note 30, and BOX Order, *supra* note 39.

[55] 15 U.S.C. 78f(b)(1).

[56] The Topaz Exchange LLC Agreement provides that ISE Holdings may not assign its interest in Topaz Exchange unless such assignment is subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act. See Topaz Exchange LLC Agreement, Section 7.1 (Assignments; Additional LLC Members).

[57] See *supra* note 13 and accompanying text.

[58] See *supra* note 14 and accompanying text.

[59] See Article FOURTH, Section III.(c) of the Amended and Restated Certificate of Incorporation of International Securities Exchange Holdings, Inc. ("ISE Holdings Certificate"). See *infra* notes 72–74 and 110–114 and accompanying text for a discussion of the statutory trust.

[60] See ISE Holdings Certificate, Article FOURTH, Section III for the definition of "Related Persons."

[61] See *id.* for the definition of "Voting Shares."

[62] See ISE Holdings Certificate, Article FOURTH, Section III.(a)(i).

[63] See ISE Holdings Certificate, Article FOURTH, Section III.(b). See also Second Amended and Restated Bylaws of ISE Holdings ("ISE Holdings Bylaws"), Article XI, Section 11.1(b).

[64] See ISE Holdings Certificate, Article FOURTH, Section III.(c). See also *infra* notes 72–75 and accompanying text for a discussion of the Trust and the related Trust Agreement.

[65] The ISE Holdings Certificate allows the ISE Holdings Board to waive the ISE Holdings ownership and voting limits pursuant to an amendment to the ISE Holdings Bylaws, provided that the ISE Holdings Board makes certain determinations. See ISE Holdings Certificate, Article FOURTH, Sections III.(a)(i)(A), III.(a)(i)(B) and III.(b)(i). Article XI of the ISE Holdings Bylaws was adopted in connection with the Eurex Acquisition (see *supra* note 15 and accompanying text), when ISE LLC was the sole national securities exchange controlled by ISE Holdings. See Eurex Acquisition Order, *supra* note 15. Article XI, Section 11.1(b) was subsequently amended to apply to any Controlled National Securities Exchange, which will include Topaz Exchange.

[66] See ISE Holdings Certificate, Article FOURTH, Sections III.(a)(i)(A) and III.(b)(i). Article XI of the ISE Holdings Bylaws, which originally was adopted in connection with the Eurex Acquisition (see *supra* note 15 and accompanying text for a description of the Eurex Acquisition), waives the ISE Holdings ownership and voting limits to allow the Upstream Owners to own and vote all of the common stock of ISE Holdings. Article XI, Section 11.1(b) states that, in waiving the ISE Holdings ownership and voting limits to permit the Upstream Owners to own and vote the capital stock of ISE Holdings, the ISE Holdings Board has determined, with respect to each Upstream Owner, that: (i) Such waiver will not impair the ability of ISE Holdings and each "Controlled National Securities Exchange" (*i.e.*, any national securities exchange or facility thereof controlled, directly or indirectly, by ISE Holdings, including ISE, EDGA, EDGX, and as a result of this Order, Topaz Exchange) to carry out their respective functions and responsibilities under the Act; (ii) such waiver is in the best interests of ISE Holdings, its stockholders, and each Controlled National Securities Exchange; (iii) such waiver will not impair the ability of the Commission to enforce the Act; (iv) neither the Upstream Owner nor any of its related persons is subject to a statutory disqualification (within the meaning of Section 3(a)(39) of the Act, 15 U.S.C. 78c(a)(39)); and (v) neither the Upstream Owner nor any of its related persons is a member of such Controlled National Securities Exchange.

[67] See Topaz Exchange LLC Agreement, Article II, Section 2.1 and Topaz Exchange Constitution Article I, Section 1.1 (both of which define "Sole LLC Member" to mean ISE Holdings, as the sole member of Topaz Exchange).

[68] See 15 U.S.C. 78s; see also Topaz Exchange LLC Agreement, Article VII, Section 7.1 and Topaz Exchange Constitution, Article I, Section 1.1.

and voting limits in their governing documents. To facilitate compliance with the ISE Holdings ownership and voting limits, the Upstream Owners have committed to take reasonable steps necessary to cause ISE Holdings to be in compliance with the ISE Holdings ownership and voting limits. These commitments are contained in the governing documents for U.S. Exchange Holdings [69] and in corporate resolutions for the non-U.S. Upstream Owners.[70]

Further, in connection with the Eurex Acquisition, ISE implemented the Trust pursuant to a Trust Agreement ("2007 Trust Agreement") [71] among ISE Holdings, U.S. Exchange Holdings, trustees ("Trustees"), and a Delaware trustee, which agreement has been subsequently amended to take into account subsequent acquisitions, including the current transaction.[72]

The current agreement ("2012 Trust Agreement") serves, in part, to effectuate the ownership and voting limits for ISE Holdings in the event that a person obtains an ownership or voting interest in excess of the limits established in the ISE Holdings Certificate without prior Commission approval. To accomplish that purpose, for as long as ISE Holdings controls, directly or indirectly, a national securities exchange, including Topaz Exchange, the Trust would accept, hold and dispose of Trust Shares [73] on the terms and subject to the conditions set forth therein.[74] Specifically, if any person's ownership percentage exceeds the ownership limits or any person's voting control percentage exceeds the voting limits without Commission approval, the Excess Shares will be transferred automatically to the Trust pursuant to the terms prescribed in the ISE Holdings Certificate.[75] The Trust then would accept the Excess Shares and hold them for the benefit of the trust beneficiary, U.S. Exchange Holdings, who has the right to reacquire the Excess Shares either when a person no longer exceeds the ownership or voting limits or when such excess ownership percentage or voting control percentage is approved by the Commission in accordance with ISE Holdings Certificate.[76]

Although ISE Holdings is not independently responsible for regulation of Topaz Exchange, its activities with respect to the operation of Topaz Exchange must be consistent with, and must not interfere with, the self-regulatory obligations of Topaz Exchange.[77] As described above, the provisions applicable to direct and indirect changes in control of ISE Holdings and Topaz Exchange, as well as the voting limitation, are designed to help prevent any owner of ISE Holdings from exercising undue influence or control over the operation of Topaz Exchange and to help assure that Topaz Exchange is able to effectively carry out its regulatory obligations under the Act. In addition, these limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the

[69] For a U.S. Upstream Owner, the U.S. Exchange Holdings Certificate provides that, for so long as U.S. Exchange Holdings directly or indirectly controls a Controlled National Securities Exchange, U.S. Exchange Holdings will take reasonable steps necessary to cause ISE Holdings to be in compliance with the ISE Holdings' ownership and voting limits. *See* U.S. Exchange Holdings Certificate, Article THIRTEENTH.

[70] *See, e.g.*, Form of German Parent Corporate Resolutions (2007 Resolution Section (4)), Exhibit B to Topaz Exchange Form 1 Application. In its Form 1 Application, Topaz Exchange included these supplemental resolutions that each of the current Non-U.S. Upstream Owners of Topaz Exchange has adopted that, in part, incorporate provisions regarding the ownership and voting limits ("Topaz Exchange Resolutions") in the same manner and to the same extent as prior corporate resolutions signed by the Non-U.S. Upstream Owners apply to ISE ("2007 Resolutions"). The Topaz Exchange Resolutions were signed by the Non-U.S. Upstream Owners and extend to Topaz Exchange the commitments that the then non-U.S. upstream owners made in the 2007 Resolutions with respect to ISE. For example, Topaz Exchange represented in Exhibit B to its Form 1 Application that Deutsche Börse AG Executive Board executed its corporate resolution on November 10, 2009.

Since 2007, U.S. Exchange Holdings' governing documents and the non-U.S. upstream owners' 2007 Resolutions have been updated, where appropriate, to reflect changes in corporate structure and ownership as described herein. In 2010, to effect the registrations of EDGA and EDGX as national securities exchanges, and to maintain ISE Holdings' ownership and voting limits, as well as the independence of the regulatory function of EDGA and EDGX, the U.S. Exchange Holdings governing documents and the 2007 Resolutions were supplemented by each of the then non-U.S. upstream owners through supplemental resolutions ("DirectEdge Resolutions") that applied the commitments of the 2007 Resolutions to EDGA and EDGX, as affiliates of ISE, *see supra* note 13, in the same manner and to the same extent as the 2007 Resolutions applied to ISE and the U.S. Exchange Holdings governing documents were updated to apply prospectively to any other national securities exchange that ISE Holdings may control, either directly or indirectly, including, but not limited to, ISE, EDGA and EDGX. *See* Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGA and EDGX) ("DirectEdge Exchanges Order"). The Commission also approved changes to U.S. Exchange Holdings' and ISE Holdings' governing documents to apply these governing documents to any prospective national securities exchange that U.S. Exchange Holdings or ISE Holdings, as applicable, directly or indirectly controlled. *See* Securities Exchange Act Release Nos. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) ("ISE Holdings Order") and 61498 (February 4, 2010), 75 FR 7299 (February 18, 2010) ("U.S. Exchange Holdings Order").

In 2012, new resolutions were executed by EGD, a Swiss corporation, when it became a wholly-owned subsidiary of Deutsche Börse, and thus a Non-U.S. Upstream Owner of ISE, EDGA and EDGX. *See* Deutsche Börse Acquisition Order, *supra* note 16.

[71] The term of the Trust is perpetual, provided that ISE Holdings directly or indirectly controls a national securities exchange or a facility thereof, which would include Topaz Exchange.

[72] *See* Eurex Acquisition Order, *supra* note 15, at Section II.C., for a more detailed description of the Trust. By its terms, the 2007 Trust Agreement related solely to ISE Holdings' ownership of ISE LLC, and not to any other national securities exchange that ISE Holdings might control, directly or indirectly. In 2010, the Commission approved proposed rule changes that revised the 2007 Trust Agreement to replace references to ISE with references to any Controlled National Securities Exchange (the 2007 Trust Agreement, as thereby amended, is referred to herein as the "2009 Trust Agreement"). *See* ISE Holdings Order and U.S. Exchange Holdings Order, *supra* note 70; *see also* DirectEdge Exchanges Order, *supra* note 70; 2009 Trust Agreement, Articles I and II, Sections 1.1 and 2.6.

Thus, the 2009 Trust Agreement will apply to Topaz Exchange upon the Commission's granting its registration as a national securities exchange because it is controlled directly by ISE Holdings. Except for the expanded scope, the 2009 Trust Agreement was substantially similar to the 2007 Trust Agreement. In 2012, the Commission approved a proposed rule change that revised the 2009 Trust Agreement to replace references to a former owner, SIX, to the new owner, EGD (the 2009 Trust Agreement, as thereby amended, is referred to herein as the "2012 Trust Agreement"). *See* Deutsche Börse Acquisition Order, *supra* note 16, for more detailed information on the addition of EGD as a Non-U.S. Upstream Owner of ISE, EDGA, and EDGX. Except for reflecting a new Upstream Owner of ISE Holdings, the 2012 Trust Agreement was substantially similar to the 2009 Trust Agreement.

[73] Under the Trust, the term "Trust Shares" means either Excess Shares or Deposited Shares, or both, as the case may be. The term "Excess Shares" means that a person obtained an ownership or voting interest in ISE Holdings in excess of the ownership and voting limits pursuant to Article FOURTH of the ISE Holdings Certificate, for example, through ownership of one of the Non-U.S. Upstream Owners or U.S. Exchange Holdings, without obtaining the approval of the Commission. The term "Deposited Shares" means shares that are transferred to the Trust pursuant to the Trust's exercise of the Call Option. Under the Trust, the term "Call Option" means the option granted by the Trust beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein. *See infra* Section II.C.2.b for further discussion of the Call Option.

[74] *See* 2012 Trust Agreement, Article IV, Section 4.1; *see also* ISE Holdings Certificate, Article FOURTH, Section III.(c); Eurex Acquisition Order, *supra* note 15, at 72 FR 71982 n.37 and accompanying text.

[75] *See id.*

[76] *See* 2012 Trust Agreement, Article IV, Section 4.1(f). In addition, as discussed in Section II.C.2.b below, the Trust also may accept, hold and dispose of Trust Shares in connection with the Call Option. Section 4.2(h) of the 2012 Trust Agreement governs when the Trustees can transfer Deposited Shares in connection with the Call Option. Section 4.3(a) of the 2012 Trust Agreement further permits the Trustees, upon receipt of written instructions from the Trust Beneficiary, to sell Trust Shares to a person or persons whose ownership percentage or voting control percentage will not violate the ownership or voting limits.

[77] *See also infra* Section II.C.2. (Regulatory Independence).

exchange. As the Commission has noted in the past, however, a member's interest in an exchange, including an entity that controls an exchange, could become so large as to cast doubts on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.[78] A member that is a controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. As such, these requirements are designed to minimize the potential that a person or entity can improperly interfere with or restrict the ability of Topaz Exchange to effectively carry out its regulatory oversight responsibilities under the Act.

The Commission believes that Topaz Exchange's and ISE Holdings' proposed ownership and voting limitation provisions, coupled with the provisions in U.S. Exchange Holdings' governing documents, the Topaz Exchange Resolutions and the 2012 Trust Agreement described above,[79] are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[80] In particular, these requirements are designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or Topaz Exchange to effectively carry out their regulatory oversight responsibilities under the Act.[81]

2. Regulatory Independence and Oversight

a. ISE Holdings

Although ISE Holdings itself will not itself carry out regulatory functions, its activities with respect to the operation of Topaz Exchange must be consistent with, and not interfere with, the self-regulatory obligations of Topaz Exchange.[82] In this regard, Topaz Exchange and ISE Holdings' respective corporate documents include certain provisions that are designed to maintain the independence of the Topaz Exchange's self-regulatory function.[83] These provisions are substantially similar to those included in the governing documents of other exchanges that recently have been granted registration.[84] Specifically:

- The directors, officers, and employees of ISE Holdings must give due regard to the preservation of the independence of the self-regulatory function of Topaz Exchange and must not take actions that would interfere with the effectuation of decisions by the Topaz Exchange Board relating to its regulatory functions (including disciplinary matters) or that would adversely affect the ability of Topaz Exchange to carry out its responsibilities under the Act.[85]
- ISE Holdings must comply with federal securities laws and the rules and regulations promulgated thereunder, and must cooperate with Topaz Exchange and the Commission pursuant to, and to the extent of, their respective regulatory authority. In addition, ISE Holdings' officers, directors, and employees must comply with federal securities laws and the rules and regulations thereunder and agree to cooperate with Topaz Exchange and the Commission pursuant to their respective regulatory authority.[86]
- ISE Holdings, and its officers, directors, employees, and agents are deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and Topaz Exchange, for purposes of any suit, action, or proceeding pursuant to U.S. federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, Topaz Exchange's activities.[87]
- All books and records of Topaz Exchange containing confidential information pertaining to the self-regulatory function of Topaz Exchange (including but not limited to confidential information regarding disciplinary matters, trading data, trading practices and audit information) shall be retained in confidence by Topaz Exchange and its officers, directors, employees and agents and will not be used by Topaz Exchange for any commercial purpose and shall not be made available to persons other than those officers, directors, employees and agents that have a reasonable need to know the contents thereof.[88]
- The books and records of Topaz Exchange and ISE Holdings must be maintained in the United States[89] and, to the extent they are related to the operation or administration of Topaz Exchange, ISE Holdings books and records will be subject at all times to inspection and copying by the Commission.[90]
- Furthermore, to the extent that they are related to the activities of Topaz Exchange, the books, records, premises, officers, directors, and employees of ISE Holdings will be deemed to be the books, records, premises, officers, directors, and employees of Topaz Exchange, for purposes of, and subject to oversight pursuant to, the Act.[91]
- ISE Holdings will take necessary steps to cause its officers, directors, and employees, prior to accepting a position as an officer, director, or employee (as

[78] See, e.g., DirectEdge Exchanges Order, *supra* note 70, and BATS Order, *supra* note 29; see *also* MIAX Order, *supra* note 30.

[79] See *supra* notes 69–70, and accompanying text.

[80] 15 U.S.C. 78f(b)(1).

[81] In addition, the 2012 Trust Agreement, like the 2007 and 2009 Trust Agreements, is consistent with the provisions that other entities that directly or indirectly own or control a SRO have instituted and that have been approved by the Commission. See, *e.g.*, Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (File No. SR–NYSE–2006–120) (order relating to the combination between NYSE Group, Inc. and Euronext N.V.). See *also* Eurex Acquisition Order, *supra* note 15, at 72 FR 71986 n.111.

[82] See, *e.g.*, BOX Order, *supra* note 39, and DirectEdge Exchanges Order, *supra* note 70.

[83] See *supra* note 66, noting that the ISE Holdings Certificate and the ISE Holdings Bylaws were revised in 2010 to cover any Controlled National Securities Exchange, which would include Topaz Exchange.

[84] See, e.g., BOX Order, *supra* note 39, and MIAX Order, *supra* note 30.

[85] See ISE Holdings Bylaws, Article I, Section 1.5. Similarly, Article V, Section 5.1(b) of the Topaz Exchange LLC Agreement requires each Topaz Exchange Board director to take into consideration the effect that his or her actions would have on the ability of Topaz Exchange to carry out its responsibilities under the Act and on the ability of Topaz Exchange to engage in conduct that fosters and does not interfere with Topaz Exchange's ability 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 or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system; and in general to protect investors and the public interest.

[86] See ISE Holdings Certificate, Article TENTH. ISE Holdings also shall take reasonable steps necessary to cause its agents to cooperate with Topaz Exchange and the Commission pursuant to their respective regulatory authority. ISE Holdings Certificate, Article THIRTEENTH.

[87] See ISE Holdings Bylaws, Article I, Section 1.4.

[88] See Topaz Exchange LLC Agreement, Article VI, Section 4.1(b) and ISE Holdings Certificate, Article ELEVENTH. ISE Holdings LLC Agreement also provides that all books and records of Topaz Exchange reflecting confidential information pertaining to the self-regulatory function of Topaz Exchange will be subject to confidentiality restrictions. See ISE Holdings Certificate, Article ELEVENTH. The requirement to keep such information confidential shall not limit or impede the Commission's ability to access and examine such information or limit or impede the ability of officers, directors, employees, or agents of ISE Holdings to disclose such information to the Commission. See *id.*

[89] See Topaz Exchange LLC Agreement, Article IV, Section 4.1 and ISE Holdings Bylaws, Article I, Section 1.3.

[90] See ISE Holdings Certificate, Article TWELFTH.

[91] See *id.*

applicable) to consent in writing to the applicability of provisions regarding books and records, confidentiality, jurisdiction, and regulatory obligations, with respect to their activities related to Topaz Exchange.[92]

• ISE Holdings Certificate and ISE Holdings Bylaws require that, so long as ISE Holdings controls Topaz Exchange, any changes to those documents be submitted to the Topaz Exchange Board, and, if such change is required to be filed with, or filed with and approved by, the Commission before it may be effective pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with, or filed with and approved by, the Commission.[93]

b. Upstream Owners

Although the Upstream Owners will not carry out any regulatory functions, the activities of each of the Upstream Owners with respect to the operation of Topaz Exchange must be consistent with, and not interfere with, the self-regulatory obligations of Topaz Exchange. The 2007 Resolutions, as supplemented by the supplemental Resolutions for Topaz Exchange, the U.S. Exchange Holdings Certificate, and the U.S. Exchange Holdings Bylaws include certain provisions that are designed to maintain the independence of the self-regulatory function of Topaz Exchange, enable Topaz Exchange to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[94] and facilitate the ability of Topaz Exchange, and the Commission to fulfill their regulatory and oversight obligations under the Act. Specifically:

• Each such Non-U.S. Upstream Owner and U.S. Exchange Holdings will comply with the U.S. federal securities laws and the rules and regulations thereunder and cooperate with the Commission and Topaz Exchange.[95] Also, each board member, officer, and employee of the Non-U.S. Upstream Owners, and of U.S. Exchange Holdings, in discharging his or her responsibilities, must comply with the U.S. federal securities laws and the rules and regulations thereunder, and must cooperate with the Commission and Topaz Exchange.[96]

• In discharging his or her responsibilities as a board member of a Non-U.S. Upstream Owner, or of U.S. Exchange Holdings, each such member must, to the fullest extent permitted by applicable law, take into consideration the effect that the actions of the Upstream Owner or U.S. Exchange Holdings, as applicable, will have on the ability of Topaz Exchange to carry out its responsibilities under the Act.[97] In addition, each of the Non-U.S. Upstream Owners and U.S. Exchange Holdings, and their board members, officers, and employees, must give due regard to the preservation of the independence of the self-regulatory function of Topaz Exchange (or in the case of the Non-U.S. Upstream Owners, that they will take reasonable steps necessary to cause their officers and employees involved in the activities of Topaz Exchange to give due regard to preserving the independence of the self-regulatory functions of Topaz Exchange).[98]

• The Non-U.S. Upstream Owners (along with their respective board members, officers, and employees), and U.S. Exchange Holdings agree to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of Topaz Exchange, including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices and audit information, contained in the books and records of Topaz Exchange and not use such information for any commercial purposes.[99]

• The books and records of the Non-U.S. Upstream Owners related to the activities of Topaz Exchange must at all times be made available for, and the books and records of U.S. Exchange Holdings must be subject at all times to, inspection and copying by the Commission and Topaz Exchange.[100]

• Books and records of U.S. Exchange Holdings related to the activities of Topaz Exchange will be maintained within the United States.[101]

• For so long as each of the Non-U.S. Upstream Owners or U.S. Exchange Holdings directly or indirectly controls Topaz Exchange, the books, records, officers, directors (or equivalent), and employees of each of the Non-U.S. Upstream Owners or of U.S. Exchange Holdings will be deemed to be the books, records, officers, directors, and employees of Topaz Exchange, as applicable.[102] And, for so long as U.S. Exchange Holdings directly or indirectly controls Topaz Exchange, the premises of U.S. Exchange Holdings will be deemed to be the premises of Topaz Exchange.[103]

• To the extent involved in the activities of Topaz Exchange, each of the Non-U.S. Upstream Owners, its board members, officers, and employees, irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any suit, action or proceeding arising out of, or relating to, the activities of Topaz Exchange to the extent such board member, officer or employee are involved in the activities of Topaz Exchange.[104] Likewise, U.S. Exchange Holdings, its officers, directors, and employees whose principal place of business and residence is outside of the United States, to the extent such director, officer, or employee is involved in the activities of Topaz Exchange, irrevocably submit to the

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[92] *See* ISE Holdings Bylaws, Article I, Section 1.6.

[93] *See* ISE Holdings Certificate, Article FOURTEENTH; and ISE Holdings Bylaws, Article X; *see also supra* notes 67–68 and accompanying text discussing a similar provision for Topaz Exchange.

[94] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[95] *See, e.g.*, Form of German Parent Corporate Resolutions (2007 Resolution Section (1) and Topaz Exchange Resolution Section (2)(a)); and U.S. Exchange Holdings Certificate, Article ELEVENTH.

[96] *See, e.g.*, Form of German Parent Corporate Resolutions (2007 Resolution Sections (7)(a) and (8)(a) and Topaz Exchange Resolution Sections (2)(b) and (2)(c)); U.S. Exchange Holdings Certificate, Article TENTH. The Resolutions also provide that each Non-U.S. Upstream Owner will take reasonable steps necessary to cause each person who subsequently becomes a board member of the Non-U.S. Upstream Owner to agree in writing to certain matters included in the Resolutions. *See, e.g.*, Form of German Parent Corporate Resolutions (2007 Resolution Section (7) and Topaz Exchange Resolution Section (2)(b)).

[97] *See, e.g.*, Form of German Parent Corporate Resolutions (2007 Resolution Section (7)(f) and Topaz Exchange Resolution Section (2)(b)); and U.S. Exchange Holdings Certificate, Article TENTH.

[98] *See, e.g.*, Form of German Parent Corporate Resolutions (2007 Resolution Sections (5), (7)(d), and (8)(d) and Topaz Exchange Resolution Section (2)); and U.S. Exchange Holdings Certificate, Article TWELFTH.

[99] *See, e.g.*, Form of German Parent Corporate Resolutions (2007 Resolution Sections (6), (7)(e) and (8)(e) and Topaz Exchange Resolution Section (2)); and U.S. Exchange Holdings Certificate, Article FOURTEENTH.

The Commission believes that any non-regulatory use of such information would be for a commercial purpose. *See* DirectEdge Exchanges Order, *supra* note 70, at 75 FR 13155 n.53.

[100] *See, e.g.*, Form of German Parent Corporate Resolutions (2007 Resolution Section (3) and Topaz Exchange Resolution Section (2)(a)); and U.S. Exchange Holdings Certificate, Article FIFTEENTH. *See infra* Section II.C.2.c for a discussion of the 2009 Procedure through which the Swiss companies would make available their books and records relating to the activities of the Topaz Exchange.

[101] *See* U.S. Exchange Holdings Certificate, Article FIFTEENTH.

[102] *See, e.g.*, Form of German Parent Corporate Resolutions (2007 Resolution Sections (3) and (8)(c) and Topaz Exchange Resolution Sections (2)(a) and (2)(c)); and U.S. Exchange Holdings Certificate, Article FIFTEENTH.

[103] *See* U.S. Exchange Holdings Certificate, Article FIFTEENTH.

[104] *See, e.g.*, Form of German Parent Corporate Resolutions (2007 Resolution Sections (2), (7)(b), and (8)(b) and Topaz Exchange Resolution Section (2)).

jurisdiction of the U.S. federal courts and the Commission for purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules or regulations thereunder, commended or initiated by the Commission arising out of, or relating to, the activities of Topaz Exchange.[105]

• The 2007 Resolutions, as supplemented by the Topaz Exchange Resolutions, and the U.S. Exchange Holdings Certificate and the U.S. Exchange Holdings Bylaws each require that any change to the applicable document (including any action by the Non-U.S. Upstream Owners that would have the effect of amending or repealing the Topaz Exchange Resolutions or the 2007 Resolutions) must be submitted to the Topaz Exchange Board.[106] If such change must be filed with, or filed with and approved by, the Commission under Section 19 of the Act,[107] and the rules thereunder, then such change shall not be effective until filed with, or filed with and approved by, the Commission.[108]

The 2012 Trust Agreement, in addition to enforcing the ownership and voting limits,[109] also serves to effectuate compliance with the other commitments made under the Topaz Exchange Resolutions, which incorporate the 2007 Resolutions. To accomplish that purpose, the Trust would determine whether a Material Compliance Event[110] has occurred or is continuing. The Trust would determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option.[111] The Trust holds a Call Option over the capital stock of ISE Holdings that may be exercised if a Material Compliance Event has occurred and continues to be in effect, and upon such exercise, the Trust Beneficiary[112] and ISE Holdings, as applicable, will take such actions as are necessary to transfer, or cause the transfer to the Trust of a majority of the Voting Shares then outstanding.[113] The Trust will transfer Deposited Shares from the Trust back to the Trust Beneficiary, as provided in Section 4.2(h) therein, only if no Material Compliance Event is continuing or, notwithstanding its continuation, the Trustees determine that the retention of the Deposited Shares could not reasonably be expected to address the continuing Material Compliance Event, provided that the determination is filed with, or filed with and approved by, the Commission.[114]

The Commission believes that the provisions discussed above in Sections II.C.2.a. and b., which are designed to help maintain the independence of Topaz Exchange's regulatory function and help facilitate the ability of Topaz Exchange to carry out its regulatory responsibilities and operate in a manner consistent with the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[115] Whether Topaz Exchange operates in compliance with the Act, however, depends on how it and ISE Holdings in practice implement the governance and other provisions that are the subject of this Order.[116]

Further, Section 19(h)(1) of the Act[117] provides the Commission with the authority "to suspend for a period not exceeding twelve months or revoke the registration of [an SRO], or to censure or impose limitations upon the activities, functions, and operations of [an SRO], if [the Commission] finds, on the record after notice and opportunity for hearing, that [the SRO] has violated or is unable to comply with any provision of [the Act], the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance" with any such provision by its members (including associated persons thereof).[118] If Commission staff were to find, or become aware of, through staff review and inspection or otherwise, facts indicating any violations of the Act, including without limitation Sections 6(b)(1)[119] and 19(g)(1),[120] these matters could provide the basis for a disciplinary proceeding under Section 19(h)(1) of the Act.[121]

Even in the absence of the provisions described above, under Section 20(a) of the Act,[122] any person with a controlling interest in Topaz Exchange would be jointly and severally liable with and to the same extent that Topaz Exchange is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act)[123] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act authorizes the Commission to enter a cease-and-desist order against any person who has been "a cause of" a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.[124] These provisions are applicable to all entities controlling Topaz Exchange, including the Trust, ISE Holdings, U.S. Exchange Holdings, and the Non-U.S. Upstream Owners.

c. Swiss Resolutions and Procedure With FINMA

As discussed more fully in the Eurex Acquisition Order,[125] Swiss law is designed to protect Swiss sovereignty concerns and prohibits the direct delivery of information from the Swiss

[105] See U.S. Exchange Holdings Bylaws, Article VI, Section 16.

[106] See, e.g., Form of German Parent Corporate Resolutions (Topaz Exchange Resolution Section (3)); U.S. Exchange Holdings Certificate, Article SIXTEENTH; and U.S. Exchange Holdings Bylaws, Article VI, Section 9.

[107] 15 U.S.C. 78s.

[108] See, e.g., Form of German Parent Corporate Resolutions (Topaz Exchange Resolution Section (3)); U.S. Exchange Holdings Certificate, Article SIXTEENTH; and U.S. Exchange Holdings Bylaws, Article VI, Section 9. The requirement to submit changes to the Topaz Exchange Board endures for as long as U.S. Exchange Holdings directly or indirectly controls Topaz Exchange. See U.S. Exchange Holdings Bylaws, Article VI, Section 9.

[109] See *supra* notes 61–63 and 73–76 and accompanying text for a discussion of the ownership and voting limits.

[110] Under the 2012 Trust Agreement, a "Material Compliance Event" is any state of facts, development, event, circumstance, condition, occurrence, or effect that results in the failure of any of the Non-U.S. Upstream Owners to adhere to its respective commitments under the Resolutions adopted by the respective Non-U.S. Upstream Owners, in any material respect. See 2012 Trust Agreement, Article I, Section 1.1.

[111] See *supra* note 73.

[112] Under the Trust, the term "Trust Beneficiary" means U.S. Exchange Holdings.

[113] See 2012 Trust Agreement, Article IV, Section 4.2. Specifically, if a Material Compliance Event occurs and continues to be in effect, the Trustees must take certain actions, including, after a specified cure period, the exercise of a Call Option for a transfer of the majority of capital stock of ISE Holdings that has the right by its terms to vote in the election of the ISE Holdings Board or on other matters.

[114] See 2012 Trust Agreement, Article IV, Section 4.2.

[115] 15 U.S.C. 78f(b)(1).

[116] The Commission has noted that it is reviewing the various standards and processes it uses to facilitate the registration of national securities exchanges and other entities required to register with the Commission and may issue a concept release designed to collect relevant information to evaluate aspects of these registration standards and processes, including the policy objectives of registration, and how best to achieve those policy objectives through registration and other means, and the relative benefits and costs of the various means available. See Securities Exchange Act Release No. 65543 (October 12, 2011), 76 FR 65784, 65786 fn. 13 (October 24, 2011).

[117] See 15 U.S.C. 78s(h)(1).

[118] See *id.*

[119] See 15 U.S.C. 78f(b)(1)

[120] See 15 U.S.C. 78s(g)(1).

[121] See 15 U.S.C. 78s(h)(1).

[122] See 15 U.S.C. 78t(a).

[123] See 15 U.S.C. 78t(e).

[124] See 15 U.S.C. 78u-3(a).

[125] See *supra* note 15.

owners of Topaz Exchange to the Commission or Topaz Exchange with respect to the activities of Topaz Exchange. In light of the Swiss penal code,[126] the Swiss companies agreed to make their books and records relating to the activities of ISE, EDGA and EDGX available for inspection and copying by the Commission through FINMA.[127] The Swiss companies made the same agreement in connection with the Eurex Acquisition, and agreed to do so again with respect to the Topaz Exchange prior to the grant of registration to Topaz Exchange as a national securities exchange.[128] In November 2009, the Commission and FINMA both approved and signed the Undertaking Relating to the Oversight of Affiliated Markets ("2009 Undertaking") pursuant to which FINMA undertook to serve as a conduit for the delivery of information between the Commission and the Swiss owners of ISE Holdings ("Procedure")[129] for any national securities exchange registered under Section 6 of the Act that ISE Holdings controls or would, in the future, control, directly or indirectly.[130]

Subject to the terms and conditions relating to the Procedure, coupled with the fact that under the Topaz Exchange LLC Agreement, all trading records of Topaz Exchange must be maintained in the United States,[131] the Commission believes that the Procedure should not result in a level of access materially different from that agreed to by other entities that control U.S. national securities exchanges.[132]

3. Regulation of Topaz Exchange

As a prerequisite to the Commission's granting of an exchange's application for registration, an exchange must be so organized and have the capacity to carry out the purposes of the Act.[133] Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the Act and the rules and regulations thereunder and the rules of the exchange.[134] The discussion below summarizes how Topaz Exchange proposes to structure and conduct its regulatory operations.

a. Corporate Governance Committee and Finance and Audit Committee

Topaz Exchange will have a Chief Regulatory Officer ("CRO") with general responsibility for supervision of the regulatory operations of Topaz Exchange. The CRO will report to the Corporate Governance Committee[135] and to the President/Chief Executive Officer, although the Topaz Exchange Board would retain the power to call the CRO to report directly to the Board as needed, and the CRO may call special meetings of the Board, as necessary.[136] The Corporate Governance Committee will meet regularly with the CRO to review regulatory matters.

The Corporate Governance Committee will monitor the regulatory program for sufficiency, effectiveness and independence, and will oversee trade practices and market surveillance, audits, examinations and other regulatory responsibilities with respect to members and the conduct of investigations. The Corporate Governance Committee also will supervise the CRO; will receive an annual report from the CRO assessing Topaz Exchange's self-regulatory program for the Board; will recommend changes that would ensure fair and effective regulation; and will review regulatory proposals and advise the Board as to whether and how such changes may impact regulation. The Corporate Governance Committee will review annually the regulatory budget and specifically inquire into the adequacy of the resources available in the budget for regulatory activities. The Corporate Governance Committee will authorize unbudgeted expenditures for necessary regulatory expenses. In addition, the Finance and Audit Committee will provide oversight over the systems of internal controls established by management and the Board and the Exchange's regulatory and compliance process.[137]

The Compensation Committee will set compensation for the CRO. The Corporate Governance Committee, in its sole discretion, will make hiring and termination decisions with respect to the CRO, in each case taking into consideration any recommendations made by the President/Chief Executive Officer. The Corporate Governance Committee will be informed about the

[126] Art. 271 of the Swiss penal code, "Prohibited acts for a foreign state," states, in part: "Whoever, without being authorized, performs acts for a foreign state on Swiss territory that are reserved to an authority or an official, whoever performs such acts for a foreign party or another foreign organization, whoever aids and abets such acts, shall be punished with imprisonment and, in serious cases, sentenced to the penitentiary."

[127] In 2007, the Swiss Federal Banking Commission ("SFBC") (the predecessor to FINMA) undertook to serve as a conduit for the delivery of information between the Commission and the Swiss companies relating to the activities of ISE. On January 1, 2009, the SFBC, the Swiss Federal Office of Private Insurance and the Swiss Anti-Money Laundering Control Authority merged to form FINMA, a new consolidated financial regulator for Switzerland. In 2009, a new undertaking was expanded to cover EDGA and EDGX and any future U.S. exchanges controlled by ISE Holdings. The 2009 undertaking became effective after the Commission approved the Form 1 applications of EDGA and EDGX. *See* DirectEdge Exchanges Order, *supra* note 70. The 2009 undertaking covers all U.S. markets that currently are, or in the future may be, controlled by ISE Holdings. Accordingly, by its terms, the new undertaking from 2009 also would apply to the activities of Topaz Exchange upon its registration. *See http://www.sec.gov/about/offices/oia/oia_bilateral/switzerland_sfbc.pdf.*

[128] *See supra* note 15. The forms of these agreements are included as part of the Form 1 Application. Form of Swiss Parent Corporate Resolutions; *see also* Form of EGD Corporate Resolutions. Based on the representation of Topaz Exchange in the submission of its Form 1 Application to the Commission, the resolutions were signed by the respective Swiss companies prior to the grant of registration by the Commission. *See* Exhibit B to Topaz Exchange Form 1 Application and Amendment No. 3.

[129] Where necessitated by Swiss law, the Procedure provides: (1) If the Commission makes a request to any of the Swiss Upstream Owners for information related to the activities of a U.S. Market, including books and records related to the activities of such U.S. Market, FINMA shall deliver to the Commission without delay any responsive information provided to FINMA by the Swiss Upstream Owners; (2) written requests for information, including books and records, related to the activities of a U.S. Market shall be made by the Commission directly to the Swiss Upstream Owners, and FINMA would be copied on any such requests; and (3) a FINMA staff member shall participate in any oral exchanges between the Commission and any of the Swiss Upstream Owners. As used in the 2009 Undertaking, "U.S. Markets" means ISE, EDGX, EDGA, and any national securities exchange registered under Section 6 of the Act that ISE Holdings may, in the future, control, directly or indirectly. *See* 2009 Undertaking, paragraph 6.

Notwithstanding this Procedure, the Swiss Upstream Owners remain fully responsible for meeting all of their obligations as owners of a U.S. securities exchange, to be set forth in binding corporate resolutions.

[130] FINMA serves as a conduit for the delivery of information and for participation in oral exchanges between the Commission and the Swiss companies, and would serve in that capacity for Topaz Exchange. The 2009 Undertaking explicitly states that it covers changes in Swiss companies that become future direct or indirect owners of the U.S. Markets. Specifically, when SIX Swiss Exchange AG's transferred its interest to the newly formed Swiss corporation, EGD, EGD was covered by the 2009 Undertaking. *See supra* note 16.

[131] *See* Topaz Exchange LLC Agreement, ARTICLE IV, Section 4.1 (Books and Records).

[132] *See* Eurex Acquisition Order, *supra* note 15, at 72 FR 71984 n.66 and accompanying text; see *also* DirectEdge Exchanges Order, *supra* note 70. If a Non-U.S. Upstream Owner fails to make its books and record relating to the operation of Topaz Exchange available to the Commission, the Commission could bring an action under, among other provisions, Section 17 of the Act, 15 U.S.C. 78q, and Rule 17a–1(b) thereunder, 17 CFR 240.17a–1(b), against Topaz Exchange pursuant to Section 19(h) of the Act, 15 U.S.C. 78s(h).

[133] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[134] *See id. See also* Section 19(g) of the Act, 15 U.S.C. 78s(g).

[135] The Corporate Governance Committee will consist of at least three directors, all of whom must be Non-Industry Directors. *See* Topaz Exchange Constitution, Article V, Section 5.4.

[136] *See* Exhibit L to Topaz Exchange Form 1 Application.

[137] *See* Exhibit L to Topaz Exchange Form 1 Application. *See also* Amendment No. 3.

compensation of the CRO, including factors affecting changes thereto.

b. Regulatory Funding

To help assure the Commission that it has and will continue to have adequate funding to be able to meet its responsibilities under the Act, Topaz Exchange represented that, prior to commencing operations as a national securities exchange, ISE Holdings will provide sufficient funding to Topaz Exchange for the exchange to carry out its responsibilities under the Act.[138] Specifically, Topaz Exchange represented that ISE Holdings will make a cash contribution to Topaz Exchange of $5 million, in addition to previously provided "in-kind" contributions of legal, regulatory and infrastructure-related services to Topaz Exchange[139] Topaz Exchange represented in its Form 1 Application that the cash and in-kind contributions to Topaz Exchange will be adequate to operate Topaz Exchange, including its regulatory program.[140] Further, Topaz Exchange, with ISE Holdings as its parent, will be affiliated with an existing exchange, ISE. Individuals currently employed by ISE have been providing, and will continue to provide, services to Topaz Exchange.[141]

Topaz Exchange represented in its Form 1 Application that there will be a written agreement between Topaz Exchange and ISE Holdings that requires ISE Holdings to provide adequate funding for Topaz Exchange's operation, including the regulation of Topaz Exchange.[142] This agreement further provides that ISE Holdings will reimburse Topaz Exchange for its costs and expenses to the extent Topaz Exchange's assets are insufficient to meet its costs and expenses.[143] Excess funds, as solely determined by Topaz Exchange, will be remitted to ISE Holdings.[144] Further, Topaz Exchange will receive all fees, including regulatory fees and trading fees, payable by Topaz Exchange's members, as well as any funds received from any applicable market data fees and OPRA tape revenue.[145] Regulatory funds, meaning the fees, fines or penalties derived from the regulatory operations of Topaz Exchange, will be used to fund the legal, regulatory and surveillance operations of Topaz Exchange.[146]

c. Rule 17d–2 Agreements; Regulatory Contracts with FINRA and ISE

Section 19(g)(1) of the Act,[147] among other things, requires every SRO registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[148] Rule 17d–2 of the Act[149] permits SROs to propose joint plans to allocate regulatory responsibilities amongst themselves for their common rules with respect to their common members.[150] These agreements, which must be filed with and declared effective by the Commission, generally cover areas where each SRO's rules substantively overlap, including such regulatory functions as personnel registration and sales practices. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO. Such regulatory duplication would add unnecessary expenses for common members and their SROs.

A 17d–2 plan that is declared effective by the Commission relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.[151] Many SROs have entered into Rule 17d–2 agreements.[152]

Topaz Exchange has represented to the Commission that it will enter into the following allocation of regulatory responsibilities pursuant to Rule 17d–2 of the Act ("17d–2 Plans"),[153] including the two existing multiparty plans applicable to options trading:

- Multiparty 17d–2 Plan for the Allocation of Regulatory Responsibility for Options Sales Practice Matters;[154]
- Multiparty 17d–2 Plan for the Allocation of Regulatory Responsibility for Options Related Market Surveillance Matters;[155] and

[138] See Exhibit I to Topaz Exchange Form 1 Application.

[139] Other applicants for registration as a national securities exchange have noted in their Form 1 applications similar funding commitments and representations. BOX Exchange represented that, prior to launch, BOX Group LLC would allocate sufficient operational assets, including regulatory infrastructure and industry and regulatory memberships, along with a $1,000,000 loan to BOX Exchange. In MIAX, the exchange represented that Miami International Holdings, Inc. would allocate sufficient operational assets and make a capital contribution of not less than $2,000,000 into MIAX capital account prior to launching operations. *See, e.g.*, MIAX Order, *supra* note 30.

[140] See Exhibit I to Topaz Exchange Form 1 Application.

[141] See *id.*

[142] See Amendment No. 3. Both BOX and MIAX also represented in their Form 1 applications that there would be explicit agreements with their respective holding companies to provide adequate funding for the exchanges' operations, including regulation.

[143] See Exhibit I to Topaz Exchange Form 1 Application.

[144] See *id.*

[145] See *id.*

[146] See *id.* See *also* Topaz Exchange LLC Agreement, Article III, Section 3.3. The Topaz Exchange LLC Agreement defines "Regulatory Funds" as fees, fines or penalties derived from the regulatory operations of the [Topaz Exchange], provided that such term shall not include revenues derived from listing fees, market data revenues, transaction revenues or any other aspect of the commercial operations of the [Topaz Exchange], even if a portion of such revenues are used to pay costs associated with the regulatory operations of the [Topaz Exchange]. *Id.* This definition is consistent with the rules of other SROs. *See, e.g.*, MIAX LLC Agreement Section 16; and MIAX By-Laws Article IX, Section 9.4.

[147] 15 U.S.C. 78s(g)(1).

[148] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[149] See Section 17(d)(1) of the Act and Rule 17d–2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) Receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

[150] 17 CFR 240.17d–2. Section 19(g)(1) of the Act requires every SRO to examine its members and persons associated with its members and to enforce compliance with the federal securities laws and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) of the Act. Section 17(d) was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication with respect to Common Members. See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976) ("Rule 17d–2 Adopting Release").

[151] See *id.*

[152] See, e.g., Securities Exchange Act Release Nos. 59218 (January 8, 2009), 74 FR 2143 (January 14, 2009) (File No. 4–575) (Financial Industry Regulatory Authority, Inc. ("FINRA")/Boston Stock Exchange, Inc.); 58818 (October 20, 2008), 73 FR 63752 (October 27, 2008) (File No. 4–569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28087 (May 18, 2007) (File No. 4–536) (National Association of Securities Dealers, Inc. ("NASD") (n/k/a FINRA) and Chicago Board of Options Exchange, Inc. ("CBOE") concerning the CBOE Stock Exchange, LLC); 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007) (File No. 4–529) (NASD/ISE) ("ISE Bilateral 17d–2 Plan"); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4–517) (NASD/The Nasdaq Stock Market LLC).

[153] Rule 17d–2 under the Act permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members (*i.e.*, 17d–2 plans).

[154] See Exhibit L to Topaz Exchange Form 1 Application. See *also* Securities Exchange Act Release No. 68363 (December 5, 2012), 77 FR 73711 (December 11, 2012) (File No. S7–966) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d–2 plan concerning options-related sales practice matters).

[155] See Exhibit L to Topaz Exchange Form 1 Application. See *also* Securities Exchange Act Release No. 68362 (December 5, 2012), 77 FR 73719 (December 11, 2012) (File No. 4–551) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d–2 plan concerning options-related market surveillance).

• Bilateral 17d–2 Plan with FINRA that would cover, among other things, general inspection, examination, and enforcement activity.[156]

If the Commission declares effective the amendments to the multilateral 17d–2 Plans and the new bilateral 17d–2 Plan, another SRO (often FINRA) would assume certain regulatory responsibility for members of Topaz Exchange that are also members of the SRO that assumes the regulatory responsibilities. This regulatory structure would be consistent with that of other exchanges, including ISE.[157]

In addition, Topaz Exchange has entered into a third-party Regulatory Service Agreement ("RSA") with FINRA.[158] Under the RSA, FINRA[159] will carry out certain specified regulatory activities on behalf of Topaz Exchange. For example, FINRA, in its capacity as service provider to Topaz Exchange, will provide member operation services, including membership application review, conducting market surveillance investigation services, conducting routine and cause examination services, assisting Topaz Exchange with disciplinary proceedings pursuant to Topaz Exchange's rules including conducting hearings, and providing dispute resolution services to Topaz Exchange members on behalf of Topaz Exchange. Topaz Exchange, however, will retain ultimate legal responsibility for the regulation of its members and market.[160] This regulatory structure would be consistent with that of other exchanges.[161]

Topaz Exchange has also entered into a facilities management agreement ("FMA") with ISE.[162] Pursuant to the proposed FMA, ISE intends to provide to Topaz Exchange certain services, including, for example, business management services, facilities management services, IT services, fiscal services, as well as Commission and other regulatory compliance services and other legal services, such as surveillance programs, legal programs, systems and other operational services.[163] Topaz Exchange, however, will retain ultimate legal responsibility for the regulation of its members and market.

The Commission believes that it is consistent with the Act for Topaz Exchange to contract with other SROs to perform certain examination, enforcement, and disciplinary functions.[164] These functions are fundamental elements of a regulatory program, and constitute core self-regulatory functions. The Commission believes that both FINRA, as a SRO that provides contractual services to other SROs, and ISE, as an SRO that currently operates an options exchange, should have the capacity to perform these functions for Topaz Exchange.[165] However, Topaz Exchange, unless relieved by the Commission of its responsibility,[166] bears the ultimate responsibility for self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on Topaz Exchange's behalf. In performing these regulatory functions, however, the SRO retained to perform specified regulatory functions may nonetheless bear liability for causing or aiding and abetting the failure of Topaz Exchange to perform its regulatory functions.[167] Accordingly, although FINRA and ISE will not act on their own behalves under their respective SRO responsibilities in carrying out these regulatory services for Topaz Exchange, as the SROs retained to perform regulatory functions, FINRA and ISE may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws by Topaz Exchange.

As part of its FMA with ISE, Topaz Exchange proposes to use dual employees to staff its regulatory services program. In other words, current ISE employees will also serve in a similar capacity for Topaz Exchange under the FMA. Topaz Exchange represents that the FMA will contain an obligation on the part of Topaz Exchange and ISE to preserve the other party's information and materials which are confidential, proprietary and/or trade secrets and prevent unauthorized use or disclosure to third parties.[168]

The Commission believes that the use of ISE employees by Topaz Exchange is appropriate, as the operations, rules, and management of ISE and Topaz Exchange will overlap to a considerable degree such that Topaz Exchange should benefit by leveraging the experience of current ISE staff. The Commission has approved such arrangements in a similar context.[169] However, the Commission expects both ISE and Topaz Exchange to monitor the workload of their dual employees and supplement their staffs, if necessary, so that Topaz Exchange maintains sufficient personnel to allow it to carry out the purposes of the Act and enforce compliance with the rules of Topaz Exchange and the federal securities laws.

D. Trading System

1. Access to Topaz Exchange

Access to Topaz Exchange will be through the use of Exchange Rights.[170] Through an application process, organizations will be approved to become members of Topaz Exchange

[156] *See* Exhibit L to Topaz Exchange Form 1 Application. *See also* ISE Bilateral 17d–2 Plan, *supra* note 152.

[157] Amendments to the multilateral 17d–2 Plans and the new bilateral 17d–2 Plan are not before the Commission as part of this Order and, therefore, the Commission is not acting on them at this time.

[158] *See*, e.g., Exhibit L to Topaz Exchange Form 1 Application.

[159] FINRA executed a single RSA with both ISE and Topaz Exchange as signatories. The single RSA, however, has two separate statements of work. The first statement of work describes the specified regulatory activities that FINRA will carry out on behalf of ISE. The second statement of work describes the specified regulatory activities that FINRA will carry out on behalf of Topaz Exchange.

[160] *See* Amendment No. 3.

[161] For example, ISE, EDGA, EDGX and BATS have entered into 17d–2 Plans and RSAs with FINRA.

[162] *See*, e.g., Exhibit L to Topaz Exchange Form 1 Application. The FMA with ISE provides, in part, for the provision of Commission and other regulatory compliance services.

[163] *See* Exhibit L of Topaz Exchange Form 1 Application; see *also* Amendment No. 3.

[164] *See, e.g.*, Regulation ATS Release, *supra* note 30. *See also* Securities Exchange Act Release Nos. 50122 (July 29, 2004), 69 FR 47962 (August 6, 2004) (SR-Amex-2004–32) (order approving rule that allowed Amex to contract with another SRO for regulatory services) ("Amex Regulatory Services Approval Order"); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) ("NOM Approval Order"); Nasdaq Order, *supra* note 29; and BATS Order, *supra* note 29.

[165] *See*, e.g., Amex Regulatory Services Approval Order, *supra* note 164; NOM Approval Order, *supra* note 164; and Nasdaq Order, *supra* note 29. The Commission notes that the RSA and FMA are not before the Commission and, therefore, the Commission is not acting on them.

[166] *See supra* note 149.

[167] For example, if failings by the SRO retained to perform regulatory functions have the effect of leaving an exchange in violation of any aspect of the exchange's self-regulatory obligations, the exchange will bear direct liability for the violation, while the SRO retained to perform regulatory functions may bear liability for causing or aiding and abetting the violation. *See*, e.g., MIAX Order, *supra* note 30; BOX Order, *supra* note 39; and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10–127) (order granting the exchange registration of ISE) ("ISE Order").

[168] *See* Exhibit L to Topaz Exchange Form 1 Application; *see also* Amendment No. 3.

[169] *See*, e.g., Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) (File No. 10–191) (order granting registration to C2 Options Exchange) ("C2 Order").

[170] *See* Topaz Exchange Rule 300 Series. "Exchange Rights" means the PMM Rights, CMM Rights and EAM Rights collectively. *See* Topaz Exchange Rule 100(a)(17). PMM Rights, CMM Rights and EAM Rights have the meaning set forth in Article VI of Topaz Exchange LLC Agreement. *See* Topaz Exchange Rules 100(a)(12), 100(a)(15) and 100(a)(36).

and to exercise trading rights.[171] Exchange Rights will not convey any ownership rights, but will provide for voting rights for representation on the Topaz Exchange Board and will confer the ability to transact on Topaz Exchange.[172] Exchange Rights may not be leased and are not transferable except in the event of a change in control of a member or corporate reorganization involving a member.[173] There is no limit on the number of Exchange Rights issued by Topaz Exchange.[174]

Membership in Topaz Exchange will be open to any broker-dealer registered under Section 15(b) of the Act that meets the standards for membership set forth in the rules of Topaz Exchange.[175] The Exchange's denials from, and impositions of conditions upon, becoming or continuing to be a member may be appealed pursuant to rules governing hearing and review, described in Section II.E below.[176] In addition to its regular membership application process, Topaz Exchange also will provide a process whereby a current member of ISE in good standing that is a registered broker-dealer can submit an abbreviated "waive-in" application to Topaz Exchange.[177] This waive-in process is similar to arrangements in place at other exchanges.[178]

Topaz Exchange will have three classes of membership: (1) PMMs; (2) CMMs; and (3) EAMs.[179] PMM and CMMs may seek appointment to become market makers in one or more options classes traded on the exchange.[180] Topaz Exchange proposes to allow firms that register as market makers to receive special privileges or rights over non-market maker members, such as participation entitlements for PMMs, if they satisfy certain affirmative and negative market making obligations on the exchange.[181] This is similar to arrangements in place at other exchanges, such as ISE.[182]

The Commission finds that Topaz Exchange's proposed membership rules are consistent with the Act, including Section 6(b)(2) of the Act,[183] which requires the rules of an exchange to provide that any registered broker or dealer or natural person associated with a broker or dealer may become a member of such exchange or associated with a member thereof. Topaz Exchange's proposed rules with respect to exchange membership are substantively similar to the rules of other exchanges.[184]

The Commission notes that pursuant to Section 6(c) of the Act,[185] an exchange must deny membership to any person, other than a natural person, that is not a registered broker or dealer, any natural person that is not, or is not associated with, a registered broker or dealer, and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As a registered exchange, Topaz Exchange must independently determine if an applicant satisfies the standards set forth in the Act, regardless of whether an applicant is a member of another SRO.[186]

In addition, Topaz Exchange also will allow non-members to access Topaz Exchange as "sponsored customers" of a Topaz Exchange member, subject to certain rules.[187] The sponsoring member will be responsible for implementing policies and procedures to supervise and monitor the trading of its sponsored users to ensure compliance with all applicable federal securities laws and rules and Topaz Exchange rules.[188] Topaz Exchange's proposed sponsored access rules are similar to the rules of other exchanges that provide for sponsored access[189] and are consistent with Rule 15c3–5 under the Act.[190]

2. Linkage

Topaz Exchange intends to become a participant in the Plan Relating to Options Order Protection and Locked/Crossed Markets or any successor plan ("Linkage Plan").[191] If admitted as a participant to the Linkage Plan, other plan participants will be able to send orders to Topaz Exchange in accordance with the terms of the plan as applied to Topaz Exchange.

Topaz Exchange rules include relevant definitions; establish the conditions pursuant to which members may enter orders in accordance with the Linkage Plan; impose obligations on Topaz Exchange regarding how it must process incoming orders; establish a general standard that members and Topaz Exchange should avoid trade-throughs; establish potential regulatory liability for members that engage in a pattern or practice of trading through other exchanges; and establish obligations with respect to locked and crossed markets.

The Commission believes that Topaz Exchange has proposed rules that are designed to comply with the requirements of the Linkage Plan.[192] Further, as provided below, before Topaz Exchange can commence operations as an exchange, it must

[171] The term "Member" means an organization that has been approved to exercise trading rights associated with Exchange Rights, and the term "Membership" refers to the trading privileges associated with Exchange Rights. *See* Topaz Exchange Rules 100(a)(23) and 100(a)(24). Under Topaz Exchange Rules 300 and 302(c), Topaz Exchange shall issue Memberships that confer the ability to transact on Topaz Exchange, although no rights shall be conferred upon a Member except those set forth in the Topaz Exchange LLC Agreement or Topaz Exchange Rules as amended from time to time. A Membership shall not convey any ownership interest in the Exchange. *See* Topaz Exchange Rules 300 and 302(c).

[172] *See* Topaz Exchange Rules 300 and 302(c); *see also* Topaz Exchange LLC Agreement, Article VI, Sections 6.1 and 6.3.

[173] *See* Topaz Exchange Rule 302(c). In such case, member status may be transferred to a qualified affiliate or successor upon written notice to Topaz Exchange. *Id.*

[174] *See* Topaz Exchange Rule 300(a); *see also* Topaz Exchange LLC Agreement, Article VI, Section 6.1.

[175] *See* Topaz Exchange Rule 301.

[176] *See* Topaz Exchange Rule 1700 Series, which incorporates by reference ISE Rule 1700 Series.

[177] *See* Topaz Exchange Rule 302(a).

[178] *See, e.g.*, C2 Options Exchange, Inc. Rule 3.1(c)(1) (containing a similar expedited waive-in membership process for members of CBOE).

[179] *See* Topaz Exchange Rule 301(c).

[180] *See* Topaz Exchange Rule 800 Series.

[181] *See* Topaz Exchange Rules 713, 802 and 803. *See infra* Section II.D.3.b. for further discussion of market maker privileges and obligations.

[182] *See, e.g.*, ISE Rules 713, 802 and 803 (containing similar rights and obligations for market makers on ISE). However, some of Topaz Exchange's proposed access rules differ in some respects from the rules of ISE. For example, as a result of their differing membership structures, there is no limit on the number of PMMs that Topaz Exchange can approve for membership, whereas ISE can appoint only ten PMMs in total. There will still be only one PMM per options class on Topaz Exchange. There also will be no limit to the number of CMMs on Topaz Exchange, whereas ISE can appoint only 160 CMMs in total. EAM rights, however, will be unlimited on both ISE and Topaz Exchange. Topaz Exchange's approach is consistent with the rules of other exchanges that have no limit on the number of exchange rights, or their functional equivalent, that may be issued by the exchange. *See, e.g.*, C2 Order, *supra* note 169.

[183] 15 U.S.C. 78f(b)(2).

[184] *See, e.g.*, MIAX Rule 200 Series ("Access").

[185] 15 U.S.C. 78f(c).

[186] *See, e.g.*, MIAX Order, *supra* note 30, at 77 FR 73074; BOX Order, *supra* note 39, at 77 FR 26337; BATS Order, *supra* note 29, at 73 FR 49502; and Nasdaq Order, *supra* note 29, at 71 FR 3555.

[187] *See* Topaz Exchange Rule 706, Supplementary Material .01.

[188] *See* Topaz Exchange Rule 706. *See also* 17 CFR 240.15c3–5.

[189] *See, e.g.*, ISE Rule 706; *see also* MIAX Rule 210.

[190] 17 CFR 240.15c3–5.

[191] *See* Exhibit E to Topaz Exchange Form 1 Application, Section B ("Non-Member Access") for a discussion of the Linkage Plan. *See also* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (order approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.).

[192] *See, e.g.*, Topaz Exchange Rules relating to Intermarket Linkage in Rule 1900 Series, which incorporates by reference ISE Rule 1900 Series. *See also* Amendment No. 3.

become a participant in the Linkage Plan.

3. Market Makers

a. Registration of Market Makers

Members of Topaz Exchange may apply to become one of two types of market maker: PMMs or CMMs (collectively, "Market Makers"). Market Makers are entitled to receive certain benefits and privileges in exchange for fulfilling certain affirmative and negative market-making obligations.[193] Each class of Market Maker will receive a specific level of benefits and privileges in exchange for a specific level of obligation that such Market Maker assumes to the Topaz Exchange market.

To begin the process of registering as a PMM or CMM, a member will be required to file a written application with Topaz Exchange.[194] In reviewing a member's application for membership, Topaz Exchange will consider, among other things, the applicant's market making ability.[195] To qualify for registration as a Market Maker, a member of Topaz Exchange must meet the requirements established in Rule 15c3–1 under the Act[196] and the general requirements set forth in Topaz Exchange Rule 800 series, including the minimum financial requirements of Topaz Exchange Rule 809.[197] All members who are approved to become Market Makers will be designated as specialists on Topaz Exchange for all purposes under the Act and rules thereunder.[198] Topaz Exchange will not limit the number of qualifying entities that may become Market Makers.[199]

In addition, all ISE market makers in good standing will be eligible for an Exchange Right in the same membership category in which they operate on ISE to trade on Topaz Exchange.[200] For example, a CMM in good standing on ISE will be eligible to become a CMM on Topaz Exchange, through the submission and approval of a Topaz Exchange Waive-In Membership Application.[201]

Once approved, a Market Maker may seek appointment to make markets in one or more options classes traded on the Topaz Exchange.[202] Topaz Exchange will provide non-ISE Members with at least sixty days advance written notice of the date upon which the Exchange will allocate options classes and appoint market makers in order to ensure that non-ISE Members have a reasonable opportunity to participate in those processes.[203] A market participant must have completed a membership application to be eligible to participate in the appointment and allocation processes.[204]

Either the Topaz Exchange Board or a committee thereof[205] will appoint classes of options contracts traded on Topaz Exchange to Market Makers taking into consideration: (1) The financial resources available to the Market Maker; (2) the Market Maker's experience and expertise in market making or options trading; and (3) the maintenance and enhancement of competition among Market Makers in each option class to which they are appointed.[206] No appointment of a Market Maker will be without the Market Maker's consent to such appointment, provided that refusal to accept an appointment may be deemed sufficient cause for termination or suspension of a market maker's registration.[207] Topaz Exchange will appoint a PMM to each options class traded on Topaz Exchange.[208] Once appointed, Topaz Exchange will surveil a Market Maker's activity for continued compliance with all applicable rules and requirements, which are discussed in more detail below.[209]

The Commission finds that Topaz Exchange's proposed rules for the registration and appointment of Market Makers are consistent with the Act. In particular, Topaz Exchange's rules provide an objective process by which a member could become a Market Maker on Topaz Exchange and provide for oversight by Topaz Exchange to monitor for continued compliance by Market Makers with the terms of their application for such status. The Commission notes that Topaz Exchange's proposed Market Maker registration and appointment requirements are similar to those of other options exchanges.[210]

b. Market Maker Obligations

Pursuant to Topaz Exchange rules, Market Makers will be subject to a number of general obligations. In particular, the transactions of a Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market and a Marker Maker should not make bids or offers or enter into transactions that are inconsistent with such a course of dealings.[211] A Market Maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular options contract, or a temporary distortion of the price relationships between options contracts of the same class.[212] For all series of option classes which the Market Maker is appointed, the Market Maker is expected to: (1) Compete with other Market Makers to improve the market; (2) make markets that, absent changed market conditions, will be honored for the number of contracts entered into the Topaz Exchange's system; (3) update market quotations in response to changed market conditions; (4) price options contracts fairly by, among other things, bidding and offering so as to create the prescribed bid/ask differentials.[213] These provisions are similar to arrangements in place at other options exchanges.[214]

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[193] Market Makers' benefits and obligations are discussed in greater detail in the following section.

[194] *See* Topaz Exchange Rule 800(b).

[195] *See id.* The provision permitting Topaz Exchange to consider "such other factors as [it] deems appropriate" must be applied in a manner that is consistent with the Act, including provisions that prohibit an exchange from acting in an unfairly discriminatory manner. *See* 15 U.S.C. 78f(b)(5); *see also* MIAX Order, *supra* note 30, at 77 FR 73074 n.149.

[196] 17 CFR 240.15c3–1.

[197] *See* Topaz Exchange Rule 800 Series. *See also* Topaz Exchange Rule 1300 Series relating to Net Capital Requirements, which incorporates by reference ISE Rule 1300 Series.

[198] *See* Topaz Exchange Rule 800(a).

[199] *See* Topaz Exchange Rule 300. *See also* Exhibit E to Topaz Exchange Form 1 Application, Section A ("Introduction").

[200] *See* Topaz Exchange Rule 302(a).

[201] *See id. See also* Exhibit F to Topaz Exchange Form 1 Application.

[202] *See* Topaz Exchange Rule 802(a).

[203] *See* Topaz Exchange Rule 302(b).

[204] *See* Exhibit E to Topaz Exchange Form 1 Application, Section A ("Introduction").

[205] *See* Topaz Exchange Rule 802(a). Topaz Exchange Rule 1700 Series provides the process for hearings, review, and arbitration of claims by persons economically aggrieved by Topaz Exchange action, which would include denial of registration as a Market Maker.

[206] *See id.*

[207] *See id.*

[208] *See* Topaz Exchange Rule 802(b).

[209] *See* Topaz Exchange Rule 802(e).

[210] *See, e.g.*, ISE Rules 800 and 801 and MIAX Rule 600 (registration); ISE Rule 802 and MIAX Rule 602 (appointment).

[211] *See* Topaz Exchange Rule 803(a).

[212] *See* Topaz Exchange Rule 803(b).

[213] *See* Topaz Exchange Rule 803(b)(1)–(4). Specifically under Topaz Exchange Rule 803(b)(4), following the opening rotation, Market Makers must create differences of no more than $5 between the bid and offer. Prior to the opening rotation, spread differentials shall be no more than $.25 between the bid and offer for each options contract for which the bid is less than $2, no more than $.40 where the bid is at least $2 but does not exceed $5, no more than $.50 where the bid is more than $5 but does not exceed $10, no more than $.80 where the bid is more than $10 but does not exceed $20, and no more than $1 where the bid is $20 or greater, provided that the Topaz Exchange may establish differences other than the above for one or more options series.

[214] *See, e.g.*, ISE Rules 802 and 803 (containing similar rights and obligations for market makers on

Further, Market Makers must maintain minimum net capital in accordance with Topaz Exchange rules, including the minimum financial requirement of Topaz Exchange Rule 809, in addition to the Act and rules and regulations thereunder.[215] Market Makers also must maintain information barriers between their market making activity and Other Business Activities[216] that are reasonably designed to prevent the misuse of material, non-public corporate or market information in the possession of persons on one side of the barrier from influencing the conduct of persons on the other side of the barrier.[217]

Topaz Exchange's rules governing Market Maker quoting obligations are tailored to the specific class of Market Maker (that is, PMM or CMM).[218] Specifically, a PMM will be subject to the highest standard applicable on Topaz Exchange, as a PMM must enter continuous two-sided quotations and enter into any resulting transactions in all of the series listed on the Topaz Exchange of the options classes to which it is appointed on a daily basis.[219] PMMs are also required to participate in the opening rotation.[220] Although a CMM is not required to enter quotations in the options classes to which it is appointed, whenever a CMM does enter a quote in an options class to which it is appointed, the CMM must then provide continuous quotations in that class for 60% of the time the options class is open for trading on the Topaz Exchange.[221] Further, CMMs may be called upon by a Topaz Exchange official to submit a single quote or maintain continuous quotes in one or more series of options class to which the CMM is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of fair and orderly markets.[222] For purposes of meeting the continuous quoting obligations discussed herein, a Market Maker's quote must meet the bid/ask differential requirements of Topaz Exchange Rule 803(b)(4).[223]

In options classes other than to which it is appointed, a Market Maker should not engage in transactions in an account in which it has an interest that are disproportionate in relation to, or in derogation of, the performance of its market making obligations as specified in the Topaz Exchange rules.[224] Further, the total number of contracts executed during a quarter by a CMM in options classes to which it is not appointed may not exceed 25% of the total number of contracts traded by such CMMs in classes to which it is appointed and with respect to which it was quoting pursuant to Topaz Exchange Rule 804(e)(2).[225] Similarly, the total number of contracts executed during a quarter by a PMM in options classes to which it is not appointed may not exceed 10% of the total number of contracts traded per each PMM membership.[226]

If Topaz Exchange finds any failure by a Market Maker to properly perform as a market maker, such Market Maker may be subject to suspension or termination.[227] Topaz Exchange may suspend or terminate any appointment of a Market Maker under Topaz Exchange Rule 802 and may make additional appointments whenever, in Topaz Exchange's judgment, the interests of a fair and orderly market are best served by such action.[228]

Market Makers receive certain benefits for carrying out their responsibilities.[229] For example, a broker-dealer or other lender may extend "good faith" credit to a member of a national securities exchange or registered broker-dealer to finance its activities as a market maker or specialist.[230] PMMs are also entitled to certain participation entitlements.[231] In addition, market makers are excepted from the prohibition in Section 11(a) of the Act.[232]

The Commission believes that a market maker must be subject to sufficient and commensurate affirmative obligations, including the obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis, to justify favorable treatment.[233] The Commission further believes that the rules of all U.S. options markets need not provide the same standards for market maker participation, so long as they impose affirmative obligations that are consistent with the Act.[234]

The Commission believes that Topaz Exchange's Market Maker participation requirements impose appropriate affirmative obligations on Topaz Exchange's Market Makers that are commensurate with the benefits afforded to such participants, as discussed above, and, accordingly, are consistent with the Act. The Commission believes that the specific levels of benefits conferred on the different classes of Market Makers (PMMs and CMMs) are appropriately balanced by the obligations imposed by Topaz Exchange's rules. The Commission further believes that Topaz Exchange's market maker requirements,[235] which are identical to ISE's rules[236] and similar to other options exchanges' rules,[237] impose sufficient appropriate obligations that are consistent with the Act.

Finally, the Commission believes that the Act does not mandate a particular market model for exchanges, and while Market Makers may become an important source of liquidity on Topaz Exchange, they will likely not be the only source as Topaz Exchange is designed to match buying and selling interest of all Topaz Exchange participants.

ISE). However, some of Topaz Exchange's access rules differ in some respect from the rules of ISE. *See also supra* note 182.

[215] *See* Topaz Exchange Rule 1300 Series, which incorporates by reference ISE Rule 1300 Series; *see also* Topaz Exchange Rule 809.

[216] "Other Business Activities" means: (1) Conducting an investment or banking or public securities business; (2) making markets in the stocks underlying the options in which it makes markets; or (3) handling listed options orders as agent on behalf of Public Customers or broker-dealers; (4) conducting non-market making proprietary listed options trading activities. *See* Topaz Exchange Rule 810(a).

[217] *See* Topaz Exchange Rule 810.

[218] *See* Topaz Exchange Rule 804.

[219] See Topaz Exchange Rule 804(e)(1); *see also* Topaz Exchange Rule 804(c). A PMM shall be deemed to have provided continuous quotes pursuant to paragraph (e)(1) of Rule 804 if it provides two-sided quotes for 90% of the time that an options class is open for trading on the Topaz Exchange. *See* Topaz Exchange Rule 804, Supplementary Material .01; *see also* Amendment No. 3.

[220] *See* Topaz Exchange Rule 701(b)(1). *See also* Amendment No. 3.

[221] *See* Topaz Exchange Rule 804(e)(2). A CMM must maintain continuous quotations for at least 90% of the time the options class for which it receives Preferenced Orders is open for trading on the Topaz Exchange. *See* Topaz Exchange Rule 804(e)(2)(iii); *see also* Topaz Exchange Rule 713, Supplementary Material .03 regarding Preferenced Orders.

[222] *See* Topaz Exchange Rule 804(e)(2)(iv).

[223] *See* Topaz Exchange Rule 804(e)(1)–(2). *See also supra* note 213.

[224] *See* Topaz Exchange Rule 803(d). Among other things, a Market Maker should not effect purchases or sales on the Topaz Exchange except in a reasonable and orderly manner. *See id.*

[225] *See* Topaz Exchange Rule 805(b)(2).

[226] *See* Topaz Exchange Rule 805(b)(3).

[227] *See* Topaz Exchange Rule 800.

[228] *See* Topaz Exchange Rule 802(d).

[229] *See, e.g.*, MIAX Order, *supra* note 30 (discussing the benefits and obligations of market makers).

[230] *See* 12 CFR 221.5 and 12 CFR 220.7; see *also* 17 CFR 240.15c3–1(a)(6) (capital requirements for market makers).

[231] *See* Topaz Exchange Rule 713, Supplementary Material .01(b)–(c). *See also infra* notes 261–268 and accompanying text (describing the PMM participation entitlements).

[232] 15 U.S.C. 78k(a).

[233] *See* MIAX Order, *supra* note 30, at 77 FR 73076; and BOX Order *supra* note 39; *see also, e.g.*, C2 Order, *supra* note 169.

[234] *See id.*

[235] *See* Topaz Exchange Rule 803.

[236] *See, e.g.*, ISE Rule 800 Series.

[237] *See, e.g.*, MIAX Order, *supra* note 30, and BOX Order, *supra* note 39.

4. Order Display, Execution, and Priority

Topaz Exchange proposes to operate a fully automated electronic options trading platform to buy or sell securities with a continuous, automated matching function.[238] Liquidity will be derived from Topaz Exchange members acting as principal or as agent electronically submitting quotes as well as market and various types of limit orders to buy or to sell.[239] Non-members also may access Topaz Exchange pursuant to Topaz Exchange rules governing "sponsored access."[240] All of these electronic submissions to Topaz Exchange will be from remote locations, as there will be no trading floor.[241] Topaz Exchange's Optimise system generally will automatically execute incoming orders.[242] Non-opening trades will occur when a buy order/quote and a sell order/quote match on the Topaz Exchange's order book.[243] All options will be traded in decimals on Topaz Exchange and will be consistent with the Penny Pilot.[244]

All orders submitted to Topaz Exchange's trading platform must have a designated price and size (limit orders)[245] or must be orders to buy or sell a stated amount of a security at the national best bid or offer when the order reaches Topaz Exchange (market orders).[246] Members may submit the following orders to Topaz Exchange: Market Orders; Limit Orders (including Marketable Limit, Fill-or-Kill, Immediate or Cancel, Non-Displayed Penny Order, Intermarket Sweep, and Stopped Orders);[247] or Contingency Orders (including All-Or-None, Stop, Stop Limit, Customer Participation, Reserve, Attributable, Customer Cross, Qualified Contingent Cross, Minimum Quantity,[248] Do-Not-Route, Add Liquidity, Opening Only, and Good-Till-Date Orders).[249] Like ISE, Topaz Exchange also will permit flash mechanisms, which thereby permit certain orders to first be exposed at the NBBO to all Topaz Exchange members for execution at the National Best Bid or Offer ("NBBO") before an unaffiliated broker will, under contract with Topaz Exchange, route the order to another market for execution.[250]

Quotes entered by PMMs and CMMs must, like Limit Orders, be priced and have a designated size.[251] Orders will be accepted for any security traded on Topaz Exchange, whether submitted by a member on a proprietary or agency basis in any size,[252] whereas quotes for any security traded on Topaz Exchange may only be submitted by PMMs and CMMs and only in the options classes to which the market makers are appointed.[253] Topaz Exchange will be required to maintain a full audit trail of every incoming and outgoing message (including all orders and quotes) submitted to the Topaz Exchange's system.[254] Members may receive status reports regarding orders submitted to Topaz Exchange or change or cancel an

[238] *See* Exhibit E to Topaz Exchange Form 1 Application.

[239] *See id.*

[240] *See id.*

[241] *See id.*

[242] *See* Topaz Exchange Rule 714.

[243] *See* Exhibit E to Topaz Exchange Form 1 Application.

[244] *See* Topaz Exchange Rule 710 and Supplementary Material .01. The Commission has approved exchange rules on a pilot basis that permit an exchange to quote series with premiums under $3 in pennies and series with premiums of $3 and over in nickels in approximately 360 options classes ("Penny Pilot"). In addition, these rules allow all series in QQQQs, IWM, and SPY to be quoted in pennies. *See, e.g.*, Securities Exchange Act Release Nos. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009); 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (File No. SR–NYSEArca–2009–44) (approving Penny Pilot program expansions for NYSE Arca). Proposed Supplementary Material .01 to Rule 710 would permit Topaz Exchange to operate a pilot to permit certain options classes to be quoted and traded in increments as low as $0.01, consistent with these previously approved rules. Specifically, this pilot is consistent with the penny pilot on ISE, which was last extended on June 21, 2013 and is scheduled to expire on December 31, 2013. *See* Securities Exchange Act Release No. 69828 (June 21, 2013), 78 FR 38745 (June 27, 2013) (File No. SR–ISE–2013–40). Similar to ISE, Topaz Exchange has further agreed to submit to the Commission such reports regarding the Penny Pilot as the Commission may request. *See* Exhibit B to Topaz Exchange Form 1 Application.

[245] A limit order is an order to buy or sell a stated number of options contracts at a specified price or better. Topaz Exchange Rule 715(b).

[246] A market order is an order to buy or sell a stated number of options contracts that is to be executed at the best price obtainable when the order reaches Topaz Exchange. Topaz Exchange Rule 715(a).

[247] *See* Topaz Exchange Rule 715. A Marketable Limit Order is a limit order to buy (sell) at or above (below) the best offer (bid) on the Topaz Exchange. A Fill-or-Kill Order is a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, treated as cancelled. An Immediate-or-Cancel Order is a limit order that is to be executed in whole or in part upon receipt and any portion not so executed is to be treated as cancelled. A Non-Displayed Penny Order is a limit order that specifies a one-cent price increment in a security that has a minimum trading increment pursuant to Topaz Exchange Rule 710 that is larger than one-cent. An Intermarket Sweep Order is a limit order that meets the requirements of Topaz Exchange Rule 1900(h), which incorporates by reference ISE Rule 1900(h). A Stopped Order is a limit order that meets the requirements of Topaz Exchange Rule 1901(b)(8), which incorporates by reference ISE Rule 1901(b)(8). To execute Stopped Orders, members must enter them into the Facilitation Mechanism or Solicited Order Mechanism pursuant to Topaz Exchange Rule 716.

