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WHEN: Tuesday, July 9, 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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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Parts 1201 and 1209

### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Interim final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) hereby amends its rules of practice and procedure to conform the Board's regulations to legislative changes that amended whistleblower protections for Federal employees and the penalties available in cases where the MSPB determines that a Federal employee or a State or local officer or employee violated restrictions on partisan political activity.

**DATES:** This interim final rule is effective on July 2, 2013. Submit written comments concerning this interim final rule on or before September 3, 2013.

**ADDRESSES:** Submit your comments concerning this interim final rule by one of the following methods and in accordance with the relevant instructions:

*Email: mspb@mspb.gov.* Comments submitted by email can be contained in the body of the email or as an attachment in any common electronic format, including word processing applications, HTML and PDF. If possible, commenters are asked to use a text format and not an image format for attachments. An email should contain a subject line indicating that the submission contains comments concerning the MSPB's interim final rule. The MSPB asks that parties use email to submit comments if possible. Submission of comments by email will assist MSPB to process comments and speed publication of a final rule.

*Fax:* (202) 653–7130. Faxes should be addressed to William D. Spencer and contain a subject line indicating that the submission contains comments concerning the MSPB's interim final rule.

*Mail or other commercial delivery:* William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419.

*Hand delivery or courier:* Comments should be addressed to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419, and delivered to the 5th floor reception window at this street address. Such deliveries are only accepted Monday through Friday, 9 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* As noted above, MSPB requests that commenters use email to submit comments, if possible. All comments received will be included in the public docket without change and will be made available online at the Board's Web site, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information whose disclosure is restricted by law. Those desiring to submit anonymous comments must submit comments in a manner that does not reveal the commenter's identity, include a statement that the comment is being submitted anonymously, and include no personally-identifiable information. The email address of a commenter who chooses to submit comments using email will not be disclosed unless it appears in comments attached to an email or in the body of a comment.

**FOR FURTHER INFORMATION CONTACT:** William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419; phone: (202) 653–7200; fax: (202) 653–7130; or email: *mspb@mspb.gov.*

**SUPPLEMENTARY INFORMATION:** This interim final rule is necessary to conform the MSPB's regulations to recent amendments to Federal law contained in the Hatch Act Modernization Act of 2012, Public Law 112–230 (the Act) and the Whistleblower Protection Enhancement Act of 2012, Public Law 112–199 (WPEA). The Act was signed by the President on December 28, 2012, and became effective on January 27, 2013. The WPEA was signed by the President on November 27, 2012, and became effective on December 27, 2012. The Board elected to combine all regulatory changes necessitated by the Act and the WPEA in this interim final rule because the Act and the WPEA have already taken effect.

Ordinarily, the Administrative Procedure Act (APA) requires an agency to provide notice of proposed rulemaking and a period of public comment before the promulgation of a new regulation. 5 U.S.C. 553(b) and (c). However, section 553(b) of the APA specifically provides that the notice and comment requirements do not apply:

(A) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) When the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The APA also requires the publication of any substantive rule at least thirty days before its effective date, 5 U.S.C. 553(d), except where the rule is interpretive, where the rule grants an exception or relieves a restriction, or "as otherwise provided by the agency for good cause found and published with the rule." *Id.*

A finding that notice and comment rulemaking is "unnecessary" must be "confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public." *Mack Trucks, Inc.* v. *Environmental Protection Agency,* 682 F.3d 87, 94 (D.C. Cir. 2012). The Board finds that use of an interim final rule instead of notice and comment rulemaking is appropriate here because the amendments contained herein merely reflect changes to both the Hatch Act and the Whistleblower Protection Act that have already been enacted into law. *Komjathy* v. *National Transp. Safety Bd.,* 832 F.2d 1294, 1296–97 (D.C. Cir. 1987) (notice and comment unnecessary where regulation does no more than repeat, virtually verbatim, the statutory grant of authority); *Gray Panthers Advocacy Comm.* v. *Sullivan,* 936 F.2d 1284, 1291–92 (D.C. Cir. 1991) (no reason exists to require notice and comment procedures where regulations restate or paraphrase the detailed requirements of the statute).