[248] The NASDAQ Letter noted that both Topaz Exchange Rules 715(l) and 715(q) appear to describe Minimum Quantity Orders and urged that Topaz Exchange clarify the difference between these two types of Minimum Quantity Orders. *See* NASDAQ Letter, *supra note* 6. Topaz Exchange stated that it will correct the duplicative definition. *See* Topaz Exchange Response Letter, *supra* note 7, and Amendment No. 3. The Commission believes that Topaz Exchange's revision to Topaz Exchange Rule 715(l) appropriately addresses the commenter's concern.

[249] *See* Topaz Exchange Rule 715. An All-or-None Order is a limit or market order that is to be executed in its entirety or not at all. A Stop Order is an order that becomes a market order when the stop price is elected. A Stop Limit Order is an order that becomes a limit order when the stop price is elected. A Customer Participation Order is a limit order on behalf of a Public Customer (as defined in Topaz Exchange Rule 100(a)(38)) that, in addition to the limit order price in standard increments according to Topaz Exchange Rule 710, includes a price stated in one-cent increments at which the Public Customer wishes to participate in trades executed in the same options series in penny increments through the Price Improvement Mechanism pursuant to Topaz Exchange Rule 723. A Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion. An Attributable Order is a market or limit order which displays the user firm ID for purposes of electronic trading on Topaz Exchange. A Customer Cross Order is comprised of a Priority Customer Order (as defined in Topaz Exchange Rule 100(a)(37B) to buy and a Priority Customer Order to sell at the same price and for the same quantity. A Qualified Contingent Cross order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade (as defined in Topaz Exchange Rule 715, Supplementary Material .02) coupled with a contra-side order to buy or sell an equal number of contracts. A Minimum Quantity Order is an order that is initially available for partial execution only for a specified number of contracts or greater. A Do-Not-Route Order is a market or limit order that is to be executed in whole or in part on Topaz Exchange only. An Add Liquidity Order is a limit order that is to be executed in whole or in part on Topaz Exchange (i) only after being displayed on Topaz Exchange's limit order book; and (ii) without routing any portion of the order to another market center. An Opening Only Order is a limit order that can be entered for the opening rotation only. A Good-Till-Date Order is a limit order to buy or sell which, if not executed, will be cancelled at the sooner of the end of the expiration date assigned to the order, or the expiration of the series. These order types are the same order types that are available on ISE, except that ISE also includes several complex order types that are not proposed for Topaz Exchange. *See* Topaz Exchange Rule 715; ISE Rules 715 and 722; *see also* Exhibit B to Topaz Exchange Form 1 Application.

[250] *See* Topaz Exchange Rule 1901, Supplementary Material .02 (which incorporates by reference ISE Rule 1901, Supplementary Material .02). *See also* Amendment No. 3 (removing exposure and routing obligation from PMMs under Topaz Exchange Rule 800 Series).

[251] *See* Topaz Exchange Rule 804(b). The NASDAQ Letter noted that proposed Topaz Exchange Rule 804(g) and Supplementary Material .01 appear to be identical and urged that Topaz Exchange clarify this provision. *See* NASDAQ Letter, *supra* note 6. Topaz Exchange stated that it will correct the duplicative provision. *See* Topaz Exchange Response Letter, *supra* note 7, and Amendment No. 3. The Commission believes that Topaz Exchange's revision to Topaz Exchange Rule 804, Supplementary Material .01 appropriately addresses the commenter's concern.

[252] *See* Topaz Exchange Rule 713(a).

[253] *See* Topaz Exchange Rule 804(a).

[254] *See* 17 CFR 240.17a–5. *See also* Exhibit E to Topaz Exchange Form 1 Application, Section C.

order at any time before that order is executed on Topaz Exchange, except as otherwise specified in Topaz Exchange Rule 723 (Price Improvement Mechanism for Crossing Transactions).[255]

All orders and quotes submitted to Topaz Exchange will be displayed unless designated otherwise by the member submitting the order.[256] Displayed orders and quotes will be displayed on an anonymous basis (except for Attributable Orders,[257] which will allow voluntary disclosure of firm identification information) at a member's specified price. Non-Displayed Orders (the non-displayed portion of a Reserve Order or a Non-Displayed Penny Order) will not be displayed to anyone and will not have time priority over displayed orders at the same price.[258]

Topaz Exchange will utilize a pro-rata priority scheme with a Priority Customer preference.[259] This scheme is the same as what the Commission has approved for ISE.[260]

In addition, under Topaz Exchange rules, PMMs are granted certain participation entitlements. For example, PMMs will be entitled to a participation entitlement with respect to each incoming order if they have a quote at the NBBO.[261] The PMM participation entitlement will apply only to any remaining balance after any Priority Customer[262] orders have first been satisfied.[263] The PMM will not be allocated a total quantity greater than the quantity it is quoting at the execution price, and it will not receive any further allocation of an order if it receives a participation entitlement.[264] Another such entitlement provides that small size orders (*i.e.*, five or fewer contracts) will be allocated in full to the PMM if it has a quote at the NBBO.[265]

These participation entitlements for PMMs are consistent with provisions that the Commission has approved for other exchanges.[266] The Commission believes that these entitlements are appropriately balanced by the obligations imposed on these classes of market makers, as discussed in detail above.[267] In particular, PMMs are subject to higher quoting obligations than other Market Makers who are not eligible to receive the aforementioned participation entitlements.[268] Therefore, the Commission believes that the proposed rules regarding participation entitlements are consistent with the Act.

Topaz Exchange proposes to make available certain additional order processing and matching features, largely based on features available on ISE.[269] Mechanisms that will be utilized by Topaz Exchange include: A Price Improvement Mechanism (which affords the opportunity for price improvement after an auction for eligible orders above the NBBO);[270] a Facilitation Mechanism (which affords members an opportunity to cross orders after an auction and provides the facilitating member the opportunity to receive 40% of the agency order);[271] and a Solicited Order Mechanism (which allows members representing agency orders the opportunity to cross large size solicited orders after an auction).[272] These mechanisms are consistent with substantially similar mechanisms currently existing on other options exchanges, including identical mechanisms on ISE with respect to non-complex orders.[273]

Members will be able to access Topaz Exchange through a variety of electronic

[255] See Exhibit E to Topaz Exchange Form 1 Application, Section C.

[256] *See* Topaz Exchange Rule 704.

[257] An Attributable Order is a market or limit order which displays the user firm's ID for purposes of trading on the Topaz Exchange. Use of Attributable Orders would be voluntary. This order type is consistent with similar order types on other exchanges. *See, e.g.*, CBOE Rule 6.53(o) (attributable order type).

[258] *See* Topaz Exchange Rules 715(b)(4) and 715(g).

[259] *See* Topaz Exchange Rule 713, Supplementary Material 01. Under this priority methodology, the highest bid and lowest offer will have priority except that Priority Customer Orders will have priority over professional interest and all market maker interest at the same price. Subject to certain limits, Professional Orders and market maker quotes at the best price receive allocations based upon the percentage of the total number of contracts available at the best price that is represented by the size of the Professional Order or quote. If there were two or more Priority Customer Orders for the same options series at the same price, priority will be afforded based on the sequence in which such orders were received. Topaz Exchange rules will define "Priority Customer" as a person or entity that is not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts. "Professional Orders," *i.e.*, orders for the account of a person or entity that is not a Priority Customer, will be subordinate to Priority Customer Orders for priority and fee purposes. Professional Orders will include orders of broker-dealers and orders of those Public Customers that are not Priority Customers. *See* Topaz Exchange Rules 100(a)(37A)–(37C) for definitions of Priority Customer, Priority Customer Order and Professional Order, respectively.

[260] *See, e.g.*, ISE Rule 713, Priority of Quotes and Orders.

[261] *See* Topaz Exchange Rule 713, Supplementary Material .01. Specifically, the PMM's participation entitlement will be equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote, or (ii) 60% of the contracts to be allocated if there is only one other Market Maker quotation at the NBBO or 40% if there are two or more other Market Maker quotes at the NBBO. *See* Topaz Exchange Rule 713, Supplementary Material .01(b).

[262] *See supra* note 259 for the definition of Priority Customer.

[263] *See* Topaz Exchange Rule 713, Supplementary Material .01.

[264] *See id.*

[265] *See* Topaz Exchange Rule 713, Supplementary Material .01(c). The rule provides that Topaz Exchange will review the functioning of this provision quarterly to make sure that small size orders do not account for more than 40% of the volume executed on Topaz Exchange. *Id.*

[266] *See, e.g.*, ISE Rule 713, Supplementary Materials .01 and .03; *see also* MIAX Order, *supra* note 30.

[267] *See supra* Section II.D.3.b (discussing market maker obligations).

[268] For example, as discussed above, *supra* Section II.D.3.b., PMMs must provide continuous two-sided quotes in each appointed option class.

[269] The primary difference between Topaz Exchange's order processing and matching features and those of ISE previously approved by the Commission will be that Topaz Exchange will not accept complex orders.

[270] *See* Topaz Exchange Rule 723. Topaz Exchange will operate a pilot program whereby there will be no minimum size requirements for orders to be eligible for the PIM. *See* Exhibit B to Topaz Exchange Form 1 Application; *see also* Topaz Exchange Rule 723, Supplementary Material .03.

[271] *See* Topaz Exchange Rule 716(d). The NASDAQ Letter stated that it appears that the rule concerning the Facilitation Mechanism was internally inconsistent in part. Specifically, the NASDAQ Letter noted that proposed Topaz Exchange Rule 716(d)(3)(i) stated that Priority Customer bids (offers) that are priced higher (lower) than the facilitation price will be executed at the facilitation price, and further noted that the same section of the rule also stated that a facilitation order would be cancelled at the end of the exposure period if an execution would take place a price that is inferior to the best bid (offer) on Topaz. *See* NASDAQ Letter, *supra* note 6. The NASDAQ Letter suggested that this means that a Priority Customer bidding higher than the facilitation price would cause the facilitation order to be cancelled. *See id.* Topaz Exchange clarified this point by explaining that, because Topaz Exchange is a price priority exchange, Topaz Exchange will not execute a facilitation order at a price that is inferior to the Topaz Exchange best bid or offer ("Topaz BBO") at the time of execution. Topaz Exchange noted that, since interest on the opposite side of a facilitation order participates in the execution of the facilitation order, the only instance where a better priced Priority Customer Order might be outside of the Topaz BBO is when the order is on the same side of the market as the facilitation order. In other words, the text of Rule 716(d) means that better-priced Priority Customer Orders on the opposite side of the market from the order being facilitated will be given the benefit of executing at the facilitation price, whereas better-priced Priority Customer Orders on the same side of the market as the order being facilitated will cause the facilitation order to be cancelled. *See* Topaz Exchange Response Letter, *supra* note 7.

[272] *See* Topaz Exchange Rule 716(e). With respect to the Block Order, Facilitation and Solicited Order Mechanisms described in Topaz Exchange Rule 716(b), (d) and (e), the NYSE Euronext Letter II recommended clarifying language to describe what terms, if any, should be contained within a "broadcast message." *See* NYSE Euronext Letter II, *supra* note 6. Topaz Exchange stated that it would amend the various sections of the rule to clarify the terms of the broadcast message. *See* Topaz Exchange Response Letter, *supra* note 7, and Amendment No. 3. The Commission believes that Topaz Exchange's revisions to Topaz Exchange Rule 716(b), (d), and (e) appropriately address the commenter's concerns.

[273] *See* ISE Rules 716 and 723.

systems, and non-members will be able to access Topaz Exchange pursuant to sponsored access arrangements with Topaz Exchange members, pursuant to Topaz Exchange rules.[274] As noted above, Topaz Exchange also intends to become a participant in the Linkage Plan.[275] The manner in which Topaz Exchange proposes to comply with the Linkage Plan is identical to the manner in which ISE complies with the Linkage Plan.[276] To comply with the Linkage Plan, Topaz Exchange, among other things, will prohibit its members from effecting a transaction at a price that is inferior to the NBBO, unless an exception applies.[277] Topaz Exchange will provide a centralized process for sending intermarket sweep orders to other exchanges on behalf of Public Customer Orders.[278] Topaz Exchange will contract with one or more unaffiliated brokers to route orders to other exchanges when necessary to comply with the Linkage Plan. In circumstances where marketable Public Customer Orders are received when Topaz Exchange is not at the NBBO or orders are received that would lock or cross another market, they will be exposed to Topaz Exchange members for up to one second.[279] If, after a Public Customer Order is exposed, such order cannot be executed in full on Topaz Exchange at the then-current NBBO or better and is marketable, the lesser of the full displayed size of the protected bid(s) or protected offer(s) that are priced better than the Topaz Exchange's quote or the balance of the order will be sent to a contracted unaffiliated broker, and any additional balance of the order that is not marketable against the then-current NBBO will be placed on the Topaz Exchange book.[280]

The Commission believes that Topaz Exchange's proposed display, execution, and priority rules are consistent with the Act. In particular, the Commission finds that the proposed rules are consistent with Section 6(b)(5) of the Act,[281] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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, and to not permit unfair discrimination between customers, issuers, or dealers. The Commission also finds that the proposed rules are consistent with Section 6(b)(8) of the Act,[282] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The trading rules of Topaz Exchange are substantially similar to the current ISE trading rules, which were approved at the time ISE's registration as a national securities exchange was granted[283] or filed with and approved by the Commission (or otherwise became effective) pursuant to Section 19(b) of the Act.[284] The Commission believes that Topaz Exchange's trading rules, in general, do not raise any novel or controversial issues.[285]

5. Section 11(a) of the Act

Section 11(a)(1) of the Act[286] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, "covered accounts"), unless an exception applies. The Exchange has represented that it has analyzed its rules proposed hereunder, and believes that they are consistent with Section 11(a) of the Act and rules thereunder. For the reasons set forth below, based on Topaz Exchange's representations, the Commission believes that Topaz Exchange's order execution algorithm, including the Facilitation, Solicitation and Customer Cross processes (but excluding the Price Improvement Mechanism), will allow members to meet the requirements of Rule 11a2–2(T) for executions on Topaz Exchange. Additionally, the Commission believes that Topaz Exchange members' executions that occur through the Price Improvement Mechanism will be consistent with the requirements in Section 11(a)(1)(G) of the Act and rule 11a1–1(T) thereunder.

a. Rule 11a2–2(T)

Rule 11a2–2(T) under the Act,[287] known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) May not be affiliated with the executing member; (ii) must transmit the order from off the exchange floor; (iii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[288] and (iv)

[274] *See, e.g.*, Topaz Exchange Rule 706, Supplementary Material .01.

[275] *See* Topaz Exchange Rule 1900 Series, which incorporates by reference ISE Rule 1900 Series.

[276] The Commission recently approved a change in the way in which ISE complies with the Linkage Plan by now contracting with one or more unaffiliated brokers to route intermarket sweep orders of Public Customers to other exchanges when necessary. *See* Securities Exchange Act Release No. 69396 (April 18, 2013), 78 FR 24273 (April 24, 2013) (File No. SR–ISE–2013–18). PMMs no longer have the responsibility of either executing the Public Customer Order at a price that at least matches the NBBO or obtaining better prices from the away market(s) by sending one or more intermarket sweep orders on the Public Customer's behalf. *See also* Amendment No. 3 (removing exposure and routing obligation from PMMs under Topaz Exchange's Rule 800 Series).

[277] *See* Topaz Exchange Rule 714; *see also* ISE Rule 714.

[278] *See* Topaz Exchange Rule 1901, which incorporates by reference ISE Rule 1901.

[279] *See* Topaz Exchange Rule 1901, Supplementary Material .02, which incorporates by reference ISE Rule 1901, Supplementary Material .02.

[280] *See id.* Any additional balance of the order will be executed on Topaz Exchange if it is marketable.

[281] 15 U.S.C. 78f(b)(5).

[282] 15 U.S.C. 78f(b)(8).

[283] *See* ISE Order, *supra* note 167.

[284] The Commission notes, however, that some of Topaz Exchange's rules differ in some respects from the rules of ISE. For example, Topaz Exchange is not proposing to incorporate ISE's rules relating to the trading of equity securities or to incorporate any rules concerning the trading of complex or multi-legged orders at this time.

[285] With respect to clearing rules, the three commenters recommended clarifying language with respect to Topaz Exchange Rule 712(b), specifically ". . . or other guarantee given by such Clearing Member to such Member . . . ." The commenters noted that this language lacks clarity whether Topaz Exchange Rule 712(b) requires some form of written authorization between a clearing member and a member in order for the member to give up the name of a particular clearing member. *See* CBOE Letter, NASDAQ Letter and NYSE Euronext Letter I, *supra* note 6. The NASDAQ Letter noted that a written, transparent and auditable authorization is needed to provide proper safeguards and protections for clearing members and to ensure clearing members are in compliance with aspects of the Commission Rule 15c3–3 in general. *See* NASDAQ Letter, *supra* note 6. The NYSE Euronext Letter I noted that the requirements for a letter of authorization were also not clearly defined and that Topaz Exchange should have rule text that governs the terms and revocation of letters of authorization. Topaz Exchange clarified this point by noting that ISE has interpreted and applied its identical rule to require the submission of written authorization in order for an ISE member to give up a particular clearing member's name. Topaz Exchange further noted that it would amend the rule to make clear that written authorization is required. *See* Topaz Exchange Response Letter, *supra* note 7, and Amendment No 3. The Commission believes that Topaz Exchange's revision to Topaz Exchange Rule 712(b) appropriately addresses the commenters' concerns.

[286] 15 U.S.C. 78k(a)(1).

[287] 17 CFR 240.11a2–2(T).

[288] The member may, however, participate in clearing and settling the transaction. *See* Securities

with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission,[289] Topaz Exchange requested that the Commission concur with its conclusion that Topaz Exchange members that enter orders through the Topaz Exchange system, including the Facilitation, Solicitation and Customer Cross processes, (but excluding those transactions effected through the PIM process), satisfy the requirements of Rule 11a2–2(T). For the reasons set forth below, the Commission believes that Topaz Exchange members that enter orders through the Topaz Exchange system, including the Facilitation, Solicitation and Customer Cross processes, but excluding those transactions effected through the PIM process, will satisfy the conditions of Rule 11a2–2(T).

Rule 11a2–2(T)'s first condition is that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the Topaz Exchange system, including the Facilitation, Solicitation and Customer Cross processes, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages over non-members in handling their orders after transmitting them to the Exchange.[290] Topaz Exchange has represented that the design of the trading platform ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to Topaz Exchange.[291] Based on the Exchange's representation, the Commission believes that the Topaz Exchange trading system, including the Facilitation, Solicitation and Customer Cross processes, will satisfy this requirement.

Second, Rule 11a2–2(T) requires orders for covered accounts to be transmitted from off the exchange floor. Topaz Exchange will not have a physical trading floor, and like other automated systems, will receive orders electronically through remote terminals or computer-to-computer interfaces. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[292] Orders sent to Topaz Exchange, regardless of where it executes within the Topaz Exchange system, including as a Facilitation, a Solicitation or a Customer Cross process, will be transmitted from remote terminals directly to Topaz Exchange by electronic means. Since the Topaz Exchange trading system receives all orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that the trading system, including the Facilitation, Solicitation and Customer Cross processes, will satisfy the off-floor transmission requirement.

Third, Rule 11a2–2(T) requires that the member not participate in the execution of its order once it has been transmitted to the member performing the execution.[293] Topaz Exchange represented that at no time following the submission of an order is a member able to acquire control or influence over the result or timing of an order's execution. According to Topaz Exchange, orders submitted through the Topaz Exchange system, including the Facilitation, Solicitation and Customer Cross processes, also meet the non-participation requirement. The execution of a member's order depends not on the member entering the order, but rather on what orders, bids, or offers are present in the system at the time the member submits the order and on the priority of those orders, bids or offers.[294] Topaz Exchange represents that orders sent to Topaz Exchange and through the Facilitation, Solicitation and Customer Cross processes will be centrally processed and executed automatically by Topaz Exchange.[295] Topaz Exchange further represents that orders sent to Topaz Exchange will be transmitted from remote terminals directly to the system by electronic means.[296] Once an order is submitted to Topaz Exchange, the order is executed against another order based on the established matching algorithms for the Topaz Exchange system, including the Facilitation, Solicitation and Customer Cross processes.[297] Trades will execute when orders or quotations on Topaz Exchange match one another based on their priority.[298] As Topaz Exchange stated in its Exchange 11(a) Request Letter, the execution does not depend on the participant but rather upon what other orders are entered into the Topaz Exchange system, including the Facilitation, Solicitation and Customer Cross processes, at or around the same time as the subject order; what orders are on Topaz Exchange; or submitted as Responses; and where the order is ranked based on the priority ranking algorithm.[299] Therefore, at no time following the submission of an order to the Topaz Exchange system, including through the Facilitation, Solicitation or Customer Cross processes, is a participant able to acquire control or influence the result or timing of orders

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Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System) ("1978 Release").

[289] *See* Letter from Michael Simon, General Counsel, Secretary and Chief Regulatory Officer, Topaz Exchange, to Elizabeth Murphy, Secretary, Commission, dated December 14, 2012 ("Exchange 11(a) Request Letter").

[290] In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into each system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084, 6086 n.25 (January 31, 1979) (File No. S7–613) (regarding the American Stock Exchange ("Amex") Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange Automated Communications and Execution System ("1979 Release")).

[291] *See* Exchange 11(a) Request Letter, *supra* note 289.

[292] *See, e.g.*, Securities Exchange Act Release Nos. 59154 (December 23, 2008) 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (order approving proposed rules of BX); 49068, (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (establishing, among other things, BOX as an options trading facility of BSE); 44983, (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving the PCX's use of the Archipelago Exchange as its equity trading facility); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (regarding NYSE's Off-Hours Trading Facility). *See* 1978 Release, *supra* note 288. *See also* 1979 Release, *supra* note 290.

[293] The member may cancel or modify the order, or modify the instructions for executing the order, but only from off the Exchange floor. *See* 1978 Release, *supra* note 288, at 43 FR 11547. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. *See id.* (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

[294] *See* Exchange 11(a) Request Letter, *supra* note 289.

[295] *See id.*

[296] *See id.*

[297] *See id.*

[298] *See id.*

[299] *See id.*

submitted to the Topaz Exchange system, including through the Facilitation, Solicitation or Customer Cross processes.[300] Accordingly, the Commission believes that the non-participation requirement will be met when orders are executed automatically through use of the Topaz Exchange system, including the Facilitation, Solicitation and Customer Cross processes.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T).[301] Topaz Exchange members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.[302]

b. Section 11(a)(1)(G) and Rule 11a1–1(T)

Section 11(a)(1)(G) of the Act provides an additional exemption from the general prohibition set forth in Section 11(a)(1) for any transaction for a member's own account, provided that: (i) Such member is primarily engaged in certain underwriting, distribution, and other activities generally associated with broker-dealers and whose gross income is derived principally from such business and related activities; and (ii) the transaction is effected in compliance with the rules of the Commission, which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange.[303] In addition, Rule 11a1–1(T) under the Act specifies that a transaction effected on a national securities exchange for the account of a member which meets the requirements of Section 11(a)(1)(G)(i) of the Act is deemed, in accordance with the requirements of Section 11(a)(1)(G)(ii), to be not inconsistent with the maintenance of fair and orderly markets and to yield priority, parity, and precedence in execution to orders for the account of non-members or persons associated with non-members of the exchange, if such transaction is effected in compliance with certain requirements.[304]

Topaz Exchange represented that its Price Improvement Mechanism, or PIM, is a process set forth in Topaz Exchange Rule 723 whereby an EAM can provide price improvement opportunities for a transaction.[305] As Topaz Exchange stated in its Exchange 11(a) Request Letter, Topaz Exchange's proposed PIM rules will require that Priority Customer interest, at any given price, be executed in full before Professional Orders and market maker quotes.[306] Additionally, Topaz Exchange's proposed PIM rules will require non-member Professional Orders to be executed in full before any proprietary interest of members (*i.e.*, proprietary interest from EAMs and market makers).[307] Because Topaz Exchange Rule 723(d) will require Topaz Exchange members to yield priority to Priority Customers and non-member Professional Orders in the PIM process, the Commission believes that the proposal with respect to transactions effected through the PIM process will be consistent with Section 11(a)(1)(G) and Rule 11a1–1(T) thereunder.[308] The Commission also reminds exchanges and their members, however, that, in addition to yielding priority to non-member orders at the same price, members must also meet the other requirements under Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder (or satisfy the requirements of another exception) to effect transactions for their own accounts.

E. Discipline and Oversight of Members

As noted above, one prerequisite for the Commission's grant of an exchange's application for registration is that a proposed exchange must be so organized and have the capacity to be able to carry out the purposes of the Act.[309] Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with the Act and the rules and regulations thereunder and the rules of the exchange.[310]

Topaz Exchange rules codify Topaz Exchange's disciplinary jurisdiction over its members, thereby facilitating its ability to enforce its members' compliance with its rules and the federal securities laws.[311] Topaz Exchange's rules permit it to sanction members for violations of the Act and the rules and regulation thereunder and Topaz Exchange's rules by, among other things, expelling or suspending members; limiting members' activities, functions, or operations; fining or censuring members; suspending or barring a person from being associated with a member; or any other fitting sanction in accordance with Topaz Exchange rules.[312]

Topaz Exchange's disciplinary and oversight functions will be administered in accordance with Chapter 16 of the Topaz Exchange rules, which

[300] *See id.*

[301] 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 288, at 43 FR 11548 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

[302] *See* Exchange 11(a) Request Letter, *supra* note 289.

[303] *See* 15 U.S.C. 78k(a)(1)(G).

[304] Rule 11a1–1(T)(a)(1)–(3) provides that each of the following requirements must be met: (1) A member must disclose that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated, and any member through whom that bid or offer is communicated must disclose to others participating in effecting the order that it is for the account of a member; (2) immediately before executing the order, a member (other than the specialist in such security) presenting any order for the account of a member on the exchange must clearly announce or otherwise indicate to the specialist and to other members then present for the trading in such security on the exchange that he is presenting an order for the account of a member; and (3) notwithstanding rules of priority, parity, and precedence otherwise applicable, any member presenting for execution a bid or offer for its own account or for the account of another member must grant priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member, irrespective of the size of any such bid or offer or the time when entered. *See* 17 CFR 240.11a1–1(T)(a)(1)–(3).

[305] The PIM is a process wherein an EAM may seek to facilitate an order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against an order it represents as agent (a "Crossing Transaction"). A Crossing Transaction is comprised of the order the EAM represents as agent (the "Agency Order") and a counter-side order for the full size of the Agency Order (the "Counter-Side Order"). The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both. *See* Exchange 11(a) Request Letter, *supra* note 289. *See also* Topaz Exchange Rule 723.

[306] *See* Exchange 11(a) Request Letter, *supra* note 289. *See also* Topaz Exchange Rule 723(d)(1).

[307] *See* Exchange 11(a) Request Letter, *supra* note 289. *See also* Topaz Exchange Rule 723(d)(3).

[308] *See* Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (File No. SR–ISE–2003–06).

[309] *See* 15 U.S.C. 78ff(b)(1).

[310] *See id.*

[311] *See* Topaz Exchange Rule 1600(a) (which incorporates by reference ISE Rule 1600(a)).

[312] *See id. See also* MIAX Rule 1000 and BOX Exchange Rule 12000 Series (containing identical provisions).

incorporates by reference Chapter 16 of ISE rules, governing disciplinary jurisdiction. Unless delegated to another SRO pursuant to the terms of an effective 17d–2 Plan,[313] Topaz Exchange regulatory staff (including regulatory staff of another SRO that may be acting on Topaz Exchange's behalf pursuant to a regulatory services agreement) will, among other things, investigate potential securities laws violations and initiate charges pursuant to Topaz Exchange rules.[314]

Upon a finding of probable cause of a violation within the disciplinary jurisdiction of Topaz Exchange and where further proceedings are warranted,[315] Topaz Exchange will conduct a hearing on disciplinary matters before a professional hearing officer [316] and two members of the Business Conduct Committee [317] ("Panel"),[318] The Topaz Exchange member (or its associated person) or the Topaz Exchange regulatory staff may petition for review of the Panel's decision by the Topaz Exchange Board.[319] Any review will be conducted by the Topaz Exchange Board or a committee thereof composed of at least three of its directors, at least one of which shall be an Industry Director [320] (whose decision must be ratified by the Topaz Exchange Board).[321] In addition, the Topaz Exchange Board on its own motion may order review of a disciplinary decision.[322] The Topaz Exchange Board may affirm, reverse, or modify, in whole or in part, the Panel's decision.[323] The decision of the Topaz Exchange Board will be in writing and will be final.[324]

Appeals from any determination that impacts access to Topaz Exchange, such as termination or suspension of membership, will be instituted under, and governed by, the provisions in the Chapter 17 of the Topaz Exchange rules, which incorporates by reference the provisions in Chapter 17 of ISE rules. Topaz Exchange's Chapter 17 applies to persons economically aggrieved by any of the following actions of Topaz Exchange including, but not limited to: (a) Denial of an application to become a Member; (b) barring a person from becoming associated with a Member; and (c) limiting or prohibiting services provided by the Topaz Exchange or services of any exchange member.[325]

Any person aggrieved by an action of Topaz Exchange within the scope of the Chapter 17 may file a written application to be heard within thirty days [326] after such action has been taken.[327] Applications for hearing and review will be referred to the Business Conduct Committee, which will appoint a hearing panel of no less than three members of such Committee.[328] The decision of the hearing panel made pursuant to Chapter 17 of the Topaz Exchange rules is subject to review by the Topaz Exchange Board, either on its own motion, or upon written request submitted by the applicant or the President of Topaz Exchange.[329] The review will be conducted by the Topaz Exchange Board or a committee of the Topaz Exchange Board composed of at least three directors.[330]

The Commission finds that Topaz Exchange's proposed disciplinary and oversight rules and structure, as well as its proposed process for persons economically aggrieved by certain Topaz Exchange actions, are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) of the Act [331] in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the proposed Topaz Exchange rules, which incorporate by reference ISE rules, are designed to provide Topaz Exchange with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of Topaz Exchange.[332] The Commission notes that Topaz Exchange's proposed disciplinary and oversight rules and

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[313] *See supra* notes 154–156 and accompanying text (concerning the multiparty 17d–2 Plans to which Topaz Exchange has committed to join).

[314] *See* Topaz Exchange Rule 1602 (which incorporates by reference ISE Rule 1602). As noted above, Topaz Exchange has entered into an RSA with FINRA and a FMA with ISE under which FINRA and ISE, respectively, will perform certain regulatory functions on behalf of Topaz Exchange. Topaz Exchange may perform some or all of the functions specified in Chapter 16 of the Topaz Exchange Rules. *See* Topaz Exchange Rule 1615 (which incorporates by reference ISE Rule 1615).

[315] *See* Topaz Exchange Rule 1604 (which incorporates by reference ISE Rule 1604). If there is probable cause for finding a violation, Topaz Exchange's regulatory staff will prepare a statement of charges including the allegations and specifying the provisions of the Act and the rules and regulations promulgated thereunder, provisions of the Topaz Exchange Constitution or rules, or interpretations or resolutions of which such acts are in violation. The CRO must approve the statement of charges.

[316] *See* Topaz Exchange Rule 1606 (which incorporates by reference ISE Rule 1606); *see also* Topaz Exchange Rule 1615, Supplemental Material .01 (which incorporates by reference ISE Rule 1615, Supplemental Material .01).

[317] Pursuant to a Resolution of the Topaz Exchange Board, the President and CEO shall establish Topaz Exchange's Business Conduct Committee, pursuant to a charter. The Committee shall consist of no more than 21 persons, all of whom are employees of members of Topaz Exchange, representing members as follows: at least three persons shall represent PMMs; at least three persons shall represent CMMs that are not also PMMs; and at least four persons shall represent EAMs that neither are, nor are affiliated with, a PMM or CMM. *See* Amendment No. 3.

[318] *See* Topaz Exchange Rule 1606 (which incorporates by reference ISE Rule 1606). A Panel may make a determination without a hearing and may impose a penalty as to violations that the member or associated person has admitted or has failed to answer or that otherwise do not appear to be in dispute. *See* Topaz Exchange Rule 1608 (which incorporates by reference ISE Rule 1608). A member or associated person alleged to have committed a disciplinary violation may submit a written offer of settlement to the Panel, or CRO if a Panel is not yet been appointed, which the Panel or CRO may accept or reject. *See* Topaz Exchange Rule 1609 (which incorporates by reference ISE Rule 1609). If the second offer of settlement is rejected (such decision is not subject to review), a hearing will proceed in accordance with Topaz Exchange Rule 1606 (which incorporates by reference ISE Rule 1606). *See also* Topaz Exchange Rule 1609 (which incorporates by reference ISE Rule 1609).

[319] *See* Topaz Exchange Rule 1610 (which incorporates by reference ISE Rule 1610).

[320] *See* Topaz Exchange Rule 1704 (which incorporates by reference ISE Rule 1704) (detailing the composition of the Appeals Committee); *see also* Amendment No. 3. Any director who participated in a matter before it was appealed to the Topaz Exchange Board shall not participate in any review of the action by the Board concerning the matter. *See* Topaz Exchange Rule 1704.

[321] *See* Topaz Exchange Rule 1610 (which incorporates by reference ISE Rule 1610).

[322] *See id.*

[323] *See id.*

[324] *See id.*

[325] *See* Topaz Exchange Rule 1700 (which incorporates by reference ISE Rule 1700). As noted above, Topaz Exchange has entered into an RSA with FINRA and a FMA with ISE under which FINRA and ISE, respectively, will perform certain regulatory functions on behalf of Topaz Exchange. For example, FINRA may perform some or all of the functions specified in Chapter 17 of Topaz Exchange rules. *See supra* notes 158–160 and accompanying text. *See also* Topaz Exchange Rule 1706 (which incorporates by reference ISE Rule 1706).

[326] An applicant may file for an extension of time within thirty days of Topaz Exchange's action. An application for such an extension will be ruled upon by the Chairman of the Business Conduct Committee and is not subject to appeal. *See* Topaz Exchange Rule 1701 (which incorporates by reference ISE Rule 1701).

[327] *See* Topaz Exchange Rule 1701 (which incorporates by reference ISE Rule 1701).

[328] *See* Topaz Exchange Rule 1702 (which incorporates by reference ISE Rule 1702).

[329] *See* Topaz Exchange Rule 1704 (which incorporates by reference ISE Rule 1704). The Topaz Exchange Board, or a committee of the Topaz Exchange Board, will have sole discretion to grant or deny either request. *See id.*

[330] *See* Topaz Exchange Rule 1704 (which incorporates by reference ISE Rule 1704). The Topaz Exchange Board or its designated committee may affirm, reverse, or modify in whole or in part, the decision of the hearing panel. The decision of the Topaz Exchange Board or its designated committee will be in writing and will be final. *See* Topaz Exchange Rule 1704 (which incorporates by reference ISE Rule 1704).

[331] 15 U.S.C. 78f(b)(6) and (b)(7), respectively.

[332] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

structures are similar to the rules of other exchanges.[333]

F. Listing Requirements

Topaz Exchange does not intend to offer original listings when it commences operations. Instead, Topaz Exchange will list and trade only standardized option contracts that are listed on other national securities exchanges and cleared by the Options Clearing Corporation.[334] Topaz Exchange's listing rules, including the criteria for the underlying securities of the options to be traded, incorporate by reference all of the listing rules of ISE.[335] The Commission finds that Topaz Exchange's proposed initial and continued listing rules are consistent with the Act, including Section 6(b)(5),[336] in that they are designed to protect investors and the public interest and to promote just and equitable principles of trade. Before beginning operation, Topaz Exchange will need to become a participant in the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Act ("OLPP").[337] In addition, before beginning operation, Topaz Exchange will need to become a participant in the Options Clearing Corporation.

III. Exemption From Section 19(b) of the Act With Regard to ISE, CBOE, NYSE, and FINRA Rules Incorporated by Reference

Topaz Exchange proposes to incorporate by reference certain ISE, CBOE, NYSE and FINRA rules.[338] Thus, for certain Topaz Exchange rules, Topaz Exchange members will comply with a Topaz Exchange rule by complying with the referenced ISE, CBOE, NYSE or FINRA rule.

In connection with the proposal to incorporate the ISE, CBOE, NYSE and FINRA rules by reference, Topaz Exchange requested, pursuant to Rule 240.0–12 under the Act,[339] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to the Topaz Exchange rules that are effected solely by virtue of a change to a cross-referenced ISE, CBOE, NYSE or FINRA rule.[340] Topaz Exchange proposes to incorporate by reference categories of rules, rather than individual rules within a category, that are not trading rules. In addition, Topaz Exchange agrees to provide written notice to its members whenever FINRA, ISE, CBOE or NYSE proposes a change to a cross-referenced rule[341] and whenever any such proposed changes are approved by the Commission or otherwise become effective.[342]

Using the authority under Section 36 of the Act, the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.[343] The Commission is hereby granting Topaz Exchange's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that Topaz Exchange proposes to incorporate by reference. The exemption is conditioned upon Topaz Exchange providing written notice to Topaz Exchange members whenever FINRA, ISE, CBOE or NYSE proposes to change an incorporated by reference rule and when the Commission approves any such changes. The Commission believes that the exemption is appropriate in the public interest and consistent, with the protection of investors because it will promote more efficient use of Commission's and SROs' resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought to be implemented by more than one SRO.

IV. Conclusion

It is ordered that the application of Topaz Exchange for registration as a national securities exchange be, and it hereby is, granted.

It is furthered ordered that operation of Topaz Exchange is conditioned on the satisfaction of the requirements below:

A. *Participation in National Market System Plans Relating to Options Trading.* Topaz Exchange must join: (1) The Plan for the Reporting of Consolidated Options Last Sale Reports and Quotation Information (Options Price Reporting Authority); (2) the OLPP; (3) the Linkage Plan; and (4) the Plan of the Options Regulatory Surveillance Authority.

B. *Participation in Multiparty Rule 17d–2 Plans.* Topaz Exchange must become a party to the multiparty Rule 17d–2 agreements concerning options sales practice regulation and market surveillance.

C. *Participation in the Options Clearing Corporation.* Topaz Exchange must become an Options Clearing Corporation participant exchange.

D. *Participation in the Intermarket Surveillance Group.* Topaz Exchange must join the Intermarket Surveillance Group.

E. *Effective Regulation.* Topaz Exchange must have, and represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations that it has, adequate procedures and programs in place to effectively regulate Topaz Exchange.

F. *Trade Processing and Exchange Systems.* Topaz Exchange must have, and represent in a letter to the staff in the Commission's Division of Trading and Markets that it has, adequate procedures and programs in place, as detailed in Commission Automation Policy Review guidelines, to effectively process trades and maintain the confidentiality, integrity, and availability of Topaz Exchange's systems.[344]

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[333] *See, e.g.*, MIAX Order, *supra* note 30, and BOX Order, *supra* note 39.

[334] *See* Exhibit H to Topaz Exchange Form 1 Application.

[335] *See* Topaz Exchange Rule 500 Series (which incorporates by reference ISE Rule 500 Series) (Securities Traded on the Exchange). *See also* MIAX Rule 400 Series and BOX Rule 5000 Series.

[336] 15 U.S.C. 78f(b)(5).

[337] 15 U.S.C. 78k–1(a)(3)(B).

[338] Specifically, Topaz Exchange proposes to incorporate by reference the following ISE Rules: Chapter 4 (Business Conduct), Chapter 5 (Securities Traded on the Exchange), Chapter 6 (Doing Business with the Public), Chapter 10 (Closing Transactions), Chapter 11 (Exercises and Deliveries), Chapter 12 (Margins), Chapter 13 (Net Capital Requirements), Chapter 14 (Records, Reports and Audits), Chapter 15 (Summary Suspension), Chapter 16 (Discipline), Chapter 17 (Hearings and Review), Chapter 18 (Arbitration), Chapter 19 (Order Protection; Locked and Crossed Market), Chapter 20 (Index Rules), Chapter 22 (Rate-Modified Foreign Currency Options Rules). The following rules are cross-referenced in the ISE rules: ISE Rule 1202 (Margin Requirements) cross-references the same CBOE and NYSE rules that may be in effect from time to time; ISE Rule 1615 (Disciplinary Functions) cross-references the FINRA Code of Procedure and ISE Rule 1800 cross-references the 12000 and 13000 Series of the FINRA Manual and FINRA Rule 2268.

[339] 17 CFR 240.0–12.

[340] *See* Letter from Michael Simon, General Counsel, Secretary and Chief Regulatory Officer, Topaz Exchange, to Elizabeth M. Murphy, Secretary, Commission, dated December 14, 2012 ("Section 19(b) Exemption Request").

[341] *See id.*

[342] Topaz Exchange will provide such notice through a posting on the same Web site location where Topaz Exchange posts its own rule filings pursuant to Rule 19b–4 under the Act, within the required time frame. The Web site posting will include a link to the location on the FINRA, ISE, CBOE or NYSE Web site where FINRA's, ISE's, CBOE's or NYSE's proposed rule change is posted. *See id.*

[343] *See, e.g.*, DirectEdge Exchanges Order, *supra* note 70, BATS Order, *supra* note 29, C2 Order, *supra* note 169, Nasdaq Order, *supra* note 29 and NOM Approval Order, *supra* note 164.

[344] On November 16, 1989, the Commission published its first Automation Review Policy ("ARP I"), in which the Commission created a voluntary framework for SROs to establish comprehensive planning and assessment programs to determine systems capacity and vulnerability. On May 9, 1991, the Commission published its second Automation Review Policy ("ARP II") to clarify the

It is further ordered, pursuant to Section 36 of the Act,[345] that Topaz Exchange shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the FINRA, ISE, CBOE and NYSE rules that Topaz Exchange proposes to incorporate by reference, subject to the conditions specified in this Order that Topaz Exchange provide written notice to Topaz Exchange members whenever FINRA, ISE, CBOE or NYSE propose to change an incorporated by reference rule and when the Commission approves any such changes.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70045; File No. SR–NYSEArca–2013–73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule With Respect to Cap on Fees for Firm and Broker Dealer Open Outcry Executions

July 26, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 18, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule") with respect to cap on fees for Firm and Broker Dealer open outcry executions. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule with respect to the cap on fees for Firm and Broker Dealer open outcry executions.

Currently, there is a $100,000 cap per month on Proprietary fees and Broker Dealer fees for transactions in standard option contracts cleared in the customer range for open outcry executions, exclusive of strategy executions, royalty fees, and Firm trades executed via a Joint Back Office ("JBO") agreement.[4] The Exchange proposes to amend the text of the Fee Schedule to make more explicit that the $100,000 cap applies to the fees on a combined basis. For example, if in a given month a Firm incurred $55,000 in Proprietary fees and $55,000 in Broker Dealer fees for standard option contract transactions cleared in the customer range for open outcry executions, exclusive of strategy executions, royalty fees and Firm trades executed via a JBO agreement, then the Firm would only have to pay a total of $100,000 in such fees.[5] If a Firm or Broker Dealer only had one of the two types of fees that met those qualifications, then it could still qualify if such fees exceeded $100,000 per month.

The proposed change is not intended to address any other issues, and the Exchange is not aware of any problems that Firms or Broker Dealers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because it will provide better notice about how to qualify for the fee cap. The Exchange further believes that the fee cap is equitable and not unfairly discriminatory because it is designed to encourage Firms and Broker Dealers to engage in a high level of open outcry executions, which will increase liquidity on the Exchange and benefit all market participants. The Exchange believes that it is equitable and not unfairly discriminatory to offer the fee cap to Firms and Broker Dealers, and not other market participants, because its purpose is to attract large block order flow to the floor of the Exchange, where such orders can be better handled in comparison with electronic orders that are not negotiable.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these

types of review and reports expected from SROs. See Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989) and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991). The Commission has proposed Regulation Systems Compliance and Integrity, which, if adopted, would replace this policy. *See* Securities Exchange Act Release No. 69077 (March 8, 2013), 78 FR 18084 (March 25, 2013) (File No. S7–01–13).

[345] 15 U.S.C. 78mm.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] See Securities Exchange Act Release No. 69690 (June 4, 2013), 78 FR 34681 (June 10, 2013) (SR–NYSEArca–2013–55) (setting cap at $100,000); *see also* Securities Exchange Act Release Nos. 67419 (July 12, 2012), 77 FR 42343 (July 18, 2012) (SR–NYSEArca–2012–71) (extending fee cap to Broker Dealers); 63471 (Dec. 8, 2010), 75 FR 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–108) (adopting initial $75,000 fee cap for Proprietary fees).

[5] Since the fee cap was amended in July 2012 to include Broker Dealer fees, the Exchange has provided a monthly report to its member firms that may have incorrectly suggested that fees for each of the two types of volume had to each separately reach $100,000 before the fee cap applied. While the Exchange believes that the current text of the Fee Schedule is clear that both types of fees count toward the $100,000 cap, the Exchange wishes to avoid any potential misunderstanding on the qualifications for the fee cap. The report text also will be updated accordingly to avoid any such misunderstanding. The Exchange notes that, since the $75,000 fee cap and, later, the $100,000 fee cap were implemented, no Firm or Broker Dealer has qualified for the fee cap, whether applied on a combined or separate basis.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[8] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change will provide better notice about how to qualify for an available fee cap.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or credits available at other venues to be more favorable. In such an environment, the Exchange must set its fees and credits so that it remains competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their trading practices, the Exchange believes that the degree to which fee or credit changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed change will impair the ability of its market participants or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2013–73 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–NYSEArca–2013–73. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–73, and should be submitted on or before August 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18471 Filed 7–31–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70051; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among NYSE MKT LLC, BATS Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, the Chicago Board Options Exchange, Incorporated, the International Securities Exchange LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc.; the NASDAQ OMX PHLX, Inc., Miami International Securities Exchange, LLC, and Topaz Exchange, LLC (the "parties") Concerning Options-Related Sales Practice Matters

July 26, 2013.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed on June 21, 2013, pursuant to Rule 17d–2 of the Act,[2] by Financial Industry Regulatory Authority, Inc. ("FINRA") and Topaz Exchange, LLC ("Topaz") (the "Participating Organizations").

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization ("SRO")

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules; Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 8, 1983, the Commission approved the SRO participants' plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[11] On May 23, 2000, the Commission approved an amendment to the plan that added the ISE as a participant.[12] On November 8, 2002, the Commission approved another amendment that replaced the original plan in its entirety and, among other things, allocated regulatory responsibilities among all the participants in a more equitable manner.[13] On February 5, 2004, the parties submitted an amendment to the plan, primarily to include the BSE, which was establishing a new options trading facility to be known as the Boston Options Exchange ("BOX"), as an SRO participant.[14] On December 5, 2007, the parties submitted an amendment to the plan to, among other things, provide that the National Association of Securities Dealers ("NASD") (n/k/a the Financial Industry Regulatory Authority, Inc. or "FINRA") and NYSE are Designated Options Examining Authorities under the plan.[15] On June 5, 2008, the parties submitted an amendment to the plan primarily to remove the NYSE as a Designated Options Examining Authority, leaving FINRA as the sole Designated Options Examining Authority for all common members that are members of FINRA.[16] On February 9, 2010, the parties submitted a proposed amendment to the plan to add BATS and C2 as SRO participants and to reflect the name changes of the American Stock Exchange LLC to the NYSE Amex LLC, the Boston Stock Exchange, Inc., to the NASDAQ OMX BX, Inc. and the Philadelphia Stock Exchange, Inc. to the NASDAQ OMX PHLX, Inc.[17] On May 22, 2012, the parties submitted a proposed amendment to add BOX as an SRO participant, and to amend Section XIII of the plan to set forth a revised procedure for adding new participants to the plan.[18] On November 20, 2012, the parties submitted a proposed amendment to add MIAX as an SRO participant, and to change the name of NYSE Amex LLC to NYSE MKT LLC.[19]

The plan reduces regulatory duplication for a large number of firms currently members of two or more of the SRO participants by allocating regulatory responsibility for certain options-related sales practice matters to one of the SRO participants. Generally, under the plan, the SRO participant responsible for conducting options-related sales practice examinations of a firm, and investigating options-related customer complaints and terminations for cause of associated persons of that firm, is known as the firm's "Designated Options Examining Authority" ("DOEA"). Pursuant to the plan, any other SRO of which the firm is a member is relieved of these responsibilities during the period in which the firm is assigned to another SRO acting as that firm's DOEA.

III. Proposed Amendment to the Plan

On June 21, 2013, FINRA and Topaz submitted a proposed amendment to the Plan. The purpose of the amendment is to add Topaz as a Participant to the Plan. The text of the proposed amended

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] See Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983).

[12] See Securities Exchange Act Release No. 42816 (May 23, 2000), 65 FR 34759 (May 31, 2000).

[13] See Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).

[14] See Securities Exchange Act Release No. 49197 (February 5, 2004), 69 FR 7046 (February 12, 2004).

[15] See Securities Exchange Act Release No. 55532 (March 26, 2007), 72 FR 15729 (April 2, 2007).

[16] See Securities Exchange Act Release No. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008).

[17] See Securities Exchange Act Release No. 61589 (February 25, 2012), 75 FR 9976 (March 4, 2010).

[18] See Securities Exchange Act Release No. 66974 (May 11, 2012), 77 FR 29705 (May 18, 2012).

[19] See Securities Exchange Act Release No. 68363 (December 5, 2012), 77 FR 73711 (December 11, 2012).

17d–2 plan is as follows (additions are *italicized;* deletions are [bracketed]):

* * * * *

Agreement by and among BATS Exchange, Inc., BOX Options Exchange, LLC, the Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, the New York Stock Exchange LLC, the NYSE MKT LLC, the NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc. [and], the NASDAQ OMX PHLX LLC, *and Topaz Exchange, LLC* Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934.

This agreement ("Agreement"), by and among BATS Exchange, Inc., BOX Options Exchange, LLC, the Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc. ("FINRA"), Miami International Securities Exchange, LLC, The NASDAQ Stock Market LLC ("NASDAQ"), NASDAQ OMX BX, Inc., the New York Stock Exchange LLC ("NYSE"), the NYSE MKT LLC, the NYSE Arca, Inc., [and] the NASDAQ OMX PHLX LLC, *and Topaz Exchange, LLC,* hereinafter collectively referred to as the Participants, is made this [19th] *21st* day of [November, 2012] *June, 2013,* pursuant to the provisions of Rule 17d–2 under the Securities Exchange Act of 1934 (the "Exchange Act"), which allows for plans among self-regulatory organizations to allocate regulatory responsibility. This Agreement shall be administered by a committee known as the Options Self-Regulatory Council (the "Council").

This Agreement amends and restates the agreement entered into among the Participants on [April 25] *November 19,* 2012, entitled "Agreement by and among BATS Exchange, Inc., BOX Options Exchange, LLC, the Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., *Miami International Securities Exchange, LLC,* the New York Stock Exchange LLC, NYSE [Amex] *MKT* LLC, the NYSE Arca, Inc., the NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc. and the NASDAQ OMX PHLX, Inc., Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934."

Whereas, the Participants are desirous of allocating regulatory responsibilities with respect to broker-dealers, and persons associated therewith, that are members [1] of more than one Participant (the "Common Members") and conduct a public business for compliance with Common Rules (as hereinafter defined) relating to the conduct by broker-dealers of accounts for listed options, index warrants, currency index warrants and currency warrants (collectively, "Covered Securities"); and

Whereas, the Participants are desirous of executing a plan for this purpose pursuant to the provisions of Rule 17d–2 and filing such plan with the Securities and Exchange Commission ("SEC" or the "Commission") for its approval;

Now, Therefore, in consideration of the mutual covenants contained hereafter, the Participants agree as follows:

I. As used herein the term Designated Options Examining Authority ("DOEA") shall mean: (1) FINRA insofar as it shall perform Regulatory Responsibility (as hereinafter defined) for its broker-dealer members that also are members of another Participant or (2) the Designated Examination Authority ("DEA") pursuant to SEC Rule 17d–1 under the Securities Exchange Act ("Rule 17d–1") for a broker-dealer that is a member of a more than one Participant (but not a member of FINRA).

II. As used herein, the term "Regulatory Responsibility" shall mean the examination and enforcement responsibilities relating to compliance by Common Members with the rules of the applicable Participant that are substantially similar to the rules of the other Participants (the "Common Rules"), insofar as they apply to the conduct of accounts for Covered Securities. A list of the current Common Rules of each Participant applicable to the conduct of accounts for Covered Securities is attached hereto as Exhibit A. Each year within 30 days of the anniversary date of the commencement of operation of this Agreement, each Participant shall submit in writing to FINRA and each DEA performing as a DOEA for any members of such Participant any revisions to Exhibit A reflecting changes in the rules of the Participant, and confirm that all other rules of the Participant listed in Exhibit A continue to meet the definition of Common Rules as defined in this Agreement. Within 30 days from the date that FINRA and each DEA performing as a DOEA has received revisions and/or confirmation that no change has been made to Exhibit A from all Participants, FINRA and each DEA performing as a DOEA shall confirm in writing to each Participant whether the rules listed in any updated Exhibit A are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibility" does not include, and each of the Participants shall (unless allocated pursuant to Rule 17d–2 otherwise than under this Agreement) retain full responsibility for, each of the following:

(a) Surveillance and enforcement with respect to trading activities or practices involving its own marketplace, including without limitation its rules relating to the rights and obligations of specialists and other market makers;

(b) Registration pursuant to its applicable rules of associated persons;

(c) Discharge of its duties and obligations as a DEA; and

(d) Evaluation of advertising, responsibility for which shall remain with the Participant to which a Common Member submits same for approval.

III. Apparent violations of another Participant's rules discovered by a DOEA, but which rules are not within the scope of the discovering DOEA's Regulatory Responsibility, shall be referred to the relevant Participant for such action as the Participant to which such matter has been referred deems appropriate. Notwithstanding the foregoing, nothing contained herein shall preclude a DOEA in its discretion from requesting that another Participant conduct an enforcement proceeding on a matter for which the requesting DOEA has Regulatory Responsibility. If such other Participants agree, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant and confirmed in writing by the Participants involved. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in an investigation or enforcement proceeding.

IV. The Council shall be composed of one representative designated by each of the Participants. Each Participant shall also designate one or more persons as its alternate representative(s). In the absence of the representative of a Participant, such alternate representative shall have the same powers, duties and responsibilities as the representative. Each Participant may, at any time, by notice to the then Chair of the Council, replace its representative and/or its alternate

[1] In the case of BOX Options Exchange, LLC ("BOX"), NASDAQ OMX BX, Inc. ("BX") and NASDAQ members are those persons who are options participants (as defined in the BOX, BX and NASDAQ Options Market Rules).

representative on such Council. A majority of the Council shall constitute a quorum and, unless specifically otherwise required, the affirmative vote of a majority of the Council members present (in person, by telephone or by written consent) shall be necessary to constitute action by the Council. The representative from FINRA shall serve as Chair of the Council. All notices and other communications for the Council shall be sent to it in care of the Chair or to each of the representatives.

V. The Council shall determine the times and locations of Council meetings, provided that the Chair, acting alone, may also call a meeting of the Council in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten-business days prior thereto. Notwithstanding anything herein to the contrary, representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VI. FINRA shall have Regulatory Responsibility for all Common Members that are members of FINRA. For the purpose of fulfilling the Participants' Regulatory Responsibilities for Common Members that are not members of FINRA, the Participant that is the DEA shall serve as the DOEA. All Participants shall promptly notify the DOEAs no later than the next scheduled meeting of any change in membership of Common Members. A DOEA may request that a Common Member that is allocated to it be reallocated to another DOEA by giving thirty days written notice thereof. The DOEAs in their discretion may approve such request and reallocate such Common Member to another DOEA.

VII. Each DOEA shall conduct an examination of each Common Member. The Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOEA. At each meeting of the Council, each DOEA shall be prepared to report on the status of its examination program for the previous quarter and any period prior thereto that has not previously been reported to the Council.

VIII. Each DOEA will promptly furnish a copy of the Examination report, relating to Covered Securities, of any examination made pursuant to the provisions of this Agreement to each other Participant of which the Common Member examined is a member.

IX. Each DOEA's Regulatory Responsibility shall for each Common Member allocated to it include investigations into terminations "for cause" of associated persons relating to Covered Securities, unless such termination is related solely to another Participant's market. In the latter instance, that Participant to whose market the termination for cause relates shall discharge Regulatory Responsibility with respect to such termination for cause. In connection with a DOEA's examination, investigation and/or enforcement proceeding regarding a Covered Security-related termination for cause, the other Participants of which the Common Member is a member shall furnish, upon request, copies of all pertinent materials related thereto in their possession. As used in this Section, "for cause" shall include, without limitation, terminations characterized on Form U5 under the label "Permitted to Resign," "Discharge" or "Other."

X. Each DOEA shall discharge the Regulatory Responsibility for each Common Member allocated to it relative to a Covered Securities-related customer complaint [2] unless such complaint is uniquely related to another Participant's market. In the latter instance, the DOEA shall forward the matter to that Participant to whose market the matter relates, and the latter shall discharge Regulatory Responsibility with respect thereto. If a Participant receives a customer complaint for a Common Member related to a Covered Security for which the Participant is not the DOEA, the Participant shall promptly forward a copy of such complaint to the DOEA.

XI. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, or by a comparable means of electronic communication to each Participant entitled to receipt thereof, to the attention of the Participant's representative on the Council at the Participant's then principal office or by email at such address as the representative shall have filed in writing with the Chair.

XII. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Council.

XIII. This Agreement may be amended to add a new Participant provided that such Participant does not assume Regulatory Responsibility, solely by an amendment by FINRA and such new Participant. All other Participants expressly consent to allow FINRA to add new Participants to this Agreement as provided above. FINRA will promptly notify all Participants of any such amendments to add new Participants. All other amendments to this Agreement must be approved in writing by each Participant. All amendments, including adding a new Participant, must be filed with and approved by the SEC before they become effective.

XIV. Any of the Participants may manifest its intention to cancel its participation in this Agreement at any time by giving the Council written notice thereof at least 90 days prior to the effective date of such cancellation. Upon receipt of such notice the Council shall allocate, in accordance with the provisions of this Agreement, any Common Members for which the petitioning party was the DOEA. Until such time as the Council has completed the reallocation described above; the petitioning Participant shall retain all its rights, privileges, duties and obligations hereunder.

XV. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, provided that in the event a notice of cancellation is received from a Participant that, assuming the effectiveness thereof, would result in there being just one remaining member of the Council, notice to the Commission of termination of this Agreement shall be given promptly upon the receipt of such notice of cancellation, which termination shall be effective upon the effectiveness of the cancellation that triggered the notice of termination to the Commission.

XVI. No Participant nor the Council nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the

[2] For purposes of complaints, they can be reported pursuant to Form U4, Form U5 or RE–3 and any amendments thereto.

other participants or their respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by any or all of the Participants or the Council with respect to any Regulatory Responsibility to be performed by each of them hereunder.

XVII. Pursuant to Section 17(d)(1)(A) of the Securities Exchange Act of 1934 and Rule 17d–2 promulgated pursuant thereto, the Participants join in requesting the Securities and Exchange Commission, upon its approval of this Agreement or any part thereof, to relieve those Participants which are from time to time participants in this Agreement which are not the DOEA as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOEA.

* * * * *

Exhibit A

Rules Enforced Under 17d–2 Agreement

Pursuant to Section II of the Agreement by and among BATS Exchange, Inc. ("BATS"), BOX Options Exchange, LLC ("BOX"), the Chicago Board Options Exchange, Incorporated ("CBOE"), C2 Options Exchange, Incorporated ("C2"), the International Securities Exchange, LLC ("ISE"), Financial Industry Regulatory Authority, Inc. ("FINRA"), Miami International Securities Exchange, LLC ("MIAX"), The NASDAQ Stock Market LLC ("NASDAQ"), NASDAQ OMX BX, Inc. ("BX"), the New York Stock Exchange LLC ("NYSE"), the NYSE MKT LLC ("NYSE MKT"), the NYSE Arca, Inc. ("NYSE ARCA"), [and] the NASDAQ OMX PHLX LLC ("PHLX"), *and Topaz Exchange, LLC ("Topaz")* pursuant to Rule 17d–2 under the Securities Exchange Act of 1934 dated June 21, 2013 (the "Agreement"), a revised list of the current Common Rules of each Participant, as compared to those of FINRA, applicable to the conduct of accounts for Covered Securities is set forth in this Exhibit A.

OPENING OF ACCOUNTS	
NYSE MKT	Rules 411, 921 and 1101.
BATS	Rule 26.2.
BOX	Rule 4020.[1]
CBOE	Rule 9.7.
C2*	CBOE Rule 9.7.
ISE	Rule 608.
FINRA	Rules 2360(b)(16) and 2352.
MIAX	Rule 1307.
NYSE	Rule 721.[2]
Topaz	*Rule 608.*
PHLX	Rule 1024(b) and (c).[3]
NYSE ARCA	Options Rules 9.2(a) and 9.18(b) and Equities Rules 9.18(b) and 8.4.
BX	Chapter XI, Section 9.
NASDAQ	Chapter XI, Section 7.

SUPERVISION	
NYSE MKT	Rules 411, 922 and 1104.
BATS	Rule 26.3.
BOX	Rule 4030.
CBOE	Rule 9.8.
C2	CBOE Rule 9.8.
ISE	Rule 609.
FINRA	Rules 2360(b)(20), 2360(b)(17)(B), 2360(b)(16)(E), 2355 and 2358.
MIAX	Rule 1308.
Topaz	*Rule 609.*
NYSE	N/A.
PHLX	Rule 1025.
NYSE ARCA	Options Rules 9.2(b) and 9.18(d)(2)(G) and Equities Rules 9.18(d)(2)(G) and 8.7.
BX	Chapter XI, Section 10.
NASDAQ	Chapter XI, Section 8.

SUITABILITY	
NYSE MKT	Rules 923 and 1102.
BATS	Rule 26.4.
BOX	Rule 4040.
CBOE	Rule 9.9.
C2	CBOE Rule 9.9.
ISE	Rule 610.
FINRA	Rules 2360(b)(19) and 2353.
MIAX	Rule 1309.
Topaz	*Rule 610.*
NYSE	Rule 723.
PHLX	Rule 1026.
NYSE ARCA	Options Rule 9.18(c) and Equities Rules 9.18(c) and 8.5.
BX	Chapter XI, Section 11.
NASDAQ	Chapter XI, Section 9.

DISCRETIONARY ACCOUNTS	
NYSE MKT	Rules 421, 924 and 1103.
BATS	Rule 26.5.[4]
BOX	Rule 4050.[4]

CBOE	Rule 9.10.
C2	CBOE Rule 9.10.
ISE	Rule 611.
FINRA	Rules 2360(b)(18) and 2354.
MIAX	Rule 1310.
Topaz	*Rule 611.*
NYSE	N/A.
PHLX	Rule 1027.
NYSE ARCA	Options Rule 9.18(e) and Equities Rules 9.18(e) and 8.6.
BX	Chapter XI, Section 12.
NASDAQ	Chapter XI, Section 10.

CUSTOMER COMMUNICATIONS (ADVERTISING)

NYSE MKT	Rules 991 and 1106.
BATS	Rule 26.16.
BOX	Rule 4170.
CBOE	Rule 9.21.[5]
C2	CBOE Rule 9.21.[5]
ISE	Rule 623.[6]
FINRA	Rules 2220 and 2357.
MIAX	Rule 1322.
Topaz	*Rule 623.*[6]
NYSE	N/A.
PHLX	N/A.
NYSE ARCA	Options Rules 9.21(a) and 9.21(b).
BX	Chapter XI, Section 24.
NASDAQ	Chapter XI, Section 22.

CUSTOMER COMPLAINTS

NYSE MKT	Rules 932 and 1105.
BATS	Rule 26.17.
BOX	Rule 4190.
CBOE	Rule 9.23.
C2	CBOE Rule 9.23.
ISE	Rule 625.
FINRA	FINRA Rules 2360(b)(17)(A) and 2356.
MIAX	Rule 1324.
Topaz	*Rule 625.*
NYSE	Rules 732.
PHLX	Rule 1070.
NYSE ARCA	Options Rule 9.18(l) and Equities Rules 9.18(l) and 8.8.
BX	Chapter XI, Section 26.
NASDAQ	Chapter XI, Section 24.

CUSTOMER STATEMENTS

NYSE MKT	Rules 419 and 930.
BATS	Rule 26.7.
BOX	Rule 4070.
CBOE	Rule 9.12.
C2	CBOE Rule 9.12.
ISE	Rules 613.
FINRA	Rule 2360(b)(15).
MIAX	Rule 1312.
Topaz	*Rule 613.*
NYSE	Rule 730.
PHLX	Rule 1032.
NYSE ARCA	Options Rule 9.18(j) and Equities Rule 9.18(j).
BX	Chapter XI, Sections 14.
NASDAQ	Chapter XI, Section 12.

CONFIRMATIONS

NYSE MKT	Rule 925.
BATS	Rule 26.6.
BOX	Rule 4060.[7]
CBOE	Rule 9.11.
C2	CBOE Rule 9.11.
ISE	Rule 612.
FINRA	Rule 2360(b)(12).
MIAX	Rule 1311.
Topaz	*Rule 612.*
NYSE	Rules 725.[8]
PHLX	Rule 1028.
NYSE ARCA	Options Rule 9.18(f) and Equities Rule 9.18(j).

BX	Chapter XI, Section 13.
NASDAQ	Chapter XI, Section 11.

ALLOCATION OF EXERCISE ASSIGNMENT NOTICES

NYSE MKT	Rule 981.
BATS	Rule 23.2.
BOX	Rule 9010.
CBOE	Rule 11.2.
C2	CBOE Rule 11.2.
ISE	Rule 1101.
FINRA	Rule 2360(b)(23)(C).
MIAX	Rule 701.
Topaz	*Rule 1101.*
NYSE	Rule 781.
PHLX	Rule 1043.
NYSE ARCA	Options Rule 6.25(a).
BX	Chapter VII, Section 2.
NASDAQ	Chapter VIII, Section 2.

DISCLOSURE DOCUMENTS

NYSE MKT	Rules 921 and 926.
BATS	Rule 26.10.
BOX	Rule 4100.
CBOE	Rule 9.15.
C2	CBOE Rule 9.15.
ISE	Rule 616.
FINRA	Rule 2360(b)(11).
MIAX	Rule 1315.
Topaz	*Rule 616.*
NYSE	Rule 726(a) and (c).
PHLX	Rules 1024(b)(v), 1029.
NYSE ARCA	Options Rule 9.18(g) and Equities Rule 9.18(g).
BX	Chapter XI, Section 17.
NASDAQ	Chapter XI, Section 15.

BRANCH OFFICES OF MEMBER ORGANIZATIONS

NYSE MKT	Rule 922(d).[9]
BOX	Rule 4010(b).
CBOE	Rule 9.6.
C2	CBOE Rule 9.6.
ISE	Rule 607.
FINRA	Rules 2360(b)(20)(B) and 2355.
MIAX	Rule 1306.
Topaz	*Rule 607.*
NYSE	N/A.
PHLX	N/A.
NYSE ARCA	Options Rule 9.18(m) and Equities Rule 9.18(m).
BX	Chapter XI, Section 8.
NASDAQ	Chapter XI, Section 6.

PROHIBITION AGAINST GUARANTEES

NYSE MKT	Rule 390.
BATS	Rule 26.13.
BOX	Rule 4130.
CBOE	Rule 9.18.
C2	CBOE Rule 9.18.
ISE	Rule 619.
FINRA	Rule 2150(b).
MIAX	Rule 1318.
Topaz	*Rule 619.*
NYSE	Rule 2150(b).
PHLX	Rule 777.
NYSE ARCA	Options Rule 9.1(e).
BX	Chapter XI, Sections 20 and 21.
NASDAQ	Chapter XI, Sections 18 and 19.

SHARING IN ACCOUNTS

NYSE MKT	Rule 390.
BATS	Rule 26.14.
BOX	Rule 4140.
CBOE	Rule 9.18(b).
C2	CBOE Rule 9.18(b).

ISE	Rule 620.[10]
FINRA	Rule 2150(c).
MIAX	Rule 1319.
Topaz	*Rule 620.*[10]
NYSE	Rules 2150(c).
PHLX	N/A.
NYSE ARCA	Options Rule 9.1(f).
BX	Chapter XI, Section 21.
NASDAQ	Chapter XI, Section 19.[11]

REGISTRATION OF ROP

NYSE MKT	Rule 920.
BATS	Rule 17.2(g)(1), (2), (6) and (7).
BOX	Rule 2020(c)(1), (e)(1) and IM–2040–4 and IM–2040–5(b).
CBOE	Rule 9.2.
C2	CBOE Rule 9.2.
ISE	Rule 601.
FINRA	NASD Rules 1022(f) & IM–1022–1.
MIAX	Rule 1301.
Topaz	*Rule 601.*
NYSE	N/A.
PHLX	Rule 1024(a)(i).
NYSE ARCA	Options Rule 9.26 and Equities Rule 9.26.
BX	Chapter XI, Section 2.
NASDAQ	Chapter XI, Section 2.

CERTIFICATION OF REGISTERED PERSONNEL

NYSE MKT	Rule 920.
BATS	Rule 2.5 Interpretation .01(c) and 11.4(e).
BOX	IM–2040–3.
CBOE	Rule 9.3.
C2	CBOE Rule 9.3.
ISE	Rule 602.
FINRA	NASD Rule 1032(d).
MIAX	Rule 1302.
Topaz	*Rule 602.*
NYSE	N/A.
PHLX	Rule 1024.
NYSE ARCA	Options Rule 9.27(a).
BX	Chapter XI, Section 3.
NASDAQ	Chapter XI, Section 3.

[1] FINRA shall not have any Regulatory Responsibility regarding the requirement for designation of Senior Options Principal and Compliance Options Principal.

[2] FINRA shall not have any Regulatory Responsibility regarding opening short uncovered option accounts requirements.

[3] FINRA shall not have any Regulatory Responsibility regarding foreign currency option requirements specified in any of the PHLX rules in this Exhibit A.

[4] FINRA shall not have any Regulatory Responsibility to enforce this rule as to time and price discretion in institutional accounts. In addition FINRA shall not have any Regulatory Responsibility regarding BOX Rule 4050(a)(2).

[5] FINRA shall not have any Regulatory Responsibility regarding CBOE's and C2's requirements to the extent that a customer would meet FINRA's definition of Institutional Investor and Institutional Sales Material but would not meet the requirements for such definitions in under CBOE's and C2's rule.

[6] FINRA shall not have any Regulatory Responsibility regarding ISE's *and Topaz's* requirements to the extent that a customer would meet FINRA's definition of Institutional Investor and Institutional Sales Material but would not meet the requirements for such definitions in under such rule. In addition, FINRA shall not have any Regulatory Responsibility regarding ISE's *and Topaz's* requirements regarding approval of all market letters.

[7] FINRA shall not have any Regulatory Responsibility regarding the requirement in confirmations to distinguish between BOX option transactions and other transactions in option contracts.

[8] FINRA shall not have any Regulatory Responsibility regarding the requirement in confirmations to distinguish between NYSE option transactions and other transactions in option contracts.

[9] FINRA shall only have Regulatory Responsibility for the first paragraph and shall not have any Regulatory Responsibility regarding the requirements for debt options.

[10] FINRA shall not have any Regulatory Responsibility regarding ISE's *and Topaz's* requirements to the extent its rule does not contain an exception to permit sharing in the profits and losses of an account.

[11] FINRA shall not have any Regulatory Responsibility regarding NASDAQ's requirements to the extent such rules do not contain an exception addressing immediate family.

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 S7–966 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 S7–966. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA and Topaz. 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 S7–966 and should be submitted on or before August 22, 2013.

V. Discussion

The Commission continues to believe that the proposed plan is an achievement in cooperation among the SRO participants. The Plan, as amended, will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related sales practice matters that would otherwise be performed by multiple SROs. The plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the plan, the plan promotes, and will continue to promote, investor protection.

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add Topaz as an SRO participant. By declaring it effective today, the amended Plan can become effective and be implemented without undue delay.[20] The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.[21] Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. S7–966.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan, as amended by and between FINRA and Topaz, filed with the Commission pursuant to Rule 17d–2 on June 21, 2013 is hereby approved and declared effective.

It is further ordered that those SRO participants that are not the DOEA as to a particular common member are relieved of those regulatory responsibilities allocated to the common member's DOEA under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18477 Filed 7–31–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70048; File No. SR–FINRA–2013–031]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Participation on the Alternative Display Facility

July 26, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 18, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rules 6271 and 6272 regarding the requirements for members seeking registration as FINRA Alternative Display Facility ("ADF") Market Participants.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

(1) ADF Background

The ADF is a quotation collection and trade reporting facility. It provides ADF Market Participants (i.e., ADF-registered market makers or electronic communications networks ("ECNs"))[4] the ability to post quotations or display orders in NMS stocks and provides all member firms that participate in the ADF the ability to view quotations and report transactions in NMS stocks to the Securities Information Processors ("SIPs") for consolidation and dissemination of data to vendors and ADF Market Participants. In addition, the ADF delivers real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by Regulation NMS.[5]

The ADF was initially approved by the Commission on July 24, 2002, in

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[20] On July 26, 2013, the Commission granted Topaz's application for registration as a national securities exchange. *See* Securities Exchange Act Release No. 70050 (July 26, 2013) (File No. 10–209).

[21] *See supra* note 19 (citing to Securities Exchange Act Release No. 68363).

[22] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* FINRA Rule 6220(a)(3).

[5] *See* 17 CFR 242.600.

connection with the SEC's approval of SuperMontage and Nasdaq's registration as a national securities exchange.[6] At that time, the ADF was approved for Nasdaq-listed securities for a nine-month pilot period to provide FINRA members with an alternative to the Nasdaq systems for reporting quotations and transactions in Nasdaq UTP Plan securities. On September 28, 2006, the SEC approved amendments to extend the ADF's functionality to all NMS stocks.[7] The ADF was approved on a permanent basis for NMS stocks on January 26, 2007.[8]

(2) Current ADF Registration Requirements

Similar to rules applicable to exchange market makers, ADF Market Participants (i.e., either Registered Reporting ADF Market Makers or Registered Reporting ADF ECNs)[9] must register as ADF market makers or ECNs before making a market or displaying orders on the ADF.[10] Members are required to register as ADF Market Participants by applying to FINRA, which includes certifying the member's good standing with FINRA and demonstrating compliance with the net capital and other financial responsibility provisions of the Act.[11] Before displaying quotations or orders on the ADF, ADF Trading Centers[12] must also execute and comply with a Certification Record to certify the ADF Trading Center's compliance efforts with its obligations under Regulation NMS.[13]

(3) Status of the ADF and Other FINRA Transparency Facilities

Since the ADF was launched in 2002, no member has registered with FINRA as a Registered Reporting ADF Market Maker, and there have been four members that, at various points in time, were registered as Registered Reporting ADF ECNs.[14] Since the second quarter of 2010, there have been no ADF Market Participants.

Beginning in 2011, FINRA began the process of updating and migrating all of its transparency facilities (including the FINRA Trade Reporting Facilities, the Trade Reporting and Compliance Engine ("TRACE"), and the ADF) off of independent technology platforms and onto a new, single, updated technology platform known as the Multi Product Platform ("MPP").[15] Due to the enormous scope of this project, FINRA was required to prioritize and migrate each facility sequentially. Because there have been no ADF Market Participants since March of 2010, the migration of the ADF onto MPP was scheduled to be undertaken last, which would result in the new ADF base platform being migrated to MPP and ready for onboarding of a new ADF Market Participant no sooner than mid-2014. However, even after the ADF is migrated to MPP, FINRA will only have the ADF base infrastructure completed; further specific build-outs, estimated to take approximately six months, are necessary to accommodate an individual ADF Market Participant seeking to quote on or report trades to the ADF. To determine the specific build-outs necessary to support a new ADF Market Participant, a member would need to provide FINRA with estimated volume projections of quotation and trade reporting activity that would flow through the ADF.

Recently, several members have approached FINRA to discuss the possibility of becoming an ADF Market Participant, and some have asked whether the migration of the ADF to MPP could be accelerated. As discussed more fully below, the timeframe to bring the new ADF base infrastructure live can be accelerated in the MPP rollout schedule. However, to do so necessarily means delaying the migration of other FINRA facilities onto MPP, reallocating resources, shifting scheduling, and implementing ADF-specific enhancements and hosting in the new technology environment—all of which impose significant costs on FINRA, including prolonging the substantially higher expenses associated with the legacy OTC Equity Trade Reporting Facility ("ORF") infrastructure (i.e., legacy ORF support costs are significantly higher than the expected costs of supporting the ORF in the new MPP technology environment).

In addition to the costs of accelerating the migration of the ADF onto MPP, bringing the new ADF base infrastructure live in the MPP technology environment to accommodate an ADF Market Participant will impose significant direct costs on FINRA related to building and testing the new ADF component on the MPP infrastructure and also related to paying for SIP capacity usage allocations. Consuming real time data feeds for ADF system price validation and other purposes will impose additional costs. General staff labor, support, and testing will impose related costs on FINRA as well. In aggregate, the MPP component re-sequencing necessary to accommodate ADF acceleration and the costs associated with bringing the ADF base infrastructure live will conservatively cost FINRA in excess of $3 million.

If the ADF MPP launch is accelerated, FINRA believes an ADF Market Participant could be live on the ADF by the end of 2013. If the ADF MPP launch is not accelerated, FINRA intends to have the ADF base infrastructure prepared for a participant by mid-2014, and a participant could be live on the ADF at the earliest six months after the base layer functionality is complete (i.e., approximately late 2014 or early 2015).

(4) Proposed Amendments to the ADF Rules

The proposed rule change would consolidate into a single rule (FINRA Rule 6271) the existing requirements that a member must meet to register as an ADF Market Participant and introduce new requirements that potential ADF Market Participants must meet to participate on the ADF. These new requirements are intended to mitigate the substantial financial risks to FINRA, discussed above, of accelerating the migration of the ADF onto MPP or of building out the ADF base platform to accommodate an ADF Market Participant.

As amended by the proposed rule change, FINRA Rule 6271 would specify that a member seeking registration as an ADF Market Participant must (i) file an application with FINRA, (ii) execute the Certification Record, and (iii) execute a Participant Agreement. Rule 6271(a)(1) would require a potential ADF Market Participant to file an application with FINRA in which the member:

[6] See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002); see also NASD *Notice to Members* 02–45 (August 2002).

[7] See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006); see also NASD *Notice to Members* 06–67 (November 2006).

[8] See Securities Exchange Act Release No. 55181 (January 26, 2007), 72 FR 5093 (February 2, 2007).

[9] See FINRA Rule 6220(a)(3), (12), (13).

[10] See FINRA Rule 6271.

[11] See FINRA Rule 6271(b).

[12] An "ADF Trading Center" is a Registered Reporting ADF Market Maker or Registered Reporting ADF ECN that is a "Trading Center," as defined in Rule 600(b)(78) of SEC Regulation NMS, and that is certified to display its quotations or orders through the ADF. See FINRA Rule 6220(a)(4); see also 17 CFR 242.600(b)(87).

[13] See FINRA Rules 6220(a)(5), 6250(a)(7); NASD *Notice to Members* 06–67 (November 2006); see also SR–NASD–2006–091, Exhibit 3.

[14] The four former Registered Reporting ADF ECNs are: (i) LavaFlow, (ii) Instinet, (iii) Track Data Securities Corp, and (iv) Direct Edge. See *www.finra.org/Industry/Complionce/MorketTronsporency/ADF/Porticipants/*.

[15] FINRA's TRACE facility for reporting transactions in fixed-income securities has been migrated to MPP. See *Regulotory Notice* 11–53 (November 2011). The FINRA/NYSE TRF was migrated onto MPP as of October 1, 2012.

- Specifies whether the member is seeking registration in Nasdaq and/or CQS securities;
- Certifies the member's good standing with FINRA;
- Demonstrates compliance with the net capital and other financial responsibility provisions of the Exchange Act;
- Provides FINRA with reasonable monthly projections of the volume of data that the member anticipates submitting to the ADF;
- Agrees to submit the ADF Deposit Amount [16] in five equal installments into an escrow account at a bank mutually acceptable to the member and FINRA on a timetable as agreed to by the member and FINRA;
- Agrees that failing to submit quotes and report trades to the ADF for a term of two years will result in the forfeiture of some or all of the ADF Deposit Amount;
- Agrees that failing to submit 75% of both its quote and trade volume in NMS stocks will result in the forfeiture of some or all of the ADF Deposit Amount; and
- Agrees to the other ADF Deposit Terms, which are the same for all members and are described below.

The first three requirements of the application, which specify whether the member is seeking registration in Nasdaq and/or CQS securities, certify the member's good standing with FINRA, and demonstrate compliance with the net capital and other financial responsibility provisions of the Act, are the same as the requirements currently in Rule 6271(b). Members who are Trading Centers, as defined in Rule 600(b)(78) of SEC Regulation NMS,[17] are also currently required to execute and comply with an ADF Certification Record, in which the member agrees, among other things, to abide by the requirements of Regulation NMS.[18] The proposed rule change would add this existing requirement into Rule 6271 so that all registration requirements are located in a single rule.[19]

The proposed rule change would add several new requirements into the application that members must complete to become ADF Market Participants. The new provisions require that a member seeking to become an ADF Market Participant: (i) Provide FINRA with reasonable monthly projections of the volume of data that the member anticipates submitting to the ADF; (ii) agree to submit the ADF Deposit Amount in five equal installments into an escrow account at a bank mutually acceptable to the member and FINRA on a timetable as agreed to by the member and FINRA; (iii) agree that failing to submit quotes and report trades to the ADF for a two-year period will result in the forfeiture of some or all of the ADF Deposit Amount; (iv) agree that failing to submit 75% of the member's trade and quote volume in NMS stocks to the ADF will result in the forfeiture of some or all of the ADF Deposit Amount; and (v) agree to the other ADF Deposit Terms set forth in the rule.

The new provisions are intended to ensure that FINRA can recover a portion of the costs associated with accelerating the migration of the ADF to MPP and bringing a new ADF Market Participant onto the ADF if the ADF Market Participant fails to participate on the ADF as anticipated. As noted above, FINRA is currently in the process of creating a new ADF platform as part of its efforts to migrate all FINRA facilities onto MPP. Under the current timeframe, the ADF base infrastructure is scheduled to be available on the new platform by no sooner than mid-2014; however, it is possible for FINRA to rearrange the scheduling priority and have the ADF available for new ADF Market Participants potentially as early as late-2013. As described above, altering the timetable imposes significant costs on FINRA associated with delaying the retirement of other products, diverting effort and resources from the current MPP roll-out schedule, and delaying the termination of other product legacy fee structures. Moreover, as noted above, even after the base infrastructure for the ADF is otherwise completed, the transition of an ADF Market Participant onto the MPP infrastructure will impose substantial development costs and staff effort costs on FINRA. The new provisions set out in the proposed rule change are intended to ensure that FINRA will be able to recover a portion of the costs incurred as a result of accommodating a member's request to accelerate the migration of the ADF to MPP or building out the ADF platform to accommodate the member's volume projections should the member fail to participate on the ADF as anticipated.

Pursuant to the proposed rule change, potential ADF Market Participants must provide FINRA with reasonable monthly projections of the volume of data that the member anticipates submitting to the ADF. In addition, the potential ADF Market Participant must agree to quote on and report trades to the ADF for a two-year term and to submit at least 75% of both its quote and trade volume to the ADF. If the ADF Market Participant fails to meet one of these obligations, it will forfeit some or all of the ADF Deposit Amount. These requirements serve two primary purposes: (1) They provide FINRA the information necessary to ensure the ADF can accommodate the volume of data the member anticipates submitting to the ADF and (2) they establish the basis upon which FINRA will be safeguarded by ensuring that the potential ADF Market Participant will bear some of the financial responsibility should FINRA undertake the efforts and incur the costs necessary to bring the ADF Market Participant onto the ADF, only to have the ADF Market Participant fail to participate at all or at the level agreed to.

To ensure the volume commitments are met, the proposed rule change requires potential ADF Market Participants to agree to submit an "ADF Deposit Amount" in five equal installments into an escrow account at a bank mutually acceptable to the member and FINRA on a timetable as agreed to by the member and FINRA. The proposed rule change defines the "ADF Deposit Amount" as $500,000 if the member requests that FINRA accelerate the ADF migration or if the member begins quoting on or reporting trades to the ADF within 90 calendar days after an ADF Market Participant that requested acceleration of the ADF migration begins quoting on or reporting trades to the ADF. For all other ADF Participants, the ADF Deposit Amount is $250,000.

FINRA is proposing to establish the two separate levels of the ADF Deposit Amount referenced above in order to reflect the differing costs FINRA will incur under either of two scenarios. Because FINRA will incur significantly higher costs if the migration of the ADF is accelerated at a member's request, FINRA has proposed an ADF Deposit Amount of $500,000 should the member request such acceleration. Additionally, to ensure that ADF Market Participants benefitting from an acceleration of the ADF onto MPP are treated equally, FINRA proposes to charge $500,000 to any member that begins quoting on or reporting trades to the ADF within ninety (90) days after an existing ADF Market Participant that requested acceleration of the ADF migration begins quoting on or reporting trades to the ADF. FINRA believes that this

[16] As described more fully below, the ADF Deposit Amount is $250,000; however, the amount will be increased to $500,000 under certain circumstances.

[17] 17 CFR 242.600(b)(78).

[18] *See* FINRA Rules 6220(a)(5), 6250(a)(7).

[19] The proposed rule change also moves the provision requiring registration in order to participate on the ADF from Rule 6271 to Rule 6272 with no substantive change.

amount, which, as noted above, is substantially lower than the actual costs FINRA will incur by amending the current MPP migration schedule reflects an appropriate balance between ensuring that FINRA is able to recover a portion of the costs associated with an accelerated migration while not representing a significant financial barrier to participation on the ADF, particularly since members can potentially recover 100% of the ADF Deposit Amount over the two-year term and up to 80% of the ADF Deposit Amount in the first quarter of their participation on the ADF through the credit structure for market data revenue described below. Moreover, FINRA believes that permitting potential participants to earn back the entire deposit amount is more equitable than charging potential ADF Market Participants a one-time payment without the ability to recover some, or all, of the amount.

The proposed rule change would reduce the ADF Deposit Amount to $250,000 if the member has not requested an accelerated migration or does not become an ADF Market Participant within 90 days after another ADF Market Participant that had requested acceleration (i.e., paid an escrow amount of $500,000) begins quoting on or reporting trades to the ADF. The lower amount reflects the fact that the costs to FINRA are significantly reduced under these circumstances because the ADF base platform will have already been migrated to MPP. However, although reduced, FINRA anticipates such costs will still be significantly higher than the $250,000 deposit amount in such a scenario based on costs related to possible additional hardware and software deployments, paying for SIP capacity usage allocations, and costs related to general staff labor, support and testing.

FINRA notes that the ADF Deposit Amount will be the same for any member seeking to become an ADF Market Participant, regardless of the member's overall anticipated quotation and trading volume. Because the costs incurred by FINRA to migrate the ADF and to build it out do not vary significantly as a result of the volume of the ADF Market Participant's trading activity, FINRA believes it is fair and equitable to require each prospective ADF Market Participant to submit the same amount into escrow.

The proposed rule change includes several required terms for the handling of the ADF Deposit Amount (referred to as "ADF Deposit Terms"), including the methods for ADF Market Participants to recover some or all of the ADF Deposit Amount as a result of meeting its participation commitments (or due to FINRA's inability to meet its obligations) and methods for FINRA to receive the funds if commitments are not met. The proposed rule change retains some flexibility in the precise terms of any agreements between FINRA and potential ADF Market Participants to ensure that any unique circumstances can be addressed by permitting de minimis additions or qualifications to the ADF Deposit Terms, provided both FINRA and the member agree to those additions or qualifications.

The proposed rule change includes a means for ADF Market Participants to earn back the ADF Deposit Amount. Specifically, the proposed rule change provides that for every $1.00 received by FINRA from the National Market System ("NMS") SIP data plans associated with ADF activity attributable, as determined in FINRA's sole discretion, to the member's trading activity on the ADF, the member shall receive $0.50 out of the escrow account. Thus, in essence, an ADF Market Participant will recover an amount equal to one-half of the SIP market data revenue generated by the ADF Market Participant's trading activity on the ADF. The ADF Market Participant's recovery would be paid on a quarterly basis after FINRA has received its quarterly disbursement from the NMS SIP data plans.[20] This provides for a reasonable opportunity for FINRA to recover some of its costs of re-sequencing the MPP rollout by virtue of the SIP market data revenue split.

In addition, the proposed rule change provides that the ADF Market Participant is only entitled to receive an amount up to 80% of the ADF Deposit Amount pursuant to this provision and is not entitled to the remaining 20% of the ADF Deposit Amount until the end of the two-year term, assuming its trading activity has earned the requisite market data revenue from the SIPs. To the extent that the ADF Market Participant opts to stop participating on the ADF before the end of the two-year term or stop meeting its volume commitment before the end of the two-year term (i.e., chooses to quote or trade through another trading venue), it would be free to do so but could potentially forfeit some or all of the remaining ADF Deposit Amount.

If FINRA does not make the ADF available within nine months of an ADF Market Participant's first deposit of the ADF Deposit Amount into the escrow account, one-fifth of the ADF Deposit Amount will be released from such escrow account to the ADF Market Participant. An additional one-fifth of the initial ADF Deposit Amount will be released to the ADF Market Participant every month thereafter that FINRA has not made the ADF available, until all funds have been released from such escrow account.

The proposed rule change also includes provisions designed to protect FINRA if a member requests that the ADF be migrated to MPP on an accelerated basis or if FINRA undertakes efforts to build out the system to support the member, and in either instance, the member fails to participate. The proposed rule change provides that one-fifth of the ADF Deposit Amount shall be released to FINRA if, in any calendar month beginning with the fourth calendar month following certification of the ADF Market Participant to quote on or report trades to the ADF, the ADF Market Participant fails to submit 75% of the member's quoting and trade reporting activity to the ADF. In addition, if a member is sold (other than a sale to an entity that would otherwise meet the FINRA qualifications as an ADF Market Participant), goes out of business, otherwise does not meet its obligations, or fails to complete the process for becoming an ADF Market Participant, the member will forfeit the ADF Deposit Amount, or any lesser amount remaining in the escrow account, and all funds will be released from such escrow account to FINRA.

Finally, the proposed rule change would make clear that a member would become an ADF Market Participant only after (i) the member received a notice of approval from FINRA that its application was accepted, (ii) the member executed the Certification Record, and (iii) FINRA executed the Participant Agreement.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 30 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that FINRA rules must be designed to

[20] Charges or credits as a result of SIP audit recoveries, which typically are *de minimis* as compared to the overall revenue paid, would not be included in the calculation.

[21] 15 U.S.C. 78*o*–3(b)(6).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and Section 15A(b)(5) of the Act,[22] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change establishes an equitable and transparent method for registering members for participation on the ADF. FINRA also believes that requiring individual members to ensure the recoupment of a portion of the specific costs FINRA incurs to accommodate their request to accelerate the migration of the ADF or use the ADF is a fair and equitable way to ensure that the members responsible for those costs are accountable should they not participate on the ADF to the extent anticipated.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that members that choose to use the ADF should bear responsibility for costs incurred in accelerating the ADF's migration or in otherwise building out the ADF. The decision to request acceleration or to use the ADF to display quotations or orders lies solely with the member. Further, members are able to recover the full amount of their ADF Deposit Amount by meeting the terms of the agreement. Although a member would be required to provide a commitment to quote on and report trades to the ADF, it always retains the option to leave the ADF or choose to quote or trade through another trading venue, but must bear certain financial consequences associated with that choice.

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 self-regulatory organization 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–FINRA–2013–031 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–FINRA–2013–031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2013–031 and should be submitted on or before August 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18470 Filed 7–31–13; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78*o*–3(b)(5).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70053; File No. 4–663]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and Topaz Exchange, LLC

July 26, 2013.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on June 21, 2013, Topaz Exchange, LLC ("Topaz") and the Financial Industry Regulatory Authority, Inc. ("FINRA") (together with Topaz, the "Parties") filed with the Securities and Exchange Commission ("Commission" or "SEC") a plan for the allocation of regulatory responsibilities, dated June 21, 2013 ("17d–2 Plan" or the "Plan"). The Commission is publishing this notice to solicit comments on the 17d–2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[4] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[5] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[8] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[9] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of both Topaz and FINRA.[10] Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the "Topaz Certification of Common Rules," referred to herein as the "Certification") that lists every Topaz rule for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to Topaz members that are also members of FINRA and the associated persons therewith ("Dual Members").

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of Topaz that are substantially similar to the applicable rules of FINRA,[11] as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification ("Common Rules"). In the event that a Dual Member is the subject of an investigation relating to a transaction on Topaz, the plan acknowledges that Topaz may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.[12]

Under the Plan, Topaz would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving Topaz's own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any Topaz rules that are not Common Rules.[13]

The text of the proposed 17d–2 Plan is as follows:

Agreement Between Financial Industry Regulatory Authority, Inc. and Topaz Exchange, LLC Pursuant to Rule 17d–2 Under The Securities Exchange Act of 1934

This Agreement, by and between Financial Industry Regulatory Authority, Inc. ("FINRA") and Topaz Exchange, LLC ("Topaz"), is made this 21st day of June, 2013 (the "Agreement"), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17d–2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and Topaz may be referred to individually as a "party" and together as the "parties."

Whereas, FINRA and Topaz desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and Topaz desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the "SEC" or "Commission") for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and Topaz hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) "*Topaz Rules*" or "*FINRA Rules*" shall mean the rules of Topaz or FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

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[5] 15 U.S.C. 78q(d)(1).

[6] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[8] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[9] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[10] The proposed 17d–2 Plan refers to these common members as "Dual Members." *See* Paragraph 1(c) of the proposed 17d–2 Plan.

[11] *See* paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). *See also* paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either Topaz rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that Topaz shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

[12] *See* paragraph 6 of the proposed 17d–2 Plan.

[13] *See* paragraph 2 of the proposed 17d–2 Plan.

(b) "*Common Rules*" shall mean the Topaz Rules that are substantially similar to the applicable FINRA Rules in that examination for compliance with such rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule.

(c) "*Dual Members*" shall mean those Topaz members that are also members of FINRA and the associated persons therewith.

(d) "*Effective Date*" shall have the meaning set forth in paragraph 13.

(e) "*Enforcement Responsibilities*" shall mean the conduct of appropriate proceedings, in accordance with the FINRA Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of pertinent laws, rules or regulations have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the FINRA's Code of Procedure and sanctions guidelines.

(f) "*Regulatory Responsibilities*" shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. Regulatory and Enforcement Responsibilities. FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, Topaz furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA Rule (the "Certification"). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the Topaz Rules or FINRA Rules, Topaz shall submit an updated list of Common Rules to FINRA for review which shall add Topaz Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete Topaz Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be Topaz Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibilities" does not include, and Topaz shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following (collectively, the "Retained Responsibilities"):

(a) Surveillance and enforcement with respect to trading activities or practices involving Topaz's own marketplaces, including without limitation Topaz's Rules relating to the rights and obligations of market makers;

(b) Registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);

(c) Discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) Any Topaz Rules that are not Common Rules.

3. Dual Members. Prior to the Effective Date, Topaz shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to Topaz by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide Topaz with ninety (90) days advance written notice in the event FINRA decides to impose any charges to Topaz for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, Topaz shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. Reassignment of Regulatory Responsibilities. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or effective industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. Notification of Violations. In the event that FINRA becomes aware of apparent violations of any Topaz Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify Topaz of those apparent violations for such response as Topaz deems appropriate. In the event Topaz becomes aware of apparent violations of the Common Rules, discovered pursuant to the performance of the Retained Responsibilities, Topaz shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of all the Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on Topaz, Topaz may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance. FINRA shall make available to Topaz all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish Topaz any information it obtains about Dual Members which reflects adversely on their financial condition. It is understood that such information is of an extremely sensitive nature and, accordingly, Topaz acknowledges and agrees to take all reasonable steps to maintain its confidentiality. Topaz shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

8. Dual Member Applications.

(a) Dual Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the Topaz Rules and FINRA Rules or associated with Dual Members thereof. Upon request, FINRA shall advise

Topaz of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the Topaz Rules and FINRA Rules.

(b) Dual Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep Topaz advised of its actions in this regard for such subsequent proceedings as Topaz may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination: (i) Meets the Topaz requirements for general membership or for specified categories of membership or participation in Topaz, such as (A) Primary Market Maker Membership ("PMM"); (B) Competitive Market Maker Membership ("CMM"); (C) Electronic Access Membership ("EAM") (or any similar type of Topaz membership or participation that is created after this Agreement is executed); or (ii) meets the Topaz requirements to be associated with, or employed by, a Topaz member or participant in any capacity, such a Designated Trading Representative ("DTR") (or any similar type of participation, employment category or title, or associate-person category or class that is created after this Agreement is executed). FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of Topaz, or a person associated with, or requesting association with, a member or participant of Topaz.

9. Branch Office Information. FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise Topaz of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

10. Customer Complaints. Topaz shall forward to FINRA copies of all customer complaints involving Dual Members received by Topaz relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by Topaz or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party (or such shorter time as may be agreed by the parties), except as provided in paragraph 4.

13. Effective Date. This Agreement shall be effective upon approval of the Commission.

14. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, Topaz and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

15. Separate Agreement. This Agreement is wholly separate from (1) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among BATS Exchange, Inc., BOX Options Exchange, LLC, the Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, the New York Stock Exchange, LLC, the NYSE MKT LLC, the NYSE Arca Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., and the NASDAQ OMX PHLX, LLC approved by the Commission on December 5, 2012 involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants or (2) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among NYSE MKT LLC, BATS Exchange, Inc., BOX Options Exchange, LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc. and Miami International Securities Exchange, LLC, approved by the Commission on December 5, 2012 involving options-related market surveillance matters and such agreements as may be amended from time to time.

16. Notification of Members. Topaz and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

17. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

18. Limitation of Liability. Neither FINRA nor Topaz nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or Topaz and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or Topaz with respect to any of the responsibilities to be performed by each of them hereunder.

19. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA and Topaz join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve Topaz of any and all

responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

In witness whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

By _____

Name:
Title:

TOPAZ EXCHANGE LLC

By _____

Name:
Title:

EXHIBIT 1

TOPAZ CERTIFICATION OF COMMON RULES

Topaz hereby certifies that the requirements contained in the rules listed below for Topaz are identical to, or substantially similar to, the comparable FINRA Rules or SEC Rules identified.

Topaz rule	FINRA or SEC rule [1]
408(a)(1) Prevention of the Misuse of Material, Nonpublic Information	Section 15(f) of the Securities Exchange Act of 1934.
409 Disciplinary Action [2]	FINRA Rule 4530(a)(1)(A) and (2) Reporting Requirements.
604 Continuing Education for Registered Persons	FINRA Rule 1250 Continuing Education Requirements.
614 Statements of Financial Condition to Customers	Rule 17a–5 of the Securities Exchange Act of 1934.
622 Transfer of Accounts	FINRA rule 11870 Customer Account Transfer Contracts.
626 Telephone Solicitation	FINRA Rule 3230 Telemarketing.
1400(a) Maintenance, Retention, and Furnishing of Books, Records and Other Information [3].	FINRA Rule 4511(a) Books and Records—Requirements.

[1] Topaz will be responsible for any significant differences between its rules and the comparable FINRA rule identified, until such time amendments to such rule(s) may be approved.

[2] FINRA shall not have Regulatory Responsibilities regarding the requirement to notify Topaz; responsibility for such requirement remains with Topaz.

[3] FINRA shall not have Regulatory Responsibilities regarding the requirement to "keep current and preserve such books and records as the Exchange may prescribe;" responsibility for such requirement remains with Topaz.

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act [14] and Rule 17d–2 thereunder,[15] after August 16, 2013, the Commission may, by written notice, declare the plan submitted by Topaz and FINRA, File No. 4–663, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d–2 Plan and to relieve Topaz of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number 4–663 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–663. 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of Topaz and FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–663 and should be submitted on or before August 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18476 Filed 7–31–13; 8:45 am]

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[14] 15 U.S.C. 78q(d)(1).

[15] 17 CFR 240.17d–2.

[16] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70047; File Nos. SR–NYSE–2013–21; SR–NYSEMKT–2013–25]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes Amending NYSE Rule 104 and NYSE MKT Rule 104—Equities, as Modified by Amendment Nos. 1, To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers, To Make Exchange Systems Available to DMMs That Would Provide DMMs With Certain Market Information, To Amend the Exchanges' Rules Governing the Ability of DMMs To Provide Market Information to Floor Brokers, and To Make Conforming Amendments to Other Rules

July 26, 2013.

I. Introduction

On April 9, 2013, the New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT") (collectively, the "Exchanges") each 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 ("Proposals") to amend certain of their respective rules relating to Designated Market Makers ("DMMs")[3] and Floor brokers.

The Proposals were published for comment in the **Federal Register** on April 29, 2013.[4] The Commission received two comment letters on the NYSE proposal.[5] On June 11, 2013, the Commission extended the time period in which to either approve, disapprove, or to institute proceedings to determine whether to disapprove the Proposals, to July 26, 2013.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the Proposals.

II. Background

The Proposals seek to amend the Exchanges' rules in several ways. First, the Exchanges propose to codify certain trading floor functions that may be performed by DMMs. Second, the Exchanges propose to allow DMMs to access Exchange systems that would provide DMMs with additional order information about the securities in which they are registered. Third, the Exchanges propose to make certain conforming amendments to their rules to reflect the additional order information that would be available to DMMs through Exchange systems, and to specify what information about Floor broker agency interest files ("e-Quotes") is available to the DMM. Finally, the Exchanges propose to modify the terms under which DMMs would be permitted to provide market information to Floor brokers and others.[7]

A. Trading Floor Functions

The Exchanges propose to codify certain traditional Trading Floor functions that were formerly performed by specialists that are now performed by DMMs, and which were described in each SRO's respective Floor Official Manual.[8] The proposed rules would specify four categories of trading floor functions that DMMs could perform: (1) Maintaining order among Floor brokers manually trading at the DMM's assigned panel, including managing trading crowd activity and facilitating Floor broker executions at the post;[9] (2) facilitating Floor broker interactions, including either participating as a buyer or seller, and appropriately communicating to Floor brokers the availability of other Floor broker contra-side interest;[10] (3) assisting Floor

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Rule 98(b)(2). "DMM unit" means any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of a member organization that (i) has been approved by NYSE Regulation pursuant to section (c) of NYSE Rule 98, (ii) is eligible for allocations under NYSE Rule 103B as a DMM unit in a security listed on the Exchange, and (iii) has met all registration and qualification requirements for DMM units assigned to such unit. The term "DMM" means any individual qualified to act as a DMM on the floor of the Exchange under NYSE Rule 103. *See also* NYSE MKT Equities Rule 2(i). Rule 2(i) defines the term "DMM" to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. NYSE MKT Equities Rule 2(j) defines the term "DMM unit" as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE MKT Equities Rule 98.

[4] See Securities Exchange Act Release No. 69427 (April 23, 2013), 78 FR 25118 (SR–NYSE–2013–21) ("NYSE Notice"); Release No. 69428 (April 23, 2013), 78 FR 25102 (SR–NYSEMKT–2013–25). On April 18, 2013, the Exchanges filed Partial Amendment No. 1 to the Proposals. The purpose of this amendment was to file the Exhibit 3 which was not included in the April 9, 2013 filings.

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Daniel Buenza, Lecturer in Management, London School of Economics and Yuval Millo, Professor of Social Studies of Finance, University of Leicester, dated May 20, 2013 ("LSE Letter"); Letter to Commission, from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated May 14, 2013 ("Angel Letter"). Although the comment letters were only explicitly directed to the NYSE proposal, the NYSE and NYSE MKT proposals are essentially identical for relevant purposes. As such, this order references both Proposals when discussing the comment letters.

[6] *See* Securities Exchange Act Release No. 69736, 78 FR 36284 (June 17, 2013) (SR–NYSE–2013–21); Release No. 69733, 78 FR 36284 (SR–NYSEMKT–2012–25) (June 17, 2013).

[7] On October 31, 2011, NYSE and NYSE Amex LLC (the predecessor entity of NYSE MKT) ("NYSE Amex") each filed with the Commission proposed rule changes to amend Rule 104 (the "2011 Proposals") that proposed largely identical changes to the relevant rules as the instant Proposals. The 2011 Proposals were published for comment in the **Federal Register** on November 17, 2011. *See* Securities Exchange Act Release Nos. 65735 (November 10, 2011), 76 FR 71405 (SR–NYSEAmex–2011–86) ("NYSE Amex Notice") and 65736 (November 10, 2011), 76 FR 71399 (SR–NYSE–2011–56) ("NYSE Notice"). The Commission received no comment letters on the Proposals. On December 22, 2011, the Commission extended the time period to February 15, 2012, in which to approve the 2011 Proposals, disapprove the 2011 Proposals, or institute proceedings to determine whether to approve or disapprove the 2011 Proposals. See Securities Exchange Act Release No. 66036, 76 FR 82011 (December 29, 2011). The Commission received no comment letters on the 2011 Proposals during the extension. On February 15, 2012, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the 2011 Proposals. *See* Securities Exchange Act Release No. 66397, 77 FR 10586 (February 22, 2012). The Commission received six comment letters supporting the 2011 Proposals after instituting proceedings. After the Commission issued a notice of designation of longer period for Commission action on May 14, 2012, see Securities Exchange Act Release No. 66981, 77 FR 29730 (May 18, 2012), the Commission disapproved the 2011 Proposals on July 13, 2012. *See* Securities Exchange Act Release No. 67437, 77 FR 42525 (July 13, 2012) ("Disapproval Order").

[8] *See, e.g., NYSE 2004 Floor Official Manual, Market Surveillance June 2004 Edition*, Chapter Two, Section I. at 7 ("specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities"), Section I.B.3. at 10–11 ("[i]n opening and reopening trading in a listed security, a specialist should . . . [s]erve as the market coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate" and "[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary"), Section I.B.4. at 11 ("In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should proceed as follows . . . [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner."), and Section I.B.5. at 12 (A specialist should "[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors."). Relevant excerpts of the *2004 Floor Official Manual* are attached as Exhibit 3 of this filing.

[9] See *id.* at Section I.A. at 7 ("specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities").

[10] See *id.* at Section I.B.3. at 10–11 ("[i]n opening and reopening trading in a listed security, a specialist should . . . [s]erve as the market

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brokers with respect to their orders by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker; [11] and (4) researching the status of orders or questioned trades.[12]

B. DMM Access to Additional Order Information

Each SRO proposes to make Exchange systems available to a DMM at the post that display the following types of information about securities in which the DMM is registered: (A) Aggregated information about buying and selling interest; [13] (B) disaggregated information about the price and size of any individual order or e-Quote and the entering and clearing firm information for such orders, except that Exchange systems would not make available to DMMs information about any order or e-Quote, or portion thereof, that a market participant has elected not to display to a DMM; and (C) post-trade information.[14] The Proposals would make available to DMMs disaggregated information about the following interest in securities in which the DMM is registered: (a) The price and size of all displayable interest submitted by off-Floor participants (off-Floor participants may submit non-displayable interest that is hidden from the DMM); [15] and (b) all e-Quotes, including reserve e-Quotes, that the Floor broker has not elected to exclude from availability to the DMM.[16]

C. Conforming Amendments and Floor Broker e-Quote Information

The Exchanges also propose to make conforming amendments to their rules to reflect the additional order information that would be available to DMMs through Exchange systems, and to specify what information about e-Quotes is available to the DMM. Specifically, the Exchanges propose to revise NYSE Rule 70 and NYSE MKT Rule 70 governing e-Quotes to reflect that disaggregated order information would be available to the DMM except as elected otherwise. The Exchanges would allow a Floor broker to enter e-Quotes with reserve interest ("Reserve e-Quote") with or without a displayable portion.

A Reserve e-Quote with a displayable portion would participate in manual and automatic executions. Order information at each price point, including the reserve portion, would be included in the aggregate interest available to the DMM. Order information at each price point would be available to the DMM on a disaggregated basis as well. If the Floor broker chooses to exclude the Reserve e-Quote with a displayable portion from the DMM, then the DMM would have access to the entire portion on an aggregated basis but would not have access to any of that interest on a disaggregated basis.

A Reserve e-Quote with an undisplayable portion would also participate in manual and automatic executions. Like the Reserve e-Quote with a displayable portion, order information at each price point would be included in the aggregate interest available to the DMM. Again, like the Reserve e-Quote with a displayable portion, order information at each price point would be available to the DMM on a disaggregated basis as well. If the Floor broker chooses to exclude the Reserve e-Quote with an undisplayable portion from the DMM, however, then the DMM would not have access to such interest on either an aggregated basis or a disaggregated basis. Such interest would not participate in manual executions.

In addition, the Exchanges propose to delete rules which currently prohibit DMMs from using the Display Book system to access information about e-Quotes excluded from the aggregated agency interest and Minimum Display Reserve Order information, other than for the purpose of effecting transactions that are reasonably imminent where such Floor broker agency and Minimum Display Reserve Order interest information is necessary to effect such transaction.[17]

The Exchanges note that both Floor brokers and off-Floor participants would have the continued ability to enter partially or completely "dark" orders that are not visible to the DMM, which would prevent any communication about such interest between the DMM and Floor brokers.

D. Ability of DMMs To Provide Market Information on the Trading Floor

The Exchanges also propose to modify the manner under which DMMs would be permitted to provide market information to Floor brokers and visitors on the trading floor, provided that the market participant entering the order had not opted out of such availability. Specifically, the proposed rules would permit a DMM to provide the market information to which he or she has access to a: (1) Floor broker in response to an inquiry in the normal course of business; or (2) visitor to the trading floor for the purpose of demonstrating methods of trading. As such, Floor brokers would be able to access disaggregated order information that market participants have not otherwise elected to be hidden from the DMM. A Floor broker would not be able to submit such an inquiry for market information by electronic means, and the DMM's response containing market information could not be delivered through electronic means.

Because the proposed rule expands on and incorporates the current SRO rules regarding disclosure of order information by DMMs, the Exchanges are proposing to delete these rules.[18] The current rules provide that a DMM may disclose market information for three purposes. First, a DMM may disclose market information for the purpose of demonstrating the methods of trading to visitors to the trading floor.

coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate" and "[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary").

[11] *See id.* at Section I.B.4. at 11 ("In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should proceed as follows . . . [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner.").

[12] *See id.* at Section I.B.5. at 12 (A specialist should "[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors.").

[13] Exchange systems currently make available to DMMs aggregate information about the following interest in securities in which the DMM is registered: (a) All displayable interest submitted by off-floor participants; (b) all Minimum Display Reserve orders, including the reserve portion; (c) all displayable floor broker agency interest files ("e-Quotes"); (d) all Minimum Display Reserve e-Quotes, including the reserve portion; and (e) the reserve quantity of Non-Display Reserve e-Quotes, unless the floor broker elects to exclude that reserve quantity from availability to the DMM.

[14] For the latter two categories, the DMM also would have access to entering and clearing firm information for each order and, as applicable, the badge number of the floor broker representing the order. According to the Exchanges, the systems would not contain any information about the ultimate customer (*i.e.*, the name of the member or member organization's customer) in a transaction.

[15] *See* NYSE and NYSE MKT Rule 13, defining non-displayed order types.

[16] The Exchanges previously permitted DMMs to have access to Exchange systems that contained the disaggregated order information described above. The Exchanges stopped making such information available to DMMs on January 19, 2011. *See* NYSE and NYSE Amex Information Memo 11–03.

[17] *See* proposed deletions to NYSE Rule 104(a)(6) and NYSE MKT Rule 104(a)(b).

[18] The Exchanges are also proposing conforming amendments to correct cross-references to the former rule.

This aspect of the current rule is replicated in the proposed rules. Second, a DMM may disclose market information to other market centers in order to facilitate the operation of the Intermarket Trading System ("ITS"). According to the Exchanges, this text is obsolete as the ITS Plan has been eliminated and therefore the Exchanges are proposing to delete it. Third, a DMM may, while acting in a market making capacity, provide information about buying or selling interest in the market, including (a) aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest, (b) aggregated interest of Minimum Display Reserve Orders and (c) the interest included in DMM interest files, excluding Capital Commitment Schedule ("CCS") interest as described in Rule 1000(c), in response to an inquiry from a member conducting a market probe in the normal course of business. The proposed rules would permit DMMs to provide Floor brokers not only with the same aggregated order information that DMMs currently are permitted to provide under current rules, but also with the disaggregated and post-trade order information described above.[19]

The proposed rules would permit a DMM to provide market information to a Floor broker in response to a specific request by the Floor broker to the DMM at the post, rather than specifying that the information must be provided "in response to an inquiry from a member conducting a market probe in the normal course of business," as currently provided in the SRO rules. Under the Proposals, Floor brokers would not have access to Exchange systems that provide disaggregated order information, and Floor brokers would only be able to access such market information through a direct manual interaction with a DMM at the post.

III. Comment Letters

The Commission received two comment letters in response to the Proposals.[20] The first commenter offered several arguments in support of the Proposals. First, the commenter stated that, by permitting DMMs to use both pre- and post-trade information that is already present on the Exchanges' systems, the Proposals promote the legitimate Floor function of matching buyers and sellers.[21] This could promote just and equitable principles of trade, and would be in the public interest.[22] According to this commenter, the Proposals would enable market participants to trade larger blocks of stock with minimal market impact and could improve execution quality, especially for large buy-side institutions such as mutual funds that trade on behalf of retail investors.[23] The commenter also stated that the Proposals contained sufficient safeguards to protect investors.[24] Specifically, the commenter stated that institutional investors monitor execution quality very closely, and that if the Proposals were to hurt execution quality on the Exchanges, market participants would migrate to other exchanges.[25] The commenter also stated that the Proposals do not permit unfair discrimination, as any market participant that wanted to avail itself to such disaggregated order information could route its orders to Floor brokers.[26]

The second commenter expressed qualified support for the proposal.[27] Citing its research, this commenter stated that communicating partially disaggregated order information from DMMs to Floor brokers would have a positive effect on price discovery, as it would assist DMMs and Floor brokers in finding the counterparties for certain trades.[28] In this way, the commenter believed that the Proposals could incentivize transactions and contribute to greater liquidity in the market.[29] However, the commenter also noted the importance of maintaining controls on the dissemination of such information, as the dissemination of excessive information may be detrimental to the investor that originated the order.[30] In that regard, the commenter noted that NYSE maintained a system of formal rules and sanctions, in addition to the informal discipline that exists on the Floor, that safeguard the disclosure of order information.[31] In contrast, however, the commenter noted that such controls did not exist outside of the Floor.[32] As such, the commenter stated that disaggregated order information should not be made available to market participants outside the floor of the NYSE, as there would "be no means to control the use that this information is put to."[33]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2013–21 and NYSEMKT–2013–25 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the Proposals should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposals that are discussed below. Institution of these proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment to inform the Commission's analysis of whether to approve or disapprove the Proposals.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act[34] requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act[35] requires that the rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

In the Proposals, the Exchanges, among other things, take the position that "[b]roadening the scope of information that DMMs can provide Floor brokers will assist DMMs with carrying out their historical function of bringing Floor brokers together to facilitate block and other large transactions. . . ."[36] The Exchanges also provide scenarios where a Floor broker that receives disaggregated information about the price and size of individual orders on the Exchange books, along with the identity of the

[19] Because DMMs on the trading floor do not have access to CCS interest information, the proposed rule does not specify that DMMs would not be disseminating such information.

[20] *See supra* note 5.

[21] *Id.* at 2, 4.

[22] *See* Angel letter at 7–8.

[23] *Id.* at 2.

[24] *Id.* at 7.

[25] *Id.* at 5.

[26] *Id.* at 6–7.

[27] *See* LSE letter, *supra* note 5.

[28] *Id.* at 2–3.

[29] *Id.* at 1–2.

[30] *Id.* at 2.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78f(b)(8).

[36] *See* NYSE Notice, *supra* note 4, 78 FR at 25121.

broker-dealer that entered the order, might conceivably be better able to facilitate a large transaction for its customer.[37]

With respect to the ability of Floor brokers to pass this disaggregated information on to their customers, however, the Exchanges simply state that "the Floor broker's customer potentially could initiate direct contact with the member organization" that entered the order, and thus the re-transmittal of this information "provides a sort of check of the principal on the agent and ensures that the agent adds value."[38] But the Exchanges go on to say that the wider off-floor dissemination of disaggregated information "presents obvious dangers," given that Exchange rules restricting the proprietary trading of DMMs and requiring the maintenance of informational barriers do not apply to other market participants, so that "there would be no mechanism . . . ensuring that the disaggregated information could only be used for the benefit of investors."[39] This concern was echoed by one of the commenters that, as noted above, did not believe that disaggregated information should be available to market participants outside the floors of the Exchanges.[40] The Exchanges, however, do not address why the dangers that would arise if disaggregated information were made available generally to off-floor market participants are not present when this same information is made available to off-floor market participants that are Floor broker customers. Nor have the Exchanges described any mechanism by which they would be able to assure that disaggregated information is not misused by Floor broker customers. Accordingly, the Commission is concerned that the Exchanges have not demonstrated why this aspect of the Proposals is designed to protect investors and public interest, and is not designed to permit unfair discrimination, or impose an unnecessary or inappropriate burden on competition.

The Commission therefore believes that questions are raised as to whether the Proposals are consistent with (1) the requirements of Section 6(b)(5) of the Act, including whether they would not be designed to permit unfair discrimination, or would promote just and equitable principles of trade, or protect investors and the public interest; and (2) the requirements of Section 6(b)(8) of the Act, including whether they would impose an unnecessary or inappropriate burden on competition.

V. Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the Proposals. In particular, the Commission invites the written views of interested persons concerning whether the Proposals are inconsistent with Section 6(b)(5), Section 6(b)(8) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[41]

Interested persons are invited to submit written data, views and arguments regarding whether the Proposals should be disapproved by August 22, 2013. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 5, 2013. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2013–21 and SR–NYSEMKT–2013–25 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–NYSE–2013–21 and SR–NYSEMKT–2013–25. These file numbers 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 Proposals that are filed with the Commission, and all written communications relating to the Proposals between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–21 and SR–NYSEMKT–2013–25 and should be submitted on or before August 22, 2013. Rebuttal comments should be submitted by September 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18472 Filed 7–31–13; 8:45 am]

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[37] A similar scenario is provided with respect to the provision of disaggregated post-trade information. *Id.* at 25124.

[38] *Id.* at 25127.

[39] *Id.* at 25127.

[40] *See* LSE Letter, *supra* note 5, at 2.

[41] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular Proposals by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[42] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70052; File No. 4–551]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among NYSE MKT LLC, BATS Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, the Chicago Board Options Exchange, Incorporated, the International Securities Exchange LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., the NASDAQ OMX PHLX, Inc., Miami International Securities Exchange, LLC, and Topaz Exchange, LLC Concerning Options-Related Market Surveillance

July 26, 2013.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed on July 2, 2013, pursuant to Rule 17d–2 of the Act,[2] by NYSE MKT LLC ("MKT"), BATS Exchange, Inc., ("BATS"), the BOX Options Exchange LLC ("BOX"), C2 Options Exchange, Incorporated ("C2"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange LLC ("ISE"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NYSE Arca, Inc. ("Arca"), The NASDAQ Stock Market LLC ("Nasdaq"), NASDAQ OMX BX, Inc. ("BX"), NASDAQ OMX PHLX, Inc. ("PHLX"), Miami International Securities Exchange ("MIAX"), and Topaz Exchange, LLC ("Topaz") (collectively, "Participating Organizations" or "parties").

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On December 11, 2007, the Commission declared effective the Participating Organizations' Plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[11] On April 11, 2008, the Commission approved an amendment to the Plan to include NASDAQ as a participant.[12] On October 9, 2008, the Commission approved an amendment to the Plan to clarify that the term Regulatory Responsibility for options position limits includes the examination responsibilities for the delta hedging exemption.[13] On February 25, 2010, the Commission approved an amendment to the Plan to add BATS Exchange, Inc. and C2 Options Exchange, Incorporated as SRO participants and to reflect the name changes of the American Stock Exchange LLC to the NYSE Amex LLC, and the Boston Stock Exchange, Inc. to the NASDAQ OMX BX, Inc.[14] On May 11, 2012, the Commission approved an amendment to the Plan to add BOX Options Exchange LLC as a participant to the Plan.[15] On December 5, 2012, the Commission approved an amendment to the Plan to add the Miami International

[1] 15 U.S.C. 78q(d).
[2] 17 CFR 240.17d–2.
[3] 15 U.S.C. 78s(g)(1).
[4] 15 U.S.C. 78q(d).
[5] 15 U.S.C. 78s(g)(2).
[6] 15 U.S.C. 78q(d)(1).
[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).
[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.
[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).
[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).
[11] *See* Securities Exchange Act Release No. 56941 (December 11, 2007), 72 FR 71723 (December 18, 2007) (File No. 4–551).
[12] *See* Securities Exchange Act Release No. 57649 (April 11, 2008), 73 FR 20976 (April 17, 2008) (File No. 4–551).
[13] *See* Securities Exchange Act Release No. 58765 (October 9, 2008), 73 FR 62344 (October 20, 2008) (File No. 4–551).
[14] *See* Securities Exchange Act Release No. 61588 (February 25, 2010), 75 FR 9970 (March 4, 2010) (File No. 4–551).
[15] *See* Securities Exchange Act Release No. 66975 (May 11, 2012), 77 FR 29712 (May 18, 2010) (File No. 4–551).

Securities Exchange as a participant to the Plan.[16]

The Plan is designed to reduce regulatory duplication for common members by allocating regulatory responsibility for certain options-related market surveillance matters among the Participating Organizations. Generally, under the Plan, a Participating Organization will serve as the Designated Options Surveillance Regulator ("DOSR") for each common member assigned to it and will assume regulatory responsibility with respect to that common member's compliance with applicable common rules for certain accounts. When an SRO has been named as a common member's DOSR, all other SROs to which the common member belongs will be relieved of regulatory responsibility for that common member, pursuant to the terms of the Plan, with respect to the applicable common rules specified in Exhibit A to the Plan.

III. Proposed Amendment to the Plan

On July 2, 2013, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add Topaz as a Participant to the Plan. The text of the proposed amended 17d–2 plan is as follows (additions are *italicized;* deletions are [bracketed]):

* * * * *

Agreement by and Among

NYSE MKT LLC; BATS Exchange, Inc., Box Options Exchange LLC Nasdaq OMX BX, INC., C2 Options Exchange, Incorporated, The Chicago Board Options Exchange, Incorporated, The International Securities Exchange LLC, Financial Industry Regulatory Authority, Inc., NYSE ARCA, Inc., The Nasdaq Stock Market LLC, NASDAQ OMX PHLX, Inc., [and] Miami International Securities Exchange, LLC and Topaz Exchange, LLC, Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934

This agreement (this "Agreement"), by and among the NYSE MKT LLC ("MKT"), BATS Exchange, Inc., ("BATS"), the C2 Options Exchange, Incorporated ("C2"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange LLC ("ISE"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NYSE Arca, Inc. ("Arca"), The NASDAQ Stock Market LLC ("Nasdaq"), the BOX Options Exchange LLC ("BOX"), NASDAQ OMX BX, Inc. ("BX") the NASDAQ OMX PHLX, Inc. ("PHLX"), [and] the Miami International Securities Exchange, LLC ("MIAX") *and the Topaz Exchange, LLC ("Topaz")* is made this 10th day of October 2007, and as amended the 31st day of March 2008, the 1st day of October 2008, the 3rd day of February 2010, the 25th day of April 2012, and the 19th day of November 2012, *and the 30th day of May 2013* pursuant to Section 17(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 17d–2 thereunder ("Rule 17d–2"), which allows for a joint plan among self-regulatory organizations ("SROs") to allocate regulatory obligations with respect to brokers or dealers that are members of two or more of the parties to this Agreement ("Common Members"). The MKT, BATS, C2, CBOE, ISE, FINRA, Arca, Nasdaq, BOX, BX, PHLX, [and] MIAX *and Topaz* are collectively referred to herein as the "Participants" and individually, each a "Participant." This Agreement shall be administered by a committee known as the Options Surveillance Group (the "OSG" or "Group"), as described in Section V hereof. Unless defined in this Agreement or the context otherwise requires, the terms used herein shall have the meanings assigned thereto by the Exchange Act and the rules and regulations thereunder.

Whereas, the Participants desire to eliminate regulatory duplication with respect to SRO market surveillance of Common Member [1] activities with regard to certain common rules relating to listed options ("Options"); and

Whereas, for this purpose, the Participants desire to execute and file this Agreement with the Securities and Exchange Commission (the "SEC" or "Commission") pursuant to Rule 17d–2.

Now, therefore, in consideration of the mutual covenants contained in this Agreement, the Participants agree as follows:

I. Except as otherwise provided in this Agreement, each Participant shall assume Regulatory Responsibility (as defined below) for the Common Members that are allocated or assigned to such Participant in accordance with the terms of this Agreement and shall be relieved of its Regulatory Responsibility as to the remaining Common Members. For purposes of this Agreement, a Participant shall be considered to be the Designated Options Surveillance Regulator ("DOSR") for each Common Member that is allocated to it in accordance with Section VII.

II. As used in this Agreement, the term "Regulatory Responsibility" shall mean surveillance, investigation and enforcement responsibilities relating to compliance by the Common Members with such Options rules of the Participants as the Participants shall determine are substantially similar and shall approve from time to time, insofar as such rules relate to market surveillance (collectively, the "Common Rules"). For the purposes of this Agreement the list of Common Rules is attached as Exhibit A hereto, which may only be amended upon unanimous written agreement by the Participants. The DOSR assigned to each Common Member shall assume Regulatory Responsibility with regard to that Common Member's compliance with the applicable Common Rules for certain accounts.[2] A DOSR may perform its Regulatory Responsibility or enter an agreement to transfer or assign such responsibilities to a national securities exchange registered with the SEC under Section 6(a) of the Exchange Act or a national securities association registered with the SEC under Section 15A of the Exchange Act. A DOSR may not transfer or assign its Regulatory Responsibility to an association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products.

The term "Regulatory Responsibility" does not include, and each Participant shall retain full responsibility with respect to:

(a) Surveillance, investigative and enforcement responsibilities other than those included in the definition of Regulatory Responsibility;

(b) any aspects of the rules of a Participant that are not substantially similar to the Common Rules or that are allocated for a separate surveillance purpose under any other agreement made pursuant to Rule 17d–2. Any such aspects of a Common Rule will be noted as excluded on Exhibit A.

With respect to options position limits, the term Regulatory Responsibility shall include examination responsibilities for the delta hedging exemption. Specifically, the Participants intend that FINRA will conduct examinations for delta hedging for all Common Members that are members of FINRA notwithstanding the fact that FINRA's position limit rule is, in some cases, limited to only firms that

[16] *See* Securities Exchange Act Release No. 68362 (December 5, 2012), 77 FR 73719 (December 11, 2012) (File No. 4–551).

[1] In the case of the BX and BOX, members are those persons who are Options Participants (as defined in the BOX Options Exchange LLC Rules and NASDAQ OMX BX, Inc. Rules).

[2] Certain accounts shall include customer ("C" as classified by the Options Clearing Corporation ("OCC")) and firm ("F" as classified by OCC) accounts, as well as other accounts, such as market maker accounts as the Participants shall, from time to time, identify as appropriate to review.

are not members of an options exchange (i.e., access members). In such cases, FINRA's examinations for delta hedging options position limit violations will be for the identical or substantively similar position limit rule(s) of the other Participant(s). Examinations for delta hedging for Common Members that are non-FINRA members will be conducted by the same Participant conducting position limit surveillance. The allocation of Common Members to DOSRs for surveillance of compliance with options position limits and other agreed to Common Rules is provided in Exhibit B. The allocation of Common Members to DOSRs for examinations of the delta hedging exemption under the options position limits rules is provided in Exhibit C.

III. Each year within 30 days of the anniversary date of the commencement of operation of this Agreement, or more frequently if required by changes in the rules of a Participant, each Participant shall submit to the other Participants, through the Chair of the OSG, an updated list of Common Rules for review. This updated list may add Common Rules to Exhibit A, shall delete from Exhibit A rules of that Participant that are no longer identical or substantially similar to the Common Rules, and shall confirm that the remaining rules of the Participant included on Exhibit A continue to be identically or substantially similar to the Common Rules. Within 30 days from the date that each Participant has received revisions to Exhibit A from the Chair of the OSG, each Participant shall confirm in writing to the Chair of the OSG whether that Participant's rules listed in Exhibit A are Common Rules.

IV. Apparent violation of another Participant's rules discovered by a DOSR, but which rules are not within the scope of the discovering DOSR's Regulatory Responsibility, shall be referred to the relevant Participant for such action as is deemed appropriate by that Participant.

Notwithstanding the foregoing, nothing contained herein shall preclude a DOSR in its discretion from requesting that another Participant conduct an investigative or enforcement proceeding ("Proceeding") on a matter for which the requesting DOSR has Regulatory Responsibility. If such other Participant agrees, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant and confirmed in writing by the Participants involved. Additionally, nothing in this Agreement shall prevent another Participant on whose market potential violative activity took place from conducting its own Proceeding on a matter. The Participant conducting the Proceeding shall advise the assigned DOSR. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in a Proceeding.

V. The OSG shall be composed of one representative designated by each of the Participants (a "Representative"). Each Participant shall also designate one or more persons as its alternate representative(s) (an "Alternate Representative"). In the absence of the Representative, the Alternate Representative shall assume the powers, duties and responsibilities of the Representative. Each Participant may at any time replace its Representative and/or its Alternate Representative to the Group.[3] A majority of the OSG shall constitute a quorum and, unless otherwise required, the affirmative vote of a majority of the Representatives present (in person, by telephone or by written consent) shall be necessary to constitute action by the Group.

The Group will have a Chair, Vice Chair and Secretary. A different Participant will assume each position on a rotating basis for a one-year term. In the event that a Participant replaces a Representative who is acting as Chair, Vice Chair or Secretary, the newly appointed Representative shall assume the position of Chair, Vice Chair, or Secretary (as applicable) vacated by the Participant's former Representative. In the event a Participant cannot fulfill its duties as Chair, the Participant serving as Vice Chair shall substitute for the Chair and complete the subject unfulfilled term. All notices and other communications for the OSG are to be sent in care of the Chair and, as appropriate, to each Representative.

VI. The OSG shall determine the times and locations of Group meetings, provided that the Chair, acting alone, may also call a meeting of the Group in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten business days prior to the meeting date. Representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VII. No less frequently than every two years, in such manner as the Group deems appropriate, the OSG shall allocate Common Members that conduct an Options business among the Participants ("Allocation"), and the Participant to which a Common Member is allocated will serve as the DOSR for that Common Member. Any Allocation shall be based on the following principles, except to the extent all affected Participants consent to one or more different principles:

(a) The OSG may not allocate a Common Member to a Participant unless the Common Member is a member of that Participant.

(b) To the extent practicable, Common Members that conduct an Options business shall be allocated among the Participants of which they are members in such manner as to equalize as nearly as possible the allocation among such Participants, provided that no Common Members shall be allocated to FINRA. For example, if sixteen Common Members that conduct an Options business are members only of three Participants, none of which is FINRA, those Common Members shall be allocated among the three Participants such that no Participant is allocated more than six such members and no Participant is allocated less than five such members. If, in the previous example, one of the three Participants is FINRA, the sixteen Common Members would be allocated evenly between the remaining Participants, so that the two non-FINRA Participants would be allocated eight Common Members each.

(c) To the extent practicable, Allocation shall take into account the amount of Options activity conducted by each Common Member in order to most evenly divide the Common Members with the largest amount of activity among the Participants of which they are members. Allocation will also take into account similar allocations pursuant to other plans or agreements to which the Common Members are party to maintain consistency in oversight of the Common Members.[4]

(d) To the extent practicable, Allocation of Common Members to Participants will be rotated among the applicable Participants such that a Common Member shall not be allocated to a Participant to which that Common Member was allocated within the previous two years. The assignment of DOSRs pursuant to the Allocation is attached as Exhibit B hereto, and will be updated from time to time to reflect Common Member Allocation changes.

(e) The Group may reallocate Common Members from time-to-time, as it deems appropriate.

(f) Whenever a Common Member ceases to be a member of its DOSR, the

[3] A Participant must give notice to the Chair of the Group of such a change.

[4] For example, if one Participant was allocated a Common Member by another regulatory group that Participant would be assigned to be the DOSR of that Common Member, unless there is good cause not to make that assignment.

DOSR shall promptly inform the Group, which shall review the matter and allocate the Common Member to another Participant.

(g) A DOSR may request that a Common Member to which it is assigned be reallocated to another Participant by giving 30 days written notice to the Chair of the OSG. The Group, in its discretion, may approve such request and reallocate the Common Member to another Participant.

(h) All determinations by the Group with respect to Allocation shall be made by the affirmative vote of a majority of the Participants that, at the time of such determination, share the applicable Common Member being allocated; a Participant shall not be entitled to vote on any Allocation relating to a Common Member unless the Common Member is a member of such Participant.

VIII. Each DOSR shall conduct routine surveillance reviews to detect violations of the applicable Common Rules by each Common Member allocated to it with a frequency (daily, weekly, monthly, quarterly, semi-annually or annually as noted on Exhibit A) not less than that determined by the Group. The other Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOSR. In addition, each Participant shall provide, to the extent not otherwise already provided, information pertaining to its surveillance program that would be relevant to FINRA or the Participant(s) conducting routine examinations for the delta hedging exemption.

At each meeting of the OSG, each Participant shall be prepared to report on the status of its surveillance program for the previous quarter and any period prior thereto that has not previously been reported to the Group. In the event a DOSR believes it will not be able to complete its Regulatory Responsibility for its allocated Common Members, it will so advise the Group in writing promptly. The Group will undertake to remedy this situation by reallocating the subject Common Members among the remaining Participants. In such instance, the Group may determine to impose a regulatory fee for services provided to the DOSR that was unable to fulfill its Regulatory Responsibility.

IX. Each Participant will, upon request, promptly furnish a copy of the report or applicable portions thereof relating to any investigation made pursuant to the provisions of this Agreement to each other Participant of which the Common Member under investigation is a member.

X. Each Participant will routinely populate a common database, to be accessed by the Group relating to any formal regulatory action taken during the course of a Proceeding with respect to the Common Rules concerning a Common Member.

XI. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to any Participant to the attention of that Participant's. Representative, to the Participant's principal place of business or by email at such address as the Representative shall have filed in writing with the Chair.

XII. The costs incurred by each Participant in discharging its Regulatory Responsibility under this Agreement are not reimbursable. However, any of the Participants may agree that one or more will compensate the other(s) for costs incurred.

XIII. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Group. Each Participant will notify the Common Members that have been allocated to it that such Participant will serve as DOSR for that Common Member.

XIV. This Agreement shall be effective upon approval of the Commission. This Agreement may only be amended in writing duly approved by each Participant. All amendments to this Agreement, excluding changes to Exhibits A, B and C, must be filed with and approved by the Commission.

XV. Any Participant may manifest its intention to cancel its participation in this Agreement at any time upon providing written notice to (i) the Group six months prior to the date of such cancellation, or such other period as all the Participants may agree, and (ii) the Commission. Upon receipt of the notice the Group shall allocate, in accordance with the provisions of this Agreement, those Common Members for which the canceling Participant was the DOSR. The canceling Participant shall retain its Regulatory Responsibility and other rights, privileges and duties pursuant to this Agreement until the Group has completed the reallocation as described above, and the Commission has approved the cancellation.

XVI. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, or such other period as all the Participants may agree. Such termination will become effective upon Commission approval.

XVII. Participation in the Group shall be strictly limited to the Participants and no other party shall have any right to attend or otherwise participate in the Group except with the unanimous approval of all Participants. Notwithstanding the foregoing, any national securities exchange registered with the SEC under Section 6(a) of the Act or any national securities association registered with the SEC under section 15A of the Act may become a Participant to this Agreement provided that: (i) Such applicant has adopted rules substantially similar to the Common Rules, and received approval thereof from the SEC; (ii) such applicant has provided each Participant with a signed statement whereby the applicant agrees to be bound by the terms of this Agreement to the same effect as though it had originally signed this Agreement and (iii) an amended agreement reflecting the addition of such applicant as a Participant has been filed with and approved by the Commission.

XVIII. This Agreement is wholly separate from the multiparty Agreement made pursuant to Rule 17d–2 by and among the NYSE MKT LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC, Financial Industry Regulatory Authority, The NASDAQ Stock Market LLC, Inc., the New York Stock Exchange, LLC, the NYSE Arca, Inc., the Philadelphia Stock Exchange, Inc., Miami International Securities Exchange, LLC *and the Topaz Exchange, LLC* involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered into on June 5, 2008, and as may be amended from time to time.

Limitation of Liability

No Participant nor the Group nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for

the failure to provide any such Regulatory Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other Participants or its respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by the Participants, individually or as a group, or by the OSG with respect to any Regulatory Responsibility to be performed hereunder.

Relief From Responsibility

Pursuant to Section 17(d)(1)(A) of the Exchange Act and Rule 17d–2, the Participants join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve the Participants that are party to this Agreement and are not the DOSR as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOSR.

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This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

In Witness Whereof, the Participants hereto have executed this Agreement as of the date and year first above written.

EXHIBIT A—OPTIONS SURVEILLANCE GROUP 17d–2 AGREEMENT

[Common Rules as of [November 6, 2012] *July 1, 2013*]

SRO	Description of rule	Exchange rule No.	Frequency of review
Violation I: Expiring Exercise Declarations (EED)—For Listed Equity Options Expiring: The Third Saturday Following the Third Friday of a Month, Quarterly, and for Listed FLEX Options			
BATS	Exercise of Options Contracts	Rule 23.1	At Expiration.
BOX	Exercise of Options Contracts	Rule 9000	At Expiration.
C2	Exercise of Options Contracts	Rule 11.1	At Expiration.
CBOE	Exercise of Options Contracts	Rule 11.1	At Expiration.
FINRA	Exercise of Options Contracts	Rule 2360(b)(23)	At Expiration.
ISE	Exercise of Options Contracts	Rule 1100	At Expiration.
MIAX	Exercise of Options Contracts	Rule 700	At Expiration.
Nasdaq	Exercise of Options Contracts	Nasdaq Chapter VIII, Sec. 1	At Expiration.
NYSE Arca	Exercise of Options Contracts	Rule 6.24	At Expiration.
NYSE MKT	Exercise of Options Contracts	Rule 980	At Expiration.
NASDAQ OMX BX	Exercise of Options Contracts	Chapter VIII, Section 1	At Expiration.
NASDAQ OMX PHLX	Exercise of Equity Options Contracts	Rule 1042	At Expiration.
Topaz	*Exercise of Options Contracts*	*Rule 1100*	*At Expiration.*

SRO	Description of rule (for review as they apply to PL)	Exchange rule No.	Frequency of review
Violation ii: Position Limits (PL)—For Listed Equity Options Expiring: The Third Saturday Following the Third Friday of a Month, Quarterly			
BATS	Position Limits	Rule 18.7	Daily.
	Exemptions from Position	Rule 18.8	As Needed.
	Liquidating Positions	Rule 18.11	As Needed.
BOX	Position Limits	Rule 3120	Daily.
	Exemptions from Position	Rule 3130	As Needed.
	Liquidating Positions	Rule 3160	As Needed.
C2	Position Limits	Rule 4.11.	Daily.
	Liquidating Positions	Rule 4.14	As Needed.
CBOE	Position Limits	Rule 4.11	Daily.
	Liquidating Positions	Rule 4.14	As Needed.
FINRA	Position Limits	Rule 2360(b)(3)	Daily.
	Liquidation of Positions and Restrictions on Access.	Rule 2360(b)(6)	As Needed.
ISE	Position Limits	Rule 412	Daily.
	Exemptions from Position Limits	Rule 413	As Needed.
	Liquidating Positions	Rule 416	As Needed.
MIAX	Position Limits	Rule 307	Daily.
	Exemptions from Position Limits	Rule 308	As Needed.
	Liquidating Positions	Rule 311	As Needed.
Nasdaq	Position Limits	Chapter III, Section 7	Daily.
	Exemptions from Position Limits	Chapter III, Section 8	As Needed.
	Liquidating Positions	Chapter III, Section 11	As Needed.
NYSE Arca	Position Limits	Rule 6.8	Daily.
	Liquidation of Positions	Rule 6.7	As Needed.
NYSE MKT	Position Limits	Rule 904	Daily.
	Liquidating Positions	Rule 907	As Needed.
NASDAQ OMX BX	Position Limits	Chapter III, Section 7	Daily.
	Exemptions from Position Limits	Chapter III, Section 8	As Needed.
	Liquidating Positions	Chapter III, Section 11	As Needed.
NASDAQ OMX PHLX	Position Limits	Rule 1001	Daily.
	Liquidation of Positions	Rule 1004	As Needed.

SRO	Description of rule (for review as they apply to PL)	Exchange rule No.	Frequency of review
Topaz	*Position Limits*	*Rule 412*	*Daily.*
	Exemptions from Position Limits	*Rule 413*	*As Needed.*
	Liquidating Positions	*Rule 416*	*As Needed.*

SRO	Description of rule (for review as they apply to LOPR)	Exchange rule No.	Frequency of review
Violation III: Large Option Position Report (LOPR)—For Listed Equity and ETF Options			
BATS	Reports Related to Position Limits	Rule 18.10	Yearly.
BOX	Reports Related to Position Limits	Rule 3150	Yearly.
C2	Reports Related to Position Limits	Rule 4.13(a)	Yearly.
	Reports Related to Position Limits	Rule 4.13(b)	Yearly.
	Reports Related to Position Limits	Rule 4.13(d)	Yearly.
CBOE	Reports Related to Position Limits	Rule 4.13(a)	Yearly.
	Reports Related to Position Limits	Rule 4.13(b)	Yearly.
	Reports Related to Position Limits	Rule 4.13(d)	Yearly.
FINRA	Options	Rule 2360(b)(5)	Yearly.
ISE	Reports Related to Position Limits	Rule 415	Yearly.
MIAX	Reports Related to Position Limits	Rule 310	Yearly.
Nasdaq	Reports Related to Position Limits	Chapter III, Section 10	Yearly.
NYSE Arca	Reporting of Options Positions	Rule 6.6	Yearly.
NYSE MKT	Reporting of Options Positions	Rule 906	Yearly.
Nasdaq OMX BX	Reports Related to Position Limits	Chapter III, Section 10	Yearly.
NASDAQ OMX PHLX	Reporting of Options Positions	Rule 1003	Yearly.
Topaz	*Reports Related to Position Limits*	*Rule 415*	*Yearly.*

SRO	Description of rule (as they apply to OCC adjustments/by-laws article V, section 1.01(a) and .02)	Exchange rule No.	Frequency of review
Violation IV: Options Clearing Corporation (OCC) Adjustment Process			
BATS	Adherence to Law	Rule 18.1	Yearly.
BOX	Adherence to Law	Rule 3010	Yearly.
C2	Adherence to Law	Rule 4.2	Yearly.
CBOE	Adherence to Law	Rule 4.2	Yearly.
FINRA	Violation of By-Laws and Rules of FINRA or the OCC.	Rule 2360(b)(21)	Yearly.
ISE	Adherence to Law	Rule 401	Yearly.
MIAX	Adherence to Law	Rule 300	Yearly.
Nasdaq	Adherence to Law	Chapter III, Section 1	Yearly.
NYSE Arca	Adherence to Law and Good Business Practice.	Rule 11.1	Yearly.
NYSE MKT	Business Conduct	Rule 16	Yearly.
NASDAQ OMX BX	Adherence to Law	Chapter III, Section 1	Yearly.
NASDAQ OMX PHLX	Violation of By-Laws and Rules of OCC	Rule 1050	Yearly.
Topaz	*Adherence to Law*	*Rule 401*	*Yearly.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4–551 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 4–551. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of MKT, BATS, C2, CBOE, ISE, FINRA, Arca, NASDAQ, BOX, BX, Phlx, MIAX, and Topaz. 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 4–551 and should be submitted on or before August 22, 2013.

V. Discussion

The Commission continues to believe that the Plan, as proposed to be amended, is an achievement in cooperation among the SRO participants. The Plan, as amended, will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related market surveillance matters that would otherwise be performed by multiple SROs. The Plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the Plan, the Plan promotes, and will continue to promote, investor protection. Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add Topaz as a Participant to the Plan. By declaring it effective today, the amended Plan can become effective and be implemented without undue delay.[17] In addition, the Commission notes that the prior version of this Plan was published for comment, and the Commission did not receive any comments thereon.[18] Finally, the Commission does not believe that the amendment to the Plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4–551.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan, as amended by and between MKT, BATS, C2, CBOE, ISE, FINRA, Arca, NASDAQ, BOX, BX, Phlx, MIAX, and Topaz, filed with the Commission pursuant to Rule 17d–2 on July 2, 2013 is hereby approved and declared effective.

It is further ordered that those SRO participants that are not the DOSR as to a particular common member are relieved of those regulatory responsibilities allocated to the common member's DOSR under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–18475 Filed 7–31–13; 8:45 am]

BILLING CODE 8011–01–P

[17] On July 26, 2013, the Commission granted Topaz's application for registration as a national securities exchange. *See* Securities Exchange Act Release No. 70050 (July 25, 2013) (File No. 10–209).

[18] *See supra* note 16 (citing to Securities Exchange Act Release No. 68362).

[19] 17 CFR 200.30–3(a)(34).

DEPARTMENT OF STATE

[Public Notice 8400]

In the Matter of the Review of the Designation of the Revolutionary People's Liberation Party/Front (and other aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as amended

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) ("INA"), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2008 decision to maintain the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: July 8, 2013.

John F. Kerry,

Secretary of State, Department of State.

[FR Doc. 2013–18520 Filed 7–31–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Delegation of Authority No. 364]

Membership on the Presidential Task Force on Wildlife Trafficking

By virtue of the authority vested in me as Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. § 2651a), and Executive Order 13648 of July 1, 2013 (the Executive Order), I hereby designate the Under Secretary for Economic Growth, Energy, and the Environment (the Under Secretary) as the Department of State representative to the Presidential Task Force on Wildlife Trafficking, established by Section 2 of the Executive Order; together with the authorities necessary to carry out such function.

In the event that the position of the Under Secretary is vacant, I hereby designate the Under Secretary for Civilian Security, Democracy and Human Rights, and in the Under Secretaries' collective absence, the Assistant Secretary for Oceans and International Environmental and Scientific Affairs to be the Department of State representative for purposes of the Executive Order.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, and the Deputy Secretary for Management and Resources may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority shall be published in the **Federal Register**.

Dated: July 23, 2013.

John F. Kerry,

Secretary of State.

[FR Doc. 2013–18557 Filed 7–31–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8402]

Waiver of Restriction on Assistance to the Central Government of Haiti

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) ("the Act"), as carried forward by the Further Continuing Appropriations Act, 2013 (Div. F, Pub. L. 113–6), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act and similar provisions of law in prior year Acts with respect to Haiti and I hereby waive this restriction.

This determination and the accompanying Memorandum of

Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: July 12, 2013.

William J. Burns,

Deputy Secretary.

[FR Doc. 2013–18558 Filed 7–31–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8401]

Waiver of Restriction on Assistance to the Central Government of Ukraine

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) ("the Act"), as carried forward by the Further Continuing Appropriations Act, 2013 (Div. F, Pub. L. 113–6), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act and similar provisions of law in prior year Acts with respect to Ukraine and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register.**

Dated: July 10, 2013.

William J. Burns,

Deputy Secretary.

[FR Doc. 2013–18561 Filed 7–31–13; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–30]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number involved and must be received on or before August 21, 2013.

ADDRESSES: You may send comments identified by docket number FAA–2013–0578 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send 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.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, or Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW.; Washington, DC 20591; email *andrea.copeland@faa.gov;* (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0578.

Petitioner: Gore Design Completion, Ltd.

Section of 14 CFR Affected: §§ 25.785(d), 25.785(h)(1), 25.791(a), 25.807(d)(7), 25.813(e), and 25.853(a)(1)

Description of Relief Sought: Relief from the requirements of flight-attendant direct view; firm handholds; no-smoking placards; doors between passenger compartments; and maximum heat-release rates for large-panel, cabin-interior materials in an executive-jet modification to an Airbus Model A330–200 airplane.

[FR Doc. 2013–18443 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–32]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 21, 2013.

ADDRESSES: You may send comments identified by docket number FAA–2013–0534 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send 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.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, or Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email *andrea.copeland@faa.gov;* (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0534.

Petitioner: Cessna Aircraft Company.

Section of 14 CFR Affected: § 25.901(c).

Description of Relief Sought: Exemption from the requirement that no single failure will jeopardize the safe operation of Cessna Model 680 Block Point Change (BPC) airplanes, for certain extremely remote powerplant failures that could affect only a very limited portion of the flight envelope.

[FR Doc. 2013–18442 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–33]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number and must be received on or before August 21, 2013.

ADDRESSES: You may send comments identified by docket number FAA–2011–1240 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.

• *Mail:* Send 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.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andrea Copeland, (202) 267–8081, Office of Rulemaking (ARM–208), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 26, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–0442.

Petitioner: Tatonduk Outfitters Limited dba Everts Air Alaska (Everts).

Section of 14 CFR Affected: §§ 91.313(a) and (c).

Description of Relief Sought: Tatonduk Outfitters Limited dba Everts Air Alaska (Everts) was granted an exemption from § 91.313(a) and (c) of Title 14, Code of Federal Regulations (14 CFR) to the extent necessary to allow Everts to operate restricted category Air Tractor AT–802 aircraft in intra-Alaska fuel hauling operations of Everts' owned or 3rd party (customer) owned fuel product pursuant to Everts' Part 119 air carrier certificate and Part 135 operations specifications (Exemption No. 10348). With this petition, Everts requests amendment to the original conditions and limitations to allow these operations under a less restrictive range of circumstances.

[FR Doc. 2013–18441 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0045]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We

are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 30, 2013.

ADDRESSES: You may submit comments identified by DOT Docket ID 2013–0045 by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, 202–366–2157, *Jennifer.Warren@dot.gov*; Office of Safety, Federal Highway Administration, Department of Transportation, New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Drug Offender's Drivers License Suspension Certification.

OMB Control #: 2125–0579.

Background: States are legally required to enact and enforce laws that revoke or suspend the drivers licenses of any individual convicted of a drug offense and to make annual certifications to the FHWA on their actions. The implementing regulations of the Department of Transportation and Related Agencies Appropriation Act, 1993 (Public Law 102–388, October 6, 1992) require annual certifications by the Governors. In this regard, the State must submit by January 1 of each year either a written certification, signed by the Governor, stating that the State is in compliance with 23 U.S.C. 159; or a written certification stating that the Governor is opposed to the enactment or enforcement, and that the State legislature has adopted a resolution expressing its opposition to 23 U.S.C. Section 159.

Beginning in Fiscal Year 1996, States' failure to comply by October 1 of each fiscal year resulted in a withholding penalty of 10 percent from major categories of Federal-aid funds (i.e., National Highway System, Surface Transportation Program and the Interstate Maintenance Program) from States' apportionments for the fiscal year. Any funds withheld in Fiscal Year 1996 and thereafter cannot be restored and will be redistributed.

Respondents: Each of the 50 SDOTs, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Annually.

Estimated Average Burden per Response: Annual average of 5 hours for each respondent.

Estimated Total Annual Burden Hours: 260 total annual burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: July 26, 2013.

Michael Howell,

Information Collection Officer.

[FR Doc. 2013–18419 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0046]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 30, 2013.

ADDRESSES: You may submit comments identified by DOT Docket ID 2013–0046 by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Murdaugh, 703–235–0535, Office of Professional and Corporate Development, Federal Highway Administration, Department of Transportation, 4600 N. Fairfax Drive, Suite 800, Arlington, VA 22203, between 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Eisenhower Transportation Fellowship Program

OMB Control #: 2125–0617.

Background: The Eisenhower Transportation Fellowship Program is comprised of two programs, the Eisenhower Transportation Fellowship and the National Highway Institute (NHI). The purpose of the Eisenhower Transportation Fellowship is to advance transportation education and research, and attract qualified students to the field of transportation. The Eisenhower Transportation Fellowship allows for the collection and analysis of vital program information from student transportation education programs, also serving as a management tool to measure program performance and evaluate effectiveness in meeting Federal intent and workforce development common goals and objectives. An application form is used to collect basic information from the student to determine eligibility and qualifications for fellowship.

The NHI calls for the development and delivery of courses for the transportation community and requires the involvement and satisfaction measurement of transportation partners. One vital component involved in reaching those goals is providing training pertaining to highway activities, making sure that professionals and members of the public

have access to the best, most accurate information. Towards this goal, the NHI develops and implements applicable training programs. To manage this increasingly complex task and to make the training process more accessible and useful, NHI has automated an online training management tool—the NHI Web Portal. The training evaluation and registration forms collect basic participant data for record keeping and basic course and instructor evaluation information for customer feedback about what NHI is doing well and what we need to improve.

Respondents: Approximately 200 students submit applications for the Eisenhower Transportation Fellowship and approximately 20,000 students for the NHI.

Frequency: The Eisenhower Transportation Fellowship frequency is annually. The NHI is by learning session.

Estimated Average Burden per Response: The estimated burden to complete the application for the Eisenhower Transportation Fellowship is 3 hrs, 600 hrs annually. The estimated burden to complete each training evaluation and registration for the NHI form is 3 minutes, 1000 hrs annually.

Estimated Total Annual Burden Hours: Approximately 1,600 hours annually. *Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 26, 2013.

Michael Howell,

Information Collection Officer.

[FR Doc. 2013–18421 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0047]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 30, 2013.

ADDRESSES: You may submit comments identified by DOT Docket ID 2013–0047 by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mary Jane Daluge, 202–366–2035, *Maryjane.Daluge@dot.gov;* Office of Real Estate Services, Federal Highway Administration, Department of Transportation, New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Fixed Residential Moving Cost Schedule.

OMB Control #: 2125–0616.

Background: Relocation assistance payments to owners and tenants who move personal property for a Federal or federally-assisted program or project is governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). 49 Code of Federal Regulations (CFR), Part 24, is the implementing regulation for the Uniform Act. 49 CFR 24.301 addresses payments for actual and reasonable moving and related expenses. The fixed residential moving cost schedule is an administrative alternative to reimbursement of actual moving costs. This option provides flexibility for the agency and affected property owners and tenants. The FHWA requests the State Departments of Transportation (State DOTs) to analyze moving cost data periodically to assure that the fixed residential moving cost schedules accurately reflect reasonable moving and related expenses. The regulation allows State DOTs flexibility in determining how to collect the cost data in order to reduce the burden of government regulation. Updated State fixed residential moving costs are submitted to the FHWA electronically.

Respondents: State Departments of Transportation (52, including the District of Columbia and Puerto Rico).

Frequency: Once every 3 years.

Estimated Average Burden per Response: 24 hours per respondent.

Estimated Total Annual Burden Hours: 24 hours for each of the 52 State Departments of Transportation. The total is 1,248 burden hours, once every 3 years, or 416 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: July 26, 2013.