In addition, the Act and the WPEA both took effect 30 days after signature by the President. Given the short time within which amendments to the Act and the WPEA took effect, the Board finds that good cause exists to publish these amendments to its regulations in an interim rule that is effective immediately in order to reduce confusion caused by outdated regulations. *Philadelphia Citizens in Action* v. *Schweiker*, 669 F.2d 877, 882–84 (3d Cir. 1982) (finding good cause to dispense with notice and comment where Omnibus Budget Reconciliation Act amendments enacted by Congress became effective by statute on a specific date, shortly after enactment).

**Regulatory Changes Required Under the Hatch Act Modernization Act of 2012**

Links to the Act and a summary of the Act prepared by the Congressional Research Service are on MSPB's Web site at *http://www.mspb.gov/appeals/uscode.htm*. The Hatch Act prohibits certain Federal, State, and local government employees from engaging in certain political activities. Chapter 73 of title 5 covers Federal employees and chapter 15 covers State and local employees. Of the numerous changes made by the Act, the only item that requires an amendment to the MSPB's regulations concerns the penalty structure in provisions of the Hatch Act covering Federal employees. Prior to the effective date of the Act, the Hatch Act required the MSPB to impose termination of Federal employment for a Hatch Act violation, unless the Board found by unanimous vote that the violation did not warrant removal. *Special Counsel* v. *Simmons*, 90 M.S.P.R. 83, ¶ 14 (2001) ("[U]nder 5 U.S.C. 7326, removal is presumptively appropriate for a Federal employee's violation of the Hatch Act, unless the Board finds by unanimous vote that the violation does not warrant removal, whereupon a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.") The Act modifies 5 U.S.C. 7326, the penalty provision of the Hatch Act, and now allows the MSPB to punish a violation by ordering removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000. These are the same penalties the Board may impose in other disciplinary cases under 5 U.S.C. 1215(a)(3).

This change in the Hatch Act penalty provision therefore requires the MSPB to delete 5 CFR 1201.125(c) and 1201.126(c), which contain specialized provisions that were necessary to accommodate the unique Hatch Act penalty provision that existed prior to the enactment of the Act.

**Regulatory Changes Required Under the Whistleblower Protection Enhancement Act of 2012**

Links to the WPEA and a summary of the WPEA prepared by the Congressional Research Service are on MSPB's Web site at *http://www.mspb.gov/appeals/uscode.htm*. A summary of the amendments to the MSPB's regulations required as a result of the enactment of the WPEA follows.

*Scope of Protected Activity*

Section 101 of the WPEA expanded the scope of protected activity subject to individual right of action (IRA) appeals. Previously, such appeals were limited to claims of retaliation for whistleblowing disclosures protected under 5 U.S.C. 2302(b)(8). IRA appeals now include claims of retaliation for additional protected activities covered under certain sections of 5 U.S.C. 2302(b)(9), as amended:

(A)(i): The exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation with regard to remedying a violation of 5 U.S.C. 2302(b)(8), i.e., the exercise of any appeal, complaint, or grievance right that included a claim of reprisal for protected whistleblowing;

(B): testifying for or otherwise lawfully assisting any individual in the exercise of any right granted by any law, rule, or regulation;

(C): cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; and

(D): refusing to obey an order that would require the individual to violate a law.

To accommodate these changes, all of the references to "whistleblowing activities" in the MSPB's regulations have been changed to refer to "whistleblowing or other protected activity," and we have added a definition of "other protected activity" to section 1209.4, immediately following the definition of "whistleblowing," which describes the activities protected by subsections (A)(i), (B), (C), and (D) of 5 U.S.C. 2302(b)(9).