Michael Howell,

Information Collection Officer.

[FR Doc. 2013–18423 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Los Angeles and San Bernardino Counties, California; Notice of Intent

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised Notice of Intent (NOI).

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this Revised Notice of Intent to inform the public of changes to the proposed High Desert Corridor project in Los Angeles and San Bernardino Counties, California. The Federal Railroad Administration has also been added as a Cooperating Agency.

DATES: Public scoping meetings were previously conducted as follows:

(1) Palmdale, CA on September 27, 2010, 6 p.m. to 8 p.m.

(2) Lancaster, CA on September 28, 2010, 6 p.m. to 8 p.m.

(3) Apple Valley, CA on September 29, 2010, 6 p.m. to 8 p.m.

(4) Victorville, CA on September 30, 2010, 6 p.m. to 8 p.m.

Meetings have also been held at various locations along the proposed corridor during April 2011 and January, February and December 2012 to keep the public, agencies, and elected officials appraised of the status of the project, including the modification of two project alternatives to include high speed rail. Additional meetings will be held in July of 2013.

FOR FURTHER INFORMATION CONTACT: Ronald Kosinski, Deputy District Director, California Department of Transportation District 7 Division of Environmental Planning, 100 South Main Street, Mail Stop 16A, Los Angeles, CA 90012.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for these projects pursuant to 23 U.S.C. 327. Caltrans, as the delegated National Environmental Policy Act (NEPA) lead agency, initiated studies on the High Desert Corridor project. The NOI was published in the **Federal Register** on October 12, 2007 (Vol. 72, No. 197) and a revised NOI was published on September 24, 2010 (Vol. 75, No. 185).

A draft Environmental Impact Statement will be prepared for a proposal to construct the High Desert Corridor, a new freeway/expressway, and possible toll way, extending approximately 63 miles between SR–14 in Los Angeles County and SR–18 in San Bernardino County. On March 22, 2012, the Los Angeles County Metropolitan Transportation Authority (Metro) Board of Directors took action to recognize this project as a Strategic Multipurpose Corridor, which provides mobility, as well as economic and environmental benefits. To satisfy this directive, the proposed corridor is being evaluated for potential inclusion of the highway (freeway/expressway), a toll way, a bike path, energy production and/or transmission facilities, and a high speed rail feeder service line. The proposed route would run primarily in an east-west direction and would roughly follow the alignment of the Avenue P–8 corridor near SR–14 in Los Angeles County and Air Expressway near I–15 in San Bernardino County. East of I–15, the proposed route would curve south until it terminates at SR–18.

The development of this corridor is considered necessary to provide for the existing and projected traffic demand attributed to large-scale growth and increasing population in the Antelope, Victor and Apple Valley areas of Los Angeles and San Bernardino Counties. This growth has resulted in inadequate capacity and accessibility along the existing east-west trending roadways as well as an increase in demand for goods movement corridors and access to regional airports. Alternatives under consideration are: (1)—No-Build; (2)—Transportation System Management/Transportation Demand Management (TSM/TDM). This includes several key elements under consideration: An eight-lane grade-separated freeway from SR–14 to 30th Street East; a transition to a four-lane at-grade expressway from 30th Street East to Longview Road; a four-lane at-grade highway connecting to SR–138 and extending east to US–395 along SR–18; a six-lane arterial highway along SR–18 (Palmdale Road) from US–395 to I–15; and minor roadway and signal improvements along SR–18 from I–15 to Bear Valley Road. These TSM/TDM roadway improvements would maintain at-grade intersections with local roads and driveway access; (3)—Freeway/Expressway (Avenue P–8, I–15 and SR–18). This would consist of a route with a controlled-access freeway in some areas and an expressway in others, depending on what is warranted by traffic demand. Interchange locations will be determined based upon traffic projections. This alternative generally follows Avenue P–8 in Los Angeles County and runs just south of El Mirage Road in San Bernardino County and then extends to Air Expressway Road near I–15 and curves south terminating at Bear Valley Road. The incorporation of green energy technologies and a bike path along the alternative will also be considered. Four variations along the main alignment of this alternative will be considered. In Variation A, the freeway/expressway would run slightly south of the main alignment, approximately between 15th Street East and Little Rock Wash near Palmdale. In Variation B, the freeway/expressway would run slightly south of the main alignment between Oasis Road and Caughlin Road east of the county line. In Variation D, the freeway/expressway would swing south of the main alignment just south of Avenue R approximately between 180th Street East and 230th Street East near the community of Lake Los Angeles. In Variation E, the freeway/expressway would swing south of the federal prison near the cities of Adelanto and Victorville; (4)—Freeway/Toll Way (Avenue P–8, I–15 and SR–18). This would consist of engineering geometrics similar to Alternative 3 with alterations made in coordination with a Public Private Partnership (P3) analysis. Variations A, B, D and E would also be considered; (5)—Freeway/Expressway with High Speed Rail Feeder Service. This Alternative is the same as the Alternative 3 (including Variations A, D, B and E) and includes a High Speed Rail (HSR) Feeder Service between Palmdale and Victorville. The HSR Feeder Service would utilize proven steel wheel on steel track technology and have a maximum operating speed of 180 miles per hour. Additional details of this operating feature, including the type of train technology (electric vs. diesel-electric), its location in relation to the HDC and its connections to existing and proposed rail stations are being evaluated as part of the ongoing Public-Private Partnership analysis and Alternatives Analysis. The incorporation of green energy technologies and a bike path will also be considered; (6)—Freeway/Tollway with High Speed Rail Feeder Service. This would consist of engineering geometrics similar to Alternative 4 with the consideration of additional right-of-way for a High Speed Rail (HSR) facility. The HSR Feeder Service would utilize proven steel wheel on steel track technology and have a maximum operating speed of 180 miles per hour. Additional details of this operating feature, including the type of train technology (electric vs. diesel-electric), its location in relation to the HDC and its connections to existing and proposed rail stations are being evaluated as part of the ongoing P3 analysis and Alternatives Analysis. The

incorporation of green energy technologies and a bike path will also be considered; and (7)—Hybrid Corridor. This would consist of a combination of the previously identified alternatives, whose elements (TSM/TDM, Freeway, Expressway, Tollway, HSR Feeder Service, Green Energy Technologies, bike path) would be pieced together to best fit the needs of each section of the corridor. The determination of which elements to use, and at which locations, would be based on the results of the traffic study, environmental studies and public input. It is anticipated that the proposed project may require the following federal approvals and permits: A Biological Opinion from the United States Fish and Wildlife Service; approval of a PM_{10} and $PM_{2.5}$ Hot Spot Analysis determination by the Conformity Working Group for transportation conformity under the Clean Air Act; Section 401, 402 and 404 permits under the Clean Water Act; and a Farmland Conversion Impact Rating under the Farmland Protection Policy Act.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, Participating Agencies, Tribal governments, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the draft EIS should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 22, 2013.

Matt Schmitz,

Director State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2013–18515 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Calcasieu Parish, LA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation project in Calcasieu Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: FHWA Carl Highsmith, Project Delivery Team Leader, FHWA, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana 70808. Project information can be found at the project Web site *http://www.i10lakecharles.com.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the DOTD, will prepare an EIS on alternatives for additional capacity along I–10 in the Lake Charles region between the I–210 interchanges including the Calcasieu River Bridge. A feasibility and environmental study was previously conducted in accordance with the National Environmental Policy Act (NEPA) for this project. The feasibility study involved four phases: (1) Information and Data Gathering; (2) Preliminary Study; (3) Refined Alternatives; and (4) Preparation and Submission of a Final Report. Based on the preliminary studies which included input from the local community, four feasible alternatives have been recommended for further study. A no-build alternative will also be evaluated in accordance with NEPA. The preliminary studies were completed in spring 2004; however the proposed project was placed on hold to evaluate the bridge height and due to the discovery of hazardous materials contamination within the proposed right-of-way. Because of the potential for impacts and issues associated with various socioeconomic and environmental resources and the high-level of public interest, FHWA will prepare an EIS. The total project length is approximately 9 miles. In addition to bridge alternatives, improvements to be investigated within the study limits include: A redesign of Sampson Street from Sulphur Avenue to I–10 to provide grade separations with existing railroads; a redesign of the access to and from I–10 on the west side of the bridge between Sampson Street and PPG Drive; a redesign of the access to and from I–10 near the east end of the bridge; and consideration of the implementation of one-way frontage roads from PPG Drive to US 90 East. Consideration will be given to using the existing bridge for the frontage roads. Proposed changes to the existing bridge to be investigated include: (a) Designing the proposed bridge structure to accommodate three travel lanes and one auxiliary lane, with inside and outside shoulders and two frontage roads in each direction, (b) a reduction in navigational clearance, (c) reducing the existing 420 foot truss span to two main spans, and (d) determining if the existing vertical clearance for marine traffic can be reduced. Letters describing the proposed project and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and the public who have previously expressed or are known to have interest in this project. Numerous public meetings will be held throughout the term of the project. The first of these meetings, a series of public scoping meetings, will be conducted to provide the public information about the project and an opportunity to assist in formulating and revising the scope of the study. The public scoping meetings will be scheduled in the future and will be posted to the project Web site *http://www.i10lakecharles.com.*

In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 25, 2013.

Charles Bolinger,

Division Administrator, Baton Rouge, Louisiana.

[FR Doc. 2013–18531 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0051]

Agency Information Collection Activities; New Information Collection Request: Commercial Motor Vehicle Marking Requirements

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval, and invites public comment. This ICR will enable FMCSA to document the burden associated with the marking regulations codified in 49 CFR 390.21, "Marking of Self-Propelled CMVs and Intermodal Equipment." These regulations require marking of vehicles and intermodal equipment by motor carriers, freight forwarders and intermodal equipment providers (IEPs) engaging in interstate transportation. On April 11, 2013, FMCSA published a **Federal Register** notice (78 FR 21704) allowing for a 60-day comment period on this ICR. The FMCSA received no comments in response to this notice.

DATES: Please send your comments by September 3, 2013. OMB must receive your comments by this date in order to act on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2013–0051. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth Rodgers, Chief, Commercial Enforcement and Investigations Division, Office of Enforcement and Compliance, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC, 20590–0001. Telephone: 202–366–0073; Email: *kenneth.rodgers@dot.gov*. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Marking of Self-Propelled CMVs and Intermodal Equipment

OMB Control Number: 2126–XXXX.

Type of Request: New information collection.

Respondents: Freight carrying commercial motor carriers, passenger carrying commercial motor carriers, and intermodal equipment providers.

Estimated Number of Respondents: 191,000.

Estimated Time per Response: 26 minutes [12 minutes to affix DOT Number + 14 minutes for affixing a carrier's name = 26].

Expiration Date: N/A. This is a new information collection.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 655,000 [620,000 hours for freight carrying commercial carriers + 26,000 hours for passenger carrying commercial motor carriers + 9,000 hours for intermodal equipment providers (IEPs) = 655,000].

Background: The Secretary of Transportation (Secretary) is authorized to require marking of vehicles and intermodal equipment by motor carriers, freight forwarders and IEPs engaging in interstate transportation under 49 U.S.C. 31133(a)(8) and 49 U.S.C. 31133(a)(10). The Secretary has delegated authority pertaining to the marking of commercial motor vehicles (CMVs) pursuant to 49 CFR 1.87(f). The Agency's regulation governing the marking of CMVs is at 49 CFR 390.21.

Vehicle marking requirements are intended to ensure that FMCSA, the National Transportation Safety Board (NTSB), and State safety officials are able to identify motor carriers and correctly assign responsibility for regulatory violations during inspections, investigations, compliance reviews, and crash studies. These marking requirements will also provide the public with beneficial information that could also assist in identifying carriers for the purposes of commerce, complaints or emergency notification. The marking requirements apply to motor carriers, freight forwarders and IEPs engaging in interstate transportation. The Agency does not require a specific method of marking as long as the marking complies with FMCSA's regulations.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: July, 24, 2013.

G. Kelly Leone,

Associate Administrator, Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2013–18533 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0074]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated June 28, 2013, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2013–0074.

Applicant: Norfolk Southern Corporation, Mr. Brian Sykes, Chief Engineer, C&S Engineering, 1200 Peachtree Street NE., Atlanta, GA 30309.

NS seeks approval of the proposed discontinuance of Control Point (CP) CSXT Connection, at Milepost (MP) H 194.9 on the NS Roanoke District, Virginia Division, between Shenandoah and Roanoke, VA. CP CSXT Connection will be discontinued, and all associated signal equipment and Crossover #83 will be removed. Signals 82L, 82RA, 82RC, 84L, and 84R will be removed. Power-operated switch #81 will be converted to a hand-operated switch equipped with an electric lock.

The reason given for the proposed changes is that CP CSXT Connection is seldom used and no longer needed for railroad operations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires

an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 16, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–18498 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0073]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated June 27, 2013, the Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2013–0073.

Applicant: Norfolk Southern Corporation, Mr. Brian Sykes, Chief Engineer, C&S Engineering, 1200 Peachtree Street NE., Atlanta, Georgia 30309.

NS seeks approval of the proposed discontinuance of automatic signals within traffic control signal territory and the installation of a cab signal system without wayside signals, on Main Track Number 3 of the NS Pittsburgh Line from Milepost (MP) 273.2, SG, to MP 277.30 and from MP 277.30 to MP 290.6, CP-Conpit Junction. This section of track is also referred to as the "Sang Hollow Extension." All automatic signals on this line will be retired. The discontinuance will include the following automatic signals: SG 280.1, SG 282.95, and SG 287.1.

The reasons given for the proposed changes are that the installation of cab signals without wayside signals will improve train operations and will facilitate the installation of Positive Train Control on the Pittsburgh Line.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 16, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–18499 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0057]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by documents dated May 28, 2013, and June 12, 2013, Steam Into History (Steam) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 215–Railroad Freight Car Safety Standards. FRA assigned the petition Docket Number FRA–2013–0057.

Specifically, Steam seeks relief from 49 CFR 215.303–*Stenciling of restricted cars,* which requires that restricted railroad freight cars shall be stenciled or marked in clearly legible letters with the letter "R" and a series of designated terms to completely indicate the basis for the restricted operation of the car.

The petition concerns three leased and two owned freight cars, numbered RERX 101, 213, and 702 and NCR 150 and 840, which are railroad flat cars converted to passenger carriage cars for tourist and excursion railroad service by the addition of seating, superstructures, and steps. Each of the Steam freight cars in the present petition is more than 50 years old, measured from the date of original construction, and the freight cars are the subject of a parallel petition for special approval for continued operation under 215.203(c). Therefore, Steam seeks a waiver of the requirement for stenciling found in 215.303, as the

railroad states that the stenciling would detract from both the aesthetic and historical nature of the reproduction vintage rail car equipment. As Steam's passenger equipment will operate in a limited area, Steam requests permission to keep documentation related to the restricted status of the equipment at its business office, similar to the conditions granted to other tourist and excursion railroads. In addition, Steam petitions for relief from all requirements of 49 CFR Part 224—Reflectorization of Rail Freight Rolling Stock, as the railroad states that reflectorization would detract from both the aesthetic and historical nature of the reproduction vintage equipment.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 16, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–18502 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0063]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 6, 2013, the Association of American Railroads (AAR), on behalf of itself and its member railroads, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices. FRA assigned the petition Docket Number FRA–2013–0063.

Specifically, AAR seeks a waiver of compliance from Part 232, Appendix B, Part 232 Prior to May 31, 2001 as Clarified Effective April 10, 2002, 232.17(b)(2). This section states that brake equipment on passenger cars must be cleaned, repaired, lubricated, and tested as often as necessary to maintain it in a safe and suitable condition for service but not less frequently than as required in Standard S–045 in the Manual of Standards and Recommended Practices (MSRP) of the AAR. AAR petitioned FRA for a 5-year waiver so that AAR Standard S–4045 may be used in lieu of the obsolete Standard S–045 for the frequency requirements referenced in 49 CFR Part 232, Appendix B.

AAR's Braking Systems Committee recently revised S–4045's Section E, Passenger Equipment Maintenance Requirements of the AAR MSRP. The revisions include a revised definition for a passenger equipment car as "[R]ail rolling equipment that is used only for excursions, recreational, or private transportation purposes (such as a vehicle designed to carry railroad personnel). It does not apply to a passenger car intended for use by members of the general public as defined in US DOT–FRA Title 49, Code of Federal Regulations, Part 238." This definition serves to address private passenger cars, particularly those operated by freight railroads that may be handled in either freight or passenger trains. Additionally, the revised standard aligns the requirements for air brake periodic attention with 49 CFR 238.309, *Periodic brake equipment maintenance*, to eliminate confusion for air brake dates on equipment that may be subject to both Part 238 and non-Part 238 service, i.e., passenger equipment that may be handled in either freight or passenger trains. Passenger equipment has operated in this dual service since 1999 with no significant difference in the numbers of defects found in D–22 and 26–C valve components between the service modes. Finally, S–4045 includes a clarification for the use of freight valves on passenger equipment by addressing the use of Rule 3 of the Field Manual of the AAR Interchange Rules as the proper reference for the maintenance of freight valves used on passenger equipment. The change recommended in this waiver request maintains existing safety levels and lessens compliance confusion by allowing uniform periodic inspection dates for railroad and privately owned passenger equipment, whether operating in a freight train, private train, or a Part 238 passenger train. It also maintains safety while reducing unnecessary costs.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov/*. Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 16, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–18501 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0068]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 18, 2013, the National Railroad Passenger Corporation (Amtrak) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 214, Subpart C, Roadway Worker Protection. FRA assigned the petition Docket Number FRA–2013–0068.

In its petition, Amtrak requests a temporary waiver from 49 CFR Part 214, Subpart C, seeking relief from the requirement to provide Roadway Worker Protection (RWP) for contractors and contractor employees (herein referred to as "workers") using hand tools within the 4-foot fouling envelope of a track in publicly accessible areas, specifically passenger station platforms. The waiver is sought for the express purposes of performing manual snow removal with hand tools, which extend into the tactile warning area of a passenger platform (if equipped with a tactile warning strip), or other warning area beyond and including a similarly positioned and contrasting painted line (if not equipped), while the worker's person is behind the area and in a position of safety. The tactile warning area is the area beyond and including a 24-inch-wide strip of truncated domes that is installed along the full length of the public-use areas of a passenger platform (pursuant to the Americans with Disabilities Act (ADA) standards) and that is generally positioned approximately 24 inches from the outside of the nearest rail. The request for relief from the regulation is limited to platforms outside of the Northeast Corridor at stations for which Amtrak is not the operating railroad.

Title 49 CFR 214.7 defines fouling a track as "the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment, or in any case is within four feet of the field side of the near running rail." In the case of a platform, 4 feet from the field side of the rail generally encompasses the space between the outside of the nearest rail and the platform, plus the width of a 24-inch-wide, ADA-required, tactile strip.

Currently, workers performing passenger station snow-removal activities, which breach the tactile (or painted) warning area with hand tools, must be provided with on-track safety in accordance with the RWP rule, while pedestrians and the riding public may move throughout the system in the very same areas without restriction.

Contractor workers performing snow removal on passenger service infrastructure not owned by Amtrak are not qualified to provide on-track safety. Thus, workers may remove snow from platform areas behind the tactile (or paint-delineated) warning area, but must not remove snow in the area of the tactile (or paint-delineated) warning area without first establishing on-track safety in accordance with the RWP rule. As a result of this requirement, hazardous conditions on platforms remain unaddressed. Amtrak believes that the proposed alternate snow removal protection program (alternate program), used for specific snow-removal activities, will permit workers to address unsafe platform conditions from a safe location in a safe and timely manner, without workers being struck by a train, while occupying the area of the platform behind the tactile warning strip or contrasting painted line.

Slippery or snow-covered platform surfaces pose a significant risk to passengers, especially if such conditions exist close to the platform's edge. This potential risk continues if the surfaces remain slippery or snow-covered. In contrast, the potential risk to workers is intermittent depending on the presence of a train. Considering the differing levels of potential risk from both time-based and quantity-based perspectives, risk to passengers is significantly greater than the potential risk to workers.

Throughout the 2012–2013 winter season, with the permission of FRA, Amtrak conducted a pilot test program of the alternate program used for specific snow-removal activities (see FRA–2011–0077). Amtrak believes that there was an improvement to the safety of the riding public during the pilot program and believes this improvement will continue in the form of faster response times, reduced hazardous walking conditions, and reduced passenger incidents, should the waiver be granted. Amtrak submits that it is logical to assume that removing snow and ice from the tactile or paint-delineated warning areas of passenger station platforms would result in a reduction in slips, trips, and falls due to inclement weather at station platforms. Further, there were no incidents meeting this criteria in the stations that were part of the pilot program.

Amtrak also believes that no negative impact to the safety of workers removing snow will occur under the plan, based upon examination of publicly available data regarding passenger and employee injuries and fatalities on railroad passenger station platforms in addition to the data obtained throughout the pilot test program.

Under Federal Transit Administration oversight, no consistent RWP requirements exist nationwide. Transit agencies are permitted to perform snow-removal activities at station platforms in accordance with protection requirements that the transit agency itself adopts. Many rail transit agencies have adopted policies similar to the practices that Amtrak proposes in this waiver, with no appreciable difference in worker injuries and fatalities on station platforms when compared with FRA data.

Amtrak believes and has observed throughout the pilot test program that the alternate program, as proposed, will provide an equivalent level of safety to the current requirements under RWP,

while improving the safety of the riding public. As such, Amtrak believes that relief from the application of fouling protection required when manually removing snow from a publicly accessible station platform is "in the public interest and consistent with railroad safety."

To ensure that workers using the alternate program to remove snow from platforms are not exposed to undue risk, the following conditions are proposed by Amtrak in its alternate program:

1. Workers are not permitted to use powered equipment, such as snow blowers, to clear the tactile edge area of snow without appropriate on-track safety in accordance with the RWP rule.

2. Any need to breach the strip or to come bodily within the 4-foot clearance envelope to push snow from the platform will require on-track safety in accordance with the RWP rule.

3. Amtrak will train workers to be constantly alert for the movement of trains and to remain in areas of the platform that are inaccessible to trains.

4. The Amtrak training program for the alternate program details the conditions under which on-track safety is needed, in accordance with the RWP rule, as well as the explicit conditions under which workers may occupy the station areas behind the tactile edge to remove snow.

5. The training program explains the purpose of a good-faith challenge as well as how to execute a challenge if work needs to be performed that requires on-track safety in accordance with the RWP rule or is otherwise thought to be unsafe by the worker.

6. Workers must demonstrate an understanding of the types of conditions that would require protection above and beyond that which would be permitted under this proposal, as well as the methods to execute a good-faith challenge.

7. Workers must hold a job briefing before any work starts.

8. Workers removing snow from station platforms under the alternate program will not be permitted to work in single-man crews.

In addition, Amtrak's alternate program will incorporate all of the criteria that FRA required Amtrak to adopt in the pilot test program conducted in 2012 and 2013.

Under the alternate program procedures, workgroups would be required to appoint a safety monitor. The safety monitor would be required to conduct the job briefing and to maintain a means to contact Amtrak personnel as necessary. Safety monitors would observe all work for compliance with the requirements of the protection procedures and would ensure that all work would stop in the presence of a train.

Amtrak does not seek a waiver from RWP requirements when a worker is fouling the track in order to remove snow from areas other than the platform, such as clearing an inner-track walkway or when a worker is required to bodily breach the tactile edge. Many of the prior incidents within the industry occurred under precisely the same conditions under which Amtrak's proposed procedures would still mandate full RWP protection.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 16, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and downloading on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review the U.S. Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–18500 Filed 7–31–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35523]

CSX Transportation, Inc.—Joint Use—Louisville & Indiana Railroad Company, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 3 in FD 35523; Notice of Acceptance of Application and Related Filings; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application submitted on June 14, 2013, and supplemented on July 2, 2013, by CSX Transportation, Inc. (CSXT), and Louisville & Indiana Railroad Company, Inc. (L&I). The application seeks Board approval under 49 U.S.C. 11323 *et seq.*, for joint use by CSXT and L&I of L&I's 106.5-mile railroad line between its connection with CSXT in Indianapolis, Ind., milepost 4.0±, and its connection with CSXT in Louisville, Ky., milepost 110.5± (the Line). In order to jointly use the Line with L&I, CSXT seeks to acquire and use a perpetual, non-exclusive freight railroad operating easement over the Line. This proposal is referred to as the Transaction, and CSXT and L&I are referred to collectively as Applicants.

The Board finds that the Transaction is a "minor transaction" under 49 CFR 1180.2(c), and that the application, as supplemented on July 2, 2013, is complete.[1] The Board adopts a procedural schedule for consideration of the application, under which the Board's final decision would be issued by December 6, 2013 (assuming the environmental review process has been completed), and would become effective by December 26, 2013.

[1] On July 2, 2013, Applicants filed public and confidential versions of Section 4 of Attachment C to the Joint Use Operating Agreement. For more information, see Decision No. 2 in this docket.

DATES: The effective date of this decision is August 1, 2013. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than August 15, 2013, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by September 30, 2013. Responses to comments, protests, requests for conditions, and other opposition on the transportation merits of the Transaction, and rebuttal in support of the application must be filed by October 21, 2013.

The Board's Office of Environmental Analysis (OEA) will issue a Draft Environmental Assessment (EA) on August 30, 2013, for public review and comment. Comments on the Draft EA will be due by September 30, 2013. OEA expects to issue a Final EA completing the environmental review process on or before November 6, 2013.

If a public hearing or oral argument is held, it will be held on a date to be determined by the Board. The Board expects to issue its final decision by December 6, 2013, unless more time is needed to permit the completion of the environmental review process, and to make the decision effective by December 26, 2013. For further information respecting dates, see the Appendix (Procedural Schedule).

ADDRESSES: Any filing submitted on the transportation merits in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at *www.stb.dot.gov* at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by email only if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Louis E. Gitomer (representing CSXT), Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204; (4) Mark H. Sidman (representing L&I), Anacostia Rail Holdings Company, 1701 Pennsylvania Avenue NW., Suite 300, Washington, DC 20006; and (5) any other person designated as a POR on the service list notice (as explained below, the service list notice will be issued as soon after August 15, 2013, as practicable).

FOR FURTHER INFORMATION CONTACT: Jonathon Binet, (202) 245–0368. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: CSXT is a wholly owned subsidiary of CSX Corporation and is a Class I railroad that owns and operates approximately 21,000 miles of railroad lines in the United States and Canada. As relevant here, CSXT currently operates over the Line pursuant to trackage rights.[2]

L&I, a Class III railroad, is a wholly owned subsidiary of Anacostia Rail Holdings. L&I owns and operates 106 miles of rail lines in Kentucky and Indiana. Prior to L&I's acquisition of the Line, it was owned by Consolidated Rail Corporation. Currently, the Line handles two trains per day between Indianapolis and Seymour, Ind. (L&I); four trains per day between Seymour and Jeffersonville Yard, Ind. (2 L&I and 2 CSXT); and seven trains per day between Jeffersonville Yard and Louisville, Ky. (5 L&I and 2 CSXT).

Joint use of the Line would be made possible through CSXT's acquisition and use of a perpetual, non-exclusive freight railroad operating easement over the Line. In order to accomplish this, CSXT and L&I have entered into a Transaction Agreement, Easement Agreement, and Joint Use Operating Agreement, as well as other agreements. L&I has agreed to sell the easement to CSXT for $10 million. As a result of the Transaction, CSXT would fund an upgrade of the Line, which would result in the following improvements: upgrade of the track from FRA Class 2 (up to 25 mph) to FRA Class 4 track (up to 60 mph), replacement of a bridge, modernization of the current dispatching system, and completion of upgrades necessary to permit the handling of 286,000 pound gross weight on rail cars (GWOR). These upgrades are estimated to cost between $70 million and $90 million, and would be completed within seven years. L&I would continue to provide overhead service and exclusive local service, while CSXT would continue to provide overhead service on the Line.

Applicants claim that the upgrades to the Line will increase the efficiency and performance of both CSXT's and L&I's operations. Once the upgrades are completed, Applicants state that there will be 17 trains (2 L&I and 15 CSXT) per day operating between Indianapolis and Jeffersonville Yard, Ind.; and 20 trains (5 L&I and 15 CSXT) per day operating between Jeffersonville Yard, Ind. and Louisville, Ky.[3] Applicants state that the Transaction would create routing flexibility and performance improvements for CSXT in the Midwestern and South regions (areas encompassing Ohio, Indiana, Illinois, and Kentucky). Applicants state that CSXT expects to save about 130.5 hours of transit time per day, resulting in savings of about $11.8 million per year. Applicants state that L&I would benefit from the upgraded Line without incurring the capital cost and would share the cost of maintaining the Line with CSXT based on usage.

Under the Joint Use Operating Agreement, the existing track would be improved to allow the Line to handle cars weighing 286,000 pounds GWOR, rather than the current weight of 263,000 pounds GWOR. L&I would be able to use the Line as it does today, however, L&I would be required to pay CSXT for use of the upgraded line for cars weighing more than 263,000 pounds GWOR or taller than 18′6″ above the top rail when CSXT is not involved in the movement of the car (referred to as "subject cars").[4] Under Section 4 of Attachment C to the Joint Use Operating Agreement, L&I's subject cars would be charged a per unit-mile fee for overhead movement between milepost 4.0 and milepost 98.3. According to Applicants, this compensation arrangement is perpetual and is based on the Transaction Agreement. L&I would also be charged for originating or terminating a certain number of subject cars at customers served by CSXT or accessible to CSXT by reciprocal switch within a calendar year, subject to some exclusions. Another provision of the Joint Use Operating Agreement precludes L&I's ability to grant operating rights to third party Class I railroads and specifies that L&I shall not

[2] *See CSX Transp.—Trackage Rights Exemption—Louisville & Ind. R.R.*, FD 33744 (STB served June 21, 2001). Under the terms of the Joint Use Operating Agreement, these trackage rights would become dormant but would automatically reactivate should the Easement Agreement terminate.

[3] These projections reflect increases in CSXT's number of trains. L&I present number of trains is not projected to change as a result of the transaction.

[4] Under the Joint Use Operating Agreement, L&I could opt out of the payments for cars taller than 18′6″, with a one-time payment to CSXT.

grant operating rights to a Class I carrier without prior written consent of CSXT.

Financial Arrangements. Under the Transaction, L&I would sell the easement to CSXT for $10 million. No new securities would be issued by CSXT or L&I. The upgrades would be funded as part of CSXT's annual capital budget.

Passenger Service Impacts. Applicants state that the Transaction would not adversely impact commuter or other passenger service. Pursuant to terms of Applicants' Joint Use Operating Agreement, L&I would retain all rights with respect to the conduct of passenger operations on the Line.

Discontinuances/Abandonments. The Transaction does not involve the abandonment of, or discontinuance of service over, any rail lines. Nor do Applicants have any plans at this time to discontinue service over or abandon any lines as a result of the Transaction.

Public Interest Considerations. Applicants assert that the Transaction would not reduce the number of railroads serving any shipper on the Line. Rather, all shippers along the Line would receive faster service and be able to use taller and heavier cars. L&I would continue to serve the same shippers it serves today. Applicants state that the competitive balance between CSXT and L&I would not be altered because L&I and CSXT would remain unaffiliated. Applicants claim that L&I would benefit by receiving an upgraded track, a new bridge, and upgraded dispatching and signaling systems without incurring the capital cost.

Applicants state that CSXT currently uses trackage rights over the Line to relieve some of the congestion on its Louisville Cincinnati Subdivision (LCL Subdivision).[5] After the upgrades are complete, CSXT expects to reduce inefficiencies caused by running shorter and slower trains on the LCL Subdivision. According to Applicants, CSXT's use of the Line would reduce freight transit time in the Midwestern and South regions, reduce fuel consumption, upgrade car utilization, and allow it to compete more effectively with nearby railroads and short and long-haul trucking companies.

Time Schedule for Consummation. Applicants expect to consummate the Transaction before the end of 2013.

Environmental Matters. The National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347 (NEPA), requires that the Board take environmental considerations into account in its decisionmaking. Environmental review under NEPA will be required here because the projected increases in train traffic on the Line (between 13 and 15 trains per day) exceed the thresholds in the Board's environmental rules (generally an increase in 3 or 8 trains per day). Consistent with those rules, OEA currently is preparing a Draft EA. OEA anticipates issuing its Draft EA for public comment on August 30, 2013. Parties interested in commenting on the Draft EA must submit comments by September 30, 2013. The Draft EA will provide instructions on how to submit comments on the document. OEA anticipates issuing a Final EA on or before November 6, 2013.

Labor Impacts. Applicants state that no employees of CSXT and L&I would be adversely affected. According to Applicants, CSXT trains that are operated over the Line would continue to be crewed by CSXT employees. L&I trains would continue to be operated by L&I employees. L&I would continue to maintain and dispatch the Line.

Applicants request that the Board impose the employee protective conditions set forth in *Norfolk and Western Railway Co.—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

Application accepted. Under 49 CFR 1180.4(b)(2)(iv), the Board must determine whether a proposed transaction is "major," "significant," or "minor." Here, we must determine whether the Transaction is "significant" under § 1180.2(b) or "minor" under § 1180.2(c).[6] A transaction that does not involve the control or merger of two or more Class I railroads is not of regional or national transportation significance, and therefore is classified as "minor" if: (1) The transaction would clearly not have anticompetitive effects, or (2) any anticompetitive effects would clearly be outweighed by the transaction's contribution to the public interest in meeting significant transportation needs. *See* 49 CFR 1180.2(b), (c).

Based on a review of the application and supplement, the Board finds that the Transaction does not appear to be of regional or national transportation significance and therefore qualifies as a "minor transaction" under the Board's regulatory scheme. The Board has identified some provisions in the parties' agreements that may have anticompetitive effects. Under Section 4 of Attachment C to the Joint Use Operating Agreement, the fee L&I must pay CSXT for overhead movement of certain cars on the upgraded track between milepost 4.0 and milepost 98.3 could be an anticompetitive effect because it may create a disincentive for L&I to interchange with carriers other than CSXT. Furthermore, this provision would continue in perpetuity. In addition, the Transaction explicitly precludes L&I from granting operating rights to other Class I railroads without the permission of CSXT. Because the compensation arrangement only applies to 286,000 pounds GWOR and cars above a certain height—both of which are car types that L&I does not presently handle—the provisions do not appear to affect L&I's ability to continue its current operations and serve the shippers it serves today. In other transactions involving a significant capital investment by a railroad to improve lines that it does not own or fully control, the Board has permitted certain restrictions similarly aimed at protecting that investment. *See Kansas City S. Ry. and Meridian Speedway LLC—Exemption for Transactions Within a Corporate Family*, FD 34822 (STB served Feb. 16, 2006) (authorizing a transaction that involved a significant investment by Norfolk Southern Railway Company (NSR) in capital improvements to a line of the Kansas City Southern Railroad, but imposed certain restrictions on other railroads from operating over it); *see also Norfolk S. Ry., Pan Am Rys., et al.—Joint Control and Operating/Pooling Agreements—Pan Am S. LLC*, FD 35147 (STB served Mar. 10, 2009) (authorizing the control and ownership of Pan Am Southern and substantial investment by NSR in improvements to Pan Am Southern's lines and facilities).

Here, the Board finds the Transaction to be a "minor transaction" because it appears on the face of the application, as supplemented, that any anticompetitive effects of the Transaction would clearly be outweighed by the contribution to the public interest. The proposed upgrades to the Line would allow more efficient operations by both L&I and CSXT. L&I would receive an upgraded track, from FRA Class 2 (up to 25 mph) to FRA Class 4 track (up to 60 mph), a new bridge, and upgraded dispatching and signaling systems. Customers along the Line would receive faster service and be able to use heavier and taller cars.

The Board's findings regarding competitive impact and contributions to the public interest are preliminary. The

[5] Expansion of the LCL Subdivision is not feasible due to curvature and weight restrictions and short sidings. Application, 11.

[6] *See* 49 CFR 1180.4(b)(2)(iv). This transaction is not "major" because it does not involve the control or merger of two or more Class I carriers. *See* 49 CFR 1180.2(a). It also is not "exempt" because it is not within one of the eight class exemptions listed in § 1180.2(d).

Board will give careful consideration to any claims that the potential anticompetitive effects of the Transaction would not be outweighed by its potential benefits. We also note that the Board can condition the Transaction to mitigate or eliminate adverse effects.

The Board accepts the application for consideration because it is in substantial compliance with the applicable regulations governing "minor transactions." *See* 49 CFR pt. 1180; 49 U.S.C. 11321–26. The Board reserves the right to require the filing of supplemental information as necessary to complete the record.

Procedural schedule. The Board has considered Applicants' request for an expedited procedural schedule, under which the Board would issue its final decision on November 25, 2013, 146 days after the application has been filed (rather than 180 days), and have that decision become effective 20 days after it is issued (rather than 30 days). The Board will adopt a procedural schedule, based on the filing of the supplemental information on July 2, 2013, that attempts to accommodate the parties' desire to close the Transaction by the end of 2013. Under the procedural schedule we are adopting in this case: Any person who wishes to participate in this proceeding as a party of record (POR) must file a notice of intent to participate no later than August 15, 2013; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by DOJ and DOT, must be filed by September 30, 2013; comments on the Draft EA must be submitted by September 30, 2013; and responses to comments, protests, requests for conditions, and other opposition on the transportation merits of the Transaction, as well as Applicants' rebuttal in support of the application, must be filed by October 21, 2013. The Board plans to issue its Final EA on or before November 6, 2013, and its final decision by December 6, 2013, and to make any such approval effective by December 26, 2013. The Board reserves the right to adjust the schedule as circumstances may warrant. For further information regarding dates, see the Appendix (Procedural Schedule).

Notice of intent to participate. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than August 15, 2013, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, Mr. Sidman (representing L&I), and Mr. Gitomer (representing CSXT).

If a request is made in the notice of intent to participate to have more than one name added to the service list as a POR representing a particular entity, the extra name will be added to the service list as a "Non-Party." The list will reflect the Board's policy of allowing only one official representative per party to be placed on the service list, as specified in Press Release No. 97–68 dated August 18, 1997, announcing the implementation of the Board's "One Party-One Representative" policy for service lists. Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4, and any other requirements set forth in this decision.

Service list notice. The Board will serve, as soon after August 15, 2013, as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR will also be required to file with the Board, within 10 days of the service date of the service list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any MOC or GOV has requested to be, and is designated as, a POR.

Service of decisions, orders, and notices. The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, GOV, or Non-Party. All other interested persons are encouraged to secure copies of decisions, orders, and notices via the Board's Web site at "*www.stb.dot.gov*" under "E-LIBRARY/Decisions & Notices." It is not necessary to become a POR in order to participate in the environmental review process. Nor must environmental comments be served on other parties. The Draft EA will be posted on the Board's Web site. In addition, OEA will distribute the document to appropriate federal, state, and local agencies and other interested parties in the project area. OEA will also provide copies of the Draft EA to public libraries in the project area. Any person or interested party may submit comments on the Draft EA by following the instructions in the document for submitting comments.

Access to filings. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished by the filer to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). Such documents are available for inspection in the Docket File Reading Room (Room 131) at the offices of the Surface Transportation Board, 395 E Street SW., in Washington, DC. The application and other filings in this proceeding will also be available on the Board's Web site at "*www.stb.dot.gov*" under "E-LIBRARY/Filings." In addition, the application may be obtained from Messrs. Sidman and Gitomer at the addresses indicated above.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application in FD 35523, as supplemented, is accepted for consideration.

2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in the Appendix.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on August 1, 2013.

Decided: July 29, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Derrick A. Gardner,

Clearance Clerk.

Appendix: Procedural Schedule

June 14, 2013 Motion for Protective Order filed.

July 2, 2013 Application, as supplemented, filed.

August 15, 2013 Notices of intent to participate in this proceeding due. Discovery requests due to Applicants.

September 3, 2013 Applicants' responses to discovery requests due.

August 30, 2013 OEA issues Draft EA.

September 30, 2013 Comments due from all parties, including the

Attorney General and the Secretary of Transportation, on the transportation merits of the Transaction.

September 30, 2013 Comments on Draft EA due to OEA.

October 21, 2013 Responses to comments on the transportation merits of the Transaction due. Applicants' rebuttal in support of the application due.

October 30, 2013 Close of record on the transportation merits.

On or before November 6, 2013 OEA issues Final EA.

December 6, 2013 Board serves final decision.*

December 26, 2013 Effective date of final decision.

* The Board reserves the right to modify this schedule as circumstances may warrant.

[FR Doc. 2013–18527 Filed 7–31–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; Treasury/United States Mint .013—United States Mint National Electronic Incident Reporting System of Records

AGENCY: United States Mint, Treasury.

ACTION: Notice of Proposed New System of Records

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury ("Treasury") and the United States Mint proposes to establish a new system of records entitled, "Treasury/United States Mint .013—United States Mint National Electronic Incident Reporting System of Records."

DATES: Comments must be received no later than September 3, 2013. The proposed new system of records will become effective September 10, 2013 unless comments are received that would result in a contrary determination.

ADDRESSES: Comments should be sent to the Disclosure Officer, United States Mint, 801 9th Street NW., Washington, DC 20220, Attention: Privacy Act Systems of Record. Comments may be faxed to (202) 756–6153, or emailed to *kmitchell@usmint.treas.gov*. Comments will be made available for public inspection upon written request. The United States Mint will make such comments available for public inspection and copying at the above listed location, on official business days between the hours of 9 a.m. and 5 p.m. Eastern Standard Time. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–7600. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues, please contact Kathleen Saunders-Mitchell, Disclosure Officer, (202) 354–7600, United States Mint, 801 9th Street NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, Treasury and the United States Mint proposes to establish a new system of records entitled, "Treasury/United States Mint .013—United States Mint National Electronic Incident Reporting System of Records."

The United States Mint is establishing the United States Mint National Electronic Incident Reporting System of Records to enhance the incident management capabilities of the United States Mint Police. The system will be a centrally managed electronic database and workflow system that will support the collection, management, and sharing of information regarding reported incidents on or related to United States Mint property; property for which the United States Mint shares jurisdiction through a Cooperative Agreement, Memorandum of Understanding or other arrangement; or property or assets under United States Mint custody or control. It is intended to be usable by all United States Mint Police Officers in accordance with applicable procedures, improve data management and security, and provide a tracking system to notify supervisors of case status.

While the system is generally organized by incident and not by individual, it contains personal information on individuals searchable by individual name or other personal identifier. Information in the system is expected to include some or all of the following: Individual names, addresses, phone numbers, dates of birth, driver's license numbers, social security numbers, license plate numbers, medical information (typically in the case of accidents or injuries), investigation information, property descriptions, vehicle identifying information and physical descriptions. Information collected is protected throughout the life cycle of the system.

All information about an individual provided to the United States Mint Police that becomes part of this system of records in connection with incidents on or related to the following will be subject to the Privacy Act and to the Privacy Act exceptions and routine uses applicable to the data: United States Mint property; property for which the United States Mint Police share jurisdiction (through a Cooperative Agreement, Memorandum of Understanding or other arrangement); or property or assets under United States Mint custody or control.

The individuals who will have access to the system include authorized employees and contractors working for the United States Mint who have undergone security background checks, have Privacy Act clauses in their contracts, and have signed nondisclosure agreements with the United States Mint. The program office and system owner will be responsible for assuring proper use of the data contained in the system. Paper records are stored in secured filing cabinets with access only by authorized personnel. Electronic records are stored in secured systems subject to access controls in accordance with Department of the Treasury and United States Mint policies and procedures. Access to electronic records is restricted to authorized personnel, and is subject to multiple controls including an access approval process, unique user identifier, user authentication and account management, and password management.

Authority for this system derives from 40 U.S.C. 1315, 31 U.S.C. 321, 31 U.S.C. 5141 (note), and Treasury Order 101–33 (March 30, 2010). Below is the description of the Treasury/United States Mint .013—United States Mint National Electronic Incident Reporting System of Records. In accordance with 5 U.S.C. 552a(r), Treasury has provided a report of this system of records to the Office of Management and Budget and to Congress.

Dated: July 15, 2013.

Helen Goff Foster

Deputy Assistant Secretary for Privacy, Transparency and Records designee.

Treasury/United States Mint .013

SYSTEM NAME:

United States Mint National Electronic Incident Reporting System of Records.

SYSTEM LOCATION:

United States Mint, 801 9th Street NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contractors, visitors and other members of the general public

involved in incidents on or related to United States Mint property; property for which the United States Mint Police share jurisdiction through a Cooperative Agreement, Memorandum of Understanding or other arrangement; or property or assets under United States Mint custody or control.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system is expected to include some or all of the following:

- individual names,
- addresses,
- phone numbers,
- dates of birth,
- driver's license numbers,
- social security numbers,
- license plate numbers,
- medical information (typically in the case of accidents or injuries),
- investigation information,
- property descriptions,
- vehicle identifying information and physical descriptions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 1315; 31 U.S.C. 321; 31 U.S.C. 5141 (note); Treasury Order 101–33 (March 30, 2010).

PURPOSE(S):

The purpose of this system is to enhance the incident management capabilities of the United States Mint Police. This is a centrally managed electronic database and workflow system that will: Support the collection, management, and sharing of information regarding reported incidents on or related to United States Mint property; property for which the United States Mint shares jurisdiction through a Cooperative Agreement, Memorandum of Understanding or other arrangement; or property or assets under United States Mint custody or control. It is intended to be usable by all United States Mint Police Officers in accordance with applicable procedures, improve data management and security, and provide a tracking system to notify supervisors of case status.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside Treasury as a routine use pursuant 5 U.S.C. 552a(b)(3) as follows:

1. Appropriate federal, state, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license;

2. A federal, state, or local agency that has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of security clearance, license, contract, grant or other benefit;

3. A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations; in response to a court-ordered subpoena; or in connection with criminal law proceedings;

4. A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

5. The news media at the Department of Justice's direction or approval, in accordance with guidelines contained in 28 CFR 50.02 which relate to an agency's functions relating to civil and criminal proceedings;

6. Third parties during the course of an authorized criminal or administrative investigation;

7. Accounting offices, managers, supervisors and government officials pertaining to cash receivables and debts owed to the Federal Government;

8. Appropriate agencies, entities, and persons when (a) the United States Mint suspects or has confirmed that the security, confidentiality or availability of information in the system of records has been compromised; (b) the United States Mint has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the United States Mint or another agency or entity) that rely on the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the United States Mint's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and electronic records.

RETRIEVABILITY:

Records may be retrieved by name or an identifier, including social security number and driver's license number.

SAFEGUARDS:

Paper records are stored in secured filing cabinets with access only by authorized personnel. Electronic records are stored in secured systems subject to access controls in accordance with Treasury and United States Mint policies and procedures. Access to electronic records is restricted to authorized personnel, and is subject to multiple controls including an access approval process, unique user identifier, user authentication and account management, and password management.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with National Archives and Records Administration (NARA) regulations, and NARA-approved records retention schedules.

SYSTEM MANAGER AND ADDRESS:

Chief, Policy and Training Branch, United States Mint Police, United States Mint, 801 9th Street NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are currently named in this system of records, seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix H. Requests for information and specific guidance on where to send requests for records may be addressed to: Disclosure Officer, United States Mint, 801 9th Street NW., Washington, DC 20220.

When seeking records about yourself from this system of records, you must first verify your identity by providing at least one of the following: (a) United States Federal employee identification; (b) driver's license; (c) or other official document. You must provide your full name, current address and date of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition you should provide the following:

- An explanation of why you believe the United States Mint would have information on you;
- Specify when you believe the records would have been created;
- Provide any other information that will help determine the location of responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that

individual certifying his or her agreement for you to access his/her records.

Without this bulleted information the United States Mint may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records are obtained from employees, contractors, visitors, and other members of the general public involved in incidents on or related to: United States Mint property; property for which the United States Mint Police share jurisdiction through a Cooperative Agreement, Memorandum of Understanding or other arrangement; or property or assets under United States Mint custody or control. Sources may also include the National Crime Information Center database, Department of the Treasury's Office of Inspector General, and other federal, state or local law enforcement agencies conducting investigations that they or the United States Mint initiate.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–18447 Filed 7–31–13; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

DATES: Written comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: United States Estate (and Generation-Skipping Transfer) Tax Return.

OMB Number: 1545–0015.

Form Number: 706.

Abstract: Form 706 is used by executors to report and compute the Federal estate tax imposed by Internal Revenue Code section 2001 and the Federal generation-skipping transfer (GST) tax imposed by Code section 2601. The IRS uses the information on the form to enforce the estate and GST tax provisions of the Code and to verify that the taxes have been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 1,078,700.

Estimated Total Annual Burden Hours: 2,046,350.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 24, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18509 Filed 7–31–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098–E

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098–E, Student Loan Interest Statement.

DATES: Written comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Student Loan Interest Statement.

OMB Number: 1545–1576.

Form Number: Form 1098–E.

Abstract: Section 6050S(b)(2) of the Internal Revenue Code requires persons

(financial institutions, governmental units, etc.) to report $600 or more of interest paid on student loans to the IRS and the students. Form 1098–E is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and State, local or tribal governments.

Estimated Number of Respondents: 8,761,303.

Estimated Time per Respondent: 7 min.

Estimated Total Annual Burden Hours: 1,051,357.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 26, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18496 Filed 7–31–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, the IRS is seeking comments concerning the following forms, and reporting and recordkeeping requirements:

Title: Election of Alternative Deficit Reduction Contribution.

OMB Number: 1545–1884.

Announcement Number: Announcement 2004–43.

Abstract: Announcement 2004–43 describes the notice that must be given by an employer to plan participants and beneficiaries and to the Pension Benefit Guaranty Corporation within 30 days of making an election to take advantage of the alternative deficit reduction contribution described in Public Law, 108–18, and gives a special transition rules for the 1st quarter.

Current Actions: There are no changes being made to the announcement at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and Not-for-profit institutions.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 60 hours.

Estimated Total Annual Burden Hours: 12,000.

Title: LIFO Recapture Under Section 1363(d).

OMB Number: 1545–1906.

Regulation Project Number: TD 9210 (REG–149524–03).

Abstract: Section 1.1363–2(e)(ii) allows a partnership to elect to adjust the basis of its inventory to take account of LIFO recapture. Section 1.1363–2(e)(3) provides guidance on how to make this election.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Time Per Respondent/ Recordkeeper: 2 hrs.

Estimated Total Annual Reporting/ Recordkeeping Burden Hours: 200.

Title: Transitional Guidance for Taxpayers Claiming Relief under the Military Spouses Residency Relief Act for Taxable Year 2009.

OMB Number: 1545–2169.

Regulation Project Number: Notice 2012–41 (Formerly 2010–30).

Abstract: This notice extends the relief set forth in *Notice 2010–30* for civilian spouses described in the prior paragraph to taxable years beginning after November 11, 2010, and provides that such civilian spouses should follow the applicable procedures described in *Notice 2010–30*. Notice 2010–30 contains transitional guidance and provides civilian spouses working in a U.S. territory but claiming a tax residence in one of the 50 States or the District of Columbia ("U.S. mainland") under MSRRA with an extension of time for paying the tax due the Internal Revenue Service ("IRS") for 2011 and subsequent taxable years. This notice also provides civilian spouses working on the U.S. mainland but claiming a tax residence in a U.S. territory under MSRRA with guidance on filing claims for refund of federal income taxes that their employers withheld and remitted to the IRS or estimated tax payments the taxpayers paid to the IRS.

Current Actions: Notice 2012–41 replaces Notice 2010–30.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 6,200.

Estimated Time Per Respondent: 1 Hour.

Estimated Total Annual Burden Hours: 6,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: July 25, 2013.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–18485 Filed 7–31–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1118

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1118, Foreign Tax Credit-Corporations.

DATES: Written comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence; Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Foreign Tax Credit-Corporations.

OMB Number: 1545–0122.

Form Number: 1118.

Abstract: Form 1118 and separate Schedules I, J, and K are used by domestic and foreign corporations to claim a credit for taxes paid to foreign countries. The IRS uses Form 1118 and related schedules to determine if the corporation has computed the foreign tax credit correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 36,950.

Estimated Time per Respondents: 94 hours, 16 minutes.

Estimated Total Annual Burden Hours: 3,483,016.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July, 24, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18508 Filed 7–31–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8855

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8855, Election To Treat a Qualified Revocable Trust as Party of an Estate.

DATES: Written comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election To Treat a Qualified Revocable Trust as Party of an Estate.

OMB Number: 1545–1881.

Form Number: 8855.

Abstract: Form 8855 is used to make a section 645 election that allows a qualified revocable trust to be treated and taxed (for income tax purposes) as part of its related estate during the election period.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 5 hours, 38 minutes.

Estimated Total Annual Burden Hours: 28,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 26, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18494 Filed 7–31–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning nonbank trustees.

DATES: Written comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Nonbank Trustees.

OMB Number: 1545–0806.

Regulation Project Number: EE–12–78.

Abstract: Internal Revenue Code section 408(a)(2) permits an institution other than a bank to be the trustee of an individual retirement account. This regulation imposes certain reporting and recordkeeping requirements to enable the IRS to determine whether an institution qualifies to be a nonbank trustee and to insure that accounts are administered according to sound fiduciary principles.

Current Actions: There is no change to this existing regulation. *Type of Review:* Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 23.

Estimated Time per Respondent: 34 minutes.

Estimated Total Annual Burden Hours: 13.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 24, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18506 Filed 7–31–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning capitalization of certain policy acquisition expenses.

DATES: Written comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Capitalization of Certain Policy Acquisition Expenses.

OMB Number: 1545–1287.

Regulation Project Number: FI–3–91 (TD 8456).

Abstract: Internal Revenue Code section 848 provides that insurance companies' must capitalize "specified policy acquisition expenses. In lieu of identifying the categories of expenses that must be capitalized, section 848 requires that a company capitalize an amount of otherwise deductible expenses equal to specified percentages of net premiums with respect to certain types of insurance contracts. Insurance companies that enter into reinsurance agreements must determine the amounts to be capitalized under those agreements consistently. This regulation provides elections to permit the parties to a reinsurance agreement to shift the burden of capitalization for their mutual benefit.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,070.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 2,070.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 26, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18497 Filed 7–31–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–N

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To file Form 990 or 990–EZ.

DATES: Written comments should be received on or before September 30, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To file Form 990 or 990–EZ.

OMB Number: 1545–2085.

Form Number: 990–N.

Abstract: Section 1223 of the Pension Protection Act of 2006 (PPA '06), enacted on August 17, 2006, amended Internal Revenue Code (Code) section 6033 by adding Code section 6033(i), which requires certain tax-exempt organizations to file an annual electronic notice (Form 990–N) for tax years beginning after December 31, 2006. These organizations are not required to file Form 990 (or Form 990–EZ) because their gross receipts are normally $25,000 or less.

Current Actions: There are no changes being made to the Form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 300,000.

Estimated Time per Respondent: 15 min.

Estimated Total Annual Burden Hours: 75,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 26, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18495 Filed 7–31–13; 8:45 am]

BILLING CODE 4830–01–P

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Part II

Department of Health and Human Services

Secretarial Review and Publication of the Annual Report to Congress Submitted by the Contracted Consensus-Based Entity Regarding Performance Measurement; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretarial Review and Publication of the Annual Report to Congress Submitted by the Contracted Consensus-Based Entity Regarding Performance Measurement

AGENCY: Office of the Secretary of Health and Human Services, HHS.

ACTION: Notice.

SUMMARY: This notice acknowledges the Secretary of the Department of Health and Human Services' (HHS) receipt and review of the Annual Report submitted to the Secretary and Congress by the contracted consensus-based entity (CBE) as mandated by section 1890(b)(5) of the Social Security Act, as created by section 183 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) and amended by section 3014 of the Affordable Care Act of 2010. The statute requires the Secretary to review and publish the report in the **Federal Register** together with any comments of the Secretary on the report not later than six months after receiving the report. This notice fulfills those requirements.

FOR FURTHER INFORMATION CONTACT: Ann Page (202) 260–6473.

I. Background

Rising health care costs coupled with the growing concern over the level of and variation in quality and efficiency in the provision of health care raise important challenges for the United States. Section 183 of MIPPA created Section 1890 of the Social Security Act, which requires the Secretary of the Department of Health and Human Services (HHS) to contract with a consensus-based entity to perform multiple duties pertaining to health care performance measurement. These activities support HHS's efforts to promote high-quality, patient-centered, and financially sustainable health care. The statute mandates that the contract be competitively awarded for a period of four years and may be renewed under a subsequent bidding process.

In January, 2009, a competitive contract was awarded by HHS to the National Quality Forum (NQF) for a four-year period. The contract specified that the CBE should conduct its business in an open and transparent manner, provide the opportunity for public comment and ensure that membership fees do not pose a barrier to participation in the scope of HHS's contract activities, if applicable.

The HHS four-year contract includes the following major tasks:

Priority Setting Process: Formulation of a National Strategy and Priorities for Health Care Performance—The CBE shall synthesize evidence and convene key stakeholders to make recommendations on an integrated national strategy and priorities for health care performance measurement in all applicable settings. The CBE shall give priority to measures that: Address the health care provided to patients with prevalent, high-cost chronic diseases; provide the greatest potential for improving quality, efficiency and patient-centered health care; and may be implemented rapidly due to existing evidence, standards of care or other reasons. Additionally, the CBE shall take into account measures that: May assist consumers and patients in making informed health care decisions; address health disparities across groups and areas; and address the continuum of care across multiple providers, practitioners and settings.

Endorsement of Measures: Implementation of a Consensus Process for Endorsement of Health Care Quality Measures—The CBE shall provide for the endorsement of standardized health care performance measures. This process shall consider whether measures are evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible to collect and report, and responsive to variations in patient characteristics such as health status, language capabilities, race or ethnicity, and income level and is consistent across types of health care providers including hospitals and physicians.

Maintenance of Consensus Endorsed Measures—The CBE shall establish and implement a process to ensure that endorsed measures are updated (or retired if obsolete) as new evidence is developed.

Promotion of the Development of Electronic Health Records—The CBE shall promote the development and use of electronic health records that contain the functionality for automated collection, aggregation, and transmission of performance measurement information. However, in January of 2013, this task was repealed and, as a result, removed from the CBE's statutory duties by the American Taxpayer Relief Act (*Pub. L. 112–240, Title VI, § 609(a)(2)*).

Convening Multi-Stakeholder Groups—The CBE shall convene multi-stakeholder groups to provide input into the selection of certain categories of quality and efficiency measures, including measures for use in certain specific Medicare programs, for use in programs that report performance information to the public, and for use in health care programs that are not included under the Social Security Act. The multi-stakeholder groups consider measures to be implemented through the federal rulemaking process for various federal health care quality reporting and quality improvement programs including those that address certain Medicare services provided through hospices, hospital inpatient and outpatient facilities, physician offices, cancer hospitals, end stage renal disease (ESRD) facilities, inpatient rehabilitation facilities, long-term care hospitals, and psychiatric hospitals and home health care programs.

Annual Report to Congress and the Secretary—Under section 1890(b)(5)(A) of the Act, by not later than March 1 of each year (beginning with 2009) the CBE shall submit to Congress and the Secretary of HHS an annual report. The report shall contain a description of:

(i) The implementation of quality and efficiency measurement initiatives and the coordination of such initiatives with quality and efficiency initiatives implemented by other payers;

(ii) recommendations on an integrated national strategy and priorities for health care performance measurement;

(iii) performance of its duties required under its contract with HHS;

(iv) gaps in endorsed quality and efficiency measures, which shall include measures that are within priority areas identified by the Secretary under the National Quality Strategy established under section 399HH of the Public Health Service Act (National Quality Strategy), and where quality and efficiency measures are unavailable or inadequate to identify or address such gaps;

(v) areas in which evidence is insufficient to support endorsement of quality and efficiency measures in priority areas identified by the Secretary under the National Quality Strategy, and where targeted research may address such gaps; and

(vi) the convening of multi-stakeholder groups to provide input on: (1) The selection of quality and efficiency measures from among such measures that have been endorsed by the CBE and such measures that have not been considered for endorsement by the CBE but are used or proposed to be used by the Secretary for the collection or reporting of quality and efficiency measures; and (2) national priorities for improvement in population health and the delivery of health care services for consideration under the National Quality Strategy.

Section 1890(b)(5)(B) of the Social Security Act requires Secretarial review and publication of this report in the **Federal Register**, together with any comments of the Secretary on the report not later than 6 months after receiving the report.

The first annual report covered the performance period of January 14, 2009 to February 28, 2009 or the first six weeks post contract award. In March 2009, NQF submitted the first annual report to Congress and the Secretary of HHS. Given the short timeframe between award and the statutory requirement for the submission of the first annual report, this first report provided a brief summary of future plans. The Secretary published a notice in the **Federal Register** in compliance with the statutory mandate for review and publication of the annual report on September 10, 2009 (74 FR 46594).

In March 2010, NQF submitted to Congress and the Secretary the second annual report covering the period of performance of March 1, 2009 through February 28, 2010. The second annual report was published in the **Federal Register** on October 22, 2010 (75 FR 65340) to comply with the statutorily required Secretarial review and publication.

In March 2011, NQF submitted the third annual report to Congress and Secretary of HHS. The third annual report, which covers March 1, 2010 through February 28, 2011, was published in the **Federal Register** on September 7, 2011 (76 FR 55474).

In March 2012, NQF submitted its fourth annual report to Congress and the Secretary. The report covers the period of performance of January 14, 2011 through January 13, 2012. The fourth annual report was published in the **Federal Register** on September 14, 2012 (77 FR 56920).

In March 2013, NQF submitted its fifth annual report to Congress and the Secretary. The report covers the period of performance of January 14, 2012 through December 31, 2012. Because the first annual report covered only six weeks, there have been five annual reports under this four-year contract. This notice complies with the statutory requirement for Secretarial review and publication of the fifth NQF annual report.

II. March 2013—Consensus-Based Entity Report to Congress and the HHS Secretary

Submitted in March 2013, the fifth annual report to Congress and the Secretary spans the period of January 14, 2012 through December 31, 2012.

A copy of NQF's submission of the March 2013 annual report to Congress and the Secretary of HHS can be found at: *http://www.qualityforum.org/Publications/2013/03/2013_NQF_Report_to_Congress.aspx.* The fifth NQF annual report is reproduced in section III of this notice.

III. NQF Report of 2012 Activities to Congress and the Secretary of the Department of Health and Human Services

This report was funded by the U.S. Department of Health and Human Services under contract number: HHSM–500–2009–00010C.

1. Executive Summary

In the last six years, Congress passed statutes that call upon HHS to work with a consensus-based entity (the entity) to facilitate multi-stakeholder input into (1) setting national priorities for improvement in quality and (2) recommending use of performance measures in federal programs to achieve these priorities. The statutes also call upon a consensus-based entity to review and endorse a portfolio of standardized performance measures to be used by stakeholders in public and private quality improvement and accountability programs. **Note:** The relevant statutory language appears in italicized text throughout this report. The first of these statutes is the 2008 Medicare Improvements for Patients and Providers Act (MIPPA) (PL 110–275), which established the responsibilities of the consensus-based entity by creating section 1890 of the Social Security Act and was passed under President Bush. The second statute is the 2010 Patient Protection and Affordable Care Act (ACA) (Pub. L. 111–148), which modified and added to the consensus-based entity's responsibilities, and was passed under President Obama. The 2013 American Taxpayer Relief Act (Pub. L. 112–240) extended funding under the MIPPA statute to the consensus-based entity through fiscal year 2013. HHS awarded contracts related to the consensus-based entity identified in the statute to the National Quality Forum (NQF). As amended by the above laws, the Social Security Act (the Act)—specifically section 1890(b)(5(A))—also mandates that the entity report to Congress and the Secretary of the Department of Health and Human Services (HHS) no later than March 1st of each year. The report must include descriptions of: (1) How NQF has implemented quality and efficiency measurement initiatives under the Act and coordinated these initiatives with those implemented by other payers; (2) NQF's recommendations with respect to activities conducted under the Act on an integrated national strategy and priorities for healthcare performance measurement in all applicable settings; (3) NQF's performance of the duties required under its contract with HHS; (4) gaps in endorsed measures that NQF has identified, including measures that are within priority areas identified by the Secretary under HHS' national strategy; (5) areas NQF has identified in which evidence is insufficient to support endorsement of measures in priority areas identified by the National Quality Strategy, and where targeted research may address such gaps, and (6) the matters described in clauses (i) and (ii) of paragraph (7)(A) of section 1890(b). To address the last item, the report will cover the new multi-stakeholder group input duties for the consensus-based entity as outlined in section 3014(a), which created section 1890(b)(7) and (8) of the Act. The first of these duties includes providing multi-stakeholder input on the selection of quality and efficiency measures both endorsed and those not endorsed by the entity, that are used or proposed to be used by the Secretary for collection or reporting of quality and efficiency measures. The second duty requires that the consensus-based entity provide multi-stakeholder group input on national priorities for improvement in population health and in the delivery of healthcare services for consideration under the National Quality Strategy.

This fourth Annual Report highlights NQF's work conducted between January 14, 2012 and December 31, 2012 related to these statutes and conducted under a federal contract with the U.S. Department of Health and Human Services.The deliverables produced under contract in 2012 are referenced throughout this report, and a full list is included in Appendix A.

Facilitating Coordinated Action To Achieve the National Quality Strategy

Section 1890(b)(1) of the Social Security Act mandates that the entity shall synthesize evidence and convene key stakeholders to make recommendations on an integrated national strategy and priorities for healthcare performance measurement in all applicable settings. In making such recommendations, the entity shall ensure that priority is given to measures: that address the health care provided to patients with prevalent, high-cost, chronic diseases; that focus on the greatest potential for improving the quality, efficiency, and patient-centeredness of healthcare; and that

may be implemented rapidly due to existing evidence and standards of care. In addition, the entity will take into account measures: that may assist consumers and patients in making informed healthcare decisions; address health disparities across groups and areas; and address the continuum of care a patient receives, including services furnished by multiple healthcare providers or practitioners and across multiple settings.

Under section 1890(b)(5)(A)(ii) of the Social Security Act, the entity is mandated to include in the annual report a description of the recommendations it has made, with respect to activities conducted under the Social Security Act, on an integrated national strategy, and priorities for healthcare performance measurement in all applicable settings.

Since 2009, the NQF-convened National Priorities Partnership (NPP) has helped to provide multi-stakeholder input into the selection of high-impact goals, related priorities, and subsequent strategies that constitute the first-ever National Strategy for Quality Improvement in Healthcare (NQS). Released in 2011, the NQS outlines three specific aims for the U.S. healthcare system—better care, healthy people and communities, and affordable care. To achieve these aims, the NQS established six priorities to help the healthcare community focus their efforts, including:

- Making care safer by reducing harm caused in the delivery of care;
- Ensuring that each person and family are engaged as partners in their care;
- Promoting effective communication and coordination of care;
- Promoting the most effective prevention and treatment practices for the leading causes of mortality, starting with cardiovascular disease;
- Working with communities to promote wide use of best practices to enable healthy living; and
- Making quality care more affordable for individuals, families, employers, and governments by developing and spreading new healthcare delivery models.

The NPP is a collaborative public-private partnership of more than 50 organizations that have a shared stake in how healthcare is delivered, received, and paid for. NPP continues to advise HHS on how to evolve the NQS' three aims, and its counsel was well reflected in HHS's 2012 *National Strategy for Quality Improvement in Healthcare*, an annual NQS progress report required by Congress.

Beyond forging agreement at the strategic goal level, it is challenging to get leaders to implement agreed-upon strategies at the care delivery and community level, given limited time and resources. In 2012, NPP focused on how to advance patient safety by aligning its work with HHS' "Partnership for Patients" effort. Through a series of web-based and in-person meetings that NPP hosted throughout 2012, nearly 2,700 participants from multiple sectors were able to learn about and share new improvement approaches, information, tools, and professional connections to accelerate their individual contributions to achieving safety related improvements. At a more detailed level, NPP developed action plans to focus a range of national and local organizations in diverse sectors on how to align efforts to reduce preventable readmissions and improve maternity care, relying on proven interventions. NPP also created a web-based system or "action registry" to track related commitments to improvement activities focused on readmissions and maternity care to enable learning across participants. Launched in the fourth quarter of 2012, the registry now houses over 50 actions by 30 different organizations.

Endorsing and Maintaining Measures, Related Tools, and Information

Under section 1890(b)(2) of the Social Security Act, the entity must provide for the endorsement of standardized healthcare performance measures. As part of the endorsement process, NQF is required to consider whether measures are evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible for collecting and reporting data, responsive to variations in patient characteristics, and consistent across healthcare providers. In addition, under section 1890(b)(3), the NQF must maintain endorsed measures, by establishing and implementing a process to ensure that endorsed measures are retired if obsolete or brought up to date as new evidence is developed.

NQF strategically manages its portfolio of 700-plus endorsed measures to increase impact and decrease burden, growing the portfolio in some areas and shrinking it in others. More specifically, it replaces existing measures with those that are better, reflect new medical evidence, or are more relevant; removes measures that are no longer effective or where the evidence base has evolved; and expands the portfolio to address well-recognized measurement gaps.

The NQS priorities guide the management of the measure portfolio by NQF expert committees. In addition to concentrating on endorsing measures suitable for public reporting, performance-based payment, and other accountability purposes, NQF evolves its portfolio so that the measures are also clinically relevant and actionable for providers. Payers and patients are interested in measures that they can use to compare and select providers; clinicians and hospitals seek clinically relevant measures to benchmark themselves against so they have the information they need to focus their improvement efforts for the benefit of their patients. A mix of measures is essential to creating and continuously evolving a portfolio that meets the needs of diverse stakeholders.

In 2012, NQF completed 16 endorsement projects—reviewing 430 submitted measures and endorsing 301 measures, or 70 percent. This set included 81 new measures and 220 measures that maintained their endorsement after being considered in light of new evidence and/or against new competing measures submitted to NQF for consideration. The newly endorsed measures align with needs identified in the NQS and address several critical areas, including patient outcomes, underserved populations, healthcare disparities, and hospital readmissions.

In comparison, NQF completed 11 projects and endorsed 170 measures in 2011. This increased productivity can be attributed to efforts to make the review process more efficient—the average measure review time decreased from 12 months to 7 months during 2012—as well as to other enhancements to the endorsement process. Specifically, as part of the Consensus Development Process pilot program, NQF provided earlier, more detailed feedback to measure developers about a first-order criterion (i.e., importance to measure) to further the goal that development dollars are spent on measures that are viewed as consequential by the field. Furthermore, when a measure is re-evaluated for continued endorsement, NQF now requires committees to consider the measure's use and whether such use has resulted in improvement or has led to unintended consequences, ensuring that committee members are informed about the measure's impact.

Under section 1890(b)(4) of the Social Security Act, the entity has been responsible for promoting the development and use of electronic health records (EHRs) that contain the functionality for automated collection,

aggregation, and transmission of performance measurement information.

In an effort to move beyond measures that rely on administrative data or that are collected from paper-based medical records, NQF continued its work in 2012 to facilitate the development and reporting of electronic measures, or eMeasures, that can help accelerate the adoption of electronic health records (EHRs). Such efforts include work at the granular level (e.g., standardizing data elements so they can be collected from varied EHRs to build eMeasures) and at the more conceptual level (e.g., the NQF-convened eMeasure Learning Collaborative). Created by NQF at the behest of measure developers, EHR vendors, HHS, and clinicians, the eMeasure Learning Collaborative is a forum for sharing best practices and tackling issues that are barriers to developing and implementing eMeasures, such as figuring out how to enhance "upstream" communication between measure developers and other stakeholders so that affected parties have the opportunity to collaborate on data requested and its representation in eMeasure logic during the measure development process. In 2012, NQF also launched the Health IT Knowledge Base and glossary to facilitate a unified understanding of terms and measurement approaches used in EHRs and more broadly, health IT, and to disseminate best practices, among other projects.

Aligning Accountability Measures To Enhance Value

Under section 1890(b)(1) of the Social Security Act, the entity shall synthesize evidence and convene key stakeholders to make recommendations and priorities for healthcare performance measurement in all applicable settings.

Under section 1890(b)(5)(A)(i) of the Social Security Act, the entity must report on the implementation of quality and efficiency measurement initiatives under the Social Security Act and the coordination of these initiatives with quality and efficiency initiatives implemented by other payers.

Under section 1890(b)(7) of the Social Security Act, NQF is specifically responsible for convening multi-stakeholder groups to provide input to the Secretary of HHS on the selection of certain categories of NQF-endorsed and non-endorsed quality and efficiency measures (measures NQF has not considered for endorsement but the Secretary uses or is proposing to use for the collection or reporting of quality and efficiency measures). Beginning in 2012, NQF has been required to transmit the input of the multi-stakeholder groups to the Secretary not later than February 1st of each year. Under section 1890(a)(5), the Secretary must consider multi-stakeholder input as part of a pre-rulemaking process the Secretary must complete prior to the adoption of measures during the Federal rulemaking process. NQF provides this multi-stakeholder input through its Measure Applications Partnership (MAP).

Agreement about how to define quality, safety, and costs in a portfolio of endorsed measures is an important first step toward measure alignment, which then needs to be followed by consensus across stakeholder groups about the use of endorsed measures.

The NQF-convened MAP—which comprises stakeholders from a wide array of healthcare sectors and 10 federal agencies, as well as 110 subject matter experts—focuses on recommending measures for federal public reporting, payment, and other programs to enhance healthcare value. As part of its mission, MAP also strives for alignment with the private sector on the use of such measures. In February 2012, MAP provided multi-stakeholder input to HHS about the considered use of measures in over 17 different federal Medicare benefit programs and the Electronic Health Record (EHR) Incentive Program as a part of its first annual pre-rulemaking report required by statute. This input was well-heeded, as evidenced by a degree of concordance—or agreement between MAP's recommendations and the Centers for Medicare & Medicaid Services (CMS) final rules for quality reporting, public reporting, and value-based purchasing programs issued in 2012—which averaged 70 percent concordance across programs.[1] Where discordance exists, it appears to be due to timing. For example, in some cases, such as the Physician Quality Reporting System (PQRS), CMS is moving measures rapidly into a program to encourage clinician participation and concurrently encouraging that these measures be reviewed by NQF for possible endorsement.

To help guide future measure development related to the NQS and to inform use of measures in value-based programs going forward (including future annual pre-rulemaking reports to HHS), MAP released a Strategic Plan for Measurement in October 2012. A key part of the plan focuses on defining the concept of "families of measures" in high-impact areas, some of which cross conditions and settings. The objective of these families, or sets of measures, is to knit together related measures currently found in different programs, care settings, levels of analysis, and populations to drive improvement and reduce measurement burden. In addition, the plan calls for further engagement of stakeholders to glean additional feedback about measure use and usefulness.

At the same time, MAP released its Families of Measures report, which defines measure families in four key areas—safety, care coordination, cardiovascular, and diabetes care—with the goal of promoting more cohesion and integration of care regardless of setting, provider, level of intensity, or timing. An additional and equally important goal is reducing measurement and reporting burden through alignment for hospitals, physicians, and other providers as it relates to these four areas.

A 2012 NQF analysis (conducted outside of the federal contract) of NQF-endorsed measures in use shows that about 29 percent of measures are being used by two or more key stakeholders simultaneously, including the federal government, private payers, states, communities, and other users. Given its size and reach, the federal government is an important driver, using more than half of NQF's measure portfolio in its various pay-for-reporting and pay-for-performance programs, followed by private payers and states using 41 percent and 28 percent, respectively. Further, NQF's analysis shows that alignment in use of the same measures increased across these key sectors between 2011 and 2012.[2,3] A 2011 RAND study of 75 organizations revealed a strong preference for NQF-endorsed measures where they exist because they are vetted, evidence-based, and known to be more credible with providers.[4]

Filling Measurement Gaps

Under section 1890(b)(5)(A)(iv) of the Social Security Act, the entity is required to report on gaps in endorsed quality and efficiency measures including measures within priority areas identified by HHS under the agency's National Quality Strategy, and where quality and efficiency measures are unavailable or inadequate to identify or address such gaps. Under section 1890(b)(5)(v) of the Social Security Act, NQF is also required to report on areas in which evidence is insufficient to support endorsement of quality and efficiency measures in priority areas identified by the Secretary under the National Quality Strategy and where targeted research may address such gaps.

The science of performance measurement continues to evolve in response to the needs and preferences of

various stakeholders, new and updated data platforms, the capacity of providers to collect and report measures, and other factors. In 2012, NQF conducted an extensive analysis of its current measures portfolio against both the National Quality Strategy priority areas and high-impact conditions to meet requirements under section 1890(b)(5)(A)(iv) of the Social Security Act. This analysis provides a more in-depth understanding of what NQF-endorsed measures exist against key strategic frameworks, which of these measures are being used in the field, and where gaps persist—either because the measures have not yet been developed or they are in existence but are not being used.

The extent to which each NQS priority at the goal level has NQF-endorsed measures available to drive change is varied but generally promising. For example, a large part (40%) of the NQF portfolio addresses the important area of patient safety which includes healthcare acquired conditions and hospital readmissions. Fewer measures (7 percent) address patient and family engagement. Overall, measures for specific goals—including shared decision-making, patient navigation and self-management, shared accountability, healthy lifestyle behaviors, community interventions to improve health, and access, cost, and resource use—are less prevalent.

Looking across both the NQS priority areas and high-impact Medicare and child health conditions, the analysis found gaps in measures of preventive care, patient-reported outcomes (particularly quality of life and functional status), appropriateness (particularly for specialty care), access to timely palliative care, and health and healthcare disparities. Additionally, the analysis revealed the need for better population-level measures to assess improvements in health and healthcare. An assessment of the NQF portfolio of endorsed measures revealed that while certain high-impact conditions have an abundance of measures—e.g., cardiovascular disease, end-stage renal disease, and diabetes—many of the high-impact childhood conditions have few or no NQF-endorsed measures. Finally, all but one of the 92 NQF-endorsed measures in use in federal and at least two other non-federal programs address a specific NQS goal or a high-impact condition.

While certainly there is room for improvement, the analysis suggests that the existing portfolio generally addresses agreed upon frameworks and that there is alignment in use of such measures across various sectors. Going forward, resources should be dedicated to delving more deeply into the identified gap areas to prioritize measure development and endorsement efforts so that the most needed measurement gaps are addressed first.

Furthermore, NQF's efforts are focused on furthering alignment as it relates to measurement strategies to enhance healthcare value through its public-private partnerships and its evidence-based, consensus-driven method for reviewing and endorsing measures. Ultimately, however, for the U.S. healthcare system to be transformed, measurement-driven efforts will need to be mutually reinforced with changes to current payment and delivery systems that drive the system toward greater integration and accountability. Only then will we be able to put the U.S. healthcare system on the path to achieving the NQS' three, interconnected, and ambitious aims.

2. Facilitating Coordinated Action To Achieve the National Quality Strategy

Section 1890(b)(1) of the Social Security Act mandates that the entity shall synthesize evidence and convene key stakeholders to make recommendations on an integrated national strategy and priorities for healthcare performance measurement in all applicable settings. In making such recommendations, the entity shall ensure that priority is given to measures: That address the healthcare provided to patients with prevalent, high-cost chronic diseases; that have the greatest potential for improving the quality, efficiency, and patient-centeredness of healthcare; and that may be implemented rapidly due to existing evidence and standards of care. In addition, the entity will take into account measures that may assist consumers and patients in making informed healthcare decisions, address health disparities across groups and areas, and address the continuum of care a patient receives, including services furnished by multiple healthcare providers or practitioners and across multiple settings.

The National Quality Strategy (NQS), released in March 2011, set forth a cohesive roadmap for achieving patient-centered, affordable care that promotes healthy people and communities (see pages 3–4 for a more detailed explanation). Upon its release, its authors emphasized that the national quality strategy requires the active engagement and support of healthcare stakeholders across the country for quality improvements and success.

For the increasing number of stakeholders that have committed to making the NQS a reality, the path and methods to achieve its aims are not always apparent. Additionally, as the hard work of achieving care of the highest value accelerates, stakeholders are increasingly recognizing that performance measurement and quality improvement are only achievable by working across sectors and organizations, and they seek effective and efficient ways to connect across the healthcare delivery system.

The NPP focused its 2012 efforts on bringing diverse people and organizations together in their pursuit of the NQS, and in conducting analyses and activities that helped to refine the next critical priorities of the healthcare community.

Advising on the National Quality Strategy

NPP members called for the creation of the NQS and in 2012 continued to shape its direction by offering input to the HHS Secretary. In September 2011, HHS asked the NPP to recommend measures for evaluating progress in achieving the NQS. This input was integrated into the 2012 *National Strategy for Quality Improvement in Healthcare*, an annual NQS progress report required by Congress. The progress report reflected near-universal agreement with NPP recommendations. Multi-stakeholder input into the NQS and follow-on work to achieve its goals embody the spirit of alignment encouraged by the NQS authors, ensuring that the strategy is informed, embraced, and viewed as achievable by both public and private sectors. Without this shared vision, progress is likely to be marred by competing, unfocused, or discordant efforts.

Identifying and Spreading Solutions To Achieve the National Quality Strategy

Under section 1890(b)(5)(A)(i) of the Social Security Act, the entity is to provide a description of its implementation of quality and efficiency measurement initiatives under the Social Security Act and the coordination of those initiatives with those implemented by other payers.

In addition to offering multi-stakeholder input on the NQS, the NPP focused on helping to disseminate proven and scalable solutions for its implementation; making connections across sectors and between organizations; and inspiring people to take highly focused, coordinated, and targeted action. Much of this work happened as part of the HHS Partnership for Patients patient safety effort, which has two ambitious and important goals: reducing hospital-

acquired conditions by 40 percent and preventable hospital readmissions by 20 percent by the end of 2013.

Establishing the "who, what, how, and when" of action is the first step in solving large-scale challenges that cut across organizations and sectors. To that end, NPP partners and an extended network of contributors (more than 750 in total) spent part of 2012 developing these problem-solving pathways—with an initial focus on fashioning shared solutions to improving maternity care and reducing preventable readmissions. The NPP selected these two areas for specific reasons. Current trends in maternity care and readmissions demonstrate an opportunity for improvement that can simultaneously reduce unnecessary patient harm and healthcare costs. Both areas also represent aspects of healthcare ripe for pooling and focusing the efforts of many—patients and families, providers, payers, and policymakers, to name a few.

For example, since 1979, the American Congress of Obstetricians and Gynecologists (ACOG) has advocated for the avoidance of elective deliveries before 39-completed weeks gestation, yet early elective inductions are common in the United States despite the known potential harms for mothers and babies.[5] Similarly, rates of cesarean section have risen in recent decades to nearly 32 percent despite potential harms, including greater likelihood of asthma for the child. In fact, the cesarean rate is rising fastest among women who are least likely to benefit—healthy women at low risk of labor and birth complications.[6] Studies reveal that higher cesarean rates do not lead to improved outcomes, and rates above 15 percent may do more harm than good.[7] Furthermore, there is strong evidence to support the need to address avoidable admissions and readmissions. Almost one in five Medicare patients discharged from the hospital is readmitted within 30 days, putting patients at increased risk of complications or infections and accounting for approximately $15 billion of excess Medicare spending each year.[8 9 10] While some admissions and readmissions are planned and appropriate, approximately 40 percent of hospital admissions among nursing home residents may be avoidable.[11]

In addition to these two specific areas of focus, NPP hosted several larger scale forums on behalf of the Partnership for Patients in 2012. NPP-hosted forums were designed to identify innovative ways to help multiple organizations meet Partnership for Patients' safety goals and to help spread proven patient safety interventions. Without these exchanges, organizations often find themselves trying to improve in a vacuum, working with a limited number of ideas and/or interventions, or struggling to innovate given their human and financial resources. The structure of these forums, oriented around idea exchanges and sharing of case studies and examples, fostered efficient information sharing, so that those on the frontlines of improving patient safety were supported in their efforts and therefore could more readily effect change. More than 400 organizations that support the Partnership for Patients attended these events. The first three meetings were focused on education regarding the National Quality Strategy and the importance of alignment between sectors; catalyzing action; and sharing success stories in achieving patient safety. The November 2012 NPP-Partnership for Patients event focused exclusively on how to achieve meaningful patient and family engagement, which is essential for solving all patient safety issues and achieving a patient-centered healthcare system. After the first meeting in January 2012, 100 percent of attendees felt the meeting enhanced their ability to contribute to public-private sector collaboration. NPP augmented the four in-person forums with online educational 'webinars.' In total, over the course of 2012, nearly 2,700 people from multiple sectors participated in NQF-hosted webinars and in-person events in support of the Partnership for Patients.

In 2012, NQF designed a web-based, interactive "registry" where organizations can share information about their own actions to advance the NQS; search data about the actions of others; find partners to work with; and learn from others. The registry, available on the NQF Web site, allowed for broader engagement, participation, and content that facilitates alignment around a focused set of patient safety activities and that clarifies who is doing what, when, with whom, and to what end. Launched in the fourth quarter of 2012, the registry now houses over 50 actions by 30 different organizations.

Deliverables Associated With These Activities

Description	Output	Status (as of 1/7/2013)	Notes/scheduled or actual completion date
NPP support for Partnership for Patients' HHS initiative focused on patient safety.	4 quarterly convenings for 100+ people each, and 3 webinars reaching 550+.	Completed	Content of meetings and webinars were captured in individual summaries.
NPP support for Partnership for Patients' HHS initiative focused on patient safety.	2 public web meetings reaching 500+ and 2 public conference calls, reaching 100+.	Completed	Content of meetings and calls were captured in individual summaries.
NPP support for Partnership for Patients' HHS initiative focused on patient safety.	Formed two Action teams around Readmissions and Maternal Health. Early development of additional action teams around Million Hearts/ Cardiovascular Health and Patient & Family Engagement.	Completed	
NPP support for Partnership for Patients' HHS initiative focused on patient safety.	Created the Action Registry, a virtual space for organizations to share their quality improvement activities—or "actions"—around the six priority areas of the National Quality Strategy and make connections with each other.	Completed	
NPP support for Partnership for Patients' HHS initiative focused on patient safety.	Quarterly reports for HHS	Completed	

3. Supporting National Healthcare Measurement Needs

Under section 1890(b)(2) of the Social Security Act, the entity must provide for the endorsement of standardized healthcare performance measures. The endorsement process shall consider whether measures are evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible for collecting and reporting data, responsive to variations in patient characteristics, and consistent across healthcare providers. In addition, under section 1890(b)(3) of the Social Security Act, the NQF must maintain endorsed measures, including retiring obsolete measures and bringing other measures up to date.

Standardized healthcare performance measures help clinicians understand whether the care they offered their patients was optimal and appropriate, and if not, where to focus their efforts to improve the care they deliver. Measures are also used by all types of public and private payers for a variety of accountability purposes, including feedback and benchmarking, public reporting, and incentive-based payment. Lastly, measures are an essential part of making healthcare more transparent to all, important for those who receive care or help make care decisions for loved ones.

Working with a variety of stakeholders to build consensus, NQF reviews and endorses healthcare performance measures that underpin federal and private-sector initiatives focused on enhancing the value of healthcare services.

Ten years ago, NQF endorsed its first voluntary, national consensus performance measures to answer the call for standardized measurement of healthcare services. These first measures were a stepping-stone for creating a consensus-driven effort that bridged nearly every interested party in healthcare. The 10-year result of this national experiment is a portfolio of more than 700 NQF-endorsed measures, most of which are in use; a more information-rich healthcare system; and a substantial emerging body of knowledge about measure development, use, and quality improvement.

In the past five years, NQF, working in partnership with HHS and others, has focused more intensely on measures that add value and reduce burden for those who provide, pay for, and receive care. This movement has been facilitated through more stringent evaluation criteria that place greater emphasis on evidence and a clear link to outcomes, demonstrable impact and gaps in care, and testing that demonstrates measures' reliability and validity. NQF also has laid the foundation for the next generation of measures, including guidance on composite measurement, patient-reported outcome measures, disparities-sensitive measures, electronic or eMeasures, and measures that evaluate complex but important areas such as resource use and population health. These activities are intended to inform the path toward targeted, prioritized measure development.

There is increasing evidence that NQF's stringent criteria, portfolio management strategies, and collaboration with developers are having the desired effect on the portfolio. For example, in 2012 we observed the following:

- Guidance that expressed NQF's strong preference for outcome measures and that required process measures to demonstrate a clear link to outcomes led to more endorsed outcome measures. At the end of 2012, 27 percent of the measures in NQF's portfolio were outcome measures, compared to 24 and 18 percent in 2011 and 2010, respectively.
- A focus on harmonization resulted in fewer duplicative measures, and steering committees selecting the best-in-class measure whenever possible.
- Developers submitted more tested measures—which are more reliable, valid, and likely to meet NQF endorsement criteria—given NQF's increased emphasis on requirements for measure testing. With fewer untested measures to evaluate, steering committees were able to focus more on evaluating "better" measures.

To apply the concept of constant improvement to its own work, NQF conducted in 2012 Lean improvement activities and other initiatives and/or projects intended to make the consensus development process more predictable, efficient, and navigable for those who develop and evaluate measures, while still maintaining the rigor of its multi-stakeholder process. Measure developers primarily seek an earlier window to get broad-based committee input on a measure concept they are considering investing in; those who use measures are interested in process changes that may further shrink review cycle time while maintaining rigor. All parties are focused on ways to make sure finite measure development resources are used to meet the greatest measurement needs.

To address these issues, NQF took steps to explore restructuring of its Consensus Development Process (CDP) in order to provide early guidance to measure developers on whether a measure concept meets NQF's criterion for "importance to measure and report" before they invest time and resources to fully develop and test a measure. The results of the pilot project, often referred to as the "two-stage CDP," will be available in 2013; results will be used to drive additional enhancements that meet the critical needs of measure developers.

NQF worked to enhance its approach to harmonization, specifically helping those who review measures to more consistently and adeptly recognize an opportunity for aligning measures. In 2012, NQF also conducted work to help committees evaluate measures for usability, a criterion for NQF endorsement with which steering committee members often struggle during deliberations.

Lastly, outside of the HHS process improvement activities around measure development, NQF created a new multi-stakeholder task force on consensus, which, working with NQF staff, led a series of focus groups and research exercises to determine a definition of consensus and how to establish consensus in rare instances when the NQF membership vote is split.

Results of NQF's Lean improvement work included reducing the *average* measure endorsement cycle time from 12 to 7 months, which is an important milestone to ensuring that the measures that matter most to our changing healthcare system are available for use as quickly as possible all without sacrificing the rigor of the endorsement process. Other results included the development of standard work for staff, developers, and committee members. This task force on consensus is slated to produce findings in early 2013.

Current State of NQF Measures Portfolio: Constricting and Expanding To Meet Evolving Needs

NQF's measure portfolio includes more than 700 performance measures, covering a variety of different conditions and care settings. The portfolio is carefully managed in a variety of ways. First, working with various expert committees, NQF removes or puts into "reserve status" measures that consistently perform at the highest levels or "top out." This step signals an improvement success and helps to ensure that time is spent instead measuring areas in need of improvement. Second, NQF works with those who create measures to "harmonize" related or near-identical measures to eliminate nuanced differences. Harmonization is critical to

reducing measurement burden for providers, who have been inundated with various misaligned measurement requests. Successful harmonization may result in fewer endorsed measures for providers to report and for payers and consumers to interpret. Lastly, where appropriate, NQF works with measure developers to replace multiple process measures with more meaningful outcome metrics. In 2012, NQF removed 103 measures from its portfolio for a variety of reasons: Measures no longer met endorsement criteria; measures were harmonized with other similar, competing measures; or measure developers chose to retire measures they no longer wished to maintain.

While NQF pursues these proven trimming strategies to make its measure portfolio appropriately lean, it also aggressively seeks measures from the field that will help to fill known measure gaps and to align with the NQS goals. Several important factors motivate NQF to expand its portfolio, including: (1) The need for eMeasures; (2) pressure for measures that are applicable to multiple clinical specialties and settings of care; (3) national pursuit of new payment models such as bundled payment; and (4) the need for more advanced measures that help close cross-cutting gaps, such as care coordination and patient-reported outcomes. The measure portfolio reflects the combined "dynamic yet static" effect of these strategies: Although the portfolio is constantly changing due to new measures cycling in and others cycling out, the relative number of endorsed measures remained steady in 2012. Specifically, 93 measures were added and 103 measures were removed from the portfolio.

The table below provides a snapshot of how the current NQF-endorsed measure portfolio aligns with the NQS, with the percentages reflecting the proportion of NQF-endorsed measures that support each of the six priorities. Some measures are counted in multiple priority areas. The table shows gaps in emerging measurement areas, including affordability, patient- and family-centered care, and community health and individual well-being. Work conducted in 2012 helped to close these known measure gaps and to pave the way for innovative measure development by the healthcare field.

Measures Compared to NQS Priority Areas

NQS Priority area	Percentage of measures in the NQF portfolio
Safety	27
Person- and Family-Centered Care	5
Prevention and Treatment Practices for Cardiovascular Diseases	15
Communication and Care Coordination	30
Health and Well-Being	15
Affordability	8
NQF Portfolio	100

Furthermore, seven measure developers account for 64 percent of NQF's portfolio:

Measure seward/developer	Number of measures	Percent of total portfolio
1. Centers for Medicare & Medicaid Services	123	17
2. National Committee for Quality Assurance (NCQA)	116	16
3. Physician Consortium for Performance Improvement (PCPI)	102	14
4. Agency for Healthcare Research and Quality (AHRQ)	56	8
5. Resolution Health, Inc.	24	3
6. The Joint Commission	24	3
7. ActiveHealth Management	23	3

Specific Measure Endorsement Accomplishments

In 2012, NQF completed 16 measure endorsement projects—reviewing 430 submitted measures and endorsing 301. These endorsed measures include 81 new measures and 220 measures that NQF expert committees concluded could maintain their previous endorsement after being reviewed against NQF's criteria and compared to new evidence or competing measures. Overall, measures undergoing maintenance were endorsed at a rate of 55 percent, and new measures submitted for endorsement were endorsed at a rate of 89 percent.

Case in point: In the last year clinical projects with a large number of *process measures* had markedly lower endorsement rates for maintenance measures (e.g., perinatal care, 44 percent; pulmonary, 44 percent; and renal disease, 36 percent). Newer measurement areas that are highly valued by clinicians and patients had higher endorsement rates, including disparities measures at 75 percent and palliative care at 64 percent. The disparities measures were primarily outcome measures, while the palliative measures were primarily process measures.

The measures endorsed by NQF in 2012 align with needs called out in the NQS and address several critical areas including patient outcomes, hospital readmissions, underserved populations, and healthcare disparities. A complete listing on measures and measurement frameworks endorsed by NQF in 2012 under contract with HHS is available in Appendix A. Highlights include the following:

Patient-reported experience measures. The healthcare community is working toward a more patient-driven system, in which individual needs and preferences are incorporated into care decisions. Measures that address patient experience, coupled with clinical measures, allow for a more comprehensive view of patient care. For example, coupling a measure that assesses whether post-surgical instructions for care were clear to the patient and his or her caregiver with measures that assess hip surgery complication rates creates a more complete picture of a patient's experience.

In 2012, NQF endorsed several measures addressing patient experience in various care settings. For example, a measure from the American College of Surgeons evaluates patient satisfaction during hospitalization for surgical procedures. A measure from the Agency for Healthcare Research and Quality focuses on effective provider communication with patients regarding disease management, medication adherence, and test results. The American Medical Association developed seven measures that were endorsed; these measures address concerns such as individual health literacy, availability of language services, and patient engagement with providers in clinician offices and acute care facilities. Finally, measures from the Center for Gerontology and Health Care Research and the *PROMISE* Center evaluate how bereaved family members

perceive the quality of care provided to loved ones in hospices, nursing home facilities, and hospitals.

NQF also convened two expert workshops to explore how patient-reported outcomes (PROs) can be effectively used in performance measurement. Defined as a patient's health status as reported by the patient, PROs are seen as the next step forward in building a patient-centered healthcare system. In the surgical example, a PRO might be information gleaned from a patient about when she could resume basic activities of daily living, start exercising, or return to work. The NQF portfolio already contains some patient-reported outcome measures. For example, patient reports are the basis of an NQF-endorsed measure of depression remission six months after treatment developed by Minnesota Community Measurement. Experiences by community coalitions, physician practices, and others implementing PROs helped inform NQF expert committees over the past year as they figured out how to overcome data, reporting, and methodological barriers to developing and using PRO-based performance measures.

Readmissions measures. About one in five Medicare beneficiaries who leaves a hospital is readmitted within 30 days. Such unplanned readmissions—many of which are potentially preventable—take a significant toll on patients and their families, often resulting in prolonged illness or pain, emotional distress, and days of lost work. These readmissions also cost Medicare about $15 billion annually.[12] Although Medicare beneficiaries are more likely to be rehospitalized, the private sector also spends billions of dollars each year on patients who have an unplanned readmission to the hospital within a month of an initial stay.

NQF endorsed two hospital-wide, all-cause readmission measures and three condition-specific readmission measures that can help the healthcare community better understand and appropriately reduce hospital readmission rates. These measures align with major safety and affordability issues. However, as performance measures are increasingly used in pay-for-performance programs, concerns about the potential for unintended consequences, such as a negative impact on providers that care for vulnerable populations, have increased. These issues were prominent considerations during the 2012 endorsement deliberations over the hospital-wide, all-cause readmission measure (NQF measure #1789), which was ultimately endorsed. To address multiple stakeholders' needs and concerns about the newly endorsed readmissions measures, the NQF Board of Directors issued guidance regarding the use of hospital-wide measures as it ratified the measure:

Multiple factors affect readmission rates and other measures including the complexity of the medical condition and associated therapies; effectiveness of inpatient treatment and care transitions; patient understanding of and adherence to treatment plans; patient health literacy and language barriers; and the availability and quality of post-acute and community-based services, particularly for patients with low incomes. Readmission measurement should reinforce national efforts to focus all stakeholders' attention and collaboration on this important issue.

In response to continued concerns about the use of the new hospital-wide, all-cause readmission measure (#1789), NQF proposed a series of steps to take place after endorsement of that particular measure, including monitoring implementation; employing an expert multi-stakeholder group to review "dry run" data provided by CMS regarding measure #1789; evaluating new readmission measures for new conditions; and establishing ongoing monitoring approaches that ensure that more systematic feedback from measure users is integrated into endorsement deliberations. NQF also reviewed updates to the readmission measures to remove planned readmissions from the condition-specific measures that are generally not considered signals of quality, and is continuing efforts to harmonize hospital and health plan all-cause readmission measures.

Patient safety measures. Americans are exposed to more preventable medical errors than patients in other industrialized nations, costing the United States close to $29 billion per year in additional healthcare expenses, lost worker productivity, and disability.[13] These costs are passed on in a number of ways, including higher insurance premiums and taxes and lost wages. Proactively addressing medical errors and unsafe care will help to protect patients from harm, lead to more effective and equitable care, and appropriately reduce costs.

NQF endorsed 32 patient safety measures in 2012, focusing on complications such as healthcare-associated infections, falls, medication safety, and pressure ulcers. These measures closely align with goals of the Partnership for Patients to make care safer.

Resource use measures. Healthcare expenditures in the United States are unmatched by any other country. This spending, however, has not resulted in better health for Americans. In general, the United States lags behind other countries in terms of mortality, patient satisfaction, access to care, or quality of care within the healthcare system.[14 15 16] Patients, insurers, state and regional leaders, federal policymakers, employers, and providers are all attuned to affordability and increasingly focused on how we can measure and reduce healthcare expenditures without harming patients.

NQF endorsed its first set of resource use measures—designed to understand how healthcare resources are being used—in January 2012, and it endorsed an additional set in April 2012. These measures will offer a more complete picture of what drives healthcare costs from several perspectives. For example, one endorsed measure evaluates a primary care provider's risk-adjusted frequency and intensity of all services used to manage patients—including inpatient/outpatient, pharmacy, laboratory, radiology, and behavioral health services—using standardized prices. Another measure evaluates a primary care provider's risk-adjusted cost effectiveness at managing his patient population using actual prices paid by health plans. Similar measures also evaluate total resources used by individual patients with specific conditions, such as asthma and chronic obstructive pulmonary disease, over the course of a measurement year. And other measures evaluate total costs over an episode of care, such as costs associated with hip/knee replacement, from diagnosis to treatment to rehabilitation. Used in concert with quality measures, these resource use measures will enable stakeholders to identify opportunities for creating a higher value healthcare system.

Harmonized behavioral health measures. In 2012, NQF endorsed 10 measures related to mental health and substance abuse, including measures of treatment for individuals experiencing alcohol or drug dependent episodes; diabetes and cardiovascular health screening for people with schizophrenia or bipolar disorder; and post-care follow-up rates for hospitalized individuals with mental illness. As a part of this process, NQF also brought together CMS and NCQA to harmonize two related measures into one measure addressing antipsychotic medication adherence in patients with schizophrenia.

A multiple chronic conditions measurement framework. People with

multiple chronic conditions (MCCs) now comprise more than 25 percent of the U.S. population[17 18] and this number is expected to grow. This population is more likely to see multiple clinicians, take five or more medications, and receive care that is fragmented, incomplete, inefficient, and ineffective.[19 20 21 22 23] They are at significantly higher risk of adverse outcomes and complications.

Despite the growing prevalence of people with MCCs, existing quality measures typically do not address issues associated with the care for individuals with MCCs, largely because of data sharing challenges and because measures are typically limited to addressing a singular disease and/or specific setting. As a result, NQF endorsed a measurement framework that establishes a shared vision for effectively measuring the quality of care for individuals with MCCs. Measure developers can use this framework to more quickly create measures for this population, filling a current measurement gap.

Healthcare disparities measures. Research from the Institute of Medicine shows that racial and ethnic minorities often receive lower quality care than their white counterparts, even after controlling for factors such as insurance coverage, socioeconomic status, and comorbidities.[24] Such disparities are exacerbated by additional factors, including that racial and ethnic minorities have poorer health status in general, face more barriers to care, and are more likely to have poor health literacy.

With funding from the Robert Wood Johnson Foundation, NQF established a more detailed picture of how to approach measurement of healthcare disparities across settings and populations, beginning with a commissioned paper outlining methodological concerns. To ensure that disparities in care can be addressed most effectively, NQF developed an approach to identify measures that are more sensitive to disparities and, as such, should be stratified. From there, NQF endorsed 12 performance measures that focused on patient-provider communication, cultural competence, and language services, among other issues. Now that these measures are endorsed, HHS has more opportunity to include these kinds of measures, which address a key NQS measurement priority, in federal programs.

Streamlining Measure Information

Various healthcare entities gather, store, and need to access information about performance measures. Over the years, different measure information systems have been built, each with differing purposes, structure, and content. This diversity of places and approaches to storing such information confounds the ability to find and coordinate pieces of information about a given measure, such as a specific version, unique identifying number or name, specifications, purpose and context, and benchmarking results.

HHS asked NQF to use its role as a neutral convener to work with a variety of public- and private-sector organizations to conduct a "Registry Needs Assessment." The assessment was geared toward understanding how various stakeholders currently approach gathering and storing performance measure information; assessing the desirability of a different approach including but not limited to a single "measure registry" system; and identifying the barriers to achieving more aligned and definitive ways to store and access consistent and comprehensive information about measures. The findings included recommendations for first steps such as developing shared definitions of measure "metadata" and versioning standards to enable alignment of measure information.

The Global to the Granular: NQF's Role in Accelerating the Adoption of eMeasures

Under section 1890(b)(4) of the Social Security Act, the entity was tasked with promoting the development and use of electronic health records that contain the functionality for automated collection, aggregation, and transmission of performance measurement information.

Currently, healthcare data largely live within system silos and on paper rather than in electronic form, which makes it nearly impossible for data to follow patients through various settings in which they receive care. Healthcare is safer and better coordinated when electronic health records (EHRs) and other clinical information technology systems reliably capture and share data across providers and patients to facilitate care—and as a byproduct of the clinical process—generate performance measurement information. Wide adoption of this kind of electronic infrastructure will spur implementation of the NQS, but has been hampered by a variety of issues.

NQF's health IT work in 2012 focused on pulling together disparate organizations that play a role in moving quality from a paper-based world to one facilitated by technology. The faster we reach consensus on approaches to this new world, the faster we may achieve the goal of a fully empowered and connected electronic information system designed with the patient in mind.

At the global level, NQF launched a series of activities designed to promote shared understanding among those involved in advancing electronic measurement and data infrastructure. It convened the eMeasure Learning Collaborative, a new environment for promoting best practices related to development and implementation of measures applied to electronic data sources (i.e., eMeasures). eMeasures are an innovation in advancing quality measurement, but significant barriers hamper their wider scale creation, adoption, and use. Through two in-person meetings and other virtual convenings, NQF brought together hundreds of stakeholders including government representatives, EHR vendors, measure developers, clinicians, and hospitals—creating a unique forum for these parties to work together on new eMeasurement approaches.

Specific eMeasure best practices emerged from this Learning Collaborative, particularly in three areas: Organizational leadership, data representation and clinical workflow, and learning health systems. For example, regarding data representation, all participants identified the need for measure developers and other stakeholders to communicate earlier in the eMeasurement process, particularly when measure developers are selecting data and representing data in eMeasure logic. For this best practice to become a reality, a national structure and process must exist to enable this level of dialogue. With respect to organizational leadership, participants suggested that provider organizations create inter-professional, physician-led teams focused on an integrated approach to eMeasure adoption, including data capture, reporting, workflow, clinical decision support, and evidence-based practice.

Several of NQF's 2012 projects sought to facilitate a unified understanding of terms and measurement approaches used in the health IT field, so that measure developers and implementers, health IT vendors, standards organizations, and other users of eMeasures and tools work with a similar lexicon. For example, NQF launched the Health IT Knowledge Base, providing answers to some of the most common technical questions about NQF's related initiatives. Since August 2012, NQF added more than 70 new entries to the frequently asked questions section, stemming from its interactions with

eMeasure users and developers. NQF also added a glossary with more than 150 terms and definitions. As a complement to the Knowledge Base, NQF provided opportunities for stakeholders to learn about best practices in eMeasurement through a series of NQF-hosted health IT webinars that reached more than 1,400 people during the past 12 months.

As quality measurement shifts to an electronic platform, additional clarity is needed regarding the testing that assures that eMeasures can be used for a range of accountability applications, which require both precision and reliable and valid results. NQF worked with CMS and the Office of the National Coordinator for Health Information Technology (ONC) to ensure that the data capture for eMeasures is feasible without impeding clinical workflow. NQF's health IT initiatives in 2012 scaled down to the granular level as well, to help standardize the efforts of the creators and users of eMeasures. Developed by NQF, the Quality Data Model (QDM) is an "information model" that defines concepts used in quality measures and clinical care in a way that allows the information to be collected automatically from data already stored in an EHR.

An example illustrates how the QDM can simplify and standardize the electronic collection and reporting of quality measures. If a physician's office wants to use its EHR to report on a measure that assesses the percentage of patients with a diagnosis of coronary artery disease (CAD) who were prescribed a lipid-lowering therapy, the EHR must first identify the patients with CAD within the physician's practice and then determine whether the patients had the therapy. If the physician's performance is going to be compared to her peers, then her EHR must define these elements in exactly the same way as every other EHR. The QDM supports this type of query regardless of the type of EHR by defining the necessary standard data elements (e.g., active diagnosis, active medication administered/ordered/dispensed) and the type of coding that the EHR may use to express the result (e.g., ICD–9 code for diagnosis; RxNorm for medication, etc.). When all measure specifications are written in a common way, EHR vendors can more easily ensure that their EHRs can support quality measurement, and the validity of electronic-based reporting programs will likely increase. NQF released an updated version of the QDM in December 2012, which focused on simplifying and standardizing QDM measure logic to support implementation of the federal Meaningful Use regulations. NQF also regularly receives ongoing feedback and insights into best practices from a User Group of measure developers, physicians, hospitals, and EHR vendors who are currently actively involved in eMeasure use.

NQF's work in standardizing eMeasurement extends to measure development. NQF partnered with a software developer to develop the Measure Authoring Tool (MAT), which is a publicly available, free, web-based tool designed to allow measure developers to create eMeasures using the aforementioned QDM, without needing to write programming code. At the end of 2012, NQF prepared to transition the day-to-day operation of the MAT to HHS, giving HHS the opportunity to better position the MAT and eMeasures in federal programs using EHR-based performance measurement, and to support the MAT's evolution.

Also in 2012, NQF completed the *Critical Paths for Creating Data Platforms* project. This effort helped assess the readiness of electronic data to support innovative measurement concepts and recommended steps to address data and infrastructure gaps and barriers in two high-priority domains: care coordination and patient safety. The care coordination report focused on transitions of care and communication of the patient plan of care. The patient safety report focused on effective use of infusion devices (e.g., giving medication through an IV) in acute care settings. The ability to capture data across settings is fundamental to gauging, for example, the degree of care coordination in a healthcare system. The final reports from these projects delineated specific steps that the government and private sector can take to enable electronic measurement in these areas.

DELIVERABLES ASSOCIATED WITH THESE ACTIVITIES

Description	Output	Status (as of 1/7/2013)	Notes/Scheduled or actual completion date
Surgery measures and maintenance review.	Two-phase project to endorse new surgery measures and conduct maintenance on existing NQF-endorsed measures.	Completed	Phase 1: 18 measures endorsed in December 2011. NQF Board endorsed 24 measures in Phase 2 in January 2012. Phase 2 addendum endorsed 9 measures in May 2012. 51 endorsed measures total, 42 maintenance.
Efficiency and resource-use measures.	Endorsed measures of imaging efficiency; white paper drafted; endorsed measures of healthcare efficiency.	Completed	Imaging Efficiency (Complete) —6 imaging efficiency measures endorsed in February 2011. —1 imaging efficiency measure was recommended to be combined with an existing NQF measure and was endorsed in April 2011. Efficiency—Resource Use (In Progress). Cycle 1: 4 measures endorsed in January 2012. Cycle 2: 4 measures endorsed in April 2012. —8 total measures endorsed, zero maintenance.
Cancer measures and maintenance review.	Project to endorse new cancer measures and conduct maintenance on existing NQF-endorsed measures.	Completed	Phase 1: 22 measures endorsed October 2012, 18 maintenance. Phase 2: 16 measures endorsed in October 2012, 10 maintenance

DELIVERABLES ASSOCIATED WITH THESE ACTIVITIES—Continued

Description	Output	Status (as of 1/7/2013)	Notes/Scheduled or actual completion date
Perinatal measures and maintenance review.	Project to endorse new perinatal measures and conduct maintenance on existing NQF-endorsed measures.	Completed	14 perinatal measures endorsed April 2012, 12 maintenance.
Renal measures and maintenance review.	Project to endorse new renal measures and conduct maintenance on existing NQF-endorsed measures.	Completed	12 renal measures endorsed April 2012, nine maintenance.
Pulmonary/critical-care measures and maintenance review.	Project to endorse new pulmonary/critical-care measures, and conduct maintenance on existing NQF-endorsed measures.	In progress	19 pulmonary/critical-care measures endorsed July 2012, 16 maintenance. One additional measure endorsed in January 2013, with two final measures still under review.
Palliative and end-of-life care.	Project to endorse new palliative and end-of-life care measures and conduct maintenance on existing NQF-endorsed measures.	Completed	14 palliative and end-of-life care measures endorsed February 2012, 2 maintenance.
Care-coordination measures and maintenance review.	Set of endorsed care-coordination measures	Completed	12 care coordination measures endorsed August 2012, 12 maintenance.
Population Health Phase 1: Prevention measures and maintenance measures review.	Set of endorsed measures for preventative services.	Completed	19 population health measures endorsed May 2012, 17 maintenance.
Population health Phase 2: Population health measures.	Commissioned paper addressing population health measurement issues and set of endorsed population health measures, plus set of endorsed measures.	Completed	Five measures also endorsed in October 2012, 3 maintenance.
Behavioral health measures and maintenance review.	Set of endorsed measures for behavioral health.	Phase 1 completed, phase 2 slated for 2013.	Phase 1 endorsed 10 measures in October 2012, 4 maintenance.
All-cause readmissions (expedited Consensus Development Process [CDP] review).	Set of endorsed all-cause readmission measures.	Completed	2 all-cause readmissions measures endorsed June 2012, zero maintenance.
Multiple Chronic Conditions Measurement Framework report analyzing measures being used to gauge quality of care for people with multiple chronic conditions.	Work plan completed; interim report available for public comment.	Completed	May 2012.
Patient-reported outcomes (PROs) workshops addressing prerequisites for endorsed PRO measures.	Two workshops discussing commissioned papers addressing methodological prerequisites for NQF consideration of PRO measures for endorsement.	Completed	Final report completed December 2012.
Oral health	Report that catalogs oral health measures, measure concepts, priorities and gaps in measurement.	Completed	July 2012.
Rapid-cycle CDP improvement (measure-endorsement process).	Summary of process improvement approach, events, and metrics used to enhance the quality and efficiency of CDP process.	Completed	May 2012.
GI/GU Two-Stage CDP	Proposed two-stage pilot project designed to provide early guidance to measure developers on whether a measure concept meets NQF's criterion for importance to measure and report before they invest time and resources in specifying and testing a measure.	Stage 1 completed	12 measure concepts approved in December 2012.
Patient-safety-complications measures and maintenance review (Phase 1).	Set of endorsed measures on complications-related areas.	Completed	14 measures endorsed June 2012, 14 maintenance. 2 additional measures endorsed August 2012, 2 maintenance. 16 measures total, 16 maintenance.
Infectious disease measures and maintenance review.	Set of endorsed infectious disease measures	In progress	14 measures endorsed January 2013, 10 maintenance. Two measures still under review.

DELIVERABLES ASSOCIATED WITH THESE ACTIVITIES—Continued

Description	Output	Status (as of 1/7/2013)	Notes/Scheduled or actual completion date
Regionalized Emergency Medical Care Services measure topic prioritization.	Provide guidance for measure development to ASPR's prioritized areas of (1) ED crowding, including a specific focus on boarding and diversion, (2) emergency preparedness, and (3) surge capacity.	Completed	
Registry Needs Assessment.	Hosted a public workshop that discussed measure information needs, requirements, and potential approaches to measure information management, as well as 2 webinars—focused on measure information management systems and a discussion on major findings of the workshop, respectively. Final report summarized major findings and included public feedback.	Completed	
Common formats for patient safety data.	Responsible—on behalf of AHRQ—for coordinating a process to obtain comments from stakeholders about the Common Formats authorized by the Patient Safety and Quality Improvement Act of 2005.	Completed	
QDM maintenance	Updated the QDM to incorporate additional types of measurement data needed to support emerging measures. The QDM June 2012 Update was released in summer for public comment. The QDM December 2012 was released in December based on feedback from the 2014 Clinical Quality Measure (CQM) development cycle for Meaningful Use Stage 2.	Updates to QDM are ongoing with input from NQF members, the QDM User Group and other interested stakeholders..	Each new version of the QDM will be published as needed. NQF will post a draft of modifications for each version.
MAT	Non-proprietary, web-based tool that allows performance-measure developers to specify, submit, and maintain electronic measures in a more streamlined, efficient, and highly structured way.	Completed	CMS assumed day-to-day responsibilities of the MAT as of January 2013.
Refinement of the eMeasure Process and Technical Assistance.	Provided education and outreach to both HHS and its contractors, and to the users of QDM, eMeasures, and the Measure Authoring Tool: measure developers, EHR vendors, and providers implementing measures. This education and outreach included both interactive teaching through webinars and live presentations, as well as development of technical information posted on NQF's Web site. Technical support was also provided to HHS/CMS/ONC as needed.	Ongoing	Launched and maintained the Health IT Knowledge Base which includes frequently asked questions (FAQs) from webinars, technical assistance log, user feedback, etc., a glossary of terms and links to Health IT reports. Updated and maintained the Measure Authoring Tool (MAT) User Guide. Provided technical assistance to HHS/ONC/CMS eMeasure contractors focusing on topics such as QDM and eMeasure logic in preparation for the release of MU2. Participated in eMeasure support calls and meeting as requested by ONC and CMS. Completed 6 public webinars with over 1850 total attendees, focusing on the Measure Authoring Tool (MAT), Quality Data Model (QDM) and eMeasures.
Commissioned paper on data sources and readiness of HIT systems to support care coordination.	Final report and commissioned paper	Completed	April 2012.
Critical Paths	Examine new measurement areas (e.g. care plans) to understand the feasibility of measuring such areas in an electronic environment.	Completed	Patient Safety and Care Coordination final reports completed in October and November 2012.
eMeasure Learning Collaborative.	Examining issues related to implementation of eMeasures with a multi-stakeholder group in order to define best practices and recommendations to the Office of the National Coordinator's Federal Advisory Committees.	Completed	Final report completed in December 2012.
eMeasure feasibility testing.	Review the current state of feasibility assessment for eMeasures and identify a set of principles, recommendations, and criteria for adequate feasibility assessment.	In progress	Draft guidance report will be finalized and released for public comment. Slated for completed by 4/5/13.

DELIVERABLES ASSOCIATED WITH THESE ACTIVITIES—Continued

Description	Output	Status (as of 1/7/2013)	Notes/Scheduled or actual completion date
Composite evaluation guidance.	Reassess NQF's existing guidance for evaluating composites, with particular consideration of recent changes in composite measure development and related methodology.	In progress	Final report slated for completed by 4/5/13.

4. Aligning Measure Use To Enhance Value

Under section 1890(b)(5)(A)(i) of the Social Security Act, the entity is required to provide a description of its implementation of quality and efficiency measurement initiatives under the Social Security Act and the coordination of those initiatives with those implemented by other payers.

Under section 1890A of the Social Security Act, HHS is required to establish a pre-rulemaking process under which a consensus-based entity (currently NQF) would convene multi-stakeholder groups to provide input to the Secretary on the selection of quality and efficiency measures for use in federal programs as specified under section 1890(b)(7)(B) of the Social Security Act. The list of quality and efficiency measures HHS is considering for selection will be publicly published no later than December 1 of each year. No later than February 1 of each year, NQF will report the input of the multi-stakeholder groups which will be considered by HHS in the selection of quality and efficiency measures for use in federal programs as specified under section 1890(b)(7)(B) of the Social Security Act.

Alignment with respect to use of the same performance measures is a critical strategy for accelerating improvement, reducing wasteful reporting burden, and enhancing transparency in healthcare. The NQF-convened Measure Applications Partnership (MAP), launched in the spring of 2011 as mandated by the Patient Protection and Affordable Care Act (Pub. L. 111–148, section 3014), is a key facilitator of measure alignment across federal programs and between the public and private sectors. The input that the MAP provides to HHS for purposes of the pre-rulemaking process and national priorities under the National Quality Strategy results from multiple stakeholders composed of representatives from more than 60 major private-sector stakeholder organizations, 10 federal agencies, and 40 individual technical experts MAP's input enhances HHS's ability to coordinate its quality and efficiency measurement initiatives with those initiatives implemented by other payers.

More specifically, MAP provides a forum for annual multi-stakeholder input into which performance measures are used in federal public reporting and pay-for-performance programs in advance of related regulations being issued. This approach augments traditional rulemaking, allowing the opportunity for substantive dialogue with HHS before rules are issued, a chance for alignment across programs with respect to use of measures, and consideration of longer term implications. MAP also provides a unique forum for public- and private-sector leaders to develop and then broadly vet a future-focused performance measurement strategy (outlined in the MAP strategic plan below), as well as the shorter term recommendations for that strategy on an annual basis in pre-rulemaking reports. MAP strives to offer recommendations that are cross-cutting and coordinated across: settings of care; federal, state, and private programs; levels of measurement analysis; payer type; and points in time.

Published on February 1, 2012, MAP's first pre-rulemaking report offered recommendations related to 17 federal programs.[25] This report:

- Recommended that 40 percent of the measures that CMS proposed at the end of 2011 move into federal programs targeting clinicians, hospitals, and post-acute care/long-term care (PAC/LTC) settings via rules issued in 2012, with another 15 percent targeted for future consideration after further development, testing, and feasibility issues are worked out. MAP did not support inclusion of the remaining 45 percent primarily because many of the measures did not have enough information, specificity, testing, or proof of implementation feasibility to guide MAP measure evaluation and selection. See Appendix C for the criteria MAP used to guide measure selection.
- Expressed clear preference for both using NQF-endorsed measures and for developing more robust feedback loops. Over 90 percent of the measures that MAP supported for inclusion in the first round of pre-rulemaking input were currently NQF-endorsed, with the remainder likely eligible for expedited review. In addition to these criteria, NQF is establishing more robust feedback loops that can help HHS, MAP, and the broader field to discern which of the endorsed measures are best suited for inclusion in future reporting and value-based purchasing programs. More specifically, in 2012 MAP analyzed what internal and external sources exist to obtain feedback from end users and informally engaged MAP members to understand how they would prioritize varying types of feedback information.[26]
- Considered how to further align measures across public programs and with the private sector with the goal of more targeted, inter-related sets of measures that are reported by different kinds of providers, in different settings, and across time.
- Laid out guiding principles for a three- to five-year measurement strategy where priority is placed on: (1) Measures that drive the system toward meeting the NQS; (2) measures that are person- rather than clinician-focused; and (3) measures that span settings, time, and types of clinicians. Person-centered measurement provides information about what matters to patients (e.g., "Will I be able to run after I recover from knee surgery?") and that is specific to patient populations or care over time, (e.g., "Did I get the care and support needed to manage my diabetes so that I did not lose my vision or my mobility?"). This kind of measurement is predicated on a redesigned delivery and payment system and an HIT-enabled environment that facilitates both coordination and integration of care for a range of patients across the continuum.

Federal Medicare and Meaningful Use rules issued over the course of 2012 largely followed the MAP pre-rulemaking recommendations for inclusion or exclusion of measures in over 20 different payment and reporting programs that MAP was asked to consider. However, concordance between the HHS final rules issued in 2012 with the MAP 2012 recommendations varied depending on the program (see table below for key

programs). Over 70% concordance was observed for the majority of relevant programs. Of the two programs that had lower concordance with MAP Recommendations, there were only five measures in one program (ESRD QIP) relevant to the analysis, and there was a relatively short time period available for HHS to consider MAP's input for the other program (Meaningful Use). There were various reasons for the individual instances of discordance. Where CMS did not finalize measures that MAP supported, the most common issue was difficulty of data collection or other burden imposed by those measures. Excluded from the concordance analysis were many measures that had not yet been reviewed or endorsed by NQF at the time of MAP's evaluation, leaving MAP with insufficient information to provide a definitive "Support" or "Do Not Support" recommendation. For example, in the Medicare Physician Fee Schedule rule, CMS included a number of non-endorsed measures that address the broad array of medical specialties to engage more physicians in federal physician-level programs. Going forward NQF is poised to quickly move these measures through review for potential endorsement.

CONCORDANCE OF MAP "SUPPORT" AND "DO NOT SUPPORT" RECOMMENDATIONS WITH MEASURES INCLUDED IN SELECTED HHS PROGRAMS FROM HHS FINAL RULES ISSUED IN 2012

HHS Final Rules	Concordance of MAP Recommendations With HHS Rules Issued in 2012 (percent)
Hospital IQR	73
Hospital VBP	71
Inpatient Psych Facility	100
Meaningful Use	50
Physician Quality Reporting System (PQRS)	79
End-Stage Renal Disease Quality Improvement Program (ESRD QIP)	40

MAP Strategic Plan for Measurement. To spur progress toward a defined set of goals and priorities related to the NQS—which include improved quality and safety, more transparency, and enhanced value—MAP developed a three-year strategic plan for measurement (2012–2015). This plan was released on October 1, 2012, and is intended to inform HHS's future measure development planning, as well as shape annual rulemaking advice in the years ahead. The plan has the following three major components:

- Define sets of measures as *families of measures* with the objective of knitting together related measures currently found in different programs, care settings, levels of analysis, and populations. This approach complements the program-specific recommendations that MAP made in its pre-rulemaking report. Individual measures are carefully selected to work together as a "family" to drive the overall system toward better performance in a given area, promote more patient-centeredness, and decrease reporting burden for providers. Families of measures are linked to a high-impact condition (e.g., diabetes) or an NQS priority (e.g., safety) and are intended to promote further measure alignment by specifying within the families more discrete core measure sets focused on hospitals, clinicians, or post-acute/long-term care. See *MAP's Families of Measures* report or for a summary of the report, see page 28.
- Engage stakeholders that develop, report, and use measures to glean feedback about the use and usefulness of measures. The idea is to create more effective two-way communication so that the experiences of end users directly inform MAP's recommendations to HHS, contribute to the thinking of the diverse stakeholders that participate directly and indirectly in MAP's activities, as well as inform the work of measure developers as they address identified measurement gaps in a more coordinated fashion.
- Develop analytic support for MAP decision making. The goal is to further enrich MAP's thinking and decision-making by integrating important data and information that are developed across NQF as a strategic byproduct of its different activities. These include input to priority setting and strategies, measurement review and endorsement, and advice on measure selection. This function would also draw upon the various outside efforts under way to glean information about measure use and impact. The analysis and integration of internal and external data will inform and likely refine MAP's overall selection criteria, as well as its recommendations to HHS in future pre-rulemaking reports. In addition, an independent third-party evaluation is planned to determine whether MAP is meeting its overall objectives.

The MAP pre-rulemaking recommendations and strategic plan largely reflect the current reality of our siloed healthcare payment and delivery systems, but anticipate a future system with shared accountability for patient welfare, community health, and stewardship of scarce resources.

Families of Measures

MAP selected safety, care coordination, cardiovascular conditions, and diabetes as its first focus areas for identification of families of measures—all areas called out in the NQS and/or leading causes of mortality. MAP's first families of measures report was published on October 1, 2012.

MAP reviewed 676 measures across these 4 topics, using criteria laid out in the report as a guide to inform selection. Of these measures, MAP recommended 55 safety, 60 care coordination, 37 cardiovascular, and 13 diabetes measures for inclusion in 4 distinct families of measures. MAP further defined more discrete core measures, which include available measures, and gaps specific to a care setting (e.g. hospitals, post-acute care/long-term care), level of analysis (e.g. individual clinicians), or population drawn from each family of measures and made program-specific recommendations in its 2013 pre-rulemaking report. MAP anticipates identifying families of measures for patient and family engagement, population health, affordability/cost, and mental health in 2013, pending funding decisions.

MAP defined families of measures with the intent that their implementation would lead to performance improvement and further cohesion and synergy of care in a targeted area. Measures in a given family bridge healthcare settings, types of providers, and time and are interconnected in the way patients would ideally like to experience care. Families of measures also include identifying measure gaps, which strongly signal to developers where new measures are needed, and can help facilitate prioritization of funding for measure development.

For example, the safety family of measures contains 9 topic areas and 22 subtopic areas. The topic areas include but are not limited to reducing healthcare-acquired infections and obstetrical adverse events and increasing procedural safety. Examples of specific gaps in the safety family of measures include post-discharge follow-up of infections in ambulatory settings, ventilator-associated events with special considerations for the pediatric population, and infection measures reported as rates rather than ratios, which would be more meaningful to consumers. The 55 measures selected for the safety family of measures follow themes such as creating a culture of safety, patient and caregiver

engagement, reporting meaningful safety information, and cost of care implications. These measures were selected for their ability to cross settings to simultaneously affect patients, caregivers, and purchasers and to ultimately increase safety for all patients.

Measure Use and Alignment

Although the advantages of measure alignment are many, few studies have systematically examined this phenomenon. A 2011 RAND study of 75 diverse organizations found that nearly all used NQF-endorsed measures, although there was considerable variability in which measures were used and for what purposes. Most used NQF-endorsed measures in quality improvement programs, followed closely by use in public reporting and then payment programs. The 2011 study also found that the organizations surveyed indicated a strong preference for NQF-endorsed measures where they exist because they are vetted, evidence-based, and known to be more credible with providers.[27]

In 2011 and 2012, NQF conducted initial research outside of the HHS contract to better understand which organizations are using NQF-endorsed measures and where there is alignment across sectors with respect to that use.[28 29] In addition, NQF is developing more systematic approaches to capturing detailed feedback from end users about the usefulness of NQF measures in driving improvements in health and healthcare.

The 2012 analysis showed that 86 percent of the 706 NQF-endorsed measures were in use, with the balance of the portfolio not in use largely consisting of measures recently endorsed (last 1–3 years) and expected to be used in the near future. Federal use of the NQF portfolio was stable at about 50 percent. Private payer use of the NQF portfolio grew from 21 percent to 35 percent during this period; state use grew from 21 percent to 23 percent. Much of the increase in private payer use is likely attributable to better data collection by NQF, rather than increased use of NQF-endorsed measures by private payers.

The federal government, private plans, and states appear to be increasingly using the same NQF-endorsed measures. In 2012, the federal government and private payers used the same 76 measures in accountability programs, or 13 percent of the 606 NQF-endorsed measures in use. During the same period, federal and state alignment was 48 measures, or 8 percent, and private payer and state alignment was 51 measures, or 8 percent. In 2012, 25 measures were simultaneously used by the federal government, private payers, and states. When all users are taken into account (including local communities, registries and others users), about 29 percent of the NQF-endorsed portfolio was used by two or more stakeholders in 2012.

NQF Facilitates National, State, and Local Measure Alignment

- Improvement Targets: Inform the National Quality Strategy (National Priorities Partnership)
- Measures: Endorse and harmonize measures
- Incentives: Advise HHS on reporting/payment programs (Measure Applications Partnership)
- National-Local Actions: Develop tools to align use of measures (Quality Positioning System or QPS) and efforts of national/local organizations implementing strategies at the delivery system level (National Priorities Partnership)

Alignment at the Community Level

Given the number and diversity of community-based efforts, it is challenging to get a comprehensive sense of how standardized measures are being used at the local, state, or regional levels. That said, the number of regional multi-stakeholder collaboratives or alliances that are collecting, reporting, and in some cases paying on the basis of performance measures appears to have grown over the past number of years. As of October 2012, the Robert Wood Johnson Foundation has cataloged on its Web site a compendium of nearly 260 state, local, or regional efforts to publicly report on healthcare performance across the United States.[30]

To better understand the public-reporting activities in a subset of these community-based groups, NQF analyzed the measure use of 16 alliances that receive funding from the Robert Wood Johnson Foundation through the Aligning Forces for Quality (AF4Q) program. This analysis showed that these alliances are using 171 NQF-endorsed measures in their reports to the public, and it provided insight to NQF as to the kinds of tools and capabilities communities are seeking as they evolve measurement efforts on the local level.

Supported by the Robert Wood Johnson Foundation, NQF has developed tools outside of the HHS contracts to support local, state, and regional leaders interested in using NQF-endorsed measures, particularly those measures also used in federal programs. For example, NQF's publicly available Quality Positioning System (QPS) enables users to search a database of NQF-endorsed measures and to build a portfolio or custom list of NQF-endorsed measures that they use or in which they are interested. A QPS user can then compare that portfolio against measures used in federal and other national programs, aligning measurement efforts where it makes sense to do so. A QPS user also can share its portfolio with others by self-publishing it within QPS on the NQF Web site. This feature and the ability to discern which NQF-endorsed measures are being used in federal programs can provide a rich information base to help communities, states, and the federal government synchronize their approaches to measuring and improving quality.

DELIVERABLES ASSOCIATED WITH THESE ACTIVITIES

Description	Output	Status (as of 1/7/2013)	Notes/scheduled or actual completion date
Measures for use in quality reporting programs under Medicare.	*Measure Applications Partnership Pre-Rulemaking Report: Input on Measures Under Consideration by HHS for 2012 Rulemaking.*	Completed	February 2012.
MAP report recommending measures that address the quality issues identified for dual-eligible beneficiaries.	Final report including potential new performance measures to fill gaps in measurement for dual-eligible beneficiaries.	Completed	June 1, 2012.

DELIVERABLES ASSOCIATED WITH THESE ACTIVITIES—Continued

Description	Output	Status (as of 1/7/2013)	Notes/scheduled or actual completion date
MAP report recommending measures for use in quality reporting for Prospective Payment System-exempt cancer hospitals.	Final report including MAP Coordinating Committee recommendations.	Completed	June 1, 2012.
MAP report recommending measures for use in quality reporting for hospice care.	Final report including MAP Coordinating Committee recommendations.	Completed	June 1, 2012.
MAP Strategic Plan 2012–2015	Final report	Completed	October 2012.
MAP report detailing families of measures for safety, care coordination, cardiovascular conditions, and diabetes.	Final report	Completed	October 2012.

5. Identifying Measure Gaps and Developing Strategies for Filling Them

Under section 1890(b)(5)(iv) of the Social Security Act, the entity is required to describe gaps in endorsed quality and efficiency measures, including measures within priority areas identified by HHS under the agency's National Quality Strategy, and where quality and efficiency measures are unavailable or inadequate to identify or address such gaps. Under section 1890(b)(5)(v) of the Social Security Act, NQF is also required to describe areas in which evidence is insufficient to support endorsement of quality and efficiency measures in priority areas identified by the National Quality Strategy and where targeted research may address such gaps.

Performance measurement science has made important strides in the last decade, including addressing new settings and types of providers, becoming more responsive to the needs and preferences of varied stakeholders, evolving with new technology, and increasingly addressing hard-to-measure concepts such as care coordination and appropriateness. Despite these gains, measurement gaps persist, either because the measures have not yet been developed, or the measures exist but are not being used.

To identify measurement gaps, NQF conducted an extensive analysis in 2012 of its current measures portfolio against both the National Quality Strategy priority areas and high-impact conditions (both Medicare and child health) as required by statute (Social Security Act, section 1890(b)(5)(iv)), analyzed stakeholder feedback, and considered which NQF-endorsed measures were being used and by which sector. The gaps identified below, however, do need to be viewed in the context of rising concern about measurement overload and administrative burden. While more measures are needed to address high-priority issues, NQF continues to remove measures that no longer meet its criteria or where performance "tops out" to ensure measurement parsimony.

Synthesis of Measure Gaps

Captured in the 2012 NQF Measure Gap Analysis, this report revealed that discussions of measure gaps too often remain at a high conceptual level, and that more detailed information is needed to inform next steps, whether those steps entail measure development or addressing barriers to implementation of existing measures. In addition, while there may be non-NQF endorsed measures currently in use that address high-priority gap areas, a full assessment of their applicability and appropriateness was beyond the scope of this project. Such measures should be brought forth for NQF endorsement to assess their importance, scientific reliability and validity, usability, and feasibility before an assessment of value or recommendations for use can be made. The following are high-level syntheses of the measure gaps identified through the NQF analysis, presented through the lens of the three aims of the NQS.

Better Care

The lion's share of current NQF-endorsed measures related to better care focused on specific conditions. Addressing the gaps identified below would provide added input directly from patients about their care and could further focus the healthcare system on the needs and preferences of patients and families, including the most vulnerable patients.

Patient-reported outcomes (PROs)—To fully assess the quality and safety of healthcare, the gap analysis emphasized the importance of patient-reported outcomes—any report of the patient's health status that comes directly from the patient, without interpretation by a clinician or anyone else. Domains for measurement include symptoms and symptom burden, health-related quality of life including functional status, experience with care, and health-related behaviors. Especially important are PRO-based performance measures that can be aggregated accurately and reliably to the level of an accountable healthcare entity, and that span the full continuum of care.

Patient-centered care and shared decision-making—To spur the healthcare system to be more responsive to patients and families, measures are needed that assess whether patient and family treatment preferences are identified; whether their psychosocial, cultural, spiritual, or healthcare literacy needs are addressed; whether they are actively engaged in developing a care plan; and whether their expressed preferences and goals for care are met. Measures of decision quality are critical for assessing whether patients understand evidence-based treatment options and whether they are able to make decisions based on information provided by their healthcare practitioner.

Care coordination and care transitions—Important outcome measures are needed to assess whether patients, families, and caregivers believe that the overall care coordination process—including the quality of communication, care planning, care transitions, and team-based care—satisfactorily prepared them to manage their care and return to the best possible quality of life. The timeliness of access to high-quality palliative care or hospice services, including pain and symptom management, psychosocial support, and advance care planning also is identified as a gap area in need of further attention. Measure gaps related to effective medication management and patient adherence, and adverse drug events remain.

Care for vulnerable populations—A critical gap area to be filled includes the ability to measure whether high-quality care is available to patients most in need, particularly the vulnerable elderly, individuals with multiple chronic conditions and complex care needs, critically ill patients, patients receiving end-of-life care, children with special needs, residents in long-term care settings, the homeless, and people who are dually eligible for Medicare and Medicaid.

Healthy People/Healthy Communities

Recognizing that the health of the American public is mostly attributable to healthy life style behaviors, environment, or social status, the following gap areas push the field beyond the traditional boundaries of the healthcare delivery system and offer the potential for dramatic gains in health for the nation.

Health and well-being—Measures within and outside of the healthcare system are needed to assess health-related quality of life and to optimize the population's well-being. Measures that assess the burden of illness experienced by patients, families, and caregivers, as well as measures of productivity also are important. Community indices that measure key factors or social determinants known to significantly influence health or drive unnecessary utilization of healthcare services are needed to develop community programs that effectively and appropriately target resources and interventions to improve population health and reduce disparities.

Preventive care—Composite measures of the highest impact age- and sex-appropriate clinical preventive services, particularly for the cardiovascular disease priority area, continue to be important measure gaps to fill. Oral health was highlighted as an important area in need of measures, specifically for the prevention of dental caries, as were coordination of long-term support services and psychosocial, behavioral health, spiritual, and cultural services. An emerging area of focus for measurement is on the extent to which care is coordinated beyond the healthcare delivery system—particularly between healthcare, public health, and community support services—and how individual organizations are held collectively accountable.

Childhood measures—Measure gaps for child and adolescent health emphasized the attainment of developmental milestones, the quality of adolescent well-care visits, prevention of accidents and injuries, and prevention of risky behaviors. There also is a heightened need for measures of childhood obesity in addition to body mass index for more effective upstream management, given the risk for development of diabetes, cardiovascular disease, and other chronic conditions.

Accessible and Affordable Care

Affordability is often narrowly construed. The following identification of gaps broadens its definition so that affordability is viewed through a variety of lenses including the individual and society, for example, out-of-pocket costs to patients and families and costs to the healthcare system. Further, a commitment to ensuring access to affordable, high quality care for all necessitates judicious use of resources at the individual level.

Access to care—In addition to measures that assess insurance coverage, the analysis revealed that measure gaps indicative of access to needed care are important to address. Important considerations include the ability to obtain medications, mental health, oral health, and specialty services in a timely fashion. Measures also are needed to assess disparities in access and affordability, particularly with regard to socioeconomic status, race, and ethnicity, and for vulnerable populations.

Healthcare affordability—Many stakeholders emphasize the need for affordability indices that reflect the burden of healthcare costs on consumers and that include direct costs (e.g., out-of-pocket expenses, personal healthcare expenditures per capita) as well as indirect opportunity costs (e.g., productivity, work and school absenteeism, and the "cost of neglect" of medical and dental care). Efficiency measures are needed to benchmark providers on cost and quality as well as to quantify the impact of inefficiencies across care settings to further target quality improvement efforts. Purchasers and consumers continue to emphasize the importance of understanding pricing and improved transparency of data through standardized measurement and reporting.

Waste and overuse—Measures that assess the extent to which the healthcare system promotes the provision of medical, surgical, and diagnostic services that offer little if any value—and that may be harmful to patients—are critical to closing gaps in variation. Specific areas frequently cited as important for measurement include appropriate, patient-centered and patient-directed end-of-life care; unnecessary emergency department visits and hospital admissions and readmissions (particularly for ambulatory-sensitive conditions); inappropriate medication use and polypharmacy; and duplication of or inappropriate services and testing, particularly imaging.

Availability of NQF-endorsed Measures

Although the NQF portfolio increasingly maps to the NQS, its extent varies across each of the six NQS priorities. For example, 40 percent of NQF measures that map to the NQS at the goal level address patient safety, including a wide range of measures related to healthcare-acquired conditions and hospital readmissions. Yet only 7 percent of measures that map at the goal level address patient and family engagement, with very few measures to address important areas of shared decision making, patient navigation, and patient self-management. Likewise, measures to address healthy lifestyle behaviors and community interventions to prevent cardiovascular disease upstream also warrant increased attention. Specific measures of cost remain a high-priority gap area, particularly for purchasers of healthcare.

NQF's portfolio includes more than 400 condition-specific measures, more than 250 of which address the high-impact Medicare conditions. Yet only 53 of the measures address the specific high-impact child health conditions, and 12 of the high-impact child health conditions do not have any specific endorsed measures. While the lack of measures for certain conditions may be of interest or concern, future measure development should be prioritized to focus on cross-cutting measures that apply to patients regardless of their disease process.

NQF Measure Portfolio in Use

The federal government remains the predominant user of NQF-endorsed measures, but a growing number of measures are in use across other public-sector programs—including state and local programs—as well as in the private sector. More promising is the emerging overlap in measure use across these sectors. Further alignment—or use of the same measures—offers the potential to significantly reduce measurement burden and to simultaneously accelerate improvement by sending consistent signals about what is important for providers to focus care improvement resources against.

Overall, 64 measures in the NQF portfolio that address specific NQS goals are in concurrent use in federal programs and two or more private programs. While the majority of these are safety-related measures, a small

number address aspects of overuse, patient experience, and preventive screenings. A nearly equal number of measures that address specific NQS goals are not in use in any of the programs analyzed—a missed opportunity, particularly for goals related to function and quality of life, hospice and palliative care, mental health, and preventive services for children. Similarly, the analysis revealed that 57 measures in the NQF portfolio that address high-impact conditions are in concurrent use in federal programs and two or more private programs, the majority of which reflect the high-impact Medicare conditions. However, 47 measures that address high-impact Medicare or child health conditions had no identified use in any of the sectors analyzed. Consideration should be given to the potential barriers that prevent these measures from being implemented in the field.

The Path Forward

As the field—the public and private stakeholders committed to building a solid foundation for quality improvement—strives to continually advance the use of standardized performance measurement, there is a strong desire to accelerate efforts to fill, rather than just identify, key measurement gaps. This will require making better use of the measures already available for key priority areas and investing wisely in measure development and endorsement activities to fill the most critical gap areas.

6. Looking Forward

NQF has evolved in the dozen years it has been in existence and since it endorsed its first performance measures a decade ago. While its focus on improving quality, enhancing safety, and reducing costs by endorsing performance measures has remained a constant, its role has expanded to include a significant emphasis on getting the various stakeholder groups to align with respect to their use of performance measures and related improvement efforts. Experience has made it clear that sector-by-sector approaches to enhancing healthcare performance are ineffective in our decentralized and complex healthcare system, and they waste precious healthcare resources and may even do harm.

Looking ahead, NQF will work together with HHS and the broader quality movement to:

- Deepen the alignment between the public and private sectors and across stakeholder groups to accelerate progress and reduce burden: This relates to measure endorsement and the work of NQF-convened partnerships and is a core, enduring value of the organization;
- Focus more on "end user" needs and engagement: NQF will enlarge its current collaborative efforts to better incorporate the perspectives and values of those at the local level and those on the sharp end of healthcare—who ultimately are integrating the needs of the delivery system with those who receive and pay for care. Starting with the preferences of the end user in mind and systematically collecting user feedback about the efficacy of measures are ways to engage communities, providers, and other users in the collective goal of improving healthcare value.
- Take a more proactive approach to coordinate the measures pipeline and remake measure review and endorsement so it is more nimble: NQF will not only identify measure gaps but engage developers in filling them so that their efforts are streamlined and avoid duplication. Simultaneously, NQF plans to set up standing committees so that measures can more readily be reviewed.
- Review and endorse "next generation" quality measures that put the patient first: A key priority is endorsing next-generation measures that are more meaningful to patients and families and that help track patient outcomes across healthcare settings. NQF is committed to moving our nation's healthcare system to be ever more responsive to patient preferences and values and believes that richer information can play a crucial role;
- Increase the focus on measures that can enhance value: Affordability and its relationship to quality will become a focal point and better integrated into NQF's future work, starting with defining the many aspects of affordability and prioritizing near and longer term areas of focus going forward. Given the embryonic stage of affordability measures overall, there is much upfront conceptual work to be done that will rely on getting broad-based and varied input in order to gain a deeper appreciation for how to further measurement in the areas of costs, appropriateness, and resource use and how to pair such measures with quality metrics in order to assess value.

NQF is embarking on an exciting agenda that emphasizes enhanced alignment and collaboration so as to better integrate end user needs—all with an eye on evolving our measure portfolio so that it drives the healthcare system toward both delivering higher value healthcare and incorporating the needs and preferences of patients, payers, and purchasers. The goals are clear, and the collective work of the 800 plus individuals who collaborate with NQF are focused on efforts to benefit the U.S. healthcare system and the patients it serves.

Appendix A: 2012 Accomplishments

JANUARY 14, 2012 TO JANUARY 7, 2013

Description	Output	Status (as of 1/7/2013)	Notes/scheduled or actual completion date
I. Facilitating Coordinated Action to Achieve the National Quality Strategy Goals			
NPP support for Partnership for Patients' HHS initiative focused on patient safety.	4 quarterly convenings for 100+ people each, and 3 webinars reaching 550+.	Completed	Content of meetings and webinars were captured in individual summaries.
NPP support for Partnership for Patients' HHS initiative focused on patient safety.	2 public web meetings reaching 500+ and 2 public conference calls, reaching 100+.	Completed	Content of meetings and calls were captured in individual summaries.
NPP support for Partnership for Patients' HHS initiative focused on patient safety.	Formed two action teams around Readmissions and Maternal Health. Early development of additional action teams around Million Hearts/Cardiovascular Health and Patient & Family Engagement.	Completed.	

JANUARY 14, 2012 TO JANUARY 7, 2013—Continued

Description	Output	Status (as of 1/7/2013)	Notes/scheduled or actual completion date
NPP support for Partnership for Patients' HHS initiative focused on patient safety.	Created the Action Registry, a virtual space for organizations to share their quality improvement activities—or "actions"—around the six priority areas of the National Quality Strategy and make connections with each other.	Completed.	
NPP support for Partnership for Patients' HHS initiative focused on patient safety.	Quarterly reports for HHS	Completed.	
II. Supporting National Healthcare Measurement Needs			
Surgery measures and maintenance review.	Two-phase project to endorse new surgery measures and conduct maintenance on existing NQF-endorsed measures.	Completed	Phase 1: 18 measures endorsed in December 2011. NQF Board endorsed 24 measures in Phase 2 in January 2012. Phase 2 addendum endorsed 9 measures in May 2012. 51 endorsed measures total, 42 maintenance.
Efficiency and resource-use measures.	Endorsed measures of imaging efficiency; white paper drafted; endorsed measures of healthcare efficiency.	Completed	Imaging Efficiency (Complete) —6 imaging efficiency measures endorsed in February 2011. —1 imaging efficiency measure was recommended to be combined with an existing NQF measure and was endorsed in April 2011. Efficiency—Resource Use (Complete). Cycle 1: 4 measures endorsed in January 2012. Cycle 2: 4 measures endorsed in April 2012. —8 total measures endorsed, zero maintenance.
Cancer measures and maintenance review.	Project to endorse new cancer measures and conduct maintenance on existing NQF-endorsed measures.	Completed	Phase 1: 22 measures endorsed October 2012, 18 maintenance. Phase 2: 16 measures endorsed in October 2012, 10 maintenance.
Perinatal measures and maintenance review.	Project to endorse new perinatal measures and conduct maintenance on existing NQF-endorsed measures.	Completed	14 perinatal measures endorsed April 2012, 12 maintenance.
Renal measures and maintenance review.	Project to endorse new renal measures and conduct maintenance on existing NQF-endorsed measures.	Completed	12 renal measures endorsed April 2012, nine maintenance.
Pulmonary/critical-care measures and maintenance review.	Project to endorse new pulmonary/critical-care measures, and conduct maintenance on existing NQF-endorsed measures.	In progress	19 pulmonary/critical-care measures endorsed July 2012, 16 maintenance. One additional measure endorsed in January 2013, with two final measures still under review.
Palliative and end-of-life care.	Project to endorse new palliative and end-of-life care measures and conduct maintenance on existing NQF-endorsed measures.	Completed	14 palliative and end-of-life care measures endorsed February 2012, 2 maintenance.
Care coordination measures and maintenance review.	Set of endorsed care coordination measures	Completed	12 care coordination measures endorsed August 2012, 12 maintenance.
Population Health Phase 1: Prevention measures and maintenance measures review.	Set of endorsed measures for preventative services.	Completed	19 population health measures endorsed May 2012, 17 maintenance.
Population health Phase 2: Population health measures.	Commissioned paper addressing population health measurement issues and set of endorsed population health measures, plus set of endorsed measures.	Completed	Five measures also endorsed in October 2012, 3 maintenance.
Behavioral health measures and maintenance review.	Set of endorsed measures for behavioral health.	Phase I completed, phase 2 slated for 2013.	Phase 1 endorsed 10 measures in October 2012, 4 maintenance.
All-cause readmissions (expedited Consensus Development Process [CDP] review).	Set of endorsed all-cause readmission measures.	Completed	Two all-cause readmissions measures endorsed June 2012, zero maintenance.

JANUARY 14, 2012 TO JANUARY 7, 2013—Continued

Description	Output	Status (as of 1/7/2013)	Notes/scheduled or actual completion date
Multiple Chronic Conditions Measurement Framework report analyzing measures being used to gauge quality of care for people with multiple chronic conditions.	Work plan completed; interim report available for public comment.	Completed	May 2012.
Patient-reported outcomes (PROs) workshops addressing prerequisites for endorsed PRO measures.	Two workshops discussing commissioned papers addressing methodological prerequisites for NQF consideration of PRO measures for endorsement.	Completed	Final report completed December 2012.
Oral health	Report that catalogs oral health measures, measure concepts, priorities and gaps in measurement.	Completed	July 2012.
Rapid-cycle CDP improvement (measure-endorsement process).	Summary of process improvement approach, events, and metrics used to enhance the quality and efficiency of CDP process.	Completed	May 2012.
GI/GU Two-Stage CDP	Proposed two-stage pilot project designed to provide early guidance to measure developers on whether a measure concept meets NQF's criterion for importance to measure and report before they invest time and resources in specifying and testing a measure.	Stage 1 completed	12 measure concepts approved in December 2012.
Patient-safety-complications measures and maintenance review (Phase 1).	Set of endorsed measures on complications-related areas.	Completed	14 measures endorsed June 2012, 14 maintenance. 2 additional measures endorsed August 2012. 2 maintenance. 16 measures total, 16 maintenance.
Infectious disease measures and maintenance review.	Set of endorsed infectious disease measures ..	In progress	14 measures endorsed January 2013, 10 maintenance. Two measures still under review.
Regionalized Emergency Medical Care Services measure topic prioritization.	Provide guidance for measure development to ASPR's prioritized areas of (1) ED crowding, including a specific focus on boarding and diversion, (2) emergency preparedness, and (3) surge capacity.	Completed.	
Registry Needs Assessment.	Hosted a public workshop that discussed measure information needs, requirements, and potential approaches to measure information management, as well as 2 webinars—focused on measure information management systems and a discussion on major findings of the workshop, respectively. Final report summarized major findings and included public feedback.	Completed.	
Common formats for patient safety data.	Responsible—on behalf of AHRQ—for coordinating a process to obtain comments from stakeholders about the Common Formats authorized by the Patient Safety and Quality Improvement Act of 2005.	Completed.	
QDM maintenance	Updated the QDM to incorporate additional types of measurement data needed to support emerging measures. The QDM June 2012 Update was released in summer for public comment. The QDM December 2012 was released in December based on feedback from the 2014 Clinical Quality Measure (CQM) development cycle for Meaningful Use Stage 2.	Completed	Work stopped effective 1/10/13 as a result of amendments made by the American Taxpayer Relief Act.
MAT	Non-proprietary, web-based tool that allows performance-measure developers to specify, submit, and maintain electronic measures in a more streamlined, efficient, and highly structured way.	Completed	CMS assumed day-to-day responsibilities of the MAT as of January 2013.

JANUARY 14, 2012 TO JANUARY 7, 2013—Continued

Description	Output	Status (as of 1/7/2013)	Notes/scheduled or actual completion date
Refinement of the eMeasure Process and Technical Assistance.	Provided education and outreach to both HHS and its contractors, and to the users of QDM, eMeasures, and the Measure Authoring Tool: Measure developers, EHR vendors, and providers implementing measures. This education and outreach included both interactive teaching through webinars and live presentations, as well as development of technical information posted on NQF's Web site. Technical support was also provided to HHS/CMS/ONC as needed.	Ongoing	Launched and maintained the Health IT Knowledge Base which includes frequently asked questions (FAQs) from webinars, technical assistance log, user feedback, etc., a glossary of terms and links to Health IT reports. Updated and maintained the Measure Authoring Tool (MAT) User Guide. Provided technical assistance to HHS/ONC/CMS eMeasure contractors focusing on topics such as QDM and eMeasure logic in preparation for the release of MU2. Participated in eMeasure support calls and meeting as requested by ONC and CMS.
Commissioned paper on data sources and readiness of HIT systems to support care coordination.	Final report and commissioned paper	Completed	April 2012.
Critical Paths	Examine new measurement areas (e.g., care plans) to understand the feasibility of measuring such areas in an electronic environment.	Completed	Patient Safety and Care Coordination final reports completed in October and November 2012.
eMeasure Learning Collaborative.	Examining issues related to implementation of eMeasures with a multi-stakeholder group in order to define best practices and recommendations to the Office of the National Coordinator's Federal Advisory Committees.	Completed	Final report completed in December 2012.
eMeasure feasibility testing.	Review the current state of feasibility assessment for eMeasures and identify a set of principles, recommendations, and criteria for adequate feasibility assessment.	In progress	Draft guidance report to be finalized and released for public comment. Slated for completion by 4/5/13.
Composite evaluation guidance.	Reassess NQF's existing guidance for evaluating composites, with particular consideration of recent changes in composite measure development and related methodology.	In progress	Final report slated for completion by 4/5/13.
III. Aligning Accountability Programs to Enhance Value			
Measures for use in quality reporting programs under Medicare.	*Measure Applications Partnership Pre-Rulemaking Report: Input on Measures Under Consideration by HHS for 2012 Rulemaking.*	Completed	Completed February 2012.
MAP report recommending measures that address the quality issues identified for dual-eligible beneficiaries.	Final report including potential new performance measures to fill gaps in measurement for dual-eligible beneficiaries.	Completed	June 1, 2012.
MAP report recommending measures for use in quality reporting for Prospective Payment System-exempt cancer hospitals.	Final report including MAP Coordinating Committee recommendations.	Completed	June 1, 2012.
MAP report recommending measures for use in quality reporting for hospice care.	Final report including MAP Coordinating Committee recommendations.	Completed	June 1, 2012.
MAP Strategic Plan 2012–2015.	Final report	Completed	October 2012.
MAP report detailing families of measures for safety, care coordination, cardiovascular conditions, and diabetes.	Final report	Completed	October 2012.

JANUARY 14, 2012 TO JANUARY 7, 2013—Continued

Description	Output	Status (as of 1/7/2013)	Notes/scheduled or actual completion date
IV. Identifying Measure Gaps and Developing Strategies for Filling Them			
Gaps Report			Feedback received on 2/8. Revised draft due back on 3/31/13.