We have modified and added to the Examples provided in section 1209.2 to illustrate the additional categories of protected activity. Example 2 reflects that, because IRA appeals now include claims of retaliation for exercising the rights protected by 5 U.S.C. 2302(b)(9)(A)(i), but not subsection (A)(ii), whether a claim of retaliation for exercising an appeal, complaint, or grievance right will be cognizable as an IRA appeal depends on whether the prior appeal, complaint, or grievance included a claim of retaliation for whistleblowing. In what might be viewed an anomaly in the scope of protected activity, Example 2 notes that, while a claim that one suffered reprisal for his or her own protected equal employment opportunity (EEO) activity may not be the subject of an IRA appeal, a claim that one suffered reprisal for testifying for or lawfully assisting another employee's protected EEO activity can be the subject of an IRA appeal. This is true because the latter activity is protected by subsection (b)(9)(B), which can form the basis of an IRA appeal, while the former is protected by subsection (b)(9)(A)(ii), which cannot form the basis of an IRA appeal.

*Order and Elements of Proof*

New paragraph (e) has been added to section 1209.2, entitled "Elements and Order of Proof." This accomplishes three things, only one of which reflects changes to the law made by the WPEA. First, this paragraph defines the merits issues in a claim of retaliation for whistleblowing or other protected activity. Although the Board has laid out these elements of proof in numerous decisions, they have not previously been set forth explicitly in the part 1209 regulations. Second, this paragraph incorporates and states explicitly the "knowledge/timing" test of 5 U.S.C. 1221(e). Third, this paragraph incorporates section 114 of the WPEA, which addresses the scope of due process available to employees in whistleblowing cases. Specifically, section 114 provides that the issue of whether an agency can prove by clear and convincing evidence that it would have taken the same action in the absence of the appellant's whistleblowing or other protected activity will be reached only if there has first been a finding that an employee's whistleblowing or other protected activity was a contributing factor in a covered personnel action. Previously, the Board had ruled that it can, in an appropriate case, consider the clear and convincing evidence matter prior to determining whether a protected disclosure was a contributing factor in a covered personnel action. E.g., *McCarthy* v. *International Boundary & Water Commission*, 116 M.S.P.R. 594, ¶ 29 (2011); *Azbill* v. *Department of Homeland Security*, 105 M.S.P.R. 363,

¶ 16 (2007) ("The Board may resolve the merits issues in any order it deems most efficient."). *See also, Fellhoelter* v. *Department of Agriculture*, 568 F.3d 965, 971 (Fed. Cir. 2009) (affirming the process and noting that the court had "tacitly approved of the Board's practice" in the past).

*What Constitutes a Disclosure*

The definition of "whistleblowing" in section 1209.4(b) has been revised to include the definition of "disclosure" contained in section 102 of the WPEA.

*Reasonable Belief Test*

The definition of what constitutes a "reasonable belief" from section 103 of the WPEA, which codifies the standard adopted by the U.S. Court of Appeals for the Federal Circuit in *Lachance* v. *White*, 174 F.3d 1378, 1381 (Fed. Cir. 1999), has been incorporated into section 1209.4.

*Nondisclosure Policies, Forms, or Agreements as Covered Personnel Actions*

Section 1209.4(a) has been updated to include the implementation or enforcement of any nondisclosure policy, form, or agreement as a covered personnel action as reflected in section 104(a) of the WPEA.

*Compensatory Damages*

Section 1209.3, 1201.3(b)(2), 1201.201 and 1201.202 have been amended to provide for the possibility of an award of compensatory damages when there has been a finding of retaliation for whistleblowing or other protected activity, as provided by section 107 of the WPEA.

*Referrals to the Special Counsel*

Section 1209.13 has been revised to reflect that referrals to the Special Counsel will be made under this part when the Board determines that there is a reason to believe that a current Federal employee may have committed a prohibited personnel practice under 5 U.S.C. 2302(b)(9)(A)(i), (B), (C), or (D), as well as when there is a reason to believe that a current Federal employee may have committed a prohibited personnel practice under 5 U.S.C. 2302(b)(8).

**List of Subjects in 5 CFR Parts 1201 and 1209**

Administrative practice and procedure.

Accordingly, for the reasons set forth in the preamble, the Board