Appendix B: NQF Board and Management Team

Board of Directors

William L. Roper, MD, MPH (Chair), Dean, School of Medicine, Vice Chancellor for Medical Affairs and Chief Executive Officer, UNC Health Care System, University of North Carolina at Chapel Hill
Helen Darling, MA (Vice Chair), President, National Business Group on Health
Gerald M. Shea (Treasurer and Interim CEO), Assistant to the President for External Affairs, AFL–CIO
Lawrence M. Becker, Director, HR Strategic Partnerships, Xerox Corporation
JudyAnn Bigby, MD, Secretary, Executive Office of Health & Human Services, Commonwealth of Massachusetts
Jack Cochran, MD, FACS, Executive Director, The Permanente Federation
Maureen Corry, Executive Director, Childbirth Connection
Leonardo Cuello, Staff Attorney, National Health Law Program
Joyce Dubow, Senior Health Care Reform Director, AARP Office of the Executive Vice-President for Policy and Strategy
Robert Galvin, MD, MBA, Chief Executive Officer, Equity Healthcare, The Blackstone Group
Ardis Dee Hoven, MD, Chair, Board of Trustees, American Medical Association
Charles N. Kahn III, MPH, President, Federation of American Hospitals
Donald Kemper, Chairman and CEO, Healthwise, Inc.
William Kramer, Executive Director for National Health Policy, Pacific Business Group on Health
Harold D. Miller, President and CEO, Network for Regional Healthcare Improvement
Elizabeth Mitchell, CEO, Maine Health Management Coalition
Dolores L. Mitchell, Executive Director, Commonwealth of Massachusetts Group Insurance Commission
Mary Naylor, Ph.D., RN, FAAN, Director, New Courtland Center for Transitions & Health and Marian S. Ware Professor in Gerontology, University of Pennsylvania School of Nursing
Debra L. Ness, President, National Partnership for Women & Families
Samuel R. Nussbaum, MD, Executive Vice President and Chief Medical Officer, WellPoint, Inc.
J. Marc Overhage, MD, Ph.D., Chief Medical Informatics Officer, Siemens Medical Solutions, Inc.
Bernard M. Rosof, MD, Chair, Board of Directors, Huntington Hospital, Chair, Physician Consortium for Performance Improvement (PCPI)
John C. Rother, JD, President and CEO, National Coalition on Health Care
Bruce Siegel, MD, MPH, President and Chief Executive Officer, National Association of Public Hospitals and Health Systems (NAPH)
Joseph R. Swedish, FACHE, President and CEO, Trinity Health
John Tooker, MD, MBA, MACP, Associate Executive Vice President, American College of Physicians
Richard J. Umbdenstock, FACHE, President and CEO, American Hospital Association

CMS

Patrick Conway, MD, Chief Medical Officer, Centers for Medicare & Medicaid Services

AHRQ

Carolyn M. Clancy, MD, Director, Agency for Healthcare Research and Quality
Designee: Nancy Wilson, MD, MPH, Senior Advisor to the Director

HRSA

Mary Wakefield, Ph.D., RN, Administrator, Health Resources and Services Administration
Designee: Terry Adirim, MD, Director, Office of Special Health Affairs

CDC

Thomas R. Frieden, MD, MPH, Director, Centers for Disease Control and Prevention
Designee: Peter A. Briss, MD, MPH, Captain, U.S. Public Health Service, Medical Director

EX OFFICIO (NON-VOTING):

Ann Monroe, (Chair, Consensus Standards Approval Committee), President, Health Foundation for Western and Central New York
Paul C. Tang, MD, MS, (Chair, Health Information Technology Advisory Committee) Vice President and Chief Medical Information Officer Palo Alto Medical Foundation

Management Team

Gerald Shea, Interim Chief Executive Officer
Karen Adams, Vice President, National Priorities
Heidi Bossley, Vice President, Performance Measures
Helen Burstin, Senior Vice President, Performance Measures
Ann Greiner, Vice President, Government Relations
Ann Hammersmith, General Counsel
Lisa Hines, Vice President, Member Relations
Rosemary Kennedy, Vice President, Health Information Technology
Nicole Silverman, Vice President, Program Operations
Lindsey Spindle, Senior Vice President, Communications and External Affairs
Diane Stollenwerk, Vice President, Stakeholder Collaboration
Jeffrey Tomitz, Chief Financial Officer, Accounting & Finance
Thomas Valuck, Senior Vice President, Strategic Partnerships
Kyle Vickers, Chief Information Office

Appendix C: MAP "Working" Measure Selection Criteria

1. Measures Within the Program Measure Set Are NQF-endorsed or Meet the Requirements for Expedited Review

Measures within the program measure set are NQF-endorsed, indicating that they have met the following criteria: important to measure and report, scientifically acceptable measure properties, usable, and feasible. Measures within the program measure set that are not NQF-endorsed but meet requirements for expedited review, including measures in widespread use and/or tested, may be recommended by MAP, contingent on subsequent endorsement. These measures will be submitted for expedited review.

Response option: Strongly Agree/Agree/Disagree/Strongly Disagree

Measures within the program measure set are NQF-endorsed or meet requirements for expedited review (including measures in widespread use and/or tested)

Additional Implementation Consideration: Individual endorsed measures may require additional discussion and may be excluded from the program measure set if there is evidence that implementing the measure would result in undesirable unintended consequences.

2. Program Measure Set Adequately Addresses Each of the National Quality Strategy (NQS) priorities

Demonstrated by measures addressing each of the National Quality Strategy (NQS) priorities:

Subcriterion 2.1 Safer care
Subcriterion 2.2 Effective care coordination
Subcriterion 2.3 Preventing and treating leading causes of mortality and morbidity
Subcriterion 2.4 Person- and family-centered care
Subcriterion 2.5 Supporting better health in communities
Subcriterion 2.6 Making care more affordable

Response option for each subcriterion: Strongly Agree/Agree/Disagree/Strongly Disagree:

NQS priority is adequately addressed in the program measure set

3. Program Measure Set Adequately Addresses High-impact Conditions Relevant to the Program's Intended Population(s) (e.g., Children, Adult non-Medicare, Older Adults, Dual Eligible Beneficiaries)

Demonstrated by the program measure set addressing Medicare High-Impact Conditions; Child Health Conditions and risks; or conditions of high prevalence, high disease burden, and high cost relevant to the program's intended population(s). (Refer to tables 1 and 2 for Medicare High-Impact Conditions and Child Health Conditions determined by the NQF Measure Prioritization Advisory Committee.)

Response option: Strongly Agree/Agree/Disagree/Strongly Disagree:

Program measure set adequately addresses high-impact conditions relevant to the program.

4. Program Measure Set Promotes Alignment With Specific Program Attributes, as Well as Alignment Across Programs

Demonstrated by a program measure set that is applicable to the intended care setting(s), level(s) of analysis, and population(s) relevant to the program.

Response option for each subcriterion:

Strongly Agree/Agree/Disagree/Strongly Disagree

Subcriterion 4.1 Program measure set is applicable to the program's intended care setting(s)
Subcriterion 4.2 Program measure set is applicable to the program's intended level(s) of analysis
Subcriterion 4.3 Program measure set is applicable to the program's population(s)

5. Program Measure Set Includes an Appropriate Mix of Measure Types

Demonstrated by a program measure set that includes an appropriate mix of process, outcome, experience of care, cost/resource use/appropriateness, and structural measures necessary for the specific program attributes.

Response option for each subcriterion: Strongly Agree/Agree/Disagree/Strongly Disagree

Subcriterion 5.1 Outcome measures are adequately represented in the program measure set
Subcriterion 5.2 Process measures are adequately represented in the program measure set
Subcriterion 5.3 Experience of care measures are adequately represented in the program measure set (e.g. patient, family, caregiver)
Subcriterion 5.4 Cost/resource use/appropriateness measures are adequately represented in the program measure set
Subcriterion 5.5 Structural measures and measures of access are represented in the program measure set when appropriate

6. Program Measure Set Enables Measurement Across the Person-Centered Episode of Care [1]

Demonstrated by assessment of the person's trajectory across providers, settings, and time.

Response option for each subcriterion: Strongly Agree/Agree/Disagree/Strongly Disagree

Subcriterion 6.1 Measures within the program measure set are applicable across relevant providers
Subcriterion 6.2 Measures within the program measure set are applicable across relevant settings
Subcriterion 6.3 Program measure set adequately measures patient care across time

[1] National Quality Forum (NQF), Measurement Framework: Evaluating Efficiency Across Patient-Focused Episodes of Care, Washington, DC: NQF; 2010.

7. Program Measure Set Includes Considerations for Healthcare Disparities [2]

Demonstrated by a program measure set that promotes equitable access and treatment by considering healthcare disparities. Factors include addressing race, ethnicity, socioeconomic status, language, gender, age disparities, or geographical considerations (e.g., urban vs. rural). Program measure set also can address populations at risk for healthcare disparities (e.g., people with behavioral/mental illness).

Response option for each subcriterion: Strongly Agree/Agree/Disagree/Strongly Disagree

Subcriterion 7.1 Program measure set includes measures that directly assess healthcare disparities (e.g., interpreter services)
Subcriterion 7.2 Program measure set includes measures that are sensitive to disparities measurement (e.g., beta blocker treatment after a heart attack)

8. Program Measure Set Promotes Parsimony

Demonstrated by a program measure set that supports efficient (i.e., minimum number of measures and the least effort) use of resources for data collection and reporting and supports multiple programs and measurement applications. The program measure set should balance the degree of effort associated with measurement and its opportunity to improve quality.

Response option for each subcriterion: Strongly Agree/Agree/Disagree/Strongly Disagree

Subcriterion 8.1 Program measure set demonstrates efficiency (i.e., minimum number of measures and the least burdensome)
Subcriterion 8.2 Program measure set can be used across multiple programs or applications (e.g., Meaningful Use, Physician Quality Reporting System [PQRS])

TABLE 1—NATIONAL QUALITY STRATEGY PRIORITIES

1. Making care safer by reducing harm caused in the delivery of care.
2. Ensuring that each person and family is engaged as partners in their care.
3. Promoting effective communication and coordination of care.
4. Promoting the most effective prevention and treatment practices for the leading causes of mortality, starting with cardiovascular disease.

[2] NQF, *Healthcare Disparities Measurement*, Washington, DC: NQF; 2011.

TABLE 1—NATIONAL QUALITY STRATEGY PRIORITIES—Continued

5. Working with communities to promote wide use of best practices to enable healthy living.
6. Making quality care more affordable for individuals, families, employers, and governments by developing and spreading new healthcare delivery models.

TABLE 2—HIGH-IMPACT CONDITIONS

Medicare Conditions:
1. Major Depression.
2. Congestive Heart Failure.
3. Ischemic Heart Disease.
4. Diabetes.
5. Stroke/Transient Ischemic Attack.
6. Alzheimer's Disease.
7. Breast Cancer.
8. Chronic Obstructive Pulmonary Disease.
9. Acute Myocardial Infarction.
10. Colorectal Cancer.
11. Hip/Pelvic Fracture.
12. Chronic Renal Disease.
13. Prostate Cancer.
14. Rheumatoid Arthritis/Osteoarthritis.
15. Atrial Fibrillation.
16. Lung Cancer.
17. Cataract.
18. Osteoporosis.
19. Glaucoma.
20. Endometrial Cancer.

Child Health Conditions and Risks:
1. Tobacco Use.
2. Overweight/Obese (≥85th percentile BMI for age).
3. Risk of Developmental Delays or Behavioral Problems.
4. Oral Health.
5. Diabetes.
6. Asthma.
7. Depression.
8. Behavior or Conduct Problems.
9. Chronic Ear Infections (3 or more in the past year).
10. Autism, Asperger's, PDD, ASD.
11. Developmental Delay (diag.).
12. Environmental Allergies (hay fever, respiratory or skin allergies).
13. Learning Disability.
14. Anxiety Problems.
15. ADD/ADHD.
16. Vision Problems not Corrected by Glasses.
17. Bone, Joint, or Muscle Problems.
18. Migraine Headaches.
19. Food or Digestive Allergy.
20. Hearing Problems.
21. Stuttering, Stammering, or Other Speech Problems.
22. Brain Injury or Concussion.
23. Epilepsy or Seizure Disorder.
24. Tourette Syndrome.

Appendix D: 2012 NQF Expert Participant Leaders (organized by committee)

Behavioral Health Steering Committee

Peter Briss, Co-Chair, National Center for Chronic Disease Prevention and Health Promotion
Harold Pincus, Co-Chair, Columbia University

Cancer Steering Committee

Stephen Edge, Co-Chair, Roswell Park Cancer Institute
Stephen Lutz, Chair, Blanchard Valley Regional Cancer Center

Cardiovascular Endorsement Maintenance 2010 Steering Committee

Mary George, Vice Chair, Centers for Disease Control and Prevention
Raymond Gibbons, Chair, Mayo Clinic

Care Coordination Steering Committee

Donald Casey, Co-Chair, Atlantic Health
Gerri Lamb, Co-Chair, Arizona State University

Common Formats Expert Panel

David Classen, Co-Chair, University of Utah School of Medicine
Henry Johnson, Co-Chair, ACS–MIDAS+

Council Leadership

Tanya Alteras, Chair, National Partnership for Women & Families
Maureen Corry, Vice Chair, Childbirth Connection
Deborah Fritz, Vice Chair, GlaxoSmithKline
Seiji Hayashi, Chair, Health Resources and Services Administration
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William Rich, Chair, Northern Virginia Ophthalomology Associates
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Healthcare Disparities & Cultural Competency Steering Committee

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MAP Cardiovascular and Diabetes Care Task Force

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MAP Safety and Care Coordination Task Force

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Kurt Stange, Co-Chair, Case Western Reserve University

Pulmonary Steering Committee

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Readmissions Expedited Review Steering Committee

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Resource Use Project Cancer TAP

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Resource Use Project Cardio/Diab TAP

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Resource Use Project: Bone/Joint TAP

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Resource Use Project: Pulmonary TAP

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Douglas Burton—American Academy of Orthopaedic Surgeons
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Russell Leftwich—Office of eHealth Initiatives, State of Tennessee
Frank Johnson—Office of Employee Health & Benefits, State of Maine
Stephanie Mika—Office of the Assistant Secretary for Planning & Evaluation, HHS
Thomas Tsang—Office of the Governor, Hawaii
Jesse James—Office of the National Coordinator for Health Information Technology
Kevin Larsen—Office of the National Coordinator for Health Information Technology
Jacob Reider—Office of the National Coordinator for Health Information Technology
Joshua Seidman—Office of the National Coordinator for Health Information Technology
Allen Traylor—Office of the National Coordinator for Health Information Technology
Kaliyah Shaheen—Ohio Department of Health
Bernadette Melnyk—Ohio State University
Susan Moffatt-Bruce—Ohio State University
Michael Sayre—Ohio State University
Patrick Ross—Ohio State University Comprehensive Cancer Center—James Cancer Hospital
Gerene Bauldoff—Ohio State University, School of Nursing
Douglas Nee—OptiMed,Inc.
Mark Leenay—OptumHealth
Michael Lieberman—Oregon Health and Sciences University
Sydney Edlund—Oregon Patient Safety Commission
Roger Herr—Outcome Concept Systems
Kate Chenok—Pacific Business Group on Health
Emma Hoo—Pacific Business Group on Health
David Hopkins—Pacific Business Group on Health
Jennifer Huff—Pacific Business Group on Health
William Kramer—Pacific Business Group on Health
Seena Haines—Palm Beach Atlantic University
Paul Tang—Palo Alto Medical Foundation
Sue Pickens—Parkland Health & Hospital System
Michael Mirro—Parkview Health
Blackford Middleton—Partners HealthCare System, Inc.
Jason Spangler—Partnership for Prevention
Lori Frank—Patient Centered Outcomes Research Institute
Marci Nielsen—Patient Centered Primary Care Collaborative
Ron Stock—PeaceHealth Oregon Region
Chris Snyder—Peninsula Regional Medical Center
Peter Dillon—Penn State Hershey Medical Center
Michael Doering—Pennsylvania Patient Safety Authority
Eileen Kennedy—Pepco Holdings, Inc
Michael Ibara—Pfizer
Eleanor Perfetto—Pfizer
Laura Cranston—Pharmacy Quality Alliance
Kathleen Brady—Philadelphia Department of Public Health
Tina Cronin—Piedmont Medical Center
Susan Frampton—Planetree
Michael Lepore—Planetree
Richard Bankowitz—Premier healthcare alliance
Gina Pugliese—Premier healthcare alliance
Dennis Kaldenberg—Press Ganey Associates
Larry Cohen—Prevention Institute
James Lee—Providence Everett Medical Center
Robert Hellrigel—Providence Health & Services
Ron Bialek—Public Health Foundation
Mary Pittman—Public Health Institute
Louis Diamond—QHC Advisory Group, LLC
Dawn Fitzgerald—Qsource
Sharon Hibay—Quality Insights of Pennsylvania
Bonnie Paris—Quality Quest for Health of Illinois
David Seidenwurm—Radiological Associates of Sacramento Medical Group, Inc.
Leona Cuttler—Rainbow Babies and Children's Hospital
Arthur Kellermann—RAND Corporation
Debra Saliba—RAND Corporation
Kathleen Aller—Recommind, Inc.
Mary Van de Kamp—RehabCare
Darlene Skorski—Rhode Island Department of Health—Office of Facilities Regulation
David Krol—Robert Wood Johnson Foundation
Carey Smoak—Roche Laboratories, Inc.
Stephen Edge—Roswell Park Cancer Institute
Kathleen Lohr—RTI International
Ruth Kleinpell—Rush University Medical Center
Shannon Sims—Rush University Medical Center
Victoria Nahum—Safe Care Campaign
James Dunford—San Diego Fire-Rescue
Paul Merguerian—Seattle Children's Hospital
Rita Mangione-Smith—Seattle Children's Research Institute
Charissa Raynor—Service Employees International Union
Dale Shaller—Shaller Consulting Group
Karen Nielsen—Siemens Medical Solutions USA
J. Marc Overhage—Siemens Medical Solutions USA
Christopher Smiley—Smiley Family Dentistry, PC
Richard Bringewatt—SNP Alliance
William Grobman—Society for Maternal-Fetal Medicine
Kate Menard—Society for Maternal-Fetal Medicine
Mitchell Levy—Society of Critical Care Medicine
Janet Nagamine—Society of Hospital Medicine
Wendy Nickel—Society of Hospital Medicine
Howard Barnebey—Specialty Eyecare Centre
Jerad Widman—Spring Hill Family Medicine
Dennis Rivenburgh—St Anthony's
Mohamad Fakih—St. John Hospital and Medical Center
Kathleen Rice Simpson—St. John's Mercy Health Care
Joseph Laver—St. Jude Children's Research Hospital
Louise Probst—St. Louis Area Business Health Coalition
Mark Sanz—St. Patrick Hospital
Risha Gidwani—Stanford University Medical Center
John Morton—Stanford University Medical Center
Marc Leib—State of Arizona Medicaid Program
Ruth Leslie—State of New York Department of Health
John Maese—Staten Island University Hospital

Bruce Auerbach—Sturdy Memorial Hospital
Amina Chaudhry—Substance Abuse and Mental Health Services Administration
Frances Cotter—Substance Abuse and Mental Health Services Administration
Pamela Hyde—Substance Abuse and Mental Health Services Administration
Rita Vandivort-Warren—Substance Abuse and Mental Health Services Administration
Thomas File—Summa Health System
Tina Picchi—Supportive Care Coalition
Lois Cross—Sutter Health
A. John Blair—Taconic IPA, Inc.
Chad Bennett—Telligen
Julie Kuhle—Telligen
Liz Johnson—Tenet Healthcare Corporation
Ann Reed—Tennessee Department of Health
William Glomb—Texas Health and Human Services Commission
Dennis Andrulis—Texas Health Institute
Steven Brotman—The Advanced Medical Technology Association
Cheryl DeMars—The Alliance
Mark McClellan—The Brookings Institute
Anne-Marie Audet—The Commonwealth Fund
Mary Jane Koren—The Commonwealth Fund
Eugene Nelson—The Dartmouth Institute
Jesse Pines—The George Washington University Medical Center
Gerard Castro—The Joint Commission
Mark Chassin—The Joint Commission
Patricia Craig—The Joint Commission
Patricia Kurtz—The Joint Commission
Jerod Loeb—The Joint Commission
Crystal Riley—The Joint Commission
Heather Sherman—The Joint Commission
Margaret VanAmringe—The Joint Commission
Ann Watt—The Joint Commission
Susan Yendro—The Joint Commission
Leah Binder—The Leapfrog Group
Barbara Rudolph—The Leapfrog Group
Nadine Gracia—The Office of Minority Health
Mady Chalk—Treatment Research Institute
Paul Conlon—Trinity Health
Tami Mark—Truven Health Analytics
Randel Johnson—U.S. Chamber of Commerce
Salma Lemtouni—U.S. Food and Drug Administration
Philip Schoenfeld—UM Medical School
Jordan Eisenstock—UMass Memorial Medical Center
Devorah Rich—United Auto Workers Retiree Medical Benefits Trust
Rhonda Robinson Beale—United Behavioral Health
Barbara Corn—UnitedHealth Group
Rhonda Medows—UnitedHealth Group
Renae Stafford—University North Carolina
Alayne Markland—University of Alabama at Birmingham
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Doug Campos-Outcalt—University of Arizona College of Medicine
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Charlene Harrington—University of California San Francisco
Louise Walter—University of California San Francisco
Nancy Donaldson—University of California San Francisco School of Nursing
Marshall Chin—University of Chicago
William McDade—University of Chicago
William Dale—University of Chicago Medical Center
Nancy Lowe—University of Colorado Denver
Mark Metersky—University of Connecticut Health Center
Ramon Bautista—University of Florida HSC/Jacksonville
Tim Williamson—University of Kansas Medical Center
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Marc Moote—University of Michigan Hospitals and Health Centers
Anne Pelletier Cameron—University of Michigan Hospitals and Health Centers
Linda Lindeke—University of Minnesota Amplatz Children's Hospital
Ira Moscovice—University of Minnesota Rural Health Research Center
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Bonnie Wakefield—University of Missouri
John Fildes—University of Nevada Las Vegas Medical Center
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Lawrence Marks—University of North Carolina, School of Medicine
Dale Bratzler—University of Oklahoma Health Sciences Center
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Judith Hibbard—University of Oregon
Leah Marcotte—University of Pennsylvania
Brendan Carr—University of Pennsylvania Health System
Lee Fleisher—University of Pennsylvania Health System
Jerry Johnson—University of Pennsylvania Health System
Frank Leone—University of Pennsylvania Health System
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Douglas White—University of Pittsburgh
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Heidi Donovan—University of Pittsburgh School of Nursing

Laurent Glance—University of Rochester
Kevin Fiscella—University of Rochester School of Medicine
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Ronald Walters—University of Texas-MD Anderson Cancer Center
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Paul Glassman—University of the Pacific School of Dentistry
David Classen—University of Utah School of Medicine
Michael Farber—University of Vermont College of Medicine
Pamela Cipriano—University of Virginia Health System
Rachel Grob—University of Wisconsin Center for Patient Partnerships
Elizabeth Jacobs—University of Wisconsin, Department of Medicine
Patricia Brennan—University of Wisconsin-Madison
Tracy Schroepfer—University of Wisconsin-Madison
Christine Hunter—US Office of Personnel Management
John O'Brien—US Office of Personnel Management
Iona Thraen—Utah Department of Health
Jim Smith—Utica College
David Penson—Vanderbilt University Medical Center
W. Stuart Reynolds—Vanderbilt University Medical Center
Peter Almenoff—Veterans Health Administration
Caroline Blaum—Veterans Health Administration
John Duda—Veterans Health Administration
Stephan Fihn—Veterans Health Administration
Joseph Francis—Veterans Health Administration
Vivienne Halpern—Veterans Health Administration
Marcia Insley—Veterans Health Administration
Michael Kelley—Veterans Health Administration
Daniel Kivlahan—Veterans Health Administration
Robert Petzel—Veterans Health Administration
Patricia Quigley—Veterans Health Administration
Scott Shreve—Veterans Health Administration
Patricia Sinnott—Veterans Health Administration
Donna Washington—Veterans Health Administration
Edward Gill—Virginia Commonwealth University Medical Center
Cathie Furman—Virginia Mason Medical Center
Johannes Koch—Virginia Mason Medical Center
Jolynn Suko—Virginia Mason Medical Center
Carol Mullin—Virtua Health
Margaret Terry—Visiting Nurse Associations of America
Carol Raphael—Visiting Nurse Service of New York
Robert Rosati—Visiting Nurse Service of New York
William Frohna—Washington Hospital Center
Linda Furkay—Washington State Department of Health
David Mancuso—Washington State Department of Social & Health Services
Jeffery Thompson—Washington State Medicaid
Michael Kaplitt—Weill Cornell Medical College
Aron Halfin—WellPoint
Richard Hastreiter—WellPoint
Jennifer Malin—WellPoint
Sarah Sampsel—WellPoint
Grace Ting—WellPoint
Tracy Wang—WellPoint
Alonzo White—WellPoint
Christy Whetsell—West Virginia University Hospitals
Frank Ghinassi—Western Psychiatric Institute & Clinic of the University of Pittsburgh Medical Center
Lori Nichols—Whatcom Health Information Network
Christopher Queram—Wisconsin Collaborative for Healthcare Quality
John Bott—Wisconsin Department of Employee Trust Funds
Lois Sater—Wisconsin Division of Public Health
Nancy Faller—Wound, Ostomy and Continence Nurses Society
Jeptha Curtis—Yale New Haven Health System
Elizabeth Drye—Yale New Haven Health System
Marcella Nunez-Smith—Yale New Haven Health System
Patrick O'Connor—Yale New Haven Health System
Mary Tinetti—Yale New Haven Health System
Patricia Button—Zynx Health
David Rhew—Zynx Health

Appendix F: National Quality Forum—Background

Despite the hard work of many, there is broad recognition that our healthcare system can do a better job on quality, safety, and affordability. This reality, in the context of a cost-conscious economy, has re-energized a national commitment to simultaneously improve care and responsibly constrain healthcare costs. State leaders, local governments, a broad swath of federal healthcare agencies, and an increasing number of other public- and private-sector organizations that constitute the quality movement are at the center of that resurgence. NQF is a public service organization that helps unite all of these organizations in their pursuit to make healthcare better, safer, and affordable.

Established in 1999 as the standard-setting organization for healthcare performance measures, NQF today has a much-broadened mission to:

- Build consensus on national priorities and goals for performance improvement, and work in partnership with the public and private sectors to achieve them.
- Endorse and maintain best-in-class standards for measuring and publicly reporting on healthcare performance quality.
- Promote the attainment of national healthcare improvement goals and the use of standardized measures through education and outreach programs.

NQF is recognized as a voluntary consensus standard-setting organization under the National Technology Transfer and Advancement Act of 1995. Its process for reaching consensus adheres to the Office of Management and Budget's formal definition of consensus.[31]

The NQF Board of Directors governs the organization and is composed of 31 voting members—key public- and private-sector leaders who represent major stakeholders in America's healthcare system. Consumers and those who purchase healthcare hold a simple majority of the at-large seats (see Appendix B). In 2012, NQF convened more than 800 hundred experts across every stakeholder group who contributed their time, experience, and insights to measure-review, measure-selection, and priority-setting committees (see Appendix E).

In recent years as part of a close working partnership with HHS, the

variety of NQF-endorsed measures has greatly expanded to address most settings of care, conditions, and provider types. NQF's measure portfolio includes measures of clinical process, patient experience of care, the actual outcomes of care, the costs and resources that go into providing care, as well as select structural measures. The portfolio is being enhanced with advanced measures, such as patient-reported outcomes and cross-cutting care-coordination measures. At the same time, NQF carefully manages its portfolio to be lean, retiring measures that no longer meet the more rigorous criteria. In the past year alone, 430 measures were submitted to NQF and 301, or nearly 70 percent, were endorsed. This endorsement rate—or ratio of submitted to endorsed measures—reflects NQF's efforts to systematically raise the bar on performance measurement and to fill key measurement gap areas even as it aggressively seeks to reduce the burden on providers by eliminating duplicative measures that add unnecessary data collection and administrative workload.

PERCENTAGE OF OUTCOME MEASURES IN NQF PORTFOLIO, 2010–2012

Year	Percentage of outcome measures in portfolio
2010	18
2011	24
2012	27

To be NQF endorsed, a measure must capture a process or outcome that is important to measure and report, be scientifically acceptable, be feasible to collect, and provide useful results. NQF conducts an eight-step, consensus-based process for reviewing measures and other standards; this process has been continually improved over a decade, and is as follows:

1. Call for Nominations allows anyone to suggest a candidate for the committee that will oversee the project. Committees are diverse, often encompassing experts in a particular field, providers, scientists, and consumers. After selection, NQF posts committee rosters on its Web site to solicit public comments on the composition of the panel and makes adjustments as needed to ensure balanced representation.

2. Call for Measures starts a 30-day period for developers to submit a measure or practice through NQF's online submission forms.

3. Steering Committee Review puts submitted measures to a four-part test to ensure they reflect sound science, will be useful to providers and patients, and will make a difference in improving quality. The expert steering committee conducts this detailed review in open sessions, each of which starts a limited period for public comment.

4. Public Comment solicits input from anyone who wishes to respond to a draft report that outlines the steering committee's assessment of measures for possible endorsement. The steering committee may request a revision to the proposed measures.

5. Member Vote asks NQF members to review the draft report and cast their votes on the endorsement of measures.

6. CSAC Review marks the point at which the NQF Consensus Standards Approval Committee (CSAC) deliberates on the merits of the measure and the issues raised during the review process, and makes a recommendation on endorsement to the Board of Directors. The CSAC includes consumers, purchasers, healthcare professionals, and others. It provides the big picture to ensure that standards are being consistently assessed from project to project.

7. Board Ratification asks for review and ratification by the NQF Board of Directors of measures recommended for endorsement.

8. Appeal opens a period when anyone can appeal the Board's decision.

Review committees comprise multiple stakeholders; consumer organizations and individual patients are equal partners with clinicians and other stakeholders throughout the process. There is a strong commitment to transparency: NQF invites public participation at every step, ranging from nominations for committees to comments and votes on specific measures. Endorsed measures are re-evaluated every three years to ensure their continuing relevance with current science and their actual use and usefulness in the field, and to determine whether they continue to represent the best in class compared to new measures. At any time, NQF can also conduct an ad hoc review of a measure if there is evidence of unintended consequences related to measurement or emerging clinical evidence that should result in a change to the measure.

Measures included in the NQF portfolio are developed and maintained by about 65 different organizations including the Centers for Medicare and Medicaid Services (CMS), the National Committee for Quality Assurance (NCQA), the Physician Consortium for Performance Improvement, convened by the American Medical Association (AMA–PCPI), Ingenix, The Joint Commission, American College of Surgeons (ACS), Bridges to Excellence, Cleveland Clinic, Minnesota Community Measurement, and Pharmacy Quality Alliance.

Many public- and private-sector leaders contributed to developing NQF's multi-stakeholder consensus process in the measure-endorsement realm. In recognition of this unique public service, HHS is required under statute to contract with a consensus-based entity, and contracted with NQF to convene diverse stakeholder groups to advise the public sector on priorities for healthcare improvement, related implementation strategies, and selection of measures to both drive these strategies and gauge results. The NQF-convened NPP and MAP and their published reports are tangible outcomes of this work. An equally important outcome of these partnerships is the ongoing alignment across stakeholder groups and across public- and private-sector leaders about which levers are most powerful in both improving healthcare performance and making the delivery system more patient centered.

NQF was initially funded primarily through grants from major philanthropic foundations, including the Robert Wood Johnson Foundation and the Commonwealth Fund. NQF in turn built a strong membership base across all those who care about advancing healthcare quality; membership dues continue to provide annual funding for NQF's work.

In 2012, NQF received $4.43 million a year in membership dues, an amount equaling 18 percent of its total budget. When combined with private foundation funding, 23 percent of NQF's budget comes from the private sector, with the remainder of its funding stemming from the public sector. In addition, the value of uncompensated donated time in 2012—some 55,000 hours of work done on a volunteer basis by healthcare leaders and experts—is conservatively estimated to equal another $4 million in private funding for NQF's work. Scaling up NQF's capacity became a necessity when the public sector, in its role as the largest American healthcare purchaser, made a serious commitment to buying healthcare based on value. This policy direction immediately generated the need for a more sustainable, steady resource that stood ready to regularly review and endorse performance measures.

NQF has been fortunate to have received support from the federal government for more than 10 years, particularly since 2008 when federal leaders strongly committed themselves

to designing and implementing a value-driven agenda for healthcare. More specifically:

- MIPPA has provided NQF with $10 million annually over a four-year period starting in 2009, which was extended for FY 2013 by HR8 (PL 112–240). These funds—awarded to NQF through a competitive process—support the organization's efforts to identify priority areas for improvement, endorse and update related performance measures, foster the transition to an electronic environment, and report annually to Congress on the status and progress to date of this effort.

ACA has provided NQF with support of about $10 million annually, starting in 2011. Under Section 3014, Congress directed HHS to contract with "the consensus-based entity under contract" to provide multi-stakeholder input into the NQS, as well as input to the Secretary of HHS on the selection of measures for use in various quality programs that utilize the federal rulemaking process for measure selection.

IV. Secretarial Comments on the Annual Report to Congress

This 2013 Annual Report describes NQF's work in 2012 to fulfill the requirements specified in section 1890 of the Social Security Act. This section of the Social Security Act requires the Secretary of the Department of Health and Human Services to "have in effect a contract with a consensus-based entity, such as the National Quality Forum," to perform certain duties including those related to performance measurement and NQS priorities. The Social Security Act also requires by not later than March 1 of each year (beginning with 2009), that the CBE shall submit to Congress and the Secretary of the Department of Health and Human Services a report containing a description of:

(i) Implementation of quality and efficiency measurement initiatives under the Social Security Act and the coordination of such initiatives with quality and efficiency initiatives implemented by other payers;

(ii) recommendations on an integrated national strategy and priorities for health care performance measurement;

(iii) performance of its duties required under its contract with HHS;

(iv) gaps in endorsed quality and efficiency measures, and where quality and efficiency measures are unavailable or inadequate to identify or address such gaps;

(v) areas in which evidence is insufficient to support endorsement of quality and efficiency measures in priority areas identified by the Secretary under the national strategy and where targeted research may address such gaps; and

(vi) convening multi-stakeholder groups to provide input on: 1) The selection of quality and efficiency measures for use in various Medicare programs, in reporting performance information to the public; and in other health care programs; and 2) national priorities for improvement in population health and the delivery of health care services for consideration under the national quality strategy.

This 2013 report fulfills the statutory requirement for the annual report described above and describes the results of work that NQF, as the CBE, undertook in 2012.

For example, in 2012, NQF managed its portfolio of more than 700 endorsed measures by replacing some measures with improved measures; removing measures that were no longer effective or where the evidence base had evolved; and expanding the portfolio to address well-recognized measurement gaps. NQF reviewed 430 submitted measures and endorsed 301 of them. This set included 81 new measures and 220 measures that maintained their endorsement after being considered in light of new evidence and/or against new competing measures submitted to NQF for consideration. The newly endorsed measures align with needs identified in the NQS and address several critical areas, including patient outcomes, underserved populations, healthcare disparities, and hospital readmissions.

In 2012, NQF's National Priorities Partnership (NPP), a collaborative public-private partnership, focused on how to advance patient safety by aligning its work with HHS' "Partnership for Patients" initiative. Through a series of web-based and in-person meetings, nearly 2,700 participants from multiple sectors learned about and shared new improvement approaches, information, tools, and professional connections to improve health care safety. The NPP also developed action plans to focus a range of national and local organizations in diverse sectors on how to align efforts to reduce preventable readmissions and improve maternity care, and created a web-based "action registry" to track improvement activities focused on readmissions and maternity care to enable learning across participants. Launched in the fourth quarter of 2012, by March 2013, the registry housed over 50 actions by 30 different organizations.

In 2012, NQF also continued its work to facilitate the electronic reporting of quality measures using electronic health records (EHRs) that health care providers across the nation are adopting. NQF's work on these "eMeasures" included standardizing data elements so the same quality of care information can be collected from different EHRs. NQF also convened an eMeasure Learning Collaborative to help multiple parties address barriers to developing and implementing eMeasures.

NQF's Measure Applications Partnership (MAP) provided multi-stakeholder input to HHS about the potential use of quality measures in more than 17 different Medicare quality reporting and performance programs and the Medicare and Medicaid Electronic Health Record (EHR) Incentive Program. This input was critical to HHS programs. At the same time, MAP released its Families of Measures report, which defined measure families in four key areas—safety, care coordination, cardiovascular, and diabetes care—with the goal of promoting more cohesion and integration of care regardless of setting, provider, level of care intensity, or timing of care.

In 2012, NQF also conducted an analysis of its current measures portfolio against both the NQS priority areas and high-impact Medicare and child health conditions. This analysis found that while many NQF measures address patient safety, fewer measures address patient and family engagement. For example, measures of shared decision-making, patient navigation and self-management, healthy lifestyle behaviors, community interventions to improve health, and access, cost, and resource use are significantly less prevalent than safety measures. The analysis also found gaps in measures of preventive care, patient-reported outcomes (particularly quality of life and functional status), appropriateness (particularly for specialty care), access to timely palliative care, and health and healthcare disparities. Additionally, the analysis revealed the need for better population-level measures to assess improvements in health and healthcare. And, while certain high-impact conditions common to adults have an abundance of measures—e.g., cardiovascular disease, end-stage renal disease, and diabetes—many of the high-impact childhood conditions have few or no NQF-endorsed measures.

These and the other activities described in the Annual Report reflect the wide scope of work required for sound measurement of health care quality—and the accompanying hard work needed for the continued improvement of health care. HHS thanks NQF for its hard work and submission of this report.

V. Future Steps

The work reflected in this annual report was produced under HHS' initial four-year contract to NQF which was executed in 2009 and will expire in 2013.

To continue to fulfill the statutory requirement for a contract with a consensus-based entity, HHS competitively procured a new contract with NQF in September 2012. Through this new contract, NQF will continue to perform the statutory activities for the CBE described above in support of HHS' efforts to achieve the aims of the NQS—better care, healthier people and communities, and affordable care.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35)

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Dated: July 25, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2013 (FY 2014); Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1447–N]

RIN 0938–AR63

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2013 (FY 2014)

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

ACTION: Notice.

SUMMARY: This notice updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs). These changes are applicable to IPF discharges occurring during the fiscal year (FY) beginning October 1, 2013 through September 30, 2014.

DATES: *Effective Date:* The updated IPF prospective payment rates are effective for discharges occurring on or after October 1, 2013 through September 30, 2014.

FOR FURTHER INFORMATION CONTACT: Dorothy Myrick or Jana Lindquist, (410) 786–4533, for general information. Hudson Osgood, (410) 786–7897 or Bridget Dickensheets, (410) 786–8670, for information regarding the market basket and labor-related share. Theresa Bean, (410) 786–2287, for information regarding the regulatory impact analysis.

SUPPLEMENTARY INFORMATION:

Table of Contents

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

Acronyms

Because of the many terms to which we refer by acronym in this notice, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, (Pub. L. 106–113)
CBSA Core-Based Statistical Area
CCR Cost-to-charge ratio
CAH Critical access hospital
DSM–IV–TR Diagnostic and Statistical Manual of Mental Disorders Fourth Edition—Text Revision
DRGs Diagnosis-related groups
FY Federal fiscal year (October 1 through September 30)
ICD–9–CM International Classification of Diseases, 9th Revision, Clinical Modification
IPFs Inpatient psychiatric facilities
IRFs Inpatient rehabilitation facilities
LTCHs Long-term care hospitals
MedPAR Medicare provider analysis and review file
RPL Rehabilitation, Psychiatric, and Long-Term Care
RY Rate Year (July 1 through June 30)
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, (Pub. L. 97–248)

I. Executive Summary

A. Purpose

This notice updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilitates for discharges occurring during the fiscal year (FY) beginning October 1, 2013 through September 30, 2014.

B. Summary of the Major Provisions

In this notice, we update the IPF PPS, as specified in 42 CFR 412.428. The updates include the following:

- The FY 2008-based Rehabilitation, Psychiatric, and Long Term Care (RPL) market basket update of 2.6 percent adjusted by a 0.1 percentage point reduction as required by section 1886(s)(2)(A)(ii) of the Social Security Act (the Act) and a 0.5 percentage point reduction for economy-wide productivity as required by 1886(s)(2)(A)(i) of the Act.
- The fixed dollar loss threshold amount in order to maintain the appropriate outlier percentage.
- The electroconvulsive therapy payment by a factor specified by CMS.
- The national urban and rural cost-to-charge ratio medians and ceilings.
- The cost of living adjustment factors for IPFs located in Alaska and Hawaii, if appropriate.
- Description of the ICD–9–CM and MS–DRG classification changes discussed in the annual update to the hospital inpatient PPS regulations.
- Use of the best available hospital wage index and information regarding whether an adjustment to the Federal per diem base rate is needed to maintain budget neutrality.
- The MS–DRG listing and comorbidity categories to reflect the ICD–9–CM revisions effective October 1, 2013.
- Retaining the 17 percent adjustment for IPFs located in rural areas, the 1.31 adjustment factor for IPFs with a qualifying emergency department, the coefficient value of 0.5150 for the teaching adjustment to the Federal per diem rate, the MS–DRG adjustment factors and comorbidity adjustment factors currently being paid to IPFs for FY 2013.

C. Summary of Transfers

Provision description	Total transfers
FY 2014 IPF PPS payment rate update.	The overall economic impact of this notice is an estimated $115 million in increased payments to IPFs during FY 2014.

II. Background

A. Annual Requirements for Updating the IPF PPS

In November 2004, we implemented the inpatient psychiatric facilities (IPF) prospective payment system (PPS) in a final rule that appeared in the November 15, 2004 **Federal Register** (69 FR 66922). In developing the IPF PPS, in order to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In that final rule, we explained that we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Therefore, we indicated that we did not intend to update the regression analysis and recalculate the Federal per diem base rate and the patient-and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (71 FR 27041). In the May 6, 2011 IPF PPS final rule (76 FR 26432), we changed the payment rate update period to a rate year (RY) that coincides with a fiscal year (FY) update. Therefore, update notices are now published in the **Federal Register** in the summer to be effective on October 1. For further discussion on changing the IPF PPS payment rate update period to a RY that coincides with a FY, see the IPF PPS final rule published in the **Federal Register** on May 6, 2011 (76 FR 26434 through 26435).

Updates to the IPF PPS, as specified in 42 CFR § 412.428, include the following:

- A description of the methodology and data used to calculate the updated Federal per diem base payment amount.
- The rate of increase factor as described in § 412.424(a)(2)(iii), which is based on the Excluded Hospital with Capital market basket under the update methodology of section 1886(b)(3)(B)(ii) of the Act for each year (effective from the implementation period until June 30, 2006).
- For discharges occurring on or after July 1, 2006, the rate of increase factor for the Federal portion of the IPF's payment, which is based on the Rehabilitation, Psychiatric, and Long-Term Care (RPL) market basket.
- The best available hospital wage index and information regarding whether an adjustment to the Federal per diem base rate is needed to maintain budget neutrality.
- Updates to the fixed dollar loss threshold amount in order to maintain the appropriate outlier percentage.
- Description of the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) coding and diagnosis-related groups (DRGs) classification changes discussed in the annual update to the hospital inpatient prospective payment system (IPPS) regulations.
- Update to the electroconvulsive therapy (ECT) payment by a factor-specified by CMS.
- Update to the national urban and rural cost-to-charge ratio medians and ceilings.
- Update to the cost of living adjustment factors for IPFs located in Alaska and Hawaii, if appropriate.

Our most recent IPF PPS annual update occurred in the August 7, 2012 **Federal Register** notice (77 FR 47224) (hereinafter referred to as the August 2012 IPF PPS notice) that set forth updates to the IPF PPS payment rates for FY 2013. That notice updated the IPF PPS per diem payment rates that were published in the May 2011 IPF PPS final rule in accordance with our established policies.

Since implementation of the IPF PPS, we have explained that we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Because we are now approximately 8 years into the system, we believe that we have enough data to begin that process. Therefore, we have begun the necessary analysis to make future refinements. While we do not propose to make refinements in this notice, as explained in section V.D.3 below, we expect that in future rulemaking, for FY 2015, we will be ready to propose potential refinements.

B. Overview of the Legislative Requirements of the IPF PPS

Section 124 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) required the establishment and implementation of an IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units including an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and psychiatric units.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to distinct part psychiatric units of critical access hospitals (CAHs).

Section 3401(f) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to as "the Affordable Care Act") added subsection (s) to section 1886 of the Act.

Section 1886(s)(1) is titled "Reference to Establishment and Implementation of System" and it refers to section 124 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, which relates to the establishment of the IPF PPS.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY. For the RY beginning in 2013 (that is, FY 2014), the productivity adjustment is equal to 0.5 percentage point, which we are implementing in this notice. Section 1886(s)(2)(A)(ii) of the Act requires the application of an "other adjustment" that reduces any update to an IPF PPS base rate by percentages specified in section 1886(s)(3) of the Act for the RY beginning in 2010 through the RY beginning in 2019. For the RY beginning in 2013 (that is, FY 2014), section 1886(s)(3)(B) of the Act requires the reduction to be 0.1 percentage point. We are implementing that provision in this FY 2014 IPF PPS notice.

Section 1886(s)(4) of the Act requires the establishment of a quality data reporting program for the IPF PPS beginning in RY 2014. We proposed and finalized new requirements for quality reporting for IPFs in the "Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates" proposed rule (May 11, 2012) (77 FR 27870, 28105 through 28116) and final rule (August 31, 2012) (77 FR 53258, 53644 through 53360).

To implement and periodically update these provisions, we have published various proposed and final rules in the **Federal Register**. For more information regarding these rules, see the CMS Web site at *http://www.cms.hhs.gov/InpatientPsychFacilPPS/*.

C. General Overview of the IPF PPS

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as authorized under section 124 of the BBRA and codified at subpart N of part 412 of the Medicare regulations. The November 2004 IPF PPS final rule set forth the per diem Federal rates for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and it provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) Medicare program.

The IPF PPS established the Federal per diem base rate for each patient day in an IPF, derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget neutrality.

The Federal per diem payment under the IPF PPS is comprised of the Federal per diem base rate described above and certain patient- and facility-level payment adjustments that were found in the regression analysis to be associated with statistically significant per diem cost differences.

The patient-level adjustments include age, DRG assignment, comorbidities, and variable per diem adjustments to reflect higher per diem costs in the early days of an IPF stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost of living adjustment for IPFs located in Alaska and Hawaii, and presence of a qualifying emergency department (ED).

The IPF PPS provides additional payment policies for: Outlier cases; stop-loss protection (which was applicable only during the IPF PPS transition period); interrupted stays; and a per treatment adjustment for patients who undergo ECT.

A complete discussion of the regression analysis appears in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

Section 124 of BBRA did not specify an annual update rate strategy for the IPF PPS and was broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

- Calculate the final Federal per diem base rate to be budget neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.
- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

III. Transition Period for Implementation of the IPF PPS

In the November 2004 IPF PPS final rule, we provided for a 3-year transition period. During this 3-year transition period, an IPF's total payment under the PPS was based on an increasing percentage of the Federal rate with a corresponding decreasing percentage of the IPF PPS payment that was based on reasonable cost concepts. However, effective for cost reporting periods beginning on or after January 1, 2008, IPF PPS payments were based on 100 percent of the Federal rate.

IV. Changing the IPF PPS Payment Rate Update Period From a Rate Year to a Fiscal Year

Prior to RY 2012, the IPF PPS was updated on a July 1st through June 30th annual update cycle. Effective with RY 2012, we switched the IPF PPS payment rate update from a rate year that begins on July 1st ending on June 30th to a period that coincides with a fiscal year. In order to transition from a RY to a FY, the IPF PPS RY 2012 covered a 15 month period from July 1st through September 30th. As proposed and finalized, after RY 2012, the rate update period for the IPF PPS payment rates and other policy changes begin on October 1 through September 30. Therefore, the update cycle for FY 2014 will be October 1, 2013 through September 30, 2014.

For further discussion of the 15-month market basket update for RY 2012 and changing the payment rate update period from a RY to a FY, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and the RY 2012 IPF PPS final rule (76 FR 26432).

V. Market Basket for the IPF PPS

A. Background

The input price index (that is, the market basket) that was used to develop the IPF PPS was the Excluded Hospital with Capital market basket. This market basket was based on 1997 Medicare cost report data and included data for Medicare participating IPFs, inpatient rehabilitation facilities (IRFs), long-term care hospitals (LTCHs), cancer hospitals, and children's hospitals. Although "market basket" technically describes the mix of goods and services used in providing hospital care, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies combined) derived from that market basket. Accordingly, the term "market basket" as used in this document refers to a hospital input price index.

Beginning with the May 2006 IPF PPS final rule (71 FR 27046 through 27054), IPF PPS payments were updated using a FY 2002-based market basket reflecting the operating and capital cost structures for IRFs, IPFs, and LTCHs (hereafter referred to as the Rehabilitation, Psychiatric, and Long-Term Care (RPL) market basket).

We excluded cancer and children's hospitals from the RPL market basket because these hospitals are not reimbursed through a PPS; rather, their payments are based entirely on reasonable costs subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which are implemented in regulations at § 413.40. Moreover, the FY 2002 cost structures for cancer and children's hospitals are noticeably different than the cost structures of the IRFs, IPFs, and LTCHs. A complete discussion of the FY 2002-based RPL market basket appears in the May 2006 IPF PPS final rule (71 FR 27046 through 27054).

In the May 1, 2009 IPF PPS notice (74 FR 20362), we expressed our interest in exploring the possibility of creating a stand-alone IPF market basket that reflects the cost structures of only IPF providers. We noted that, of the available options, one would be to join the Medicare cost report data from

freestanding IPF providers (presently incorporated into the RPL market basket) with data from hospital-based IPF providers (not currently incorporated in any market basket cost weights). We indicated that an examination of the Medicare cost report data comparing freestanding and hospital-based IPFs revealed considerable differences between the two with respect to cost levels and cost structures. At that time, we were unable to fully understand the differences between these two types of IPF providers. As a result, we felt that further research was required; therefore we solicited public comment for additional information that might help us to better understand the reasons for the variations in costs and cost structures, as indicated by the cost report data, between freestanding and hospital-based IPFs (74 FR 20376).

We summarized the public comments received and our responses in the April 2010 IPF PPS notice (75 FR 23111 through 23113). Despite receiving comments from the public on this issue, we were unable to explain the observed differences in costs and cost structures between hospital-based and freestanding IPFs. Therefore, we did not believe it was appropriate, at the time, to incorporate data from hospital-based IPFs with those of freestanding IPFs to create a stand-alone IPF market basket.

In the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432), we proposed and finalized the use of a rebased and revised FY 2008-based RPL market basket to update IPF payments. In the RY 2012 IPF PPS proposed rule (76 FR 5001), we also welcomed public comment on the possibility of using a rehabilitation and psychiatric (RP) market basket to update IPF payments in the future. Comments received and our responses are summarized in the RY 2012 final rule (76 FR 26436).

We continue to explore the viability of creating separate market baskets from the current RPL market basket. In the FY 2013 IPPS/LTCH final rule (77 FR 53468 through 53476), we adopted the newly created FY 2009-based LTCH-specific market basket for use under the LTCH PPS beginning in FY 2013. We continue to investigate the use of an alternative market basket to update IPF PPS payments; however, for the FY 2014 IPF PPS update, we continue to use (as was done for the FY 2013 update) the percentage increase in the FY 2008-based RPL market basket to determine the IPF PPS market basket update. We still have concerns about cost differences between freestanding and hospital-based providers, which remain unexplained even when looking at more recent data. However, we remain interested in researching this topic further to determine if these data quality and representativeness concerns can be overcome, and have plans to conduct more analysis into the claims and cost data for IPFs. Any possible changes to the market basket used to update IPF payments would appear in a future rulemaking and be subject to public comment.

B. FY 2014 Market Basket Update

The FY 2014 update for the IPF PPS using the FY 2008-based RPL market basket and IHS Global Insight's second quarter 2013 forecast of the market basket components is 2.6 percent (prior to the application of any statutory adjustments). This includes increases in both the operating and the capital components for FY 2014 (that is, October 1, 2013 through September 30, 2014). IHS Global Insight, Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

As previously described in section I.B, section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 and each subsequent RY. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the "MFP adjustment").

The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private non-farm business MFP. We refer readers to the BLS Web site at *http://www.bls.gov/mfp* to obtain the BLS historical published MFP data. The MFP adjustment for FY 2014 applicable to the IPF PPS is derived using a projection of MFP that is currently produced by IHS Global Insight, Inc. For a detailed description of the model currently used by IHS Global Insight, Inc. to project MFP, as well as a description of how the MFP adjustment is calculated, we refer readers to the FY 2012 IPPS/LTCH final rule (76 FR 51690 through 51692). Based on IHS Global Insight, Inc.'s 2013 second quarter forecast, the productivity adjustment for FY 2014 is 0.5 percentage point. Section 1886(s)(2)(A)(ii) of the Act also requires the application of an "other adjustment" that reduces any update to an IPF PPS base rate by percentages specified in section 1886(s)(3) of the Act for rate years beginning in 2010 through the RY beginning in 2019. For the RY beginning in 2013 (that is, FY 2014), the reduction is 0.1 percentage point. We are implementing the productivity adjustment and "other adjustment" in this FY 2014 IPF PPS notice.

C. Labor-Related Share

Due to variations in geographic wage levels and other labor-related costs, we believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index, which would apply to the labor-related portion of the Federal per diem base rate (hereafter referred to as the labor-related share).

The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market. Based on our definition of the labor-related share, we include in the labor-related share the sum of the relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Business Support Services, All Other: Labor-related Services, and a portion of the Capital-Related cost weight.

Therefore, to determine the labor-related share for the IPF PPS for FY 2014, we used the FY 2008-based RPL market basket cost weights relative importance to determine the labor-related share for the IPF PPS. This estimate of the FY 2014 labor-related share is based on IHS Global Insight Inc.'s second quarter 2013 forecast, which is the same forecast used to derive the FY 2014 market basket update.

Table 1 below shows the FY 2014 relative importance labor-related share using the FY 2008-based RPL market basket along with the FY 2013 relative importance labor-related share.

TABLE 1—FY 2014 RELATIVE IMPORTANCE LABOR-RELATED SHARE AND THE FY 2013 RELATIVE IMPORTANCE LABOR-RELATED SHARE BASED ON THE FY 2008-BASED RPL MARKET BASKET

	FY 2013 relative importance labor-related share [1]	FY 2014 relative importance labor-related share [2]
Wages and Salaries	48.796	48.394
Employee Benefits	13.021	12.963
Professional Fees: Labor-Related	2.070	2.065
Administrative and Business Support Services	0.417	0.415
All Other: Labor-Related Services	2.077	2.080
Subtotal	66.381	65.917
Labor-Related Portion of Capital Costs (46%)	3.600	3.577
Total Labor-Related Share	69.981	69.494

1. Published in the FY 2013 IPF PPS notice (77 FR 47228) and based on IHS Global Insight, Inc.'s second quarter 2012 forecast of the FY 2008-based RPL market basket.
2. Based on IHS Global Insight, Inc.'s second quarter 2013 forecast of the FY 2008-based RPL market basket.

The labor-related share for FY 2014 is the sum of the FY 2014 relative importance of each labor-related cost category, and would reflect the different rates of price change for these cost categories between the base year (FY 2008) and FY 2014. The sum of the relative importance for FY 2014 for operating costs (Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Business Support Services, and All Other: Labor-related Services) is 65.917 percent, as shown in Table 1 above. The portion of Capital-related cost that is influenced by the local labor market is estimated to be 46 percent. Since the relative importance for Capital-Related Costs is 7.776 percent of the FY 2008-based RPL market basket in FY 2014, we take 46 percent of 7.776 percent to determine the labor-related share of Capital-related cost for FY 2014. The result is 3.577 percent, which we add to 65.917 percent for the operating cost amount to determine the total labor-related share for FY 2014. Therefore, the labor-related share for the IPF PPS in FY 2014 is 69.494 percent. This labor-related share is determined using the same general methodology as employed in calculating all previous IPF labor-related shares (see, for example, 69 FR 66952 through 66953). The wage index and the labor-related share are reflected in budget neutrality adjustments.

VI. Updates to the IPF PPS for FY Beginning October 1, 2013

The IPF PPS is based on a standardized Federal per diem base rate calculated from the IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The Federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient- and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

A. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA required that we implement the IPF PPS in a budget neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) methodology had the IPF PPS not been implemented.

Under the IPF PPS methodology, we calculated the final Federal per diem base rate to be budget neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (that is, October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

1. Standardization of the Federal Per Diem Base Rate and Electroconvulsive Therapy (ECT) Rate

In the November 2004 IPF PPS final rule, we describe how we standardized the IPF PPS Federal per diem base rate to account for the overall positive effects of the IPF PPS payment adjustment factors. To standardize the IPF PPS payments, we compared the IPF PPS payment amounts calculated from the FY 2002 Medicare Provider Analysis and Review (MedPAR) file to the projected TEFRA payments from the FY 2002 cost report file updated to the midpoint of the IPF PPS implementation period (that is, October 2005). The standardization factor was calculated by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. The standardization factor was calculated to be 0.8367.

As described in detail in the May 2006 IPF PPS final rule (71 FR 27045), in reviewing the methodology used to simulate the IPF PPS payments used for the November 2004 IPF PPS final rule, we discovered that due to a computer code error, total IPF PPS payments were underestimated by about 1.36 percent. Since the IPF PPS payment total should have been larger than the estimated figure, the standardization factor should have been smaller (0.8254 vs. 0.8367). In turn, the Federal per diem base rate and the ECT rate should have been reduced by 0.8254 instead of 0.8367.

To resolve this issue, in RY 2007, we amended the Federal per diem base rate and the ECT payment rate prospectively. Using the standardization factor of 0.8254, the average cost per day was effectively reduced by 17.46 percent (100 percent minus 82.54 percent = 17.46 percent).

2. Calculation of the Budget Neutrality Adjustment

To compute the budget neutrality adjustment for the IPF PPS, we separately identified each component of the adjustment, that is, the outlier adjustment, stop-loss adjustment, and behavioral offset.

A complete discussion of how we calculate each component of the budget neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the May 2006 IPF PPS final rule (71 FR 27044 through 27046).

a. Outlier Adjustment

Since the IPF PPS payment amount for each IPF includes applicable outlier amounts, we reduced the standardized Federal per diem base rate to account for aggregate IPF PPS payments estimated to be made as outlier payments. The outlier adjustment was calculated to be 2 percent. As a result, the standardized Federal per diem base rate was reduced by 2 percent to account for projected outlier payments.

b. Stop-Loss Provision Adjustment

As explained in the November 2004 IPF PPS final rule, we provided a stop-loss payment during the transition from cost-based reimbursement to the per diem payment system to ensure that an IPF's total PPS payments were no less than a minimum percentage of their TEFRA payment, had the IPF PPS not been implemented. We reduced the standardized Federal per diem base rate by the percentage of aggregate IPF PPS payments estimated to be made for stop-loss payments. As a result, the standardized Federal per diem base rate was reduced by 0.39 percent to account for stop-loss payments. Since the transition was completed in RY 2009, the stop-loss provision is no longer applicable, and for cost reporting periods beginning on or after January 1, 2008, IPFs were paid 100 percent PPS rates.

c. Behavioral Offset

As explained in the November 2004 IPF PPS final rule, implementation of the IPF PPS may result in certain changes in IPF practices, especially with respect to coding for comorbid medical conditions. As a result, Medicare may make higher payments than assumed in our calculations. Accounting for these effects through an adjustment is commonly known as a behavioral offset.

Based on accepted actuarial practices and consistent with the assumptions made in other PPSs, we assumed in determining the behavioral offset that IPFs would regain 15 percent of potential "losses" and augment payment increases by 5 percent. We applied this actuarial assumption, which is based on our historical experience with new payment systems, to the estimated "losses" and "gains" among the IPFs. The behavioral offset for the IPF PPS was calculated to be 2.66 percent. As a result, we reduced the standardized Federal per diem base rate by 2.66 percent to account for behavioral changes. As indicated in the November 2004 IPF PPS final rule, we do not plan to change adjustment factors or projections until we analyze IPF PPS data.

If we find that an adjustment is warranted, the percent difference may be applied prospectively to the established PPS rates to ensure the rates accurately reflect the payment level. In conducting this analysis, we will be interested in the extent to which improved coding of patients' principal and other diagnoses, which may not reflect real increases in underlying resource demands, has occurred under the PPS.

B. Update of the Federal Per Diem Base Rate and Electroconvulsive Therapy Rate

As described in the November 2004 IPF PPS final rule (69 FR 66931), the average per diem cost was updated to the midpoint of the implementation year. This updated average per diem cost of $724.43 was reduced by—(1) 17.46 percent to account for standardization to projected TEFRA payments for the implementation period; (2) 2 percent to account for outlier payments; (3) 0.39 percent to account for stop-loss payments; and (4) 2.66 percent to account for the behavioral offset. The Federal per diem base rate in the implementation year was $575.95. The increase in the per diem base rate for RY 2009 included the 0.39 percent increase due to the removal of the stop-loss provision. We indicated in the November 2004 IPF PPS final rule (69 FR 66932) that we would remove this 0.39 percent reduction to the Federal per diem base rate after the transition. As discussed in section IV.D.2. of the May 2008 IPF PPS notice, we increased the Federal per diem base rate and the ECT base rate by 0.39 percent in RY 2009. Therefore for RY 2009 and beyond, the stop-loss provision has ended and is no longer a part of budget neutrality.

In accordance with section 1886(s)(2)(A)(ii) of the Act, which requires the application of an "other adjustment," described in section 1886(s)(3) of the Act (specifically, section 1886(s)(3)(B)) for RYs 2013 and 2014 that reduces the update to the IPF PPS base rate for the FY beginning in Calendar Year (CY) 2013, we are adjusting the IPF PPS update by a 0.1 percentage point reduction for FY 2014. In addition, in accordance with section 1886(s)(2)(A)(i) of the Act, which requires the application of the productivity adjustment that reduces the update to the IPF PPS base rate for the FY beginning in CY 2013, we are adjusting the IPF PPS update by a 0.5 percentage point reduction for FY 2014.

For this notice, we are applying an annual update of 2.0 percent (that is the FY 2008-based RPL market basket increase for FY 2014 of 2.6 percent less the productivity adjustment of 0.5 percentage point less the 0.1 percentage point required under section1886(s)(3)(B) of the Act), and the wage index budget neutrality factor of 1.0010 to the FY 2013 Federal per diem base rate of $698.51, yielding a Federal per diem base rate of $713.19 for FY 2014. Similarly, we are applying the 2.0 percent payment update, and the 1.0010 wage index budget neutrality factor to the FY 2013 ECT base rate, yielding an ECT base rate of $307.04 for FY 2014.

As noted above, section 1886(s)(4) of the Act requires the establishment of a quality data reporting program for the IPF PPS beginning in RY 2014. We finalized new requirements for quality reporting for IPFs in the "Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates" final rule (August 31, 2012) (77 FR 53258, 53644 through 53360). Section 1886(s)(4)(A)(i) of the Act requires that, for RY 2014 and each subsequent rate year, the Secretary shall reduce any annual update to a standard Federal rate for discharges occurring during the rate year by 2.0 percentage points for any IPF that does not comply with the quality data submission requirements with respect to an applicable year. Therefore, we are applying a 2.0 percentage point reduction to the federal per diem base rate and the ECT base rate as follows.

For IPFs that fail to submit quality reporting data under the IPFQR program, we are applying a 0 percent annual update (that is 2 percent reduced by 2 percentage points in accordance with section 1886(s)(4)(A)(ii) of the Act) and the wage index budget neutrality factor of 1.0010 to the FY 2013 Federal per diem base rate of $698.51, yielding a Federal per diem base rate of $699.21 for FY 2014.

Similarly, we are applying the 0 percent annual update and the 1.0010 wage index budget neutrality factor to

the FY 2013 ECT base rate of $300.72, yielding an ECT base rate of $301.02 for FY 2014.

In the FY 2014 IPPS/LTCH PPS final rule (78 FR 27485), we are adopting two new measures for the FY 2016 payment determination and subsequent years for the IPFQR Program. We are also finalizing a request for voluntary information whereby IPFs will be asked to provide information on the patient experience of care survey they use.

VII. Update of the IPF PPS Adjustment Factors

A. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 MedPAR data file, which contained 483,038 cases. For this notice, we used the same results of the regression analysis used to implement the November 2004 IPF PPS final rule. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). While we have since used more recent claims data to set the fixed dollar loss threshold amount, we used the same results of this regression analysis to update the IPF PPS for FY 2013 and for FY 2014. Now that we are approximately 8 years into the IPF PPS, we believe that we have enough data to begin looking at the process of refining the IPF PPS as appropriate. We expect that in future rulemaking, we may propose potential refinements to the system.

As we stated previously, we do not plan to update the regression analysis until we are able to analyze IPF PPS claims and cost report data. However, we continue to monitor claims and payment data independently from cost report data to assess issues, to determine whether changes in case-mix or payment shifts have occurred among freestanding governmental, non-profit and private psychiatric hospitals, and psychiatric units of general hospitals, and CAHs and other issues of importance to IPFs.

B. Patient-Level Adjustments

In the August 2012 IPF PPS notice (77 FR 47230 through 47233) we announced payment adjustments for the following patient-level characteristics: Medicare Severity diagnosis related groups (MS–DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

1. Adjustment for MS–DRG Assignment

The IPF PPS includes payment adjustments for designated psychiatric DRGs assigned to the claim based on each patient's principal diagnosis. As we did in FY 2013 (77 FR 47231), for FY 2014, we will make a payment adjustment for psychiatric diagnoses that group to one of the 17 MS–IPF–DRGs listed in Table 2. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis.

In accordance with § 412.27(a), payment under the IPF PPS is conditioned on IPFs admitting "only patients whose admission to the unit is required for active treatment, of an intensity that can be provided appropriately only in an inpatient hospital setting, of a psychiatric principal diagnosis that is listed in Chapter Five ('Mental Disorders') of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM)" or in the Fourth Edition, Text Revision of the American Psychiatric Association's Diagnostic and Statistical Manual, (DSM–IV–TR). IPF claims with a principal diagnosis included in Chapter Five of the ICD–9–CM or the DSM–IV–TR are paid the Federal per diem base rate under the IPF PPS and all other applicable adjustments, including any applicable DRG adjustment. Psychiatric principal diagnoses that do not group to one of the 17 designated DRGs will still receive the Federal per diem base rate and all other applicable adjustments, but the payment will not include a DRG adjustment.

The Standards for Electronic Transaction final rule published in the **Federal Register** on August 17, 2000 (65 FR 50312), adopted ICD–9–CM as the designated code set for reporting diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury, disease, impairment, or other health related problems. Therefore, we use ICD–9–CM as the designated code set for the IPF PPS.

We believe that it is important to maintain the same diagnostic coding and DRG classification for IPFs that are used under the IPPS for providing psychiatric care. Therefore, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set and DRG patient classification system (that is, the CMS DRGs) that were utilized at the time under the hospital inpatient IPPS. Since the inception of the IPF PPS, the DRGs used as the patient classification system under the IPF PPS have corresponded exactly with the CMS DRGs applicable under the IPPS for acute care hospitals.

Every year, changes to the ICD–9–CM coding system are addressed in the IPPS proposed and final rules. The changes to the codes are effective October 1 of each year and must be used by acute care hospitals as well as other providers to report diagnostic and procedure information. The IPF PPS has always incorporated ICD–9–CM coding changes made in the annual IPPS update. We publish coding changes in a Transmittal/Change Request, similar to how coding changes are announced by the IPPS and LTCH PPS. Those ICD–9–CM coding changes are also published in the following IPF PPS FY update, in either the IPF PPS proposed and final rules, or in an IPF PPS update notice.

In the May 2008 IPF PPS notice (73 FR 25709), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS–DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). A crosswalk, to reflect changes that were made to the DRGs under the IPF PPS to the new MS–DRGs, was provided (73 FR 25716). We believe by better accounting for patients' severity of illness in Medicare payment rates, the MS–DRGs encourage hospitals to improve their coding and documentation of patient diagnoses. The MS–DRGs, which are based on the IPPS MS–DRGs, represent a significant increase in the number of DRGs (from 538 to 745, an increase of 207). For a full description of the development and implementation of the MS–DRGs, see the FY 2008 IPPS final rule with comment period (72 FR 47141 through 47175).

All of the ICD–9–CM coding changes are reflected in the FY 2013 GROUPER, Version 31.0, effective for IPPS discharges occurring on or after October 1, 2013 through September 30, 2014. The GROUPER Version 31.0 software package assigns each case to an MS–DRG on the basis of the diagnosis and procedure codes and demographic information (that is, age, sex, and discharge status). The Medicare Code Editor (MCE) 31.0 uses the new ICD–9–CM codes to validate coding for IPPS discharges on or after October 1, 2013. The complete documentation of the GROUPER logic is available from 3M/Health Information System (HIS), which, under contract with CMS, is responsible for updating and maintaining the GROUPER program. The current MS–DRG Definitions

Manual, version 30.0, is available on a CD for $225.00. Version 31.0 of this manual, which will include the final FY 2014 MS–DRG changes, will be available on CD for $225.00. These manuals may be obtained by writing to 3M/HIS at the following address: 100 Barnes Road, Wallingford, CT 06492; or by calling (203) 949–0303, or by obtaining an order form at the Web site: *http://www.3MHIS.com*. The IPF PPS has always used the same GROUPER and Code Editor as the IPPS. Therefore, the ICD–9–CM changes, which were reflected in the GROUPER Version 31.0 and MCE 31.0 on October 1, 2013, also became effective for the IPF PPS for discharges occurring on or after October 1, 2013.

The impact of the new MS–DRGs on the IPF PPS was negligible. Mapping to the MS–DRGs resulted in the current 17 MS–DRGs, instead of the original 15, for which the IPF PPS provides an adjustment. Although the code set is updated, the same associated adjustment factors apply now that have been in place since implementation of the IPF PPS, with one exception that is unrelated to the update to the codes. When DRGs 521 and 522 were consolidated into MS–DRG 895, we carried over the adjustment factor of 1.02 from DRG 521 to the newly consolidated MS–DRG. This was done to reflect the higher claims volume under DRG 521, with more than eight times the number of claims than billed under DRG 522. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS–DRG adjustment categories, we refer readers to the May 2008 IPF PPS notice (73 FR 25714).

The official version of the ICD–9–CM is available on CD–ROM from the U.S. Government Printing Office. The FY 2012 version can be ordered by contacting the Superintendent of Documents, U.S. Government Printing Office, Department 50, Washington, DC 20402–9329, telephone number (202) 512–1800. Questions concerning the ICD–9–CM should be directed to Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, CMS, Center for Medicare Management, Hospital and Ambulatory Policy Group, Division of Acute Care, Mailstop C4–08–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The Web site for the CD–ROM which contains the complete official version of the International Classification of Diseases, Ninth Revision, Clinical Modification is located at: *http://www.cms.gov/Medicare/Coding/ICD9ProviderDiagnosticCodes/CDROM.html*.

Further information concerning the official version of the ICD–9–CM can be found on the IPPS Web site at: *http://cms.hhs.gov/medicare/coding/icd9providerdiagnosticcodes/addendum.html*.

Transition to ICD–10–CM

We note that, in accordance with the requirements of the final rule published in the **Federal Register** on September 5, 2012 (77 FR 54664), we will be discontinuing our current use of the International Classification of Diseases, 9th revision, Clinical Modification (ICD–9–CM), effective with the compliance date for using the international Classification of Diseases, 10th revision, Clinical Modifications (ICD–10–CM) of October 1, 2014. The ICD–10–CM coding guidelines are available through the CMS Web site at: *www.cms.gov/Medicare/Coding/ICD10/downloads/pcs_2012_guidelines.pdf* and *http://www.cms.gov/Medicare/Coding/ICD10/index.html?redirect=/ICD10* or on the CDC's Web site at *www.cdc.gov/nchs/data/icd10/10cmguidelines2012.pdf*.

The MS–IPF–DRG adjustment factors (as shown in Table 2) will continue to be paid for discharges occurring in FY 2014. In FY 2015, the MS–IPF–DRG adjustment factors will be updated effective with the compliance date for using the ICD–10–CM of October 1, 2014.

TABLE 2—FY 2014 CURRENT MS–IPF–DRGS APPLICABLE FOR THE PRINCIPAL DIAGNOSIS ADJUSTMENT

MS–DRG	MS–DRG descriptions	Adjustment factor
056	Degenerative nervous system disorders w MCC	1.05
057	Degenerative nervous system disorders w/o MCC	1.05
080	Nontraumatic stupor & coma w MCC	1.07
081	Nontraumatic stupor & coma w/o MCC	1.07
876	O.R. procedure w principal diagnoses of mental illness	1.22
880	Acute adjustment reaction & psychosocial dysfunction	1.05
881	Depressive neuroses	0.99
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.02
884	Organic disturbances & mental retardation	1.03
885	Psychoses	1.00
886	Behavioral & developmental disorders	0.99
887	Other mental disorder diagnoses	0.92
894	Alcohol/drug abuse or dependence, left AMA	0.97
895	Alcohol/drug abuse or dependence w rehabilitation therapy	1.02
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.88
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	-0.88

2. Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain concurrent medical or psychiatric conditions that are expensive to treat. In the May 2011 IPF PPS final rule (76 FR 26451 through 26452), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2012 (76 FR 26451).

Comorbidities are specific patient conditions that are secondary to the patient's principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on

the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment within a comorbidity category, but it may receive an adjustment for more than one comorbidity category. Billing instructions require that IPFs must enter the full ICD–9–CM codes for up to 24 additional diagnoses if they co-exist at the time of admission or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM "code first" instructions apply. As we explained in the May 2011 IPF PPS final rule (76 FR 265451), the code first rule applies when a condition has both an underlying etiology and a manifestation due to the underlying etiology. For these conditions, ICD–9–CM has a coding convention that requires the underlying conditions to be sequenced first followed by the manifestation. Whenever a combination exists, there is a "use additional code" note at the etiology code and a code first note at the manifestation code.

As discussed in the MS–DRG section, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care.

For FY 2014, we are applying the 17 comorbidity categories for which we are providing an adjustment, their respective codes, and their respective adjustment factors in Table 3 below. In FY 2015, the diagnosis codes and adjustment factors for the comorbidity categories will be updated effective with the compliance date for using the ICD–10–CM of October 1, 2014.

TABLE 3—FY 2014 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES

Description of comorbidity	Diagnoses codes	Adjustment factor
Developmental Disabilities	317, 3180, 3181, 3182, and 319	1.04
Coagulation Factor Deficits	2860 through 2864	1.13
Tracheostomy	51900 through 51909 and V440	1.06
Renal Failure, Acute	5845 through 5849, 63630, 63631, 63632, 63730, 63731, 63732, 6383, 6393, 66932, 66934, 9585.	1.11
Renal Failure, Chronic	40301, 40311, 40391, 40402, 40412, 40413, 40492, 40493, 5853, 5854, 5855, 5856, 5859, 586, V4511, V4512, V560, V561, and V562.	1.11
Oncology Treatment	1400 through 2399 with a radiation therapy code 92.21–92.29 or chemotherapy code 99.25.	1.07
Uncontrolled Diabetes-Mellitus with or without complications.	25002, 25003, 25012, 25013, 25022, 25023, 25032, 25033, 25042, 25043, 25052, 25053, 25062, 25063, 25072, 25073, 25082, 25083, 25092, and 25093.	1.05
Severe Protein Calorie Malnutrition	260 through 262	1.13
Eating and Conduct Disorders	3071, 30750, 31203, 31233, and 31234	1.12
Infectious Disease	01000 through 04110, 042, 04500 through 05319, 05440 through 05449, 0550 through 0770, 0782 through 07889, and 07950 through 07959.	1.07
Drug and/or Alcohol Induced Mental Disorders.	2910, 2920, 29212, 2922, 30300, and 30400	1.03
Cardiac Conditions	3910, 3911, 3912, 40201, 40403, 4160, 4210, 4211, and 4219	1.11
Gangrene	44024 and 7854	1.10
Chronic Obstructive Pulmonary Disease	49121, 4941, 5100, 51883, 51884, V4611, V4612, V4613 and V4614	1.12
Artificial Openings—Digestive and Urinary	56960 through 56969, 9975, and V441 through V446	1.08
Severe Musculoskeletal and Connective Tissue Diseases.	6960, 7100, 73000 through 73009, 73010 through 73019, and 73020 through 73029	1.09
Poisoning	96500 through 96509, 9654, 9670 through 9699, 9770, 9800 through 9809, 9830 through 9839, 986, 9890 through 9897.	1.11

3. Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (that is, the range of ages) for payment adjustments.

In general, we found that the cost per day increases with age. The older age groups are more costly than the under 45 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant.

We do not plan to update the regression analysis until we are able to analyze IPF PPS data. Therefore, for FY 2014, we are continuing to use the patient age adjustments currently in effect as shown in Table 4 below.

TABLE 4—AGE GROUPINGS AND ADJUSTMENT FACTORS

Age	Adjustment factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

4. Variable Per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the LOS increases. The variable per diem adjustments to the Federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF.

We used a regression analysis to estimate the average differences in per diem cost among stays of different lengths. As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment

remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section VII.C.5 of this notice.

For FY 2014, we are continuing to use the variable per diem adjustment factors currently in effect as shown in Table 5 below. A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

TABLE 5—VARIABLE PER DIEM ADJUSTMENTS

Day-of-stay	Adjustment factor
Day 1—IPF Without a Qualifying ED	1.19
Day 1—IPF With a Qualifying ED	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

C. Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Wage Index Adjustment

a. Background

As discussed in the May 2006 IPF PPS final rule (71 FR 27061) and in the May 2008 (73 FR 25719) and May 2009 IPF PPS notices (74 FR 20373), in order to provide an adjustment for geographic wage levels, the labor-related portion of an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location of the IPF in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) and (C).

b. Wage Index for FY 2014

Since the inception of the IPF PPS, we have used the pre-reclassified, pre-floor hospital wage index in developing a wage index to be applied to IPFs because there is not an IPF-specific wage index available and we believe that IPFs generally compete in the same labor market as acute care hospitals so the pre-reclassified, pre-floor inpatient acute care hospital wage index should be reflective of labor costs of IPFs. As discussed in the May 2006 IPF PPS final rule for FY 2007 (71 FR 27061 through 27067), under the IPF PPS, the wage index is calculated using the IPPS wage index for the labor market area in which the IPF is located, without taking into account geographic reclassifications, floors, and other adjustments made to the wage index under the IPPS. For a complete description of these IPPS wage index adjustments, please see the CY 2013 IPPS/IRF PPS final rule (77 FR 53365 through 53374). We are continuing that practice for FY 2014.

We apply the wage index adjustment to the labor-related portion of the Federal rate, which is 69.494 percent. This percentage reflects the labor-related relative importance of the FY 2008-based RPL market basket for FY 2014 (see section V.C. of this notice).

Changes to the wage index are made in a budget neutral manner so that updates do not increase expenditures. For FY 2014, we are applying the most recent hospital wage index (that is, the FY 2013 pre-floor, pre-reclassified hospital wage index because this is the most appropriate index as it best reflects the variation in local labor costs of IPFs in the various geographic areas) using the most recent hospital wage data (that is, data from hospital cost reports for the cost reporting period beginning during FY 2009), and applying an adjustment in accordance with our budget neutrality policy. This policy requires us to estimate the total amount of IPF PPS payments for FY 2013 using the labor-related share and the wage indices from FY 2013 divided by the total estimated IPF PPS payments for FY 2014 using the labor-related share and wage indices from FY 2014. The estimated payments are based on FY 2012 IPF claims, inflated to the appropriate FY. This quotient is the wage index budget neutrality factor, and it is applied in the update of the Federal per diem base rate for FY 2014 in addition to the market basket described in section VI.B. of this notice. The wage index budget neutrality factor for FY 2014 is 1.0010. The wage index applicable for FY 2014 appears in Table 1 and Table 2 in Addendum B of this notice.

In the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061–27067), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, we did not provide a separate transition for the CBSA-based wage index since the IPF PPS was already in a transition period from TEFRA payments to PPS payments.

As was the case in FY 2013, for FY 2014, we will continue to use the CBSA geographic designations. The updated FY 2014 CBSA-based wage index values are presented in Tables 1 and 2 in Addendum B of this notice. A complete discussion of the CBSA labor market definitions appears in the May 2006 IPF PPS final rule (71 FR 27061 through 27067).

In keeping with established IPF PPS wage index policy, we will use the FY 2013 pre-floor, pre-reclassified hospital wage index (which is based on data collected from hospital cost reports submitted by hospitals for cost reporting periods beginning during FY 2009) to adjust IPF PPS payments beginning October 1, 2013.

c. OMB Bulletins

OMB publishes bulletins regarding CBSA changes, including changes to CBSA numbers and titles. In the May 2008 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applies to the hospital wage index used to determine the current IPF PPS wage index and stated that we expect to continue to do the same for all the OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary (73 FR 25721). The OMB bulletins may be accessed online at *http://www.whitehouse.gov/omb/bullentins/index.html.*

In accordance with our established methodology, we have historically adopted any CBSA changes that are published in the OMB bulletin that corresponds with the hospital wage index used to determine the IPF PPS wage index. For FY 2014, we use the FY 2013 pre-floor, pre-reclassified hospital wage index to adjust the IPF PPS payments. On February 28, 2013, OMB issued OMB Bulletin No. 13–01, which

establishes revised delineations of statistical areas based on OMB standards published in the **Federal Register** on June 28, 2010 and 2010 Census Bureau data. Because the FY 2013 pre-floor, pre-reclassified hospital wage index was finalized prior to the issuance of this Bulletin, the FY 2013 pre-floor, pre-reclassified hospital wage index does not reflect OMB's new area delineations based on the 2010 Census and, thus, the FY 2014 IPF PPS wage index will not reflect the OMB changes. CMS intends to propose changes to the hospital wage index based on this OMB Bulletin in the FY 2015 IPPS/LTCH PPS proposed rule, as stated in the FY 2014 IPPS/LTCH PPS proposed rule (78 FR 27552 through 27553). Therefore, we anticipate that the OMB Bulletin changes will be reflected in the FY 2015 hospital wage index. Because we base the IPF PPS wage index on the hospital wage index from the prior year, we anticipate that the OMB Bulletin changes would be reflected in the FY 2016 IPPS PPS wage index.

2. Adjustment for Rural Location

In the November 2004 IPF PPS final rule, we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. For FY 2014, we are applying a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C). As stated in the November 2004 IPF PPS final rule, we do not intend to update the adjustment factors derived from the regression analysis until we are able to analyze IPF PPS data. A complete discussion of the adjustment for rural locations appears in the November 2004 IPF PPS final rule (69 FR 66954).

3. Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census.

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under a PPS, and those paid under the TEFRA rate-of-increase limits. These direct GME payments are made separately from payments for hospital operating costs and are not part of the IPF PPS. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

For teaching hospitals paid under the TEFRA rate-of-increase limits, Medicare does not make separate payments for indirect medical education costs because payments to these hospitals are based on the hospitals' reasonable costs which already include these higher indirect costs that may be associated with teaching programs.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's "teaching variable," which is one plus the ratio of the number of FTE residents training in the IPF (subject to limitations described below) to the IPF's average daily census (ADC).

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. The cap limits the number of FTE residents that teaching IPFs may count for the purpose of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a "base year" and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (that is, the publication date of the IPF PPS final rule).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant.

As with other adjustment factors derived through the regression analysis, we do not plan to rerun the regression analysis until we analyze IPF PPS data. Therefore, in this notice, for FY 2014, we are retaining the coefficient value of 0.5150 for the teaching adjustment to the Federal per diem base rate.

A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the May 2008 IPF PPS notice (73 FR 25721).

a. FTE Intern and Resident Cap Adjustment

CMS had been asked to reconsider the original IPF teaching policy and permit a temporary increase in the FTE resident cap when an IPF increases the number of FTE residents it trains due to the acceptance of displaced residents (residents that are training in an IPF or a program before the IPF or program closed) when another IPF closes or closes its medical residency training program.

To help us assess how many IPFs had been, or were expected to be adversely affected by their inability to adjust their caps under § 412.424(d)(1) and under these situations, we specifically requested public comment from IPFs in the May 1, 2009 IPF PPS notice (74 FR 20376 through 20377). A summary of the comments and our responses can be reviewed in the April 30, 2010 IPF PPS notice (75 FR 23106 through 23117). All of the commenters recommended that CMS modify the IPF PPS teaching adjustment policy, supporting a policy change that would permit the IPF PPS residency cap to be temporarily adjusted when that IPF trains displaced residents due to closure of an IPF or closure of an IPF's medical residency training program(s). The commenters recommended a temporary resident cap adjustment policy similar to the policies applied in similar contexts for acute care hospitals.

We agreed with the commenters that, when a hospital temporarily takes on residents because another hospital closes or discontinues its program, a temporary adjustment to the cap would be appropriate for a rotation that occurs in an IPF setting (freestanding or units). In these situations, residents may have partially completed a medical residency training program at the hospital that has closed its training program and may be unable to complete their training at another hospital that is already training residents up to or in excess of its cap. We believe that it is appropriate to allow temporary adjustments to the FTE caps for an IPF that provides residency

training to medical residents who have partially completed a residency training program at an IPF that closes or at an IPF that discontinues training residents in a residency training program(s) (also referred to as a "closed" program throughout this preamble). For this reason, we adopted the following temporary resident cap adjustment policies, similar to the temporary adjustments to the FTE cap used for acute care hospitals. We proposed and finalized that the cap adjustment would be temporary because it is resident specific and would only apply to the displaced resident(s) until the resident(s) completes training in that specialty. As under the IPPS policy for displaced residents, the IPF PPS temporary cap adjustment would apply only to residents that were still training at the IPF at the time the IPF closed or at the time the IPF ceased training residents in the residency training program(s). Residents who leave the IPF, for whatever reason, before the closure of the IPF hospital or medical residency training program would not be considered displaced residents for purposes of the IPF temporary cap adjustment policy. Similarly, as under the IPPS policy, medical students who match to a program at an IPF but the IPF or medical residency training program closes before the individual begins training at that IPF are also not considered displaced residents for purposes of the IPF temporary cap adjustments. For detailed information on these acute care hospital GME/IME payment policies, we refer the reader to the August 1, 2001 final rule (66 FR 39899), July 30, 1999 final rule (64 FR 41522), and May 7, 1999 proposed rule (64 FR 24736). We note that although we adopted a policy under the IPF PPS that is consistent with the policy applicable under the IPPS, the actual caps under the two payment systems may not be commingled.

b. Temporary Adjustment to the FTE Cap To Reflect Residents Added Due to Hospital Closure

In the May 6, 2011 IPF PPS final rule (76 FR 26455), we indicated that we would allow an IPF to receive a temporary adjustment to the FTE cap to reflect residents added because of another IPF's closure. This adjustment is intended to account for medical residents who would have partially completed a medical residency training program at the hospital that has closed and may be unable to complete their training at another hospital because that hospital is already training residents up to or in excess of its cap. We made this change because IPFs have indicated a reluctance to accept additional residents from a closed IPF without a temporary adjustment to their caps. For purposes of this policy on IPF closure, we adopted the IPPS definition of "closure of a hospital" in 42 CFR 413.79(h) to mean the IPF terminates its Medicare provider agreement as specified in 42 CFR 489.52. Therefore, we added a new § 412.424(d)(1)(iii)(F)(1) to allow a temporary adjustment to an IPF's FTE cap to reflect residents added because of an IPF's closure on or after July 1, 2011, to be effective for cost reporting periods beginning on or after July 1, 2011. Under this policy, we allow an adjustment to an IPF's FTE cap if the IPF meets the following criteria: (1) The IPF is training displaced residents from an IPF that closed on or after July 1, 2011; and (2) the IPF that is training the displaced residents from the closed IPF submits a request for a temporary adjustment to its FTE cap to its Medicare contractor no later than 60 days after the hospital first begins training the displaced residents, and documents that the IPF is eligible for this temporary adjustment to its FTE cap by identifying the residents who have come from the closed IPF and have caused the IPF to exceed its cap, (or the IPF may already be over its cap), and specifies the length of time that the adjustment is needed. After the displaced residents leave the IPF's training program or complete their residency program, the IPF's cap would revert to its original level. This means that the temporary adjustment to the FTE cap would be available to the IPF only for the period of time necessary for the displaced residents to complete their training. Further, as under the IPPS policy, we also indicated that the total amount of temporary cap adjustment that can be distributed to all receiving hospitals cannot exceed the cap amount of the IPF that closed.

c. Temporary Adjustment to FTE Cap To Reflect Residents Affected by Residency Program Closure

In the May 6, 2011 final rule (76 FR 26455), we indicated that if an IPF that ceases training residents in a residency training program(s) agrees to temporarily reduce its FTE cap, we would allow another IPF to receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of another IPF's residency training program. For purposes of this policy on closed residency programs, we adopted the IPPS definition of "closure of a hospital residency training program" to mean that the hospital ceases to offer training for residents in a particular approved medical residency training program as specified in § 413.79(h). The methodology for adjusting the caps for the "receiving IPF" and the "IPF that closed its program" is described below.

i. Receiving IPF

We proposed and finalized that an IPF(s) may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of another IPF's residency training program for cost reporting periods beginning on or after July 1, 2011 if—

- The IPF is training additional residents from the residency training program of an IPF that closed its program on or after July 1, 2011.
- No later than 60 days after the IPF begins to train the residents, the IPF submits to its Medicare Contractor a request for a temporary adjustment to its FTE cap, documents that the IPF is eligible for this temporary adjustment by identifying the residents who have come from another IPF's closed program and have caused the IPF to exceed its cap, (or the IPF may already be in excess of its cap), specifies the length of time the adjustment is needed, and, submits to its Medicare contractor a copy of the FTE cap reduction statement by the IPF closing the residency training program.

In general, the temporary adjustment criteria established for closed medical residency training programs at IPFs is similar to the criteria established for closed IPFs. More than one IPF may be eligible to apply for the temporary adjustment because residents from one closed program may complete their training at one IPF, or at several IPFs. Also, an IPF would be eligible for the temporary adjustment only to the extent that the displaced residents would cause the IPF to exceed its FTE cap.

Finally, we proposed and finalized that IPFs meeting the proposed criteria would be eligible to receive temporary adjustments to their FTE caps for cost reporting periods beginning on or after July 1, 2011.

ii. IPF That Closed Its Program

We indicated that an IPF that agrees to train residents who have been displaced by the closure of another IPF's resident teaching program, may receive a temporary FTE cap adjustment only if the IPF that closed a program:

- Temporarily reduces its FTE cap by the number of FTE residents, in each program year, training in the program at the time of the program's closure. The yearly reduction would be determined by deducting the number of those residents who would have been training in the program during the year of the closure, had the program not closed.

• No later than 60 days after the residents who were in the closed program begin training at another IPF, submits to its Medicare contractor a statement signed and dated by its representative that specifies that it agrees to the temporary reduction in its FTE cap to allow the IPF training the displaced residents to obtain a temporary adjustment to its cap; identifies the residents who were training at the time of the program's closure; identifies the IPFs to which the residents are transferring once the program closes; and specifies the reduction for the applicable program years.

We proposed and finalized that the cap reduction for the IPF with the closed program would be based on the number of FTE residents in each program year who were in the program at the IPF at the time of the program's closure, and who begin training at another IPF.

A complete discussion on the temporary adjustment to the FTE cap to reflect residents added due to hospital closure and by residency program appears in the January 27, 2011 IPF PPS proposed rule (76 FR 5018 through 5020) and the May 6, 2011 IPF PPS final rule (76 FR 26453 through 26456).

4. Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the county in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare PPSs (for example, the IPPS and LTCH PPS) have adopted a cost of living adjustment (COLA) to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA adjustment for IPFs located in Alaska and Hawaii is made by multiplying the nonlabor-related portion of the Federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

The COLA factors are published on the Office of Personnel Management (OPM) Web site (*http://www.opm.gov/oca/cola/rates.asp*).

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

• City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

• City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

• City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;

• Rest of the State of Alaska.

As previously stated in the November 2004 IPF PPS final rule, we update the COLA factors according to updates established by the OPM. Sections 1911 through 1919 of the Nonforeign Area Retirement Equity Assurance Act, as contained in subtitle B of title XIX of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Pub. L. 111–84, October 28, 2009), transitions the Alaska and Hawaii COLAs to locality pay. Under section 1914 of Public Law 111–84, locality pay is being phased in over a 3-year period beginning in January 2010, with COLA rates frozen as of the date of enactment, October 28, 2009, and then proportionately reduced to reflect the phase-in of locality pay.

When we published the proposed COLA adjustment factors in the January 2011 IPF proposed rule (76 FR 4998), we inadvertently selected the FY 2010 COLA rates. The FY 2010 COLA rates were reduced rates to account for the phase-in of locality pay. We did not intend to propose reduced COLA rates, and we do not believe it is appropriate to finalize the reduced COLAs that we showed in our January 2011 proposed rule. The 2009 COLA rates do not reflect the phase-in of locality pay. Therefore, we finalized the FY 2009 COLA rates, which are the same rates that were in effect for RY 2010 through RY 2012. We plan to address the COLA in the future refinement process in FY 2015. For FY 2014, IPFs located in Alaska and Hawaii will continue to receive the updated COLA factors based on the COLA area in which the IPF is located as shown in Table 6 below.

TABLE 6—COLA FACTORS FOR ALASKA AND HAWAII IPFS

Area	Cost of living adjustment factor
Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	1.23
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.23
City of Juneau and 80-kilometer (50-mile) radius by road	1.23
Rest of Alaska	1.25
Hawaii:	
City and County of Honolulu	1.25
County of Hawaii	1.18
County of Kauai	1.25
County of Maui and County of Kalawao	1.25

(The above factors are based on data obtained from the U.S. Office of Personnel Management Web site at: *http://www.opm.gov/oca/cola/rates.asp.*)

5. Adjustment for IPFs With a Qualifying Emergency Department (ED)

The IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the Federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a freestanding psychiatric hospital with a qualifying ED or a distinct part psychiatric unit of an acute hospital or a CAH for preadmission services otherwise payable under the Medicare Outpatient Prospective Payment System (OPPS) furnished to a beneficiary on the date of the beneficiary's admission to the

hospital and during the day immediately preceding the date of admission to the IPF (see § 413.40(c)(2)) and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception described below), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. That is, IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described below. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made where a patient is discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit. An ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the acute care hospital or through the reasonable cost payment made to the CAH. If we provided the ED adjustment in these cases, the hospital would be paid twice for the overhead costs of the ED, as stated in the November 2004 IPF PPS final rule (69 FR 66960).

Therefore, when patients are discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF.

For FY 2014, we are retaining the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factor appears in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the May 2006 IPF PPS final rule (71 FR 27070 through 27072).

D. Other Payment Adjustments and Policies

For FY 2014, the IPF PPS includes an outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients. In this section, we also explain the reason for ending the stop-loss provision that was applicable during the transition period.

1. Outlier Payments

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require more costly care and, therefore, reduce the incentives for IPFs to under-serve these patients.

We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the Federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments. After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount of $11,600 through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target.

a. Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we are updating the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the Federal per diem base rate for all other cases that are not outlier cases.

We believe it is necessary to update the fixed dollar loss threshold amount because an analysis of the latest available data (that is, FY 2012 IPF claims) and rate increases indicate that adjusting the fixed dollar loss amount is necessary in order to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments.

In the May 2006 IPF PPS final rule (71 FR 27072), we describe the process by which we calculate the outlier fixed dollar loss threshold amount. We will continue to use this process for FY 2014. We begin by simulating aggregate payments with and without an outlier policy, and applying an iterative process to determine an outlier fixed dollar loss threshold amount that will result in estimated outlier payments being equal to 2 percent of total estimated payments under the simulation. Based on this process, using the FY 2012 claims data, we estimate that IPF outlier payments as a percentage of total estimated payments are approximately 1.7 percent in FY 2013. Thus, for this notice, we are updating the FY 2014 IPF outlier threshold amount to ensure that estimated FY 2014 outlier payments are approximately 2 percent of total estimated IPF payments. The outlier fixed dollar loss threshold amount of $11,600 for FY 2013 will be changed to $10,245 for FY 2014 to increase estimated outlier payments and thereby maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for FY 2014.

b. Update to IPF Cost-to-Charge Ratio Ceilings

As previously stated, under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In the June 2003 IPPS final rule (68 FR 34494), we implemented changes to the IPPS policy used to determine CCRs for acute care hospitals because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs in order to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule, because we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS, we adopted a method to ensure the statistical accuracy of CCRs under the IPF PPS (69

FR 66961). Specifically, we adopted the following procedure in the November 2004 IPF PPS final rule: We calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas. We computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs using the most recent CCRs entered in the CY 2013 Provider Specific File.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in FY 2014 is 1.8644 for rural IPFs, and 1.7066 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We apply the national CCRs to the following situations:

++ New IPFs that have not yet submitted their first Medicare cost report.

++ IPFs whose overall CCR is in excess of 3 standard deviations above the corresponding national geometric mean (that is, above the ceiling).

++ Other IPFs for which the Medicare contractor obtains inaccurate or incomplete data with which to calculate a CCR.

For new IPFs, we are using these national CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.

We are not making any changes to the procedures for updating the CCR ceilings in FY 2014. However, we are updating the FY 2014 national median and ceiling CCRs for urban and rural IPFs based on the CCRs entered in the latest available IPF PPS Provider Specific File. Specifically, for FY 2014, and to be used in each of the three situations listed above, using the most recent CCRs entered in the CY 2013 Provider Specific File we estimate the national median CCR of 0.6220 for rural IPFs and the national median CCR of 0.4770 for urban IPFs. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations.

A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

2. Expiration of the Stop-Loss Provision

In the November 2004 IPF PPS final rule, we implemented a stop-loss policy that reduced financial risk to IPFs projected to experience substantial reductions in Medicare payments during the period of transition to the IPF PPS. This stop-loss policy guaranteed that each facility received total IPF PPS payments that were no less than 70 percent of its TEFRA payments had the IPF PPS not been implemented. This policy was applied to the IPF PPS portion of Medicare payments during the 3-year transition.

In the implementation year, the 70 percent of TEFRA payment stop-loss policy required a reduction in the standardized Federal per diem and ECT base rates of 0.39 percent in order to make the stop-loss payments budget neutral. As described in the May 2008 IPF PPS notice for RY 2009, we increased the Federal per diem base rate and ECT rate by 0.39 percent because these rates were reduced by 0.39 percent in the implementation year to ensure stop-loss payments were budget neutral.

The stop-loss provision ended during RY 2009 (that is for discharges occurring on or after July 1, 2008 through June 30, 2009). The stop-loss policy is no longer applicable under the IPF PPS.

3. Future Refinements

As we have indicated throughout this notice, we have delayed making refinements to the IPF PPS until we have adequate IPF PPS data on which to base those refinements. Specifically, we explained that we will delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Now that we are approximately 8 years into the system, we believe that we have enough data to begin that process. We have begun the necessary analysis to better understand IPF industry practices so that we may refine the IPF PPS as appropriate. Using more recent data, we plan to re-run the regression analyses and recalculate the Federal per diem base rate and the patient-and facility-level adjustments. While we are not making these refinements in this notice, we expect that in the rulemaking for FY 2015 we will be ready to present the results of our analysis.

For RY 2012, we published several areas of concern for future refinement and we invited comments on these issues in our RY 2012 proposed and final rules. For further discussion of these issues and to review public comments, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432).

VIII. Secretary's Recommendations

Section 1886(e)(4)(A) of the Act requires the Secretary, taking into consideration the recommendations of MedPAC, to recommend update factors for inpatient hospital services (including IPFs) for each FY that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Section 1886(e)(5) of the Act requires the Secretary to publish the recommended and final update factors in the **Federal Register**.

In the past, the Secretary's recommendations and a discussion about the MedPAC recommendations for the IPF PPS were included in the IPPS proposed and final rules. The market basket update for the IPF PPS was also included in the IPPS proposed and final rules, as well as in the IPF PPS annual update.

Beginning FY 2013, however, we only publish the market basket update for the IPF PPS in the annual IPF PPS FY update and not in the IPPS proposed and final rules. Furthermore, for any years in which MedPAC makes recommendations for the IPF PPS, those recommendations will be noted and considered in the IPF PPS update.

MedPAC did not make any recommendations for the IPF PPS for FY 2014. For the update to the IPF PPS standard Federal rate for FY 2014, see section IV B. of this notice.

IX. Waiver of Notice and Comment

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice.

We find it is unnecessary to undertake notice and comment rulemaking for this action because the updates in this notice do not reflect any substantive changes in policy, but merely reflect the application of previously established methodologies. Therefore, under 5 U.S.C 553(b)(3)(B), for good cause, we waive notice and comment procedures.

X. Collection of Information Requirements

This notice does not impose any new or revised information collection, recordkeeping, or third-party disclosure requirements. Consequently, it does not need additional Office of Management and Budget review under the authority

of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

XI. Regulatory Impact Analysis

A. Statement of Need

This notice will update the prospective payment rates for Medicare inpatient hospital services provided by IPF for discharges occurring during the FY beginning October 1, 2013 through September 30, 2014. We are applying the FY 2008-based RPL market basket increase of 2.6 percent, less the 0.1 percentage point required by sections 1886(s)(2)(A) (ii) and 1886(s)(3)(B) of the Act and less the productivity adjustment of 0.5 percentage point as required by 1886(s)(2)(A)(i) of the Act.

B. Overall Impact

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for a major notice with economically significant effects ($100 million or more in any 1 year). This notice is designated as economically "significant" under section 3(f)(1) of Executive Order 12866.

We estimate that the total impact of these changes for FY 2014 payments compared to FY 2013 payments will be a net increase of approximately $115 million. This reflects a $100 million increase from the update to the payment rates, as well as, a $15 million increase as a result of the update to the outlier threshold amount. Outlier payments are estimated to increase from 1.7 percent in FY 2013 to 2.0 percent in FY 2014.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are small entities, either by nonprofit status or having revenues of $7 million to $34.5 million or less in any 1 year depending on industry classification (for details, refer to the SBA Small Business Size Standards found at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*), or being nonprofit organizations that are not dominant in their markets."

Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue that is derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA.

As shown in Table 7, we estimate that the overall revenue impact of this notice on all IPFs is to increase Medicare payments by approximately 2.3 percent. As a result, since the estimated impact of this notice is a net increase in revenue across all categories of IPFs, the Secretary has determined that this notice will have a positive revenue impact on a substantial number of small entities. Medicare fiscal intermediaries, Medicare Administrative Contractors, and Carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As discussed in detail below, the rates and policies set forth in this notice will not have an adverse impact on the rural hospitals based on the data of the 309 rural units and 73 rural hospitals in our database of 1,624 IPFs for which data were available. Therefore, the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This notice will not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of $141 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. As stated above, this notice would not have a substantial effect on state and local governments.

C. Anticipated Effects

We discuss the historical background of the IPF PPS and the impact of this notice on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and May 2006 IPF PPS final rules, we applied a budget neutrality factor to the Federal per diem and ECT base rates to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the May 2008 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

In accordance with § 412.424(c)(3)(ii), we indicated that we will evaluate the accuracy of the budget neutrality adjustment within the first 5 years after implementation of the payment system. We may make a one-time prospective adjustment to the Federal per diem and ECT base rates to account for differences between the historical data on cost-based TEFRA payments (the basis of the budget neutrality adjustment) and estimates of TEFRA payments based on actual data from the first year of the IPF PPS. As part of that process, we will reassess the accuracy of all of the factors impacting budget neutrality. In addition, as discussed in section VII.C.1 of this notice, we are using the wage index and labor-related share in a budget neutral manner by applying a wage index budget neutrality factor to the Federal per diem and ECT base rates. Therefore, the budgetary impact to the Medicare program of this notice will be due to the market basket update for FY 2014 of 2.6 percent (see section V.B. of this notice) less the "other

adjustment" of 0.1 percentage point according to sections 1886(s)(2)(A)(ii) and 1886 (s)(3)(B) of the Act, less the productivity adjustment of 0.5 percentage point required by section 1886 (s)(2)(A)(i) of the Act, and the update to the outlier fixed dollar loss threshold amount.

We estimate that the FY 2014 impact will be a net increase of $115 million in payments to IPF providers. This reflects an estimated $100 million increase from the update to the payment rates and a $15 million increase due to the update to the outlier threshold amount to increase outlier payments from approximately 1.7 percent in FY 2013 to 2.0 percent in FY 2014.

2. Impact on Providers

To understand the impact of the changes to the IPF PPS on providers, discussed in this notice, it is necessary to compare estimated payments under the IPF PPS rates and factors for FY 2014 versus those under FY 2013. The estimated payments for FY 2013 and FY 2014 will be 100 percent of the IPF PPS payment, since the transition period has ended and stop-loss payments are no longer paid. We determined the percent change of estimated FY 2014 IPF PPS payments to FY 2013 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the update to the outlier fixed dollar loss threshold amount, the labor-related share and wage index changes for the FY 2014 IPF PPS, and the market basket update for FY 2014, as adjusted by the "other adjustment" according to sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act and the productivity adjustment according to section 1886(s)(2)(A)(i).

To illustrate the impacts of the FY 2014 changes in this notice, our analysis begins with a FY 2013 baseline simulation model based on FY 2012 IPF payments inflated to the midpoint of FY 2013 using IHS Global Insight Inc.'s most recent forecast of the market basket update (see section V.B. of this notice); the estimated outlier payments in FY 2013; the CBSA designations for IPFs based on OMB's MSA definitions after June 2003; the FY 2012 pre-floor, pre-reclassified hospital wage index; the FY 2013 labor-related share; and the FY 2013 percentage amount of the rural adjustment. During the simulation, the total estimated outlier payments are maintained at 2 percent of total IPF PPS payments.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The update to the outlier fixed dollar loss threshold amount.
- The FY 2013 pre-floor, pre-reclassified hospital wage index and FY 2014 labor-related share.
- The market basket update for FY 2014 of 2.6 percent less the "other adjustment" of 0.1 percentage point in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act and less the productivity adjustment of 0.5 percentage point reduction in accordance with section 1886(s)(2)(A)(i) of the Act.

Our final comparison illustrates the percent change in payments from FY 2013 (that is, October 1, 2012 to September 30, 2013) to FY 2014 (that is, October 1, 2013 to September 30, 2014) including all the changes in this notice.

TABLE 7—IPF IMPACT TABLE FOR FY 2014

Facility by type	Number of facilities	Projected Impacts (% Change In Columns 3–6) Outlier	CBSA wage index & labor share	Adjusted market basket update [1]	Total percent change [2]
(1)	(2)	(3)	(4)	(5)	(6)
All Facilities	1,624	0.3	0.0	2.0	2.3
Total Urban	1,242	0.3	0.0	2.0	2.3
Total Rural	382	0.2	−0.1	2.0	2.1
Urban unit	834	0.4	0.0	2.0	2.5
Urban hospital	408	0.1	0.0	2.0	2.1
Rural unit	309	0.2	−0.1	2.0	2.2
Rural hospital	73	0.3	−0.2	2.0	2.0
By Type of Ownership:					
Freestanding IPFs:					
Urban Psychiatric Hospitals:					
Government	130	0.3	−0.1	2.0	2.2
Non-Profit	99	0.1	0.2	2.0	2.2
For-Profit	177	0.1	0.0	2.0	2.0
Rural Psychiatric Hospitals:					
Government	36	0.5	−0.4	2.0	2.1
Non-Profit	13	0.1	0.0	2.0	2.1
For-Profit	23	0.1	−0.1	2.0	2.0
IPF Units:					
Urban:					
Government	131	0.8	0.1	2.0	2.9
Non-Profit	548	0.4	0.1	2.0	2.5
For-Profit	155	0.3	−0.2	2.0	2.0
Rural:					
Government	80	0.2	−0.1	2.0	2.1
Non-Profit	163	0.3	0.0	2.0	2.2
For-Profit	66	0.3	−0.1	2.0	2.2
Unknown Ownership Type	3	0.0	0.2	2.0	2.2
By Teaching Status:					
Non-teaching	1,419	0.2	0.0	2.0	2.2
Less than 10% interns and residents to beds	109	0.5	0.0	2.0	2.5
10% to 30% interns and residents to beds	70	0.5	0.1	2.0	2.6
More than 30% interns and residents to beds	26	0.9	0.5	2.0	3.5
By Region:					

TABLE 7—IPF IMPACT TABLE FOR FY 2014—Continued

Facility by type	Number of facilities	Outlier	CBSA wage index & labor share	Adjusted market basket update [1]	Total percent change [2]
(1)	(2)	(3)	(4)	(5)	(6)
	Projected Impacts (% Change In Columns 3–6)				
New England	111	0.4	0.5	2.0	3.0
Mid-Atlantic	256	0.4	−0.1	2.0	2.3
South Atlantic	233	0.2	−0.3	2.0	1.9
East North Central	258	0.3	0.1	2.0	2.4
East South Central	171	0.2	−0.7	2.0	1.6
West North Central	139	0.3	0.2	2.0	2.5
West South Central	234	0.2	−0.2	2.0	1.9
Mountain	99	0.3	−0.6	2.0	1.7
Pacific	123	0.5	0.9	2.0	3.5
By Bed Size:					
Psychiatric Hospitals:					
Beds: 0–24	82	0.2	−0.3	2.0	1.9
Beds: 25–49	75	0.1	−0.1	2.0	1.9
Beds: 50–75	79	0.2	0.0	2.0	2.2
Beds: 76 +	245	0.1	0.0	2.0	2.1
Psychiatric Units:					
Beds: 0–24	684	0.4	0.0	2.0	2.4
Beds: 25–49	306	0.4	0.2	2.0	2.5
Beds: 50–75	94	0.4	−0.1	2.0	2.2
Beds: 76 +	59	0.5	0.0	2.0	2.6

[1] This column reflects the payment update impact of the RPL market basket update for FY 2014 of 2.6 percent, a 0.1 percentage point reduction in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act, and a 0.5 percentage point reduction for the productivity adjustment as required by section 1886(s)(2)(A)(i) of the Act.

[2] Percent changes in estimated payments from FY 2013 to FY 2014 include all of the changes presented in this notice. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

3. Results

Table 7 above displays the results of our analysis. The table groups IPFs into the categories listed below based on characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from HCRIS:

- Facility Type
- Location
- Teaching Status Adjustment
- Census Region
- Size

The top row of the table shows the overall impact on the 1,624 IPFs included in this analysis.

In column 3, we present the effects of the update to the outlier fixed dollar loss threshold amount. We estimate that IPF outlier payments as a percentage of total IPF payments are 1.7 percent in FY 2013. Thus, we are adjusting the outlier threshold amount in this notice to set total estimated outlier payments equal to 2 percent of total payments in FY 2014. The estimated change in total IPF payments for FY 2014, therefore, includes an approximate 0.3 percent increase in payments because the outlier portion of total payments is expected to increase from approximately 1.7 percent to 2 percent.

The overall impact of this outlier adjustment update (as shown in column 3 of table 7), across all hospital groups, is to increase total estimated payments to IPFs by 0.3 percent. We do not estimate that any group of IPFs will experience a decrease in payments from this update. The largest increase in payments is estimated to reflect a 0.9 percent increase in payments for IPFs located in teaching hospitals with an intern and resident ADC ratio greater than 30 percent.

In column 4, we present the effects of the budget-neutral update to the labor-related share and the wage index adjustment under the CBSA geographic area definitions announced by OMB in June 2003. This is a comparison of the simulated FY 2014 payments under the FY 2013 hospital wage index under CBSA classification and associated labor-related share to the simulated FY 2013 payments under the FY 2012 hospital wage index under CBSA classifications and associated labor-related share. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4. However, there will be small distributional effects among different categories of IPFs. For example, we estimate the largest increase in payments to be a 0.9 percent increase for IPFs in the Pacific region and the largest decrease in payments to be a 0.7 percent decrease for IPFs in the East South Central region.

Column 5 shows the estimated effect of the update to the IPF PPS payment rates, which includes a 2.6 percent market basket update less the 0.1 percentage point in accordance with section 1886(s)(2)(A)(ii) and 1886(s)(3)(B) and less the productivity adjustment of 0.5 percentage point in accordance with section 1886(s)(2)(A)(i).

Column 6 compares our estimates of the total changes reflected in this notice for FY 2014, to our payments for FY 2013 (without these changes). This column reflects all FY 2014 changes relative to FY 2013. The average estimated increase for all IPFs is approximately 2.3 percent. This estimated net increase includes the effects of the 2.6 percent market basket update adjusted by the "other adjustment" of minus 0.1 percentage point, as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act and the productivity adjustment of minus 0.5 percentage point, as required by section 1886(s)(2)(A)(i) of the Act. It also includes the overall estimated 0.3 percent increase in estimated IPF outlier payments from the update to the outlier fixed dollar loss threshold amount. Since we are making the updates to the IPF labor-related share and wage index in a budget-neutral manner, they will not affect total estimated IPF payments in the aggregate. However, they will

affect the estimated distribution of payments among providers.

Overall, no IPFs are estimated to experience a net decrease in payments as a result of the updates in this notice. IPFs in urban areas will experience a 2.3 percent increase and IPFs in rural areas will experience a 2.1 percent increase. The largest payment increase is estimated at 3.5 percent for IPFs located in teaching hospitals with an intern and resident ADC ratio greater than 30 percent and IPFs in the Pacific region. This is due to the larger than average positive effect of the CBSA wage index and labor-related share updates and the higher volume of outlier payments for IPFs in these categories.

4. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other PPSs, we estimate that Medicare spending (total Medicare program payments) for IPF services over the next 5 years would be as shown in Table 8 below.

TABLE 8—ESTIMATED PAYMENTS SHOWN IN CURRENT YEAR DOLLARS

Fiscal year	Dollars in millions
2014	5,420
2015	5,910
2016	6,500
2017	7,090
2018	7,570

These estimates are based on the current forecast of the increases in the RPL market basket, including an adjustment for productivity, for the FY beginning in 2014 and each subsequent RY, as required by section 1886(s)(2)(A)(i) of the Act, as follows:

- 2.1 percent for FY 2014.
- 2.3 percent for FY 2015.
- 2.6 percent for FY 2016.
- 2.6 percent for FY 2017.
- 2.5 percent for FY 2018.

The estimates in Table 8 also include the application of the "other adjustment," as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act, as follows:

- −0.3 percentage point for rate years beginning in 2014.
- −0.2 percentage point for rate years beginning in 2015.
- −0.2 percentage point for rate years beginning in 2016.
- −0.75 percentage point for rate years beginning in 2017.
- −0.75 percentage point for rate years beginning in 2018.

We estimate that there would be a change in fee-for-service Medicare beneficiary enrollment as follows:

- 2.2 percent in FY 2014.
- 4.1 percent in FY 2015.
- 5.0 percent in FY 2016.
- 5.5 percent in FY 2017.
- 4.4 percent in FY 2018.

5. Effect on Beneficiaries

Under the IPF PPS, IPFs will receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the FY 2014 IPF PPS but we continue to expect that paying prospectively for IPF services would enhance the efficiency of the Medicare program.

D. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule. Lastly, no alternative policy options were considered in this notice, since this notice does not initiate policy changes with regard to the IPF PPS. This notice simply provides an update to the rates for FY 2014.

E. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 9 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this notice. This table provides our best estimate of the increase in Medicare payments under the IPF PPS as a result of the changes presented in this notice and based on the data for 1,624 IPFs in our database. All expenditures are classified as Federal transfers to IPF Medicare providers.

TABLE 9—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2013 IPF PPS FY TO THE 2014 IPF PPS FY

[In millions]

Category	Transfers
Annualized Monetized Transfers	$115.
From Whom To Whom?	Federal Government to IPF Medicare Providers.

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

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 29, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 28, 2013.

Kathleen Sebelius,

Secretary.

Addendum A—Rate and Adjustment Factors

Per Diem Rate:
Federal Per Diem Base Rate—$713.19
Labor Share—(0.69494)—$495.62
Non-Labor Share (0.30506)—$217.57

Per Diem Rate Applying the 2 Percentage Point Reduction:
Federal Per Diem Base Rate—$699.21
Labor Share (0.69494)—$485.91
Non-Labor Share (0.30506)—$213.30

Fixed Dollar Loss Threshold Amount:
$10,245

Wage Index Budget Neutrality Factor:
1.0010

Facility Adjustments:
Rural Adjustment Factor—1.17
Teaching Adjustment Factor—0.5150
Wage Index—Pre-reclass Hospital Wage Index (FY2013)

Cost of Living Adjustments (COLAs)

Area	Cost of living adjustment factor
Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	1.23
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.23
City of Juneau and 80-kilometer (50-mile) radius by road	1.23
Rest of Alaska	1.25
Hawaii:	
City and County of Honolulu	1.25
County of Hawaii	1.18
County of Kauai	1.25
County of Maui and County of Kalawao	1.25

Patient Adjustments:
ECT—Per Treatment—$307.04
ECT—Per Treatment Applying the 2 Percentage Point Reduction—$301.02

Variable Per Diem Adjustments

	Adjustment factor
Day 1—Facility Without a Qualifying Emergency Department	1.19
Day 1—Facility With a Qualifying Emergency Department	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

Age Adjustments

Age (in years)	Adjustment factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

DRG Adjustments

MS–DRG	MS–DRG descriptions	Adjustment factor
056	Degenerative nervous system disorders w MCC	1.05
057	Degenerative nervous system disorders w/o MCC	
080	Nontraumatic stupor & coma w MCC	1.07

DRG ADJUSTMENTS—Continued

MS–DRG	MS–DRG descriptions	Adjustment factor
081	Nontraumatic stupor & coma w/o MCC	1.22
876	O.R. procedure w principal diagnoses of mental illness	1.05
880	Acute adjustment reaction & psychosocial dysfunction	0.99
881	Depressive neuroses	1.02
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.03
884	Organic disturbances & mental retardation	1.00
885	Psychoses	0.99
886	Behavioral & developmental disorders	0.92
887	Other mental disorder diagnoses	0.97
894	Alcohol/drug abuse or dependence, left AMA	1.02
895	Alcohol/drug abuse or dependence w rehabilitation therapy	0.88
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	

COMORBIDITY ADJUSTMENTS

Comorbidity	Adjustment factor
Developmental Disabilities	1.04
Coagulation Factor Deficit	1.13
Tracheostomy	1.06
Eating and Conduct Disorders	1.12
Infectious Diseases	1.07
Renal Failure, Acute	1.11
Renal Failure, Chronic	1.11
Oncology Treatment	1.07
Uncontrolled Diabetes Mellitus	1.05
Severe Protein Malnutrition	1.13
Drug/Alcohol Induced Mental Disorders	1.03
Cardiac Conditions	1.11
Gangrene	1.10
Chronic Obstructive Pulmonary Disease	1.12
Artificial Openings—Digestive & Urinary	1.08
Severe Musculoskeletal & Connective Tissue Diseases	1.09
Poisoning	1.11

Addendum B—FY 2014 CBSA Wage Index Tables

In this addendum, we provide the wage index tables referred to in the preamble to this notice. The tables presented below are as follows:

Table1—FY 2014 Wage Index For Urban Areas Based on CBSA Labor Market Areas.

Table 2—FY 2014 Wage Index Based On CBSA Labor Market Areas For Rural Areas.

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX	0.8324
	Callahan County, TX.	
	Jones County, TX.	
	Taylor County, TX.	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3532
	Aguada Municipio, PR.	
	Aguadilla Municipio, PR.	
	Añasco Municipio, PR.	
	Isabela Municipio, PR.	
	Lares Municipio, PR.	
	Moca Municipio, PR.	
	Rincón Municipio, PR.	
	San Sebastián Municipio, PR.	
10420	Akron, OH	0.8729
	Portage County, OH.	
	Summit County, OH.	
10500	Albany, GA	0.8435
	Baker County, GA.	
	Dougherty County, GA.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Lee County, GA.	
	Terrell County, GA.	
	Worth County, GA.	
10580	Albany-Schenectady-Troy, NY	0.8647
	Albany County, NY.	
	Rensselaer County, NY.	
	Saratoga County, NY.	
	Schenectady County, NY.	
	Schoharie County, NY.	
10740	Albuquerque, NM	0.9542
	Bernalillo County, NM.	
	Sandoval County, NM.	
	Torrance County, NM.	
	Valencia County, NM.	
10780	Alexandria, LA	0.7857
	Grant Parish, LA.	
	Rapides Parish, LA.	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9084
	Warren County, NJ.	
	Carbon County, PA.	
	Lehigh County, PA.	
	Northampton County, PA.	
11020	Altoona, PA	0.8898
	Blair County, PA.	
11100	Amarillo, TX	0.8506
	Armstrong County, TX.	
	Carson County, TX.	
	Potter County, TX.	
	Randall County, TX.	
11180	Ames, IA	0.9595
	Story County, IA.	
11260	Anchorage, AK	1.2147
	Anchorage Municipality, AK.	
	Matanuska-Susitna Borough, AK.	
11300	Anderson, IN	0.9547
	Madison County, IN.	
11340	Anderson, SC	0.8929
	Anderson County, SC.	
11460	Ann Arbor, MI	1.0115
	Washtenaw County, MI.	
11500	Anniston-Oxford, AL	0.7539
	Calhoun County, AL.	
11540	Appleton, WI	0.9268
	Calumet County, WI.	
	Outagamie County, WI.	
11700	Asheville, NC	0.8555
	Buncombe County, NC.	
	Haywood County, NC.	
	Henderson County, NC.	
	Madison County, NC.	
12020	Athens-Clarke County, GA	0.9488
	Clarke County, GA.	
	Madison County, GA.	
	Oconee County, GA.	
	Oglethorpe County, GA.	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9517
	Barrow County, GA.	
	Bartow County, GA.	
	Butts County, GA.	
	Carroll County, GA.	
	Cherokee County, GA.	
	Clayton County, GA.	
	Cobb County, GA.	
	Coweta County, GA.	
	Dawson County, GA.	
	DeKalb County, GA.	
	Douglas County, GA.	
	Fayette County, GA.	
	Forsyth County, GA.	
	Fulton County, GA.	
	Gwinnett County, GA.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Haralson County, GA.	
	Heard County, GA.	
	Henry County, GA.	
	Jasper County, GA.	
	Lamar County, GA.	
	Meriwether County, GA.	
	Newton County, GA.	
	Paulding County, GA.	
	Pickens County, GA.	
	Pike County, GA.	
	Rockdale County, GA.	
	Spalding County, GA.	
	Walton County, GA.	
12100	Atlantic City-Hammonton, NJ	1.1977
	Atlantic County, NJ.	
12220	Auburn-Opelika, AL	0.7437
	Lee County, AL.	
12260	Augusta-Richmond County, GA-SC	0.9373
	Burke County, GA.	
	Columbia County, GA.	
	McDuffie County, GA.	
	Richmond County, GA.	
	Aiken County, SC.	
	Edgefield County, SC.	
12420	Austin-Round Rock, TX	0.9746
	Bastrop County, TX.	
	Caldwell County, TX.	
	Hays County, TX.	
	Travis County, TX.	
	Williamson County, TX.	
12540	Bakersfield, CA	1.1611
	Kern County, CA.	
12580	Baltimore-Towson, MD	1.0147
	Anne Arundel County, MD.	
	Baltimore County, MD.	
	Carroll County, MD.	
	Harford County, MD.	
	Howard County, MD.	
	Queen Anne's County, MD.	
	Baltimore City, MD.	
12620	Bangor, ME	1.0184
	Penobscot County, ME.	
12700	Barnstable Town, MA	1.2843
	Barnstable County, MA.	
12940	Baton Rouge, LA	0.8147
	Ascension Parish, LA.	
	East Baton Rouge Parish, LA.	
	East Feliciana Parish, LA.	
	Iberville Parish, LA.	
	Livingston Parish, LA.	
	Pointe Coupee Parish, LA.	
	St. Helena Parish, LA.	
	West Baton Rouge Parish, LA.	
	West Feliciana Parish, LA.	
12980	Battle Creek, MI	0.9912
	Calhoun County, MI.	
13020	Bay City, MI	0.9181
	Bay County, MI.	
13140	Beaumont-Port Arthur, TX	0.8533
	Hardin County, TX.	
	Jefferson County, TX.	
	Orange County, TX.	
13380	Bellingham, WA	1.1415
	Whatcom County, WA.	
13460	Bend, OR	1.1119
	Deschutes County, OR.	
13644	Bethesda-Frederick-Gaithersburg, MD	1.0374
	Frederick County, MD.	
	Montgomery County, MD.	
13740	Billings, MT	0.8737
	Carbon County, MT.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Yellowstone County, MT.	
13780	Binghamton, NY	0.8707
	Broome County, NY.	
	Tioga County, NY.	
13820	Birmingham-Hoover, AL	0.8516
	Bibb County, AL.	
	Blount County, AL.	
	Chilton County, AL.	
	Jefferson County, AL.	
	St. Clair County, AL.	
	Shelby County, AL.	
	Walker County, AL.	
13900	Bismarck, ND	0.7261
	Burleigh County, ND.	
	Morton County, ND.	
13980	Blacksburg-Christiansburg-Radford, VA	0.8348
	Giles County, VA.	
	Montgomery County, VA.	
	Pulaski County, VA.	
	Radford City, VA.	
14020	Bloomington, IN	0.8752
	Greene County, IN.	
	Monroe County, IN.	
	Owen County, IN.	
14060	Bloomington-Normal, IL	0.9502
	McLean County, IL.	
14260	Boise City-Nampa, ID	0.8897
	Ada County, ID.	
	Boise County, ID.	
	Canyon County, ID.	
	Gem County, ID.	
	Owyhee County, ID.	
14484	Boston-Quincy, MA	1.2378
	Norfolk County, MA.	
	Plymouth County, MA.	
	Suffolk County, MA.	
14500	Boulder, CO	1.0574
	Boulder County, CO.	
14540	Bowling Green, KY	0.8665
	Edmonson County, KY.	
	Warren County, KY.	
14740	Bremerton-Silverdale, WA	1.0829
	Kitsap County, WA.	
14860	Bridgeport-Stamford-Norwalk, CT	1.3170
	Fairfield County, CT.	
15180	Brownsville-Harlingen, TX	0.8612
	Cameron County, TX.	
15260	Brunswick, GA	0.8792
	Brantley County, GA.	
	Glynn County, GA.	
	McIntosh County, GA.	
15380	Buffalo-Niagara Falls, NY	0.9999
	Erie County, NY.	
	Niagara County, NY.	
15500	Burlington, NC	0.8485
	Alamance County, NC.	
15540	Burlington-South Burlington, VT	0.9997
	Chittenden County, VT.	
	Franklin County, VT.	
	Grand Isle County, VT.	
15764	Cambridge-Newton-Framingham, MA	1.1262
	Middlesex County, MA.	
15804	Camden, NJ	1.0474
	Burlington County, NJ.	
	Camden County, NJ.	
	Gloucester County, NJ.	
15940	Canton-Massillon, OH	0.8834
	Carroll County, OH.	
	Stark County, OH.	
15980	Cape Coral-Fort Myers, FL	0.9158
	Lee County, FL.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
16020	Cape Girardeau-Jackson, MO-IL	0.8860
	Alexander County, IL.	
	Bollinger County, MO.	
	Cape Girardeau County, MO.	
16180	Carson City, NV	1.0559
	Carson City, NV.	
16220	Casper, WY	1.0143
	Natrona County, WY.	
16300	Cedar Rapids, IA	0.8944
	Benton County, IA.	
	Jones County, IA.	
	Linn County, IA.	
16580	Champaign-Urbana, IL	0.9907
	Champaign County, IL.	
	Ford County, IL.	
	Piatt County, IL.	
16620	Charleston, WV	0.8050
	Boone County, WV.	
	Clay County, WV.	
	Kanawha County, WV.	
	Lincoln County, WV.	
	Putnam County, WV.	
16700	Charleston-North Charleston-Summerville, SC	0.8820
	Berkeley County, SC.	
	Charleston County, SC.	
	Dorchester County, SC.	
16740	Charlotte-Gastonia-Concord, NC-SC	0.9215
	Anson County, NC.	
	Cabarrus County, NC.	
	Gaston County, NC.	
	Mecklenburg County, NC.	
	Union County, NC.	
	York County, SC.	
16820	Charlottesville, VA	0.9195
	Albemarle County, VA.	
	Fluvanna County, VA.	
	Greene County, VA.	
	Nelson County, VA.	
	Charlottesville City, VA.	
16860	Chattanooga, TN-GA	0.8678
	Catoosa County, GA.	
	Dade County, GA.	
	Walker County, GA.	
	Hamilton County, TN.	
	Marion County, TN.	
	Sequatchie County, TN.	
16940	Cheyenne, WY	0.9730
	Laramie County, WY.	
16974	Chicago-Naperville-Joliet, IL	1.0600
	Cook County, IL.	
	DeKalb County, IL.	
	DuPage County, IL.	
	Grundy County, IL.	
	Kane County, IL.	
	Kendall County, IL.	
	McHenry County, IL.	
	Will County, IL.	
17020	Chico, CA	1.1197
	Butte County, CA.	
17140	Cincinnati-Middletown, OH-KY-IN	0.9508
	Dearborn County, IN.	
	Franklin County, IN.	
	Ohio County, IN.	
	Boone County, KY.	
	Bracken County, KY.	
	Campbell County, KY.	
	Gallatin County, KY.	
	Grant County, KY.	
	Kenton County, KY.	
	Pendleton County, KY.	
	Brown County, OH.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Butler County, OH.	
	Clermont County, OH.	
	Hamilton County, OH.	
	Warren County, OH.	
17300	Clarksville, TN-KY	0.8082
	Christian County, KY.	
	Trigg County, KY.	
	Montgomery County, TN.	
	Stewart County, TN.	
17420	Cleveland, TN	0.7592
	Bradley County, TN.	
	Polk County, TN.	
17460	Cleveland-Elyria-Mentor, OH	0.9082
	Cuyahoga County, OH.	
	Geauga County, OH.	
	Lake County, OH.	
	Lorain County, OH.	
	Medina County, OH.	
17660	Coeur d'Alene, ID	0.9218
	Kootenai County, ID.	
17780	College Station-Bryan, TX	0.9584
	Brazos County, TX.	
	Burleson County, TX.	
	Robertson County, TX.	
17820	Colorado Springs, CO	0.9364
	El Paso County, CO.	
	Teller County, CO.	
17860	Columbia, MO	0.8339
	Boone County, MO.	
	Howard County, MO.	
17900	Columbia, SC	0.8560
	Calhoun County, SC.	
	Fairfield County, SC.	
	Kershaw County, SC.	
	Lexington County, SC.	
	Richland County, SC.	
	Saluda County, SC.	
17980	Columbus, GA-AL	0.8857
	Russell County, AL.	
	Chattahoochee County, GA.	
	Harris County, GA.	
	Marion County, GA.	
	Muscogee County, GA.	
18020	Columbus, IN	0.9564
	Bartholomew County, IN.	
18140	Columbus, OH	0.9763
	Delaware County, OH.	
	Fairfield County, OH.	
	Franklin County, OH.	
	Licking County, OH.	
	Madison County, OH.	
	Morrow County, OH.	
	Pickaway County, OH.	
	Union County, OH.	
18580	Corpus Christi, TX	0.8591
	Aransas County, TX.	
	Nueces County, TX.	
	San Patricio County, TX.	
18700	Corvallis, OR	1.0715
	Benton County, OR.	
18880	Crestview-Fort Walton Beach-Destin, FL	0.8916
	Okaloosa County, FL.	
19060	Cumberland, MD-WV	0.8836
	Allegany County, MD.	
	Mineral County, WV.	
19124	Dallas-Plano-Irving, TX	0.9835
	Collin County, TX.	
	Dallas County, TX.	
	Delta County, TX.	
	Denton County, TX.	
	Ellis County, TX.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Hunt County, TX.	
	Kaufman County, TX.	
	Rockwall County, TX.	
19140	Dalton, GA	0.8828
	Murray County, GA.	
	Whitfield County, GA.	
19180	Danville, IL	0.9977
	Vermilion County, IL.	
19260	Danville, VA	0.8218
	Pittsylvania County, VA.	
	Danville City, VA.	
19340	Davenport-Moline-Rock Island, IA-IL	0.9145
	Henry County, IL.	
	Mercer County, IL.	
	Rock Island County, IL.	
	Scott County, IA.	
19380	Dayton, OH	0.9136
	Greene County, OH.	
	Miami County, OH.	
	Montgomery County, OH.	
	Preble County, OH.	
19460	Decatur, AL	0.7261
	Lawrence County, AL.	
	Morgan County, AL.	
19500	Decatur, IL	0.7993
	Macon County, IL.	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.8716
	Volusia County, FL.	
19740	Denver-Aurora-Broomfield, CO	1.0469
	Adams County, CO.	
	Arapahoe County, CO.	
	Broomfield County, CO.	
	Clear Creek County, CO.	
	Denver County, CO.	
	Douglas County, CO.	
	Elbert County, CO.	
	Gilpin County, CO.	
	Jefferson County, CO.	
	Park County, CO.	
19780	Des Moines-West Des Moines, IA	0.9616
	Dallas County, IA.	
	Guthrie County, IA.	
	Madison County, IA.	
	Polk County, IA.	
	Warren County, IA.	
19804	Detroit-Livonia-Dearborn, MI	0.9361
	Wayne County, MI.	
20020	Dothan, AL	0.7398
	Geneva County, AL.	
	Henry County, AL.	
	Houston County, AL.	
20100	Dover, DE	0.9893
	Kent County, DE.	
20220	Dubuque, IA	0.8662
	Dubuque County, IA.	
20260	Duluth, MN-WI	1.0741
	Carlton County, MN.	
	St. Louis County, MN.	
	Douglas County, WI.	
20500	Durham-Chapel Hill, NC	0.9525
	Chatham County, NC.	
	Durham County, NC.	
	Orange County, NC.	
	Person County, NC.	
20740	Eau Claire, WI	0.9705
	Chippewa County, WI.	
	Eau Claire County, WI.	
20764	Edison-New Brunswick, NJ	1.0806
	Middlesex County, NJ.	
	Monmouth County, NJ.	
	Ocean County, NJ.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Somerset County, NJ.	
20940	El Centro, CA	0.8602
	Imperial County, CA.	
21060	Elizabethtown, KY	0.8294
	Hardin County, KY.	
	Larue County, KY.	
21140	Elkhart-Goshen, IN	0.9097
	Elkhart County, IN.	
21300	Elmira, NY	0.8205
	Chemung County, NY.	
21340	El Paso, TX	0.8426
	El Paso County, TX.	
21500	Erie, PA	0.7823
	Erie County, PA.	
21660	Eugene-Springfield, OR	1.1454
	Lane County, OR.	
21780	Evansville, IN-KY	0.8401
	Gibson County, IN.	
	Posey County, IN.	
	Vanderburgh County, IN.	
	Warrick County, IN.	
	Henderson County, KY.	
	Webster County, KY.	
21820	Fairbanks, AK	1.0816
	Fairbanks North Star Borough, AK.	
21940	Fajardo, PR	0.3663
	Ceiba Municipio, PR.	
	Fajardo Municipio, PR.	
	Luquillo Municipio, PR.	
22020	Fargo, ND-MN	0.8108
	Cass County, ND.	
	Clay County, MN.	
22140	Farmington, NM	0.9323
	San Juan County, NM.	
22180	Fayetteville, NC	0.8971
	Cumberland County, NC.	
	Hoke County, NC.	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.9288
	Benton County, AR.	
	Madison County, AR.	
	Washington County, AR.	
	McDonald County, MO.	
22380	Flagstaff, AZ	1.2369
	Coconino County, AZ.	
22420	Flint, MI	1.1257
	Genesee County, MI.	
22500	Florence, SC	0.8087
	Darlington County, SC.	
	Florence County, SC.	
22520	Florence-Muscle Shoals, AL	0.7679
	Colbert County, AL.	
	Lauderdale County, AL.	
22540	Fond du Lac, WI	0.9158
	Fond du Lac County, WI.	
22660	Fort Collins-Loveland, CO	0.9833
	Larimer County, CO.	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0363
	Broward County, FL.	
22900	Fort Smith, AR-OK	0.7848
	Crawford County, AR.	
	Franklin County, AR.	
	Sebastian County, AR.	
	Le Flore County, OK.	
	Sequoyah County, OK.	
23060	Fort Wayne, IN	0.9633
	Allen County, IN.	
	Wells County, IN.	
	Whitley County, IN.	
23104	Fort Worth-Arlington, TX	0.9516
	Johnson County, TX.	
	Parker County, TX.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Tarrant County, TX.	
	Wise County, TX.	
23420	Fresno, CA	1.1593
	Fresno County, CA.	
23460	Gadsden, AL	0.7697
	Etowah County, AL.	
23540	Gainesville, FL	0.9631
	Alachua County, FL.	
	Gilchrist County, FL.	
23580	Gainesville, GA	0.9327
	Hall County, GA.	
23844	Gary, IN	0.9259
	Jasper County, IN.	
	Lake County, IN.	
	Newton County, IN.	
	Porter County, IN.	
24020	Glens Falls, NY	0.8340
	Warren County, NY.	
	Washington County, NY.	
24140	Goldsboro, NC	0.8560
	Wayne County, NC.	
24220	Grand Forks, ND-MN	0.7250
	Polk County, MN.	
	Grand Forks County, ND.	
24300	Grand Junction, CO	0.9415
	Mesa County, CO.	
24340	Grand Rapids-Wyoming, MI	0.9125
	Barry County, MI.	
	Ionia County, MI.	
	Kent County, MI.	
	Newaygo County, MI.	
24500	Great Falls, MT	0.7927
	Cascade County, MT.	
24540	Greeley, CO	0.9593
	Weld County, CO.	
24580	Green Bay, WI	0.9793
	Brown County, WI.	
	Kewaunee County, WI.	
	Oconto County, WI.	
24660	Greensboro-High Point, NC	0.8638
	Guilford County, NC.	
	Randolph County, NC.	
	Rockingham County, NC.	
24780	Greenville, NC	0.9694
	Greene County, NC.	
	Pitt County, NC.	
24860	Greenville-Mauldin-Easley, SC	0.9737
	Greenville County, SC.	
	Laurens County, SC.	
	Pickens County, SC.	
25020	Guayama, PR	0.3696
	Arroyo Municipio, PR.	
	Guayama Municipio, PR.	
	Patillas Municipio, PR.	
25060	Gulfport-Biloxi, MS	0.8544
	Hancock County, MS.	
	Harrison County, MS.	
	Stone County, MS.	
25180	Hagerstown-Martinsburg, MD-WV	0.9422
	Washington County, MD.	
	Berkeley County, WV.	
	Morgan County, WV.	
25260	Hanford-Corcoran, CA	1.0992
	Kings County, CA.	
25420	Harrisburg-Carlisle, PA	0.9525
	Cumberland County, PA.	
	Dauphin County, PA.	
	Perry County, PA.	
25500	Harrisonburg, VA	0.9087
	Rockingham County, VA.	
	Harrisonburg City, VA.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
25540	Hartford-West Hartford-East Hartford, CT	1.0869
	Hartford County, CT.	
	Middlesex County, CT.	
	Tolland County, CT.	
25620	Hattiesburg, MS	0.8035
	Forrest County, MS.	
	Lamar County, MS.	
	Perry County, MS.	
25860	Hickory-Lenoir-Morganton, NC	0.8677
	Alexander County, NC.	
	Burke County, NC.	
	Caldwell County, NC.	
	Catawba County, NC.	
25980	Hinesville-Fort Stewart, GA [1]	0.8843
	Liberty County, GA.	
	Long County, GA.	
26100	Holland-Grand Haven, MI	0.8024
	Ottawa County, MI.	
26180	Honolulu, HI	1.2156
	Honolulu County, HI.	
26300	Hot Springs, AR	0.8944
	Garland County, AR.	
26380	Houma-Bayou Cane-Thibodaux, LA	0.7928
	Lafourche Parish, LA.	
	Terrebonne Parish, LA.	
26420	Houston-Sugar Land-Baytown, TX	0.9933
	Austin County, TX.	
	Brazoria County, TX.	
	Chambers County, TX.	
	Fort Bend County, TX.	
	Galveston County, TX.	
	Harris County, TX.	
	Liberty County, TX.	
	Montgomery County, TX.	
	San Jacinto County, TX.	
	Waller County, TX.	
26580	Huntington-Ashland, WV-KY-OH	0.8635
	Boyd County, KY.	
	Greenup County, KY.	
	Lawrence County, OH.	
	Cabell County, WV.	
	Wayne County, WV.	
26620	Huntsville, AL	0.8667
	Limestone County, AL.	
	Madison County, AL.	
26820	Idaho Falls, ID	0.9114
	Bonneville County, ID.	
	Jefferson County, ID.	
26900	Indianapolis-Carmel, IN	0.9870
	Boone County, IN.	
	Brown County, IN.	
	Hamilton County, IN.	
	Hancock County, IN.	
	Hendricks County, IN.	
	Johnson County, IN.	
	Marion County, IN.	
	Morgan County, IN.	
	Putnam County, IN.	
	Shelby County, IN.	
26980	Iowa City, IA	1.0120
	Johnson County, IA.	
	Washington County, IA.	
27060	Ithaca, NY	0.9249
	Tompkins County, NY.	
27100	Jackson, MI	0.8511
	Jackson County, MI.	
27140	Jackson, MS	0.8177
	Copiah County, MS.	
	Hinds County, MS.	
	Madison County, MS.	
	Rankin County, MS.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Simpson County, MS.	
27180	Jackson, TN	0.7672
	Chester County, TN.	
	Madison County, TN.	
27260	Jacksonville, FL	0.8883
	Baker County, FL.	
	Clay County, FL.	
	Duval County, FL.	
	Nassau County, FL.	
	St. Johns County, FL.	
27340	Jacksonville, NC	0.7957
	Onslow County, NC.	
27500	Janesville, WI	0.9458
	Rock County, WI.	
27620	Jefferson City, MO	0.8263
	Callaway County, MO.	
	Cole County, MO.	
	Moniteau County, MO.	
	Osage County, MO.	
27740	Johnson City, TN	0.7359
	Carter County, TN.	
	Unicoi County, TN.	
	Washington County, TN.	
27780	Johnstown, PA	0.8116
	Cambria County, PA.	
27860	Jonesboro, AR	0.8084
	Craighead County, AR.	
	Poinsett County, AR.	
27900	Joplin, MO	0.7828
	Jasper County, MO.	
	Newton County, MO.	
28020	Kalamazoo-Portage, MI	0.9834
	Kalamazoo County, MI.	
	Van Buren County, MI.	
28100	Kankakee-Bradley, IL	1.0127
	Kankakee County, IL.	
28140	Kansas City, MO-KS	0.9614
	Franklin County, KS.	
	Johnson County, KS.	
	Leavenworth County, KS.	
	Linn County, KS.	
	Miami County, KS.	
	Wyandotte County, KS.	
	Bates County, MO.	
	Caldwell County, MO.	
	Cass County, MO.	
	Clay County, MO.	
	Clinton County, MO.	
	Jackson County, MO.	
	Lafayette County, MO.	
	Platte County, MO.	
	Ray County, MO.	
28420	Kennewick-Pasco-Richland, WA	0.9708
	Benton County, WA.	
	Franklin County, WA.	
28660	Killeen-Temple-Fort Hood, TX	0.9102
	Bell County, TX.	
	Coryell County, TX.	
	Lampasas County, TX.	
28700	Kingsport-Bristol-Bristol, TN-VA	0.7325
	Hawkins County, TN.	
	Sullivan County, TN.	
	Bristol City, VA.	
	Scott County, VA.	
	Washington County, VA.	
28740	Kingston, NY	0.8953
	Ulster County, NY.	
28940	Knoxville, TN	0.7575
	Anderson County, TN.	
	Blount County, TN.	
	Knox County, TN.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Loudon County, TN.	
	Union County, TN.	
29020	Kokomo, IN	0.8756
	Howard County, IN.	
	Tipton County, IN.	
29100	La Crosse, WI-MN	1.0070
	Houston County, MN.	
	La Crosse County, WI.	
29140	Lafayette, IN	0.9316
	Benton County, IN.	
	Carroll County, IN.	
	Tippecanoe County, IN.	
29180	Lafayette, LA	0.8565
	Lafayette Parish, LA.	
	St. Martin Parish, LA.	
29340	Lake Charles, LA	0.7813
	Calcasieu Parish, LA.	
	Cameron Parish, LA.	
29404	Lake County-Kenosha County, IL-WI	1.0558
	Lake County, IL.	
	Kenosha County, WI.	
29420	Lake Havasu City-Kingman, AZ	0.9760
	Mohave County, AZ.	
29460	Lakeland-Winter Haven, FL	0.8262
	Polk County, FL.	
29540	Lancaster, PA	0.9452
	Lancaster County, PA.	
29620	Lansing-East Lansing, MI	1.0065
	Clinton County, MI.	
	Eaton County, MI.	
	Ingham County, MI.	
29700	Laredo, TX	0.7486
	Webb County, TX.	
29740	Las Cruces, NM	0.9044
	Dona Ana County, NM.	
29820	Las Vegas-Paradise, NV	1.2076
	Clark County, NV.	
29940	Lawrence, KS	0.8676
	Douglas County, KS.	
30020	Lawton, OK	0.8351
	Comanche County, OK.	
30140	Lebanon, PA	0.7994
	Lebanon County, PA.	
30300	Lewiston, ID-WA	0.9326
	Nez Perce County, ID.	
	Asotin County, WA.	
30340	Lewiston-Auburn, ME	0.9178
	Androscoggin County, ME.	
30460	Lexington-Fayette, KY	0.9023
	Bourbon County, KY.	
	Clark County, KY.	
	Fayette County, KY.	
	Jessamine County, KY.	
	Scott County, KY.	
	Woodford County, KY.	
30620	Lima, OH	0.9226
	Allen County, OH.	
30700	Lincoln, NE	0.9726
	Lancaster County, NE.	
	Seward County, NE.	
30780	Little Rock-North Little Rock-Conway, AR	0.8595
	Faulkner County, AR.	
	Grant County, AR.	
	Lonoke County, AR.	
	Perry County, AR.	
	Pulaski County, AR.	
	Saline County, AR.	
30860	Logan, UT-ID	0.8456
	Franklin County, ID.	
	Cache County, UT.	
30980	Longview, TX	0.8550

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Gregg County, TX.	
	Rusk County, TX.	
	Upshur County, TX.	
31020	Longview, WA	1.0081
	Cowlitz County, WA.	
31084	Los Angeles-Long Beach-Glendale, CA	1.2293
	Los Angeles County, CA.	
31140	Louisville-Jefferson County, KY-IN	0.8862
	Clark County, IN.	
	Floyd County, IN.	
	Harrison County, IN.	
	Washington County, IN.	
	Bullitt County, KY.	
	Henry County, KY.	
	Meade County, KY.	
	Nelson County, KY.	
	Oldham County, KY.	
	Shelby County, KY.	
	Spencer County, KY.	
	Trimble County, KY.	
31180	Lubbock, TX	0.8870
	Crosby County, TX.	
	Lubbock County, TX.	
31340	Lynchburg, VA	0.8615
	Amherst County, VA.	
	Appomattox County, VA.	
	Bedford County, VA.	
	Campbell County, VA.	
	Bedford City, VA.	
	Lynchburg City, VA.	
31420	Macon, GA	0.8584
	Bibb County, GA.	
	Crawford County, GA.	
	Jones County, GA.	
	Monroe County, GA.	
	Twiggs County, GA.	
31460	Madera-Chowchilla, CA	0.8050
	Madera County, CA.	
31540	Madison, WI	1.1264
	Columbia County, WI.	
	Dane County, WI.	
	Iowa County, WI.	
31700	Manchester-Nashua, NH	1.0042
	Hillsborough County, NH.	
31740	Manhattan, KS	0.7839
	Geary County, KS.	
	Pottawatomie County, KS.	
	Riley County, KS.	
31860	Mankato-North Mankato, MN	0.9413
	Blue Earth County, MN.	
	Nicollet County, MN.	
31900	Mansfield, OH	0.8993
	Richland County, OH.	
32420	Mayagüez, PR	0.3586
	Hormigueros Municipio, PR.	
	Mayagüez Municipio, PR.	
32580	McAllen-Edinburg-Mission, TX	0.8603
	Hidalgo County, TX.	
32780	Medford, OR	1.0400
	Jackson County, OR.	
32820	Memphis, TN-MS-AR	0.9049
	Crittenden County, AR.	
	DeSoto County, MS.	
	Marshall County, MS.	
	Tate County, MS.	
	Tunica County, MS.	
	Fayette County, TN.	
	Shelby County, TN.	
	Tipton County, TN.	
32900	Merced, CA	1.2996
	Merced County, CA.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
33124	Miami-Miami Beach-Kendall, FL	1.0130
	Miami-Dade County, FL.	
33140	Michigan City-La Porte, IN	0.9694
	LaPorte County, IN.	
33260	Midland, TX	1.0640
	Midland County, TX.	
33340	Milwaukee-Waukesha-West Allis, WI	0.9931
	Milwaukee County, WI.	
	Ozaukee County, WI.	
	Washington County, WI.	
	Waukesha County, WI.	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.1336
	Anoka County, MN.	
	Carver County, MN.	
	Chisago County, MN.	
	Dakota County, MN.	
	Hennepin County, MN.	
	Isanti County, MN.	
	Ramsey County, MN.	
	Scott County, MN.	
	Sherburne County, MN.	
	Washington County, MN.	
	Wright County, MN.	
	Pierce County, WI.	
	St. Croix County, WI.	
33540	Missoula, MT	0.9001
	Missoula County, MT.	
33660	Mobile, AL	0.7467
	Mobile County, AL.	
33700	Modesto, CA	1.2841
	Stanislaus County, CA.	
33740	Monroe, LA	0.7717
	Ouachita Parish, LA.	
	Union Parish, LA.	
33780	Monroe, MI	0.8472
	Monroe County, MI.	
33860	Montgomery, AL	0.7858
	Autauga County, AL.	
	Elmore County, AL.	
	Lowndes County, AL.	
	Montgomery County, AL.	
34060	Morgantown, WV	0.8284
	Monongalia County, WV.	
	Preston County, WV.	
34100	Morristown, TN	0.6768
	Grainger County, TN.	
	Hamblen County, TN.	
	Jefferson County, TN.	
34580	Mount Vernon-Anacortes, WA	1.0340
	Skagit County, WA.	
34620	Muncie, IN	0.8734
	Delaware County, IN.	
34740	Muskegon-Norton Shores, MI	1.1007
	Muskegon County, MI.	
34820	Myrtle Beach-North Myrtle Beach-Conway, SC	0.8717
	Horry County, SC.	
34900	Napa, CA	1.6045
	Napa County, CA.	
34940	Naples-Marco Island, FL	0.9265
	Collier County, FL.	
34980	Nashville-Davidson-Murfreesboro-Franklin, TN	0.9061
	Cannon County, TN.	
	Cheatham County, TN.	
	Davidson County, TN.	
	Dickson County, TN.	
	Hickman County, TN.	
	Macon County, TN.	
	Robertson County, TN.	
	Rutherford County, TN.	
	Smith County, TN.	
	Sumner County, TN.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Trousdale County, TN.	
	Williamson County, TN.	
	Wilson County, TN.	
35004	Nassau-Suffolk, NY	1.2698
	Nassau County, NY.	
	Suffolk County, NY.	
35084	Newark-Union, NJ-PA	1.1223
	Essex County, NJ.	
	Hunterdon County, NJ.	
	Morris County, NJ.	
	Sussex County, NJ.	
	Union County, NJ.	
	Pike County, PA.	
35300	New Haven-Milford, CT	1.2061
	New Haven County, CT.	
35380	New Orleans-Metairie-Kenner, LA	0.8932
	Jefferson Parish, LA.	
	Orleans Parish, LA.	
	Plaquemines Parish, LA.	
	St. Bernard Parish, LA.	
	St. Charles Parish, LA.	
	St. John the Baptist Parish, LA.	
	St. Tammany Parish, LA.	
35644	New York-White Plains-Wayne, NY-NJ	1.2914
	Bergen County, NJ.	
	Hudson County, NJ.	
	Passaic County, NJ.	
	Bronx County, NY.	
	Kings County, NY.	
	New York County, NY.	
	Putnam County, NY.	
	Queens County, NY.	
	Richmond County, NY.	
	Rockland County, NY.	
	Westchester County, NY.	
35660	Niles-Benton Harbor, MI	0.8237
	Berrien County, MI.	
35840	North Port-Bradenton-Sarasota-Venice, FL	0.9375
	Manatee County, FL.	
	Sarasota County, FL.	
35980	Norwich-New London, CT	1.1376
	New London County, CT.	
36084	Oakland-Fremont-Hayward, CA	1.6654
	Alameda County, CA.	
	Contra Costa County, CA.	
36100	Ocala, FL	0.8455
	Marion County, FL.	
36140	Ocean City, NJ	1.0307
	Cape May County, NJ.	
36220	Odessa, TX	0.9741
	Ector County, TX.	
36260	Ogden-Clearfield, UT	0.9031
	Davis County, UT.	
	Morgan County, UT.	
	Weber County, UT.	
36420	Oklahoma City, OK	0.8810
	Canadian County, OK.	
	Cleveland County, OK.	
	Grady County, OK.	
	Lincoln County, OK.	
	Logan County, OK.	
	McClain County, OK.	
	Oklahoma County, OK.	
36500	Olympia, WA	1.1397
	Thurston County, WA.	
36540	Omaha-Council Bluffs, NE-IA	1.0037
	Harrison County, IA.	
	Mills County, IA.	
	Pottawattamie County, IA.	
	Cass County, NE.	
	Douglas County, NE.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Sarpy County, NE.	
	Saunders County, NE.	
	Washington County, NE.	
36740	Orlando-Kissimmee, FL	0.9082
	Lake County, FL.	
	Orange County, FL.	
	Osceola County, FL.	
	Seminole County, FL.	
36780	Oshkosh-Neenah, WI	0.9433
	Winnebago County, WI.	
36980	Owensboro, KY	0.8117
	Daviess County, KY.	
	Hancock County, KY.	
	McLean County, KY.	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.3079
	Ventura County, CA.	
37340	Palm Bay-Melbourne-Titusville, FL	0.8838
	Brevard County, FL.	
37380	Palm Coast, FL	0.9880
	Flagler County, FL.	
37460	Panama City-Lynn Haven-Panama City Beach, FL	0.7976
	Bay County, FL.	
37620	Parkersburg-Marietta-Vienna, WV-OH	0.7487
	Washington County, OH.	
	Pleasants County, WV.	
	Wirt County, WV.	
	Wood County, WV.	
37700	Pascagoula, MS	0.7662
	George County, MS.	
	Jackson County, MS.	
37764	Peabody, MA	1.0551
	Essex County, MA.	
37860	Pensacola-Ferry Pass-Brent, FL	0.7819
	Escambia County, FL.	
	Santa Rosa County, FL.	
37900	Peoria, IL	0.8882
	Marshall County, IL.	
	Peoria County, IL.	
	Stark County, IL.	
	Tazewell County, IL.	
	Woodford County, IL.	
37964	Philadelphia, PA	1.0806
	Bucks County, PA.	
	Chester County, PA.	
	Delaware County, PA.	
	Montgomery County, PA.	
	Philadelphia County, PA.	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0477
	Maricopa County, AZ.	
	Pinal County, AZ.	
38220	Pine Bluff, AR	0.7847
	Cleveland County, AR.	
	Jefferson County, AR.	
	Lincoln County, AR.	
38300	Pittsburgh, PA	0.8585
	Allegheny County, PA.	
	Armstrong County, PA.	
	Beaver County, PA.	
	Butler County, PA.	
	Fayette County, PA.	
	Washington County, PA.	
	Westmoreland County, PA.	
38340	Pittsfield, MA	1.0721
	Berkshire County, MA.	
38540	Pocatello, ID	0.9555
	Bannock County, ID.	
	Power County, ID.	
38660	Ponce, PR	0.4314
	Juana Díaz Municipio, PR.	
	Ponce Municipio, PR.	
	Villalba Municipio, PR.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
38860	Portland-South Portland-Biddeford, ME	0.9975
	Cumberland County, ME.	
	Sagadahoc County, ME.	
	York County, ME.	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1673
	Clackamas County, OR.	
	Columbia County, OR.	
	Multnomah County, OR.	
	Washington County, OR.	
	Yamhill County, OR.	
	Clark County, WA.	
	Skamania County, WA.	
38940	Port St. Lucie, FL	0.9577
	Martin County, FL.	
	St. Lucie County, FL.	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.1325
	Dutchess County, NY.	
	Orange County, NY.	
39140	Prescott, AZ	1.2009
	Yavapai County, AZ.	
39300	Providence-New Bedford-Fall River, RI-MA	1.0699
	Bristol County, MA.	
	Bristol County, RI.	
	Kent County, RI.	
	Newport County, RI.	
	Providence County, RI.	
	Washington County, RI.	
39340	Provo-Orem, UT	0.9133
	Juab County, UT.	
	Utah County, UT.	
39380	Pueblo, CO	0.8518
	Pueblo County, CO.	
39460	Punta Gorda, FL	0.8590
	Charlotte County, FL.	
39540	Racine, WI	0.9158
	Racine County, WI.	
39580	Raleigh-Cary, NC	0.9488
	Franklin County, NC.	
	Johnston County, NC.	
	Wake County, NC.	
39660	Rapid City, SD	0.9823
	Meade County, SD.	
	Pennington County, SD.	
39740	Reading, PA	0.9072
	Berks County, PA.	
39820	Redding, CA	1.4555
	Shasta County, CA.	
39900	Reno-Sparks, NV	1.0328
	Storey County, NV.	
	Washoe County, NV.	
40060	Richmond, VA	0.9695
	Amelia County, VA.	
	Caroline County, VA.	
	Charles City County, VA.	
	Chesterfield County, VA.	
	Cumberland County, VA.	
	Dinwiddie County, VA.	
	Goochland County, VA.	
	Hanover County, VA.	
	Henrico County, VA.	
	King and Queen County, VA.	
	King William County, VA.	
	Louisa County, VA.	
	New Kent County, VA.	
	Powhatan County, VA.	
	Prince George County, VA.	
	Sussex County, VA.	
	Colonial Heights City, VA.	
	Hopewell City, VA.	
	Petersburg City, VA.	
	Richmond City, VA.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
40140	Riverside-San Bernardino-Ontario, CA	1.1396
	Riverside County, CA.	
	San Bernardino County, CA.	
40220	Roanoke, VA	0.9088
	Botetourt County, VA.	
	Craig County, VA.	
	Franklin County, VA.	
	Roanoke County, VA.	
	Roanoke City, VA.	
	Salem City, VA.	
40340	Rochester, MN	1.0708
	Dodge County, MN.	
	Olmsted County, MN.	
	Wabasha County, MN.	
40380	Rochester, NY	0.8704
	Livingston County, NY.	
	Monroe County, NY.	
	Ontario County, NY.	
	Orleans County, NY.	
	Wayne County, NY.	
40420	Rockford, IL	0.9935
	Boone County, IL.	
	Winnebago County, IL.	
40484	Rockingham County-Strafford County, NH	1.0234
	Rockingham County, NH.	
	Strafford County, NH.	
40580	Rocky Mount, NC	0.8898
	Edgecombe County, NC.	
	Nash County, NC.	
40660	Rome, GA	0.8844
	Floyd County, GA.	
40900	Sacramento-Arden-Arcade-Roseville, CA	1.4752
	El Dorado County, CA.	
	Placer County, CA.	
	Sacramento County, CA.	
	Yolo County, CA.	
40980	Saginaw-Saginaw Township North, MI	0.8820
	Saginaw County, MI.	
41060	St. Cloud, MN	1.1010
	Benton County, MN.	
	Stearns County, MN.	
41100	St. George, UT	0.8870
	Washington County, UT.	
41140	St. Joseph, MO-KS	0.9856
	Doniphan County, KS.	
	Andrew County, MO.	
	Buchanan County, MO.	
	DeKalb County, MO.	
41180	St. Louis, MO-IL	0.9420
	Bond County, IL.	
	Calhoun County, IL.	
	Clinton County, IL.	
	Jersey County, IL.	
	Macoupin County, IL.	
	Madison County, IL.	
	Monroe County, IL.	
	St. Clair County, IL.	
	Crawford County, MO.	
	Franklin County, MO.	
	Jefferson County, MO.	
	Lincoln County, MO.	
	St. Charles County, MO.	
	St. Louis County, MO.	
	Warren County, MO.	
	Washington County, MO.	
	St. Louis City, MO.	
41420	Salem, OR	1.1069
	Marion County, OR.	
	Polk County, OR.	
41500	Salinas, CA	1.6074
	Monterey County, CA.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
41540	Salisbury, MD	0.9260
	Somerset County, MD.	
	Wicomico County, MD.	
41620	Salt Lake City, UT	0.9063
	Salt Lake County, UT.	
	Summit County, UT.	
	Tooele County, UT.	
41660	San Angelo, TX	0.8221
	Irion County, TX.	
	Tom Green County, TX.	
41700	San Antonio, TX	0.8936
	Atascosa County, TX.	
	Bandera County, TX.	
	Bexar County, TX.	
	Comal County, TX.	
	Guadalupe County, TX.	
	Kendall County, TX.	
	Medina County, TX.	
	Wilson County, TX.	
41740	San Diego-Carlsbad-San Marcos, CA	1.1922
	San Diego County, CA.	
41780	Sandusky, OH	0.8347
	Erie County, OH.	
41884	San Francisco-San Mateo-Redwood City, CA	1.6327
	Marin County, CA.	
	San Francisco County, CA.	
	San Mateo County, CA.	
41900	San Germán-Cabo Rojo, PR	0.4804
	Cabo Rojo Municipio, PR.	
	Lajas Municipio, PR.	
	Sabana Grande Municipio, PR.	
	San Germán Municipio, PR.	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.7396
	San Benito County, CA.	
	Santa Clara County, CA.	
41980	San Juan-Caguas-Guaynabo, PR	0.4318
	Aguas Buenas Municipio, PR.	
	Aibonito Municipio, PR.	
	Arecibo Municipio, PR.	
	Barceloneta Municipio, PR.	
	Barranquitas Municipio, PR.	
	Bayamón Municipio, PR.	
	Caguas Municipio, PR.	
	Camuy Municipio, PR.	
	Canóvanas Municipio, PR.	
	Carolina Municipio, PR.	
	Cataño Municipio, PR.	
	Cayey Municipio, PR.	
	Ciales Municipio, PR.	
	Cidra Municipio, PR.	
	Comerío Municipio, PR.	
	Corozal Municipio, PR.	
	Dorado Municipio, PR.	
	Florida Municipio, PR.	
	Guaynabo Municipio, PR.	
	Gurabo Municipio, PR.	
	Hatillo Municipio, PR.	
	Humacao Municipio, PR.	
	Juncos Municipio, PR.	
	Las Piedras Municipio, PR.	
	Loíza Municipio, PR.	
	Manatí Municipio, PR.	
	Maunabo Municipio, PR.	
	Morovis Municipio, PR.	
	Naguabo Municipio, PR.	
	Naranjito Municipio, PR.	
	Orocovis Municipio, PR.	
	Quebradillas Municipio, PR.	
	Río Grande Municipio, PR.	
	San Juan Municipio, PR.	
	San Lorenzo Municipio, PR.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Toa Alta Municipio, PR.	
	Toa Baja Municipio, PR.	
	Trujillo Alto Municipio, PR.	
	Vega Alta Municipio, PR.	
	Vega Baja Municipio, PR.	
	Yabucoa Municipio, PR.	
42020	San Luis Obispo-Paso Robles, CA	1.3081
	San Luis Obispo County, CA.	
42044	Santa Ana-Anaheim-Irvine, CA	1.2038
	Orange County, CA.	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.2670
	Santa Barbara County, CA.	
42100	Santa Cruz-Watsonville, CA	1.8062
	Santa Cruz County, CA.	
42140	Santa Fe, NM	1.0400
	Santa Fe County, NM.	
42220	Santa Rosa-Petaluma, CA	1.6440
	Sonoma County, CA.	
42340	Savannah, GA	0.8968
	Bryan County, GA.	
	Chatham County, GA.	
	Effingham County, GA.	
42540	Scranton-Wilkes-Barre, PA	0.8260
	Lackawanna County, PA.	
	Luzerne County, PA.	
	Wyoming County, PA.	
42644	Seattle-Bellevue-Everett, WA	1.1771
	King County, WA.	
	Snohomish County, WA.	
42680	Sebastian-Vero Beach, FL	0.8850
	Indian River County, FL.	
43100	Sheboygan, WI	0.9515
	Sheboygan County, WI.	
43300	Sherman-Denison, TX	0.8544
	Grayson County, TX.	
43340	Shreveport-Bossier City, LA	0.8412
	Bossier Parish, LA.	
	Caddo Parish, LA.	
	De Soto Parish, LA.	
43580	Sioux City, IA-NE-SD	0.9010
	Woodbury County, IA.	
	Dakota County, NE.	
	Dixon County, NE.	
	Union County, SD.	
43620	Sioux Falls, SD	0.8338
	Lincoln County, SD.	
	McCook County, SD.	
	Minnehaha County, SD.	
	Turner County, SD.	
43780	South Bend-Mishawaka, IN-MI	0.9531
	St. Joseph County, IN.	
	Cass County, MI.	
43900	Spartanburg, SC	0.9186
	Spartanburg County, SC.	
44060	Spokane, WA	1.0824
	Spokane County, WA.	
44100	Springfield, IL	0.9179
	Menard County, IL.	
	Sangamon County, IL.	
44140	Springfield, MA	1.0377
	Franklin County, MA.	
	Hampden County, MA.	
	Hampshire County, MA.	
44180	Springfield, MO	0.8581
	Christian County, MO.	
	Dallas County, MO.	
	Greene County, MO.	
	Polk County, MO.	
	Webster County, MO.	
44220	Springfield, OH	0.9236
	Clark County, OH.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
44300	State College, PA	0.9510
	Centre County, PA.	
44600	Steubenville-Weirton, OH-WV	0.7640
	Jefferson County, OH.	
	Brooke County, WV.	
	Hancock County, WV.	
44700	Stockton, CA	1.3356
	San Joaquin County, CA.	
44940	Sumter, SC	0.7454
	Sumter County, SC.	
45060	Syracuse, NY	0.9829
	Madison County, NY.	
	Onondaga County, NY.	
	Oswego County, NY.	
45104	Tacoma, WA	1.1741
	Pierce County, WA.	
45220	Tallahassee, FL	0.8521
	Gadsden County, FL.	
	Jefferson County, FL.	
	Leon County, FL.	
	Wakulla County, FL.	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9032
	Hernando County, FL.	
	Hillsborough County, FL.	
	Pasco County, FL.	
	Pinellas County, FL.	
45460	Terre Haute, IN	0.9113
	Clay County, IN.	
	Sullivan County, IN.	
	Vermillion County, IN.	
	Vigo County, IN.	
45500	Texarkana, TX-Texarkana, AR	0.7967
	Miller County, AR.	
	Bowie County, TX.	
45780	Toledo, OH	0.9034
	Fulton County, OH.	
	Lucas County, OH.	
	Ottawa County, OH.	
	Wood County, OH.	
45820	Topeka, KS	0.8969
	Jackson County, KS.	
	Jefferson County, KS.	
	Osage County, KS.	
	Shawnee County, KS.	
	Wabaunsee County, KS.	
45940	Trenton-Ewing, NJ	1.0360
	Mercer County, NJ.	
46060	Tucson, AZ	0.9065
	Pima County, AZ.	
46140	Tulsa, OK	0.8139
	Creek County, OK.	
	Okmulgee County, OK.	
	Osage County, OK.	
	Pawnee County, OK.	
	Rogers County, OK.	
	Tulsa County, OK.	
	Wagoner County, OK.	
46220	Tuscaloosa, AL	0.8533
	Greene County, AL.	
	Hale County, AL.	
	Tuscaloosa County, AL.	
46340	Tyler, TX	0.8361
	Smith County, TX.	
46540	Utica-Rome, NY	0.8653
	Herkimer County, NY.	
	Oneida County, NY.	
46660	Valdosta, GA	0.7918
	Brooks County, GA.	
	Echols County, GA.	
	Lanier County, GA.	
	Lowndes County, GA.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
46700	Vallejo-Fairfield, CA	1.5844
	Solano County, CA.	
47020	Victoria, TX	0.8992
	Calhoun County, TX.	
	Goliad County, TX.	
	Victoria County, TX.	
47220	Vineland-Millville-Bridgeton, NJ	1.0596
	Cumberland County, NJ.	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.9208
	Currituck County, NC.	
	Gloucester County, VA.	
	Isle of Wight County, VA.	
	James City County, VA.	
	Mathews County, VA.	
	Surry County, VA.	
	York County, VA.	
	Chesapeake City, VA.	
	Hampton City, VA.	
	Newport News City, VA.	
	Norfolk City, VA.	
	Poquoson City, VA.	
	Portsmouth City, VA.	
	Suffolk City, VA.	
	Virginia Beach City, VA.	
	Williamsburg City, VA.	
47300	Visalia-Porterville, CA	1.0349
	Tulare County, CA.	
47380	Waco, TX	0.8458
	McLennan County, TX.	
47580	Warner Robins, GA	0.8197
	Houston County, GA.	
47644	Warren-Troy-Farmington Hills, MI	0.9543
	Lapeer County, MI.	
	Livingston County, MI.	
	Macomb County, MI.	
	Oakland County, MI.	
	St. Clair County, MI.	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.0659
	District of Columbia, DC.	
	Calvert County, MD.	
	Charles County, MD.	
	Prince George's County, MD.	
	Arlington County, VA.	
	Clarke County, VA.	
	Fairfax County, VA.	
	Fauquier County, VA.	
	Loudoun County, VA.	
	Prince William County, VA.	
	Spotsylvania County, VA.	
	Stafford County, VA.	
	Warren County, VA.	
	Alexandria City, VA.	
	Fairfax City, VA.	
	Falls Church City, VA.	
	Fredericksburg City, VA.	
	Manassas City, VA.	
	Manassas Park City, VA.	
	Jefferson County, WV.	
47940	Waterloo-Cedar Falls, IA	0.8422
	Black Hawk County, IA.	
	Bremer County, IA.	
	Grundy County, IA.	
48140	Wausau, WI	0.8921
	Marathon County, WI.	
48300	Wenatchee-East Wenatchee, WA	1.0037
	Chelan County, WA.	
	Douglas County, WA.	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9661
	Palm Beach County, FL.	
48540	Wheeling, WV-OH	0.6863
	Belmont County, OH.	

TABLE 1—FY 2014 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Marshall County, WV.	
	Ohio County, WV.	
48620	Wichita, KS	0.8681
	Butler County, KS.	
	Harvey County, KS.	
	Sedgwick County, KS.	
	Sumner County, KS.	
48660	Wichita Falls, TX	0.9048
	Archer County, TX.	
	Clay County, TX.	
	Wichita County, TX.	
48700	Williamsport, PA	0.8230
	Lycoming County, PA.	
48864	Wilmington, DE-MD-NJ	1.0687
	New Castle County, DE.	
	Cecil County, MD.	
	Salem County, NJ.	
48900	Wilmington, NC	0.9155
	Brunswick County, NC.	
	New Hanover County, NC.	
	Pender County, NC.	
49020	Winchester, VA-WV	0.9249
	Frederick County, VA.	
	Winchester City, VA.	
	Hampshire County, WV.	
49180	Winston-Salem, NC	0.8660
	Davie County, NC.	
	Forsyth County, NC.	
	Stokes County, NC.	
	Yadkin County, NC.	
49340	Worcester, MA	1.1205
	Worcester County, MA.	
49420	Yakima, WA	1.0097
	Yakima County, WA.	
49500	Yauco, PR	0.4059
	Guánica Municipio, PR.	
	Guayanilla Municipio, PR.	
	Peñuelas Municipio, PR.	
	Yauco Municipio, PR.	
49620	York-Hanover, PA	0.9557
	York County, PA.	
49660	Youngstown-Warren-Boardman, OH-PA	0.8283
	Mahoning County, OH.	
	Trumbull County, OH.	
	Mercer County, PA.	
49700	Yuba City, CA [1]	1.2004
	Sutter County, CA.	
	Yuba County, CA.	
49740	Yuma, AZ	0.9517
	Yuma County, AZ.	

[1] At this time, there are no hospitals located in this urban area on which to base a wage index.

TABLE 2—FY 2014 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

State code	Nonurban area	Wage index
1	Alabama	0.7121
2	Alaska	1.2807
3	Arizona	0.9182
4	Arkansas	0.7350
5	California	1.2567
6	Colorado	1.0208
7	Connecticut	1.1128
8	Delaware	1.0171
10	Florida	0.8062
11	Georgia	0.7421
12	Hawaii	1.0728
13	Idaho	0.7583
14	Illinois	0.8438
15	Indiana	0.8472
16	Iowa	0.8351
17	Kansas	0.7997
18	Kentucky	0.7877
19	Louisiana	0.7718
20	Maine	0.8300
21	Maryland	0.8797
22	Massachusetts	1.3540
23	Michigan	0.8387
24	Minnesota	0.9053
25	Mississippi	0.7537
26	Missouri	0.7622
27	Montana	0.8600
28	Nebraska	0.8733
29	Nevada	0.9739

TABLE 2—FY 2014 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

State code	Nonurban area	Wage index
30	New Hampshire	1.0372
31	New Jersey [1]	
32	New Mexico	0.8879
33	New York	0.8199
34	North Carolina	0.8271
35	North Dakota	0.6891
36	Ohio	0.8470
37	Oklahoma	0.7783
38	Oregon	0.9500
39	Pennsylvania	0.8380
40	Puerto Rico [1]	0.4047
41	Rhode Island [1]	

TABLE 2—FY 2014 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

State code	Nonurban area	Wage index
42	South Carolina	0.8338
43	South Dakota	0.8124
44	Tennessee	0.7559
45	Texas	0.7978
46	Utah	0.8516
47	Vermont	0.9725
48	Virgin Islands	0.7185
49	Virginia	0.7728
50	Washington	1.0092
51	West Virginia	0.7333
52	Wisconsin	0.9142
53	Wyoming	0.9238

TABLE 2—FY 2014 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

State code	Nonurban area	Wage index
65	Guam	0.9611

[1] All counties within the State are classified as urban, with the exception of Puerto Rico. Puerto Rico has areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2013. The Puerto Rico wage index is the same as FY 2012.

[FR Doc. 2013–18445 Filed 7–29–13; 4:15 pm]

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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013–0076; Sequence 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–69; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–69. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–69 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–69

Item	Subject	FAR Case	Analyst
I	Definition of Contingency Operation	2013–003	Corrigan.
II	Iran Threat Reduction	2012–030	Davis.
III	Documenting Contractor Performance	2012–009	Glover.
IV	Repeal of Sunset for Certain Protests of Task or DeliveryOrder Contracts	2013–011	Jackson.
V	Least Developed Countries that are Designated Countries	2013–009	Davis.
VI	Update to Biobased Reporting Requirements	2013–006	Petrusek.
VII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–69 amends the FAR as specified below:

Item I—Definition of Contingency Operation (FAR Case 2013–003)

This final rule amends, without change, the interim rule published in the **Federal Register** at 78 FR 13765 on February 28, 2013, revising the definition of "contingency operation" in FAR 2.101 to address the statutory change to the definition made by paragraph (b) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). Expanding the definition to include responding to a major disaster or emergency will increase the circumstances under which agencies may raise the micropurchase and simplified acquisition thresholds. This may increase opportunities for awarding contracts to small entities located at or near a major disaster area or emergency activities.

Item II—Iran Threat Reduction (FAR Case 2012–030)

This final rule adopts the interim rule published in the **Federal Register** at 77 FR 73516, on December 10, 2013, with minor changes. The interim rule amended the FAR to require certifications that implement the expansion of sanctions relating to the energy sector of Iran and sanctions with respect to Iran's Revolutionary Guard Corps, as contained in titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012. This final rule will not have a significant economic impact on a substantial number of small entities. As a result, the certification required in this case ensures that contracting officers will not award to offerors that engage in transactions with the Iran Revolutionary Guard Corps that exceed $3,000.

Item III—Documenting Contractor Performance (FAR Case 2012–009)

This rule amends FAR part 42 to provide Governmentwide standardized past performance evaluation factors and performance ratings, and to require all past performance information be entered into the Contractor Performance Assessment Reporting System (CPARS).

This change is required by statute, as well as by the Office of Federal Procurement Policy, which requested that FAR part 42 be revised to include recommendations from the Government Accountability Office Report GAO–09–374, Better Performance Information Needed to Support Agency Contract Award Decisions, to provide Governmentwide standardized evaluation factors and rating scales for the evaluation of contractor performance.

This rule specifically impacts contracting officers and contractors by clarifying the evaluation factors and performance ratings in the FAR. The rule also requires that all past performance information be entered into CPARS. The rule does not have a significant economic impact on small entities because the rule does not impose any additional requirements on small business.

Item IV—Repeal of Sunset for Certain Protests of Task and Delivery Order Contracts (FAR Case 2013–011)

This final rule revises the FAR to implement a section of the 2013 National Defense Authorization Act (Pub. L. 112–239) for agencies covered by title 10 of the United States Code, namely DoD, NASA, and Coast Guard. This section removes the sunset date for protests against the issuance or proposed issuance of an order, valued at more than $10 million, under a task-order contract or delivery-order contract for title 10 agencies only. This rule does not affect title 41 agencies.

Item V—Least Developed Countries That Are Designated Countries (FAR Case 2013–009)

This final rule amends the FAR in parts 25 and 52 to revise the definitions of "designated country" and "least developed country," adding South

Sudan, removing the Maldives, and changing the name of East Timor to Timor-Leste. The United States Trade Representative (USTR) list of least developed countries that are designated as eligible countries under the Trade Agreements Act is derived from the United Nations Least Developed Countries List. The USTR has updated the list of least developed countries that are treated as designated countries. In acquisitions that are covered by the World Trade Organization Government Procurement Agreement, contracting officers must acquire only U.S.-made or designated country end products, or U.S. or designated country services, unless offers of such end products or services are not received or are insufficient to fulfill the requirement (FAR 25.403(c)). This final rule will not have a significant economic impact on small entities.

Item VI—Update to Biobased Reporting Requirements (FAR Case 2013–006)

This final rule amends the clause at FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, to replace the requirement for agencies to insert the agency environmental point of contact with a single Web site for contractors to submit the annual biobased report. The Web site has instructions and frequently asked questions.

Item VII—Technical Amendments

Editorial changes are made at FAR 2.101, 22.1801, 29.401–3, 52.209–6, 52.212–5 and 52.222–54.

Dated: July 26, 2013.

William Clark,

Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005–69 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–69 is effective August 1, 2013.

Dated: July 23, 2013.

Richard Ginman,

Deputy Director, Defense Procurement and Acquisition Policy.

Dated: July 26, 2013.

Laura Auletta,

Acting Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: July 25, 2013.

William P. McNally,

Director, Contract Management Division, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2013–18460 Filed 7–31–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2005–69; FAR Case 2013–003; Item I; Docket 2013–0003, Sequence 1]

RIN 9000–AM48

Federal Acquisition Regulation; Definition of Contingency Operation

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to revise the definition of "contingency operation" to address the statutory change to the definition made by the National Defense Authorization Act for Fiscal Year 2012.

DATES: *Effective:* August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Corrigan, Procurement Analyst, at 202–208–1963, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–69, FAR Case 2013–003.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 78 FR 13765 on February 28, 2013, amending the FAR to revise the definition of "contingency operation" at FAR 2.101 in accordance with the statutory change to the definition made by paragraph (b) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81, enacted December 31, 2011). The definition of "contingency operation" was amended at 10 U.S.C. 101(a)(13) by adding "12304a".

Paragraph (a) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), entitled "Authority to Order Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to Active Duty to Provide Assistance in Response to a Major Disaster or Emergency," amends chapter 1209 of title 10, United States Code, by incorporating a new provision at section 12304a that provides for treatment of an operation as a contingency operation when the Secretary of Defense activates Reserves under the terms of 10 U.S.C. 12304a in response to a Governor's request for Federal assistance in responding to a major disaster or emergency declared by the President.

The interim rule therefore added a reference to 10 U.S.C. 12304a (from section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81)) to the list of references in section (2) of the definition of "contingency operation" in FAR 2.101, Definitions.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) reviewed the public comments in the development of the final rule.

Only one comment was received. The respondent indicated that it concurred with the interim rule. Therefore, no change to the interim rule was deemed necessary for the final rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

Expanding the definition of "contingency operation" to include responding to a Presidential declaration of a major disaster or emergency (as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)) will increase the circumstances under which "contingency operations" may be declared, thereby allowing defense and civilian agencies to raise thresholds (*i.e.*, micro-purchase and simplified acquisition thresholds) for acquisitions made in support of emergencies in accordance with the authorities listed at FAR 18.201, and exercise preferences, such as local area set-asides or evaluation preferences.

Because "local businesses" may vary in size and business ownership, and the locations of disasters vary, we do not expect the amendment to have a direct and sustained economic impact on a substantial number of small entities. However, there is the possibility that, because the Robert T. Stafford Disaster Relief and Emergency Assistance Act provides for a preference for local organizations, firms, and individuals when contracting for major disaster or emergency activities, implementation of the revised definition for "contingency operation" may increase opportunities for awarding contracts to small entities located at or near major disaster areas or emergency activities.

In addition, FAR 19.502–2(a) requires simplified acquisitions during a contingency operation within the United States ($300,000 instead of $150,000) to be automatically reserved for small businesses (with the usual exceptions). The ability to restrict purchases up to two times the normal simplified acquisition threshold for small businesses will have a significant positive impact on small entities.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 2

Government procurement.

Dated: July 26, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 2, which was published in the **Federal Register** at 78 FR 13765 on February 28, 2013 is adopted as a final rule without change.

[FR Doc. 2013–18448 Filed 7–31–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 25, and 52

[FAC 2005–69; FAR Case 2012–030; Item II; Docket 2012–0030, Sequence 1]

RIN 9000–AM44

Federal Acquisition Regulation; Iran Threat Reduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with minor changes, the interim rule amending the Federal Acquisition Regulation (FAR) to require certifications that implement the expansion of sanctions relating to the energy sector of Iran and sanctions with respect to Iran's Revolutionary Guard Corps, as contained in titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012.

DATES: *Effective:* August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–69, FAR Case 2012–030.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 77 FR 73516, on December 10, 2012, to implement sections of titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112–158), enacted August 10, 2012.

The public comment period closed on February 8, 2013. One respondent submitted a comment.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comment in the development of the final rule. A discussion of the comment and the changes made to the rule as a result of the comment is provided as follows:

A. Summary of Significant Changes

There are no significant changes to the FAR as a result of this final rule.

B. Analysis of Public Comment

Comment: One respondent commented that boycotts rarely work. The respondent supported military action against Iran to destroy their nuclear arms program.

Response: This rule implements the expansion of sanctions relating to the energy sector of Iran and sanctions with respect to Iran's Revolutionary Guard Corps, as contained in titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012. The respondent's recommendation is outside the scope of the rule and the authority of the FAR and acquisition community.

C. Other Changes

The final rule corrects the title of the Act at FAR 25.700(c) to read "Iran Threat Reduction and Syria Human Rights Act of 2012". The final rule also corrects the Web site address at FAR 25.703–3 and 52.213–3 to read *http://www.acquisition.gov.*

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule will only have significant impact on an offeror that is engaging in an activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act or certain transactions with Iran's Revolutionary Guard Corps. Domestic entities generally do not engage in activity that would cause them to be subject to the procurement bans described in this rule due to current restrictions on trade with Iran (see, *e.g.*, Department of Treasury Office of Foreign Assets Control regulations at 31 CFR 560). Accordingly, it is expected that the number of domestic entities significantly impacted by this rule will be minimal, if any. The Regulatory Flexibility Act is for the protection of United States small entities, not foreign entities.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 4, 25, and 52

Government procurement.

Dated: July 26, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 4, 25, and 52, which was published in the **Federal Register** at 77 FR 73516, December 10, 2012, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 25—FOREIGN ACQUISITION

25.700 [Amended]

■ 2. Amend section 25.700 by removing from paragraph (c) "Reduction Act" and adding "Reduction" in its place.

25.703–3 [Amended]

■ 3. Amend section 25.703–3 by removing from paragraph (a) "*https://www.acquisition.gov*" and adding "*http://www.acquisition.gov*" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–3 by revising the date of the provision and by removing from the introductory text and paragraph (b)(2) "*https://www.acquisition.gov*" and adding "*http://www.acquisition.gov*" in its place.

The revision reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (AUG 2013)

* * * * *

[FR Doc. 2013–18454 Filed 7–31–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 15, 17, 42, and 49

[FAC 2005–69; FAR Case 2012–009; Item III; Docket 2012–0009, Sequence 1]

RIN 9000–AM09

Federal Acquisition Regulation; Documenting Contractor Performance

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to provide Governmentwide standardized past performance evaluation factors and performance rating categories and require that past performance information be entered into the Contractor Performance Assessment Reporting System (CPARS), the single Governmentwide past performance reporting system.

DATES: *Effective:* September 3, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–69, FAR Case 2012–009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 37704 on June 28, 2011, under FAR Case 2009–042, to implement recommendations from Government Accountability Office (GAO) Report GAO–09–374, entitled "Better Performance Information Needed to Support Agency Contract Award Decisions," and Office of Federal Procurement Policy (OFPP) memorandum entitled "Improving the Use of Contractor Performance Information" (dated July 29, 2009). Two amendments to the proposed rule were published in the **Federal Register** at 76 FR 48776 on August 9, 2011, and at 76 FR 50714 on August 16, 2011. Twenty three respondents submitted comments on the proposed rule. A second proposed rule that was published in the **Federal Register** at 77 FR 54864 on September 6, 2012, addressed all comments received in response to the first proposed rule and, in addition, proposed to implement paragraphs (a), (b), and (d) of section 806 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). The second proposed rule further requested comments on the merits of modifying the FAR requirements governing the appeal process to evaluate if this would improve or weaken the effectiveness of past performance policies and associated principles of impartiality and accountability. Seventeen respondents submitted comments on the second proposed rule. This rule also incorporates agency management accountability requirements from section 853 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). In the interim, the Governmentwide Guidance for the Contractor Performance Assessment Reporting System (CPARS) was released in November 2012 and is available at *http://www.cpars.gov/cparsfiles/pdfs/CPARS-Guidance.pdf.*

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

- FAR 42.1503(b)(4) is revised by adding two tables:
  - Table 42–1—Evaluation Ratings Definitions; and
  - Table 42–2—Evaluation Ratings Definitions (for the Small Business Subcontracting Evaluation Factor when the FAR clause at 52.218–9 is used).
- FAR subpart 42.15 is reorganized for clarity and consistency of subject matter.
- FAR 42.1502, Policy, is revised to clarify when past performance evaluations are required for contracts and orders.
- The procedures and responsibilities for contributing to and conducting past performance evaluations are addressed and clarified at FAR 42.1503, Procedures. This section also includes a new requirement for past performance reports to include a clear, non-technical description of the principal purpose of the contract or order.
- In accordance with statutory direction, FAR 42.1503(c) includes the requirement to enter the award-fee performance adjectival rating and incentive-fee contract performance evaluation into CPARS when applicable.
- Agencies are required, at FAR 42.1503(e), to conduct frequent evaluations of agency compliance with past performance evaluation requirements so agencies can readily identify delinquent and deficient past performance reports for quality control.

B. Analysis of Public Comments

1. General

Comment: Three respondents expressed support for the intent of the rule to standardize the past performance evaluation factors and rating categories.

Response: Noted.

Comment: One respondent commented that, under FAR 17.207, language should be added to paragraph (c)(6), or a new paragraph (c)(7) should be added, to ensure that past performance evaluations are done on all recently completed task/delivery orders so that the contracting officer considering exercising an option had the most recent performance information.

Response: The text at FAR 17.207(c)(6) has been revised, and a new (c)(7) has been added to address the respondent's concern.

Comment: One respondent commented that, in FAR 42.1503(b)(2)(vi), "defective cost and pricing data" should be changed to "defective cost or pricing data".

Response: Agreed.

Comments: Three respondents commented that the examples listed for a sixth evaluation factor should be deleted. It was noted that the FAR 43.1503(b)(2)(vi) examples should be deleted because they are inflammatory negative examples, they duplicated Federal Awardee Performance and Integrity Information System (FAPIIS), and they were examples of performance findings rather than other areas of evaluation.

Response: The "other" evaluation factor was added to capture events that may have a bearing on contractor performance that do not fit well within any of the other five categories. The examples listed are just some of the factors that the contracting officer may consider, and they in no way preclude the inclusion of positive information regarding the contractor's performance. Evaluations include negative and positive information about the contractor's performance to inform the contractor of the Government's concerns so improvements can be made to achieve the intended results under the contract. The "Other" evaluation factor allows flexibility for contracting officers to consider factors unique to each contract.

Comment: One respondent commented that the contractor should be allowed to evaluate Government input.

Response: Contractors are given an opportunity to provide rebuttal statements in response to agency evaluations. The final decision is solely the agency's discretion.

Comment: One respondent commented that the proposed FAR case should be withdrawn and reconsidered by the FAR Council.

Response: It is in the Government's interest to proceed with the case.

Comments: Two respondents commented that the three- to six-year retention period for past performance information is not long enough. One respondent commented that, in FAR 42.1503(g), the language "Agencies shall use the past performance information in PPIRS that is within three years (six for construction . . .)" should be changed to "Agencies shall use the past performance information in PPIRS that reflects performance within the last three years (six for construction)".

Response: The respondents' comments are noted. However, the current retention periods in the Past Performance Information Retrieval System (PPIRS) are appropriate.

Comment: One respondent commented that cost control can be harmful to some businesses.

Response: The requirement for cost control is not new to contractor performance information; it is included in FAR 42.1501 and listed as an example to consider when reviewing relevant information. Cost control is not the only factor that is considered relevant past performance information, but it is relevant information for source selection officials to consider especially under cost contracts. Other factors such as technical, schedule/timeliness, and management or business relations are some of the relevant considerations reported in past performance evaluations, and that also will be used to evaluate a contractor's overall performance.

Comment: One respondent commented on establishing uniform definitions for evaluation factors.

Response: By adding the CPARS rating factors, uniform definitions are established and standardized for evaluation ratings. However, there is flexibility to tailor evaluation ratings to the contract type, size, content, and complexity of the contractual requirements.

Comment: One respondent commented on linking past performance in FAR 42.1503(d) to future responsibility determinations in FAR subpart 9.1 and the impact of a contractor with more than one contract to have a negative performance evaluation on one contract take precedence over good or excellent performance on many other contracts in future responsibility determinations.

Response: Contracting officers are required to use sound judgment in determining the weight and relevance of all information in relation to the present acquisition. FAR 15.305(a)(1)(i) on use of past performance information in source selection states that the comparative assessment of past performance is separate from the responsibility determination required under FAR subpart 9.1.

Comment: The respondent's company was unfairly evaluated in multiple 100 percent 8(a) set-aside solicitations because an agency procurement office blocked the contracting officer technical representatives from putting their past performance evaluations in the CPARS and PPIRS, according to the respondent.

Response: This comment is outside the scope of this case. However, the respondent should contact the agency small business office or the Small Business Administration's (SBA) Procurement Center Representatives (PCR) and Commercial Market

Representatives (CMR) for assistance. SBA's PCRs and CMRs play an important role in helping ensure that small businesses gain access to contracting and subcontracting opportunities.

Comment: One respondent commented that an important feature of the system is the ability of the seller to be able to post a response to all (particularly negative) reviews, as well as the buyer being able to revise an evaluation.

Response: FAR 42.1503(d) does allow contractors to submit comments, rebutting statements, or additional information. If there is a disagreement between the parties, the contractor can request a review of the evaluation at a level above the contracting officer. The ultimate conclusion on the performance evaluation is a decision of the contracting agency.

Comments: Two respondents applauded the Councils for clearly identifying the contracting officer as the ultimate person responsible for performing past performance evaluations where agency procedures do not specify a responsible representative.

Response: Noted.

Comment: One respondent expressed appreciation for the standardized evaluation ratings; however, the respondent felt that, while standardization may mitigate some evaluation inconsistencies, the rating inconsistencies would likely persist given the subjective nature of the system.

Response: The objective of the rule is to standardize the past performance evaluation rating definitions. Any specific individual evaluation should be addressed with the agency contracting officer responsible for that past performance rating.

Comment: One respondent commented that the FAR Council should consider requiring that regularly scheduled past performance evaluation discussions be considered as part of the partnering process that the agencies promote.

Response: The comment reflects issues related to administration and not policy.

Comment: One respondent commented that the FAR Council should consider mandating that Federal agencies regularly assess the evaluations given by their regional offices. The respondent was concerned because of inconsistent evaluations among the regional offices within an agency, such as different parameters for the top rating.

Response: Agencies are encouraged to conduct contract management reviews or procurement management reviews that entail reviewing contract administration functions performed under the contract, such as monitoring whether or not evaluations are timely, complete, and include quality and useful information. See FAR 42.1501(b).

Comments: Two respondents commented that many agencies require past performance questionnaires, which require much of the same information as the past performance evaluation. The respondents stated that these processes needed to be better integrated and streamlined to save time and money for both the Government and contractors.

Response: FAR 15.305(a)(2)(ii) provides offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. In this fashion, an offeror may convey relevant performance information of which the Government may be unaware.

Comments: Several respondents commented on Construction Contractor Appraisal Support System (CCASS). One respondent commented that contracting officers should be required to utilize and rely upon Contractor Performance Assessment Reporting System (CPARS). Another respondent commented that individuals responsible for completing the past performance information in CCASS were not required to address all elements of the evaluation.

Response: CCASS includes assessments of a contractor's performance and provides a record, both positive and negative, on completed construction contract performance. All reports should be complete. Questions about incomplete CCASS reports should be directed to the contracting officer or *https://www.cpars.gov.*

Comments: Two respondents recommended that there should be additional requirements for the timely completion and timely release of past performance evaluations. One respondent suggested a FAR clause to better bind the Government to completing evaluations on time. This respondent also recommended the appointment of a past performance ombudsman.

Response: Contracting officers are required to provide evaluations to contractors as soon as practicable after completion of the evaluation. This FAR change encourages agencies to monitor their timely reporting of past performance information, so the respondent's concerns should lessen over time. The Office of Federal Procurement Policy (OFPP), since FY 2010, has issued policy memoranda to ensure agencies are compliant with the past performance reporting requirements in FAR subpart 42.15 (see OFPP Memo dated March 6, 2013, Improving the Collection and Use of Information about Contractor Performance and Integrity at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/improving-the-collection-and-use-of-information-about-contractor-performance-and-integrity.pdf;* OFPP Memo dated January 21, 2011, Improving Contractor Past Performance Assessments: Summary of the Office of Federal Procurement Policy's Review, and Strategies for Improvement at *http://www.whitehouse.gov/sites/default/files/omb/procurement/contract_perf/PastPerformanceMemo-21-Jan-2011.pdf;* and the OFPP memo date July 29, 2009, Improving the Use of Contractor Performance Information at *http://www.whitehouse.gov/sites/default/files/omb/assets/procurement/improving_use_of_contractor_perf_info.pdf.*

2. Appeals Process

Comment: The FAR currently requires agencies to provide for review of agency evaluations at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. In accordance with the FAR Council's Retrospective Plan and Analysis of Existing Rules, this requirement, at FAR 42.1503(b), was singled out in the second proposed rule with a request for comments on whether modifying the appeal process would improve or weaken the effectiveness of past performance policies and associated principles of impartiality and accountability. There were seven responses to this request; all urged that the appeals process be retained.

The respondents considered that elimination of the appeals process would reduce contractor competition, increase the likelihood of disruptive and costly litigation, weaken the effectiveness of past performance review procedures, and undermine confidence in the process. One respondent noted that, even when the appeals process was not used, it acted as an important due-process protection for contractors. The availability of the appeals process, according to respondents, ensures that individual Government rater bias or lack of understanding of the complete program, not just contracting issues, can be brought out and addressed.

None of the respondents was of the opinion that eliminating the past performance evaluation appeals process would improve economy or efficiency. One respondent cited the statistic that 30 percent of its initial past performance

evaluations contained errors that, upon appeal, resulted in substantive changes in the final performance ratings and/or narratives. Another respondent stressed that the past performance appeals process benefits not just contractors, but the Government, in that it ensures more accurate information is available for source selection decisions.

Response: The process for appealing an initial past performance evaluation remains in FAR 42.1503 to allow the contractor the ability to comment on the evaluation and agencies the opportunity to consider the contractor's rebuttal statement and material, and, if appropriate, revise the evaluation to reflect any agreed upon changes. However, it should be noted that the existence of an appeal need not delay making a past performance evaluation available to source selection officials.

Comment: One respondent suggested changing the text at FAR 42.1503(d) from "Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation," to "Agencies shall provide for review at a level above the individual who completed the evaluation in CPARS to consider disagreements between the parties regarding the evaluation."

Response: The FAR language explicitly refers to a level above the contracting officer, which means within the contracting office. The Councils consider it appropriate to retain the review function in the contracting office.

Comments: Six respondents commented that they did not support the elimination of the "appeals process" where agencies are required to provide for review of agency evaluation at a level above the contracting officer. A seventh respondent commented on the need for a procedure to ensure impartiality and hold agencies accountable for their assessments.

Response: A contractor is authorized to appeal a past performance evaluation and the agency is required to provide for review at a level above the contracting officer to consider disagreements between the parties. The appeals process is addressed at FAR 42.1503(b) in the current FAR, but is moved to FAR 42.1503(d) in this final rule. This final rule does not eliminate or modify the appeals process.

Comment: One respondent stated CPARS and the FAR do not properly address the contractor appeal process.

Response: The FAR requires that agencies provide for a review at a level above the contracting officer. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Specifics of the appeal process properly are left to agencies' discretion.

3. Rating Tables

Comment: One respondent commented that the evaluation ratings definitions included in the proposed Tables 42–1 and 42–2 need to be changed. The phrase "and exceeds many" under the Exceptional rating, as well as the phase "and exceeds some" under the Very Good rating, should be removed.

Response: These phrases allow the exceptional or very good contractor to be rewarded for exceeding Government requirements. This benefits the contractor not only in regard to the current requirement, but also future requirements that it may be considered for.

Comment: One respondent commented that the FAR Council should consider reducing the number of possible ratings from the currently proposed five. This respondent recommended that the proposed rule eliminate the exceptional and marginal ratings. The respondent suggested that the FAR Council should consider mandating that Federal owners clearly define in the solicitation or contract what type of performance on a particular project merits ratings of Exceptional, Very Good, Satisfactory, etc.

Response: The exceptional rating allows the Government to recognize performance that goes well beyond the norm, and the marginal rating allows the Government to identify a contractor that has serious performance issues, but that is still trying to perform to the Government requirement. The respondent's second comment is noted. The Governmentwide CPARS Guide was released in November 2012 with the existing five ratings (exceptional, very good, satisfactory, marginal, and unsatisfactory) that were considered necessary to address various levels of performance. It includes the description of each rating, and the rating assigned the contractor should correspond to the performance requirements stated in the contract or order (*e.g.*, 30 day delivery schedule, 100 percent report accuracy).

Comment: One respondent had a concern with the evaluation rating definitions in Table 42–1. Specifically, the respondent felt that the Councils should use numbers and not subjective terms such as "few minor problems" or "some minor problems".

Response: The Councils see no issue with the words "few" or "some" in this context.

Comment: One respondent had a concern regarding past performance evaluations including records of forecasting and cost controlling and the impact on future contracts. This respondent felt that a contractor could not use the best quality of raw materials in order to achieve a lower than forecasted cost.

Response: Noted.

Comment: One respondent agreed that the revision to FAR 42.1503(b)(2)(vi) referencing "late or nonpayment to subcontractors" is a substantial improvement of the current FAR provision. This respondent also suggested that the language could be further enhanced by breaking it out from the evaluation factor "other" and offering it as another evaluation factor on its own.

Response: It is not necessary to break out a separate category.

Comment: One respondent commented that, in FAR 42.1503(b)(4), the sentence "Rating definitions shall reflect those in the tables below:" should be changed to "The narratives for the evaluation factors must support the ratings given by reflecting the rating definitions in the tables below:"

Response: The change to the FAR text uses similar language.

Comment: One respondent commented that, in Table 42–1, Definitions; "Exceptional", in the last sentence, "corrective actions taken by the contractor was highly effective", should be changed to "corrective actions taken by the contractor were highly effective". This respondent also commented that under the "Very Good" definition in the last sentence, that "corrective actions taken by the contractor was effective", should be changed to "corrective action taken by the contractor were effective".

Response: These corrections were made in the final rule.

4. Past Performance Evaluations on Science and Technology/Research and Development Contracts

Comments: Several respondents requested that the Councils exempt research and development contracts, or the subset of science and technology contracts, from past performance assessments. One respondent asked to limit the requirement to actions exceeding $10 million dollars. Two respondents pointed out that the CPARS guidance excludes certain science and technology contracts. Two respondents stated that many of the mandatory evaluation factors are not relevant to science and technology contracts.

Response: It is not in the Government's best interest to exempt

research and development contracts from past performance assessments, at any dollar value, because doing so would not allow the Government to obtain information about the contractor's performance. There are past performance evaluations of science and technology contracts in CPARS now. The requirement at FAR 42.1503(b)(1) to "include a clear, non-technical description of the principal purpose of the contract or order" was added specifically for science and technology contracts.

5. Release of Information

Comments: One respondent recommended increased clarity for FAR 42.1503(d) because the paragraph could be read to allow release of past performance information to third parties once the periods in FAR 42.1503(g) have expired. The respondent recommended that past performance evaluations be made public after source selection. A respondent asked that the rule clarify that the past performance information would not be publicly displayed.

Another respondent advocated the wide release of past performance evaluations to the public.

One respondent advocated a revision to the rule that would permit the release of past performance information relating to late or nonpayment of subcontractors.

Response: The purpose of this case is to provide Governmentwide standardized past performance evaluation factors and performance rating categories and require that past performance information be entered into the CPARS. The proposed rule did not propose any changes to the FAR with regard to public release of past performance evaluations. Therefore, any such changes in the final rule would be outside the scope of this case.

Comments: One respondent recommended that past performance ratings information in FAPIIS be publicly displayed. The respondent requested that it be made legal to disclose past performance information.

Response: It is outside the scope of this case to seek a legislative change.

6. Other Comments

Comment: One respondent stated that the proposed rule creates a double standard and allows personal judgment by the evaluator. The respondent recommended a definition of what qualifies a contract to be assessed under more scrutiny and a new table for contracts that fit the definition be added to the FAR.

Response: An additional definition and new table are not necessary. The tables added are existing tables that reside in CPARS and have been used by various Federal acquisition personnel since the system was established. These tables and definitions are being transferred into the FAR to standardize and regulate the ratings and evaluation factors across the Federal Government.

Comments: Two respondents recommended that the new process provided for in any final rule be applied only to new solicitations first issued after the effective date of any final rule.

Response: As a matter of policy, CPARS was implemented Governmentwide on October 1, 2010. There was no migration of the past performance reviews to CPARS. If a review was in process, it would have been completed in the review system an agency was using before October 1, 2010.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule codifies in the FAR existing past performance reporting guidelines and practices. The evaluation factors and rating system language proposed are currently used by Federal agencies. There are no new requirements placed on small entities.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 8, 12, 15, 17, 42, and 49

Government procurement.

Dated: July 26, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8, 12, 15, 17, 42, and 49 as set forth below:

■ 1. The authority citation for 48 CFR parts 8, 12, 15, and 17 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.406–4 [Amended]

■ 2. Amend section 8.406–4 by removing from paragraph (e) "42.1503(f)" and adding "42.1503(h)" in its place.

■ 3. Revise section 8.406–7 to read as follows:

8.406–7 Contractor Performance Evaluation.

Ordering activities must prepare at least annually and at the time the work under the order is completed, an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold in accordance with 42.1502(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.403 [Amended]

■ 4. Amend section 12.403 by removing from paragraph (c)(4) "42.1503(f)" and adding "42.1503(h)" in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.407–1 [Amended]

■ 5. Amend section 15.407–1 by removing from the introductory text of paragraph (d) "42.1503(f)" and adding "42.1503(h)" in its place.

PART 17—SPECIAL CONTRACTING METHODS

■ 6. Amend section 17.207 by—

■ a. Removing from paragraph (c)(4) "and";

■ b. Removing from the end of paragraph (c)(5) the period and adding ";" in its place; and

■ c. Adding paragraphs (c)(6) and (7) to read as follows:

17.207 Exercise of options.

* * * * *

(c) * * *

(6) The contractor's past performance evaluations on other contract actions have been considered; and

(7) The contractor's performance on this contract has been acceptable, *e.g.*, received satisfactory ratings.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 7. The authority citation for 48 CFR part 42 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 8. Revise sections 42.1500 and 42.1501 to read as follows:

42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts. See subpart 16.4. However, the fee amount paid to contractors should be reflective of the contractor's performance and the past performance evaluation should closely parallel and be consistent with the fee determinations.

42.1501 General.

(a) Past performance information (including the ratings and supporting narratives) is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts or orders. It includes, for example, the contractor's record of—

(1) Conforming to requirements and to standards of good workmanship;

(2) Forecasting and controlling costs;

(3) Adherence to schedules, including the administrative aspects of performance;

(4) Reasonable and cooperative behavior and commitment to customer satisfaction;

(5) Reporting into databases (see subparts 4.14 and 4.15, and reporting requirements in the solicitation provisions and clauses referenced in 9.104–7);

(6) Integrity and business ethics; and

(7) Business-like concern for the interest of the customer.

(b) Agencies shall monitor their compliance with the past performance evaluation requirements (see 42.1502), and use the Contractor Performance Assessment Reporting System (CPARS) and Past Performance Information Retrieval System (PPIRS) metric tools to measure the quality and timely reporting of past performance information.

■ 9. Amend section 42.1502 by revising paragraphs (a) through (d) and (i) to read as follows:

42.1502 Policy.

(a) *General.* Past performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed. Past performance evaluations are required for contracts and orders for supplies, services, research and development, and contingency operations, including contracts and orders performed inside and outside the United States, with the exception of architect-engineer and construction contracts or orders, which will still be reported into the Architect-Engineer Contract Administration Support System (ACASS) and Construction Contractor Appraisal Support System (CCASS) databases of CPARS. These evaluations are generally for the entity, division, or unit that performed the contract or order. Past performance information shall be entered into CPARS, the Governmentwide evaluation reporting tool for all past performance reports on contracts and orders. Instructions for submitting evaluations into CPARS are available at *http://www.cpars.gov/*.

(b) *Contracts.* Except as provided in paragraphs (e), (f), and (h) of this section, agencies shall prepare evaluations of contractor performance for each contract (as defined in FAR part 2) that exceeds the simplified acquisition threshold and for each order that exceeds the simplified acquisition threshold. Agencies are required to prepare an evaluation if a modification to the contract causes the dollar amount to exceed the simplified acquisition threshold.

(c) *Orders under multiple-agency contracts.* Agencies shall prepare an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold that is placed under a Federal Supply Schedule contract or placed under a task-order contract or a delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract). Agencies placing orders under their own multiple-agency contract shall also prepare evaluations for their own orders. This evaluation shall not consider the requirements under paragraph (g) of this section. Agencies are required to prepare an evaluation if a modification to the order causes the dollar amount to exceed the simplified acquisition threshold.

(d) *Orders under single-agency contracts.* For single-agency task-order and delivery-order contracts, the contracting officer may require performance evaluations for each order in excess of the simplified acquisition threshold when such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation (*e.g.*, when the scope of the basic contract is very broad and the nature of individual orders could be significantly different). This evaluation need not consider the requirements under paragraph (g) of this section unless the contracting officer deems it appropriate.

* * * * *

(i) Agencies shall promptly report other contractor information in accordance with 42.1503(h).

■ 10. Revise section 42.1503 to read as follows:

42.1503 Procedures.

(a)(1) Agencies shall assign responsibility and management accountability for the completeness of past performance submissions. Agency procedures for the past performance evaluation system shall—

(i) Generally provide for input to the evaluations from the technical office, contracting office, program management office and, where appropriate, quality assurance and end users of the product or service;

(ii) Identify and assign past performance evaluation roles and responsibilities to those individuals responsible for preparing and reviewing interim evaluations, if prepared, and final evaluations (*e.g.*, contracting officers, contracting officer representatives, project managers, and program managers). Those individuals identified may obtain information for the evaluation of performance from the program office, administrative contracting office, audit office, end users of the product or service, and any other technical or business advisor, as appropriate; and

(iii) Address management controls and appropriate management reviews of past performance evaluations, to include accountability for documenting past performance on PPIRS.

(2) If agency procedures do not specify the individuals responsible for past performance evaluation duties, the contracting officer is responsible for this function.

(3) Interim evaluations may be prepared as required, in accordance with agency procedures.

(b)(1) The evaluation should include a clear, non-technical description of the

principal purpose of the contract or order. The evaluation should reflect how the contractor performed. The evaluation should include clear relevant information that accurately depicts the contractor's performance, and be based on objective facts supported by program and contract or order performance data. The evaluations should be tailored to the contract type, size, content, and complexity of the contractual requirements.

(2) Evaluation factors for each assessment shall include, at a minimum, the following:

(i) Technical (quality of product or service).

(ii) Cost control (not applicable for firm-fixed-price or fixed-price with economic price adjustment arrangements).

(iii) Schedule/timeliness.

(iv) Management or business relations.

(v) Small business subcontracting (as applicable, see Table 42–2).

(vi) Other (as applicable) (*e.g.*, late or nonpayment to subcontractors, trafficking violations, tax delinquency, failure to report in accordance with contract terms and conditions, defective cost or pricing data, terminations, suspension and debarments).

(3) Evaluation factors may include subfactors.

(4) Each factor and subfactor used shall be evaluated and a supporting narrative provided. Each evaluation factor, as listed in paragraph (b)(2) of this section, shall be rated in accordance with a five scale rating system (*i.e.*, exceptional, very good, satisfactory, marginal, and unsatisfactory). The ratings and narratives must reflect the definitions in the tables 42–1 or 42–2 of this section.

(c)(1) When the contract provides for incentive fees, the incentive-fee contract performance evaluation shall be entered into CPARS.

(2) When the contract provides for award fee, the award fee-contract performance adjectival rating as described in 16.401(e)(3) shall be entered into CPARS.

(d) Agency evaluations of contractor performance, including both negative and positive evaluations, prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. The contractor will receive a CPARS-system generated notification when an evaluation is ready for comment. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used to support future award decisions, and should therefore be marked "Source Selection Information". Evaluation of Federal Prison Industries (FPI) performance may be used to support a waiver request (see 8.604) when FPI is a mandatory source in accordance with subpart 8.6. The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations. Evaluations used in determining award or incentive fee payments may also be used to satisfy the requirements of this subpart. A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.

(e) Agencies shall require frequent evaluation (*e.g.*, monthly, quarterly) of agency compliance with the reporting requirements in 42.1502, so agencies can readily identify delinquent past performance reports and monitor their reports for quality control.

(f) Agencies shall prepare and submit all past performance evaluations electronically in the CPARS at *http://www.cpars.gov/*. These evaluations are automatically transmitted to PPIRS at *http://www.ppirs.gov*. Past performance evaluations for classified contracts and special access programs shall not be reported in CPARS, but will be reported as stated in this subpart and in accordance with agency procedures. Agencies shall ensure that appropriate management and technical controls are in place to ensure that only authorized personnel have access to the data and the information safeguarded in accordance with 42.1503(d).

(g) Agencies shall use the past performance information in PPIRS that is within three years (six for construction and architect-engineer contracts) of the completion of performance of the evaluated contract or order, and information contained in the Federal Awardee Performance and Integrity Information System (FAPIIS), *e.g.*, terminations for default or cause.

(h) *Other contractor performance information.* (1) Agencies shall ensure information is accurately reported in the Federal Awardee Performance and Integrity Information System (FAPIIS) module of CPARS within 3 calendar days after a contracting officer—

(i) Issues a final determination that a contractor has submitted defective cost or pricing data;

(ii) Makes a subsequent change to the final determination concerning defective cost or pricing data pursuant to 15.407–1(d);

(iii) Issues a final termination for cause or default notice; or

(iv) Makes a subsequent withdrawal or a conversion of a termination for default to a termination for convenience.

(2) Agencies shall establish CPARS focal points who will register users to report data into the FAPIIS module of CPARS (available at *http://www.cpars.gov/*, then select FAPIIS).

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the contracting officer shall follow the procedures at 9.105–2(b)(2)(iv).

TABLE 42–1—EVALUATION RATINGS DEFINITIONS

Rating	Definition	Note
(a) Exceptional	Performance meets contractual requirements and exceeds many to the Government's benefit. The contractual performance of the element or sub-element being evaluated was accomplished with few minor problems for which corrective actions taken by the contractor were highly effective.	To justify an Exceptional rating, identify multiple significant events and state how they were of benefit to the Government. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there should have been NO significant weaknesses identified.

TABLE 42–1—EVALUATION RATINGS DEFINITIONS—Continued

Rating	Definition	Note
(b) Very Good	Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being evaluated was accomplished with some minor problems for which corrective actions taken by the contractor were effective.	To justify a Very Good rating, identify a significant event and state how it was a benefit to the Government. There should have been no significant weaknesses identified.
(c) Satisfactory	Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor recovered from without impact to the contract/order. There should have been NO significant weaknesses identified. A fundamental principle of assigning ratings is that contractors will not be evaluated with a rating lower than Satisfactory solely for not performing beyond the requirements of the contract/order.
(d) Marginal	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being evaluated reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.	To justify Marginal performance, identify a significant event in each category that the contractor had trouble overcoming and state how it impacted the Government. A Marginal rating should be supported by referencing the management tool that notified the contractor of the contractual deficiency (*e.g.*, management, quality, safety, or environmental deficiency report or letter).
(e) Unsatisfactory	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains a serious problem(s) for which the contractor's corrective actions appear or were ineffective.	To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (*e.g.*, management, quality, safety, or environmental deficiency reports, or letters).

Note 1: Plus or minus signs may be used to indicate an improving (+) or worsening (−) trend insufficient to change the evaluation status.
Note 2: N/A (not applicable) should be used if the ratings are not going to be applied to a particular area for evaluation.

TABLE 42–2—EVALUATION RATINGS DEFINITIONS

[For the Small Business Subcontracting Evaluation Factor, when 52.219–9 is used]

Rating	Definition	Note
(a) Exceptional	Exceeded all statutory goals or goals as negotiated. Had exceptional success with initiatives to assist, promote, and utilize small business (SB), small disadvantaged business (SDB), women-owned small business (WOSB), HUBZone small business, veteran-owned small business (VOSB) and service disabled veteran owned small business (SDVOSB). Complied with FAR 52.219–8, Utilization of Small Business Concerns. Exceeded any other small business participation requirements incorporated in the contract/order, including the use of small businesses in mission critical aspects of the program. Went above and beyond the required elements of the subcontracting plan and other small business requirements of the contract/order. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	To justify an Exceptional rating, identify multiple significant events and state how they were a benefit to small business utilization. A singular benefit, however, could be of such magnitude that it constitutes an Exceptional rating. Small businesses should be given meaningful and innovative work directly related to the contract, and opportunities should not be limited to indirect work such as cleaning offices, supplies, landscaping, etc. Also, there should have been no significant weaknesses identified.

TABLE 42–2—EVALUATION RATINGS DEFINITIONS—Continued

[For the Small Business Subcontracting Evaluation Factor, when 52.219–9 is used]

Rating	Definition	Note
(b) Very Good	Met all of the statutory goals or goals as negotiated. Had significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, HUBZone, VOSB, and SDVOSB. Complied with FAR 52.219–8, Utilization of Small Business Concerns. Met or exceeded any other small business participation requirements incorporated in the contract/order, including the use of small businesses in mission critical aspects of the program. Endeavored to go above and beyond the required elements of the subcontracting plan. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	To justify a Very Good rating, identify a significant event and state how it was a benefit to small business utilization. Small businesses should be given meaningful and innovative opportunities to participate as subcontractors for work directly related to the contract, and opportunities should not be limited to indirect work such as cleaning offices, supplies, landscaping, etc. There should be no significant weaknesses identified.
(c) Satisfactory	Demonstrated a good faith effort to meet all of the negotiated subcontracting goals in the various socio-economic categories for the current period. Complied with FAR 52.219–8, Utilization of Small Business Concerns. Met any other small business participation requirements included in the contract/order. Fulfilled the requirements of the subcontracting plan included in the contract/order. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor has addressed or taken corrective action. There should have been no significant weaknesses identified. A fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract/order.
(d) Marginal	Deficient in meeting key subcontracting plan elements. Deficient in complying with FAR 52.219–8, Utilization of Small Business Concerns, and any other small business participation requirements in the contract/order. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Failed to satisfy one or more requirements of a corrective action plan currently in place; however, does show an interest in bringing performance to a satisfactory level and has demonstrated a commitment to apply the necessary resources to do so. Required a corrective action plan.	To justify Marginal performance, identify a significant event that the contractor had trouble overcoming and how it impacted small business utilization. A Marginal rating should be supported by referencing the actions taken by the government that notified the contractor of the contractual deficiency.
(e) Unsatisfactory	Noncompliant with FAR 52.219–8 and 52.219–9, and any other small business participation requirements in the contract/order. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Showed little interest in bringing performance to a satisfactory level or is generally uncooperative. Required a corrective action plan.	To justify an Unsatisfactory rating, identify multiple significant events that the contractor had trouble overcoming and state how it impacted small business utilization. A singular problem, however, could be of such serious magnitude that it alone constitutes an Unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the actions taken by the government to notify the contractor of the deficiencies. When an Unsatisfactory rating is justified, the contracting officer must consider whether the contractor made a good faith effort to comply with the requirements of the subcontracting plan required by FAR 52.219–9 and follow the procedures outlined in FAR 52.219–16, Liquidated Damages-Subcontracting Plan.

Note 1: Plus or minus signs may be used to indicate an improving (+) or worsening (−) trend insufficient to change evaluation status.

Note 2: Generally, zero percent is not a goal unless the contracting officer determined when negotiating the subcontracting plan that no subcontracting opportunities exist in a particular socio-economic category. In such cases, the contractor shall be considered to have met the goal for any socio-economic category where the goal negotiated in the plan was zero.

PART 49—TERMINATION OF CONTRACTS

■ 11. The authority citation for 48 CFR part 49 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

49.402–8 [Amended]

■ 12. Amend section 49.402–8 by removing "42.1503(f)" and adding "42.1503(h)" in its place.

[FR Doc. 2013–18461 Filed 7–31–13; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAC 2005–69; FAR Case 2013–011; Item IV; Docket 2013–0011, Sequence 1]

RIN 9000–AM16

Federal Acquisition Regulation; Repeal of Sunset for Certain Protests of Task or Delivery Order Contracts

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year 2013. This section removes the sunset date for protests against certain orders under a task-order contract or delivery-order contract for title 10 agencies only.

DATES: *Effective:* September 3, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–69, FAR Case 2013–011.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing this final rule to amend the FAR to implement section 830 of the 2013 NDAA (Pub. L. 112–239) enacted January 2, 2013, for agencies covered by title 10 of the United States Code, namely DoD, NASA, and Coast Guard. This section removes the sunset date for protests against the issuance or proposed issuance of an order, valued at more than $10 million, under a task-order contract or delivery-order contract for title 10 agencies only. The authority to protest the placement of such orders does not expire for DoD, NASA, and the Coast Guard. This rule does not affect title 41 agencies, which continue to have a sunset date of September 30, 2016.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because this rule reflects the statutory elimination of the sunset date for protest for title 10 agencies. The FAR revision informs the acquisition community of this change.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 16

Government procurement.

Dated: July 26, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 16 as set forth below:

PART 16—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 16 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 16.505 by revising paragraph (a)(10)(ii) to read as follows:

16.505 Ordering.

(a) * * *

(10) * * *

(ii) The authority to protest the placement of an order under (a)(10)(i)(B) of this section expires on September 30, 2016, for agencies other than DoD, NASA, and the Coast Guard (41 U.S.C. 4103(d) and 41 U.S.C. 4106(f)). The authority to protest the placement of an order under (a)(10)(i)(B) of this section does not expire for DoD, NASA, and the Coast Guard.

* * * * *

[FR Doc. 2013–18462 Filed 7–31–13; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–69; FAR Case 2013–009; Item V; Docket 2013–0009, Sequence 1]

RIN 9000–AM62

Federal Acquisition Regulation; Least Developed Countries That Are Designated Countries

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a revision by the United States Trade Representative (USTR) to the list of least developed countries that are designated countries under the Trade Agreements Act of 1979.

DATES: *Effective:* September 3, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–69, FAR Case 2013–009.

SUPPLEMENTARY INFORMATION:

I. Background

19 U.S.C. 2511(b)(4) allows the President to designate least developed countries as eligible countries under the Trade Agreements Act of 1979, allowing non-discriminatory treatment of the products of such countries in acquisitions subject to the World Trade Organization Government Procurement Agreement. This statutory authority has been delegated to the USTR. The USTR selects the countries for such designation from the United Nations (UN) Least Developed Countries List. USTR consults with other government agencies on trade policy matters through the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). These changes are necessary to reflect the current UN Least Developed Countries List. Based on TPSC's approval on February 13, 2013, to incorporate the changes to the UN Least Developed Countries List, the USTR has revised the list of least developed countries that are designated as eligible countries as follows:

- Changed the name of East Timor to Timor-Leste, reflecting the change on the UN list.
- Removed the Maldives, which is no longer a least developed country.
- Added South Sudan, which seceded from Sudan to form an independent state on July 9, 2011, and was formally recognized as a least developed country by the UN in December 2012. Although the United States continues to impose sanctions against Sudan, South Sudan is not subject to sanctions.

This final rule revises the definitions of "designated country" and "least developed country" at various locations throughout the FAR (FAR 25.003, Definitions; FAR 52.225–5, Trade Agreements; FAR 52.225–11, Buy American Act—Construction Materials under Trade Agreements; and FAR 52.225–23, Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements) and makes a conforming change to FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

"Publication of proposed regulations," 41 U.S.C. 1707, is the statute that applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only revises the list of least developed countries that the USTR has designated as eligible for non-discriminatory treatment under the Trade Agreements Act. The addition of South Sudan and removal of the Maldives will have no significant effect beyond the internal operating procedures of the Government or a significant cost or administrative impact on contractors or offerors, because the trade of all 49 least developed countries combined accounts for less than 1 percent of the global trade according to United Nations data. Individual least developed countries generate an average of less than .02 percent of the global trade. Since we are adding one least developed country and removing one, the net effect is negligible.

III. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: July 26, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 2. Amend section 25.003 by—

■ a. Removing from the definition "Designated country" in paragraph (3) "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste,"; and

■ b. Removing from the definition "Least developed country" the words "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste,".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(41) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (SEP 2013)

* * * * *

(b) * * *

____ (41) 52.225–5, Trade Agreements (Sep 2013) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

* * * * *

■ 4. Amend section 52.225–5 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a) in the definition "Designated country" in paragraph (3) "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste,".

The revision reads as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (SEP 2013)

* * * * *

■ 5. Amend section 52.225–11 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a) in the definition "Designated country" in paragraph (3) "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste,".

The revision reads as follows:

52.225–11 Buy American Act—Construction Materials Under Trade Agreements.

* * * * *

Buy American Act—Construction Materials Under Trade Agreements (SEP 2013)

* * * * *

■ 6. Amend section 52.225–23 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a) in the definition "Designated country" in paragraph (3) "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste,"; and

■ c. Removing from paragraph (a) in the definition "Recovery Act designated country" in paragraph (3) "East Timor," and "Maldives," and adding, in alphabetical order, "South Sudan," and "Timor-Leste,".

The revision reads as follows:

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements. (SEP 2013)

* * * * *

[FR Doc. 2013–18463 Filed 7–31–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005–69; FAR Case 2013–006; Item VI; Docket 2013–0006, Sequence 1]

RIN 9000–AM63

Federal Acquisition Regulation; Update to Biobased Reporting Requirements

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to revise the biobased reporting clause to require the contractor to submit the annual biobased report to a new Governmentwide Web site instead of the agency environmental point of contact.

DATE: *Effective:* September 3, 2013

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, at 202–501–0136, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–69, FAR Case 2013–006.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are revising the clause at FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, to reflect new reporting instructions for the annual biobased report; the reports will be submitted to a new Web site rather than to an agency point of contact.

For reporting in 2012, the Department of Agriculture provided a reporting site that was intended to be available for one year only. The Web site to be used for the annual Biobased reports due at the end of October 2013, *http://www.sam.gov,* is intended to be the permanent site used for reporting this information. The new Web site is a Governmentwide site that allows contractors to submit a report on a contract-by-contract basis at any time throughout the year, improving consistency in reporting across Federal agencies with the goal of increasing Federal procurement of biobased products. The new Web site also generates a Governmentwide report for agency use. In addition, the new Web site includes instructions on how to complete the report and frequently asked questions.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because submission of the report was already required and changing the Web site to which the report is submitted will have no cost or other impact on contractors. These requirements affect only the internal operating procedures of the Government.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 52

Government procurement.

Dated: July 26, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52–SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 52.223–2 by—

■ a. Revising the date of the clause and paragraph (c)(1);

■ b. Removing from paragraph (c)(2)(ii) "; and" and adding a period in its place; and

■ c. Removing paragraphs (c)(3) and (d).

The revised text reads as follows:

52.223–2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

* * * * *

Affirmative Procurement of Biobased Products Under Service and Construction Contracts. (Sept, 2013)

* * * * *

(c) * * *

(1) Report to *http://www.sam.gov*, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

* * * * *

[FR Doc. 2013–18464 Filed 7–31–13; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 22, and 52

[FAC 2005–69; Item VII; Docket 2013–0080; Sequence 4]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective:* August 1, 2013.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405, 202–501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–69, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 2, 22, 29, and 52, this document makes editorial changes to the FAR.

List of Subject in 48 CFR Parts 2, 22, and 52

Government procurement.

Dated: July 26, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 22, 29, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 22, 29, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101, in paragraph (b)(2), in the definition "Commercially available off-the-shelf (COTS) item", by—

■ a. Removing "(COTS) item" and adding "(COTS) item—" in its place; and

■ b. In paragraph (2) of the definition removing "bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702)" and adding "bulk cargo, as defined in 46 U.S.C. 40102(4)" in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1801 [Amended]

■ 3. Amend section 22.1801, in the definition "Commercially available off-the-shelf (COTS) item", paragraph (2), by removing "bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702)" and adding "bulk cargo, as defined in 46 U.S.C. 40102(4)" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.209–6 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a)(2) in the definition "Commercially available off-the-shelf (COTS) item" the words "bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702)" and adding "bulk cargo, as defined in 46 U.S.C. 40102(4)" in their place.

The revision reads as follows:

52.209–6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

* * * * *

Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (Aug, 2013)

* * * * *

■ 5. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(6) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Aug, 2013)

* * * * *

(b) * * *

(6) 52.209–6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Aug, 2013) (31 U.S.C. 6101 note).

* * * * *

■ 6. Amend section 52.222–54 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a)(2) of the definition "Commercially available off-the-shelf (COTS) item" the words "bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702)" and adding "bulk cargo, as defined in 46 U.S.C. 40102(4)" in its place.

The revision reads as follows:

52.222–54 Employment Eligibility Verification.

* * * * *

Employment Eligibility Verification (Aug, 2013)

* * * * *

[FR Doc. 2013–18465 Filed 7–31–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013–0078; Sequence 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–69; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–69, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–69, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: August 1, 2013.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–69 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–69

Item	Subject	FAR Case	Analyst
*I	Definition of Contingency Operation	2013–003	Corrigan.
II	Iran Threat Reduction	2012–030	Davis.
III	Documenting Contractor Performance	2012–009	Glover.
IV	Repeal of Sunset for Certain Protests of Task or Delivery Order Contracts	2013–011	Jackson.
V	Least Developed Countries that are Designated Countries	2013–009	Davis.
VI	Update to Biobased Reporting Requirements	2013–006	Petrusek.
VII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–69 amends the FAR as specified below:

Item I—Definition of Contingency Operation (FAR Case 2013–003)

This final rule amends, without change, the interim rule published in the **Federal Register** at 78 FR 13765 on February 28, 2013, revising the definition of "contingency operation" in FAR 2.101 to address the statutory change to the definition made by paragraph (b) of section 515 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). Expanding the definition to include responding to a major disaster or emergency will increase the circumstances under which agencies may raise the micropurchase and simplified acquisition thresholds. This may increase opportunities for awarding contracts to small entities located at or near a major disaster area or emergency activities.

Item II—Iran Threat Reduction (FAR Case 2012–030)

This final rule adopts the interim rule published in the **Federal Register** at 77 FR 73516, on December 10, 2013, with minor changes. The interim rule amended the FAR to require certifications that implement the expansion of sanctions relating to the energy sector of Iran and sanctions with respect to Iran's Revolutionary Guard Corps, as contained in titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012. This final rule will not have a significant economic impact on a substantial number of small entities. As a result, the certification required in this case ensures that contracting officers will not award to offerors that engage in transactions with the Iran Revolutionary Guard Corps that exceed $3,000.

Item III—Documenting Contractor Performance (FAR Case 2012–009)

This rule amends FAR part 42 to provide Governmentwide standardized past performance evaluation factors and performance ratings, and to require all past performance information be entered into the Contractor Performance Assessment Reporting System (CPARS).

This change is required by statute, as well as by the Office of Federal Procurement Policy, which requested that FAR part 42 be revised to include recommendations from the Government Accountability Office Report GAO–09–374, Better Performance Information Needed to Support Agency Contract Award Decisions, to provide Governmentwide standardized evaluation factors and rating scales for the evaluation of contractor performance.

This rule specifically impacts contracting officers and contractors by clarifying the evaluation factors and performance ratings in the FAR. The rule also requires that all past performance information be entered into CPARS. The rule does not have a significant economic impact on small entities because the rule does not impose any additional requirements on small business.

Item IV—Repeal of Sunset for Certain Protests of Task and Delivery Order Contracts (FAR Case 2013–011)

This final rule revises the FAR to implement a section of the 2013 National Defense Authorization Act (Pub. L. 112–239) for agencies covered by title 10 of the United States Code, namely DoD, NASA, and Coast Guard. This section removes the sunset date for protests against the issuance or proposed issuance of an order, valued at more than $10 million, under a task-order contract or delivery-order contract for title 10 agencies only. This rule does not affect title 41 agencies.

Item V—Least Developed Countries That Are Designated Countries (FAR Case 2013–009)

This final rule amends the FAR in parts 25 and 52 to revise the definitions of "designated country" and "least developed country," adding South Sudan, removing the Maldives, and changing the name of East Timor to Timor-Leste. The United States Trade Representative (USTR) list of least developed countries that are designated as eligible countries under the Trade Agreements Act is derived from the United Nations Least Developed Countries List. The USTR has updated the list of least developed countries that are treated as designated countries. In acquisitions that are covered by the World Trade Organization Government Procurement Agreement, contracting officers must acquire only U.S.-made or designated country end products, or U.S. or designated country services, unless offers of such end products or services are not received or are insufficient to fulfill the requirement (FAR 25.403(c)). This final rule will not have a significant economic impact on small entities.

Item VI—Update to Biobased Reporting Requirements (FAR Case 2013–006)

This final rule amends the clause at FAR 52.223–2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, to replace the requirement for agencies to insert the agency environmental point of contact with a single Web site for contractors to submit the annual biobased report. The Web site has instructions and frequently asked questions.

Item VII—Technical Amendments

Editorial changes are made at FAR 2.101, 22.1801, 29.401–3, 52.209–6, 52.212–5 and 52.222–54.

Dated: July 26, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2013–18466 Filed 7–31–13; 8:45 am]

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FEDERAL REGISTER PAGES AND DATE, AUGUST

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At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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A new table will be published in the first issue of each month.

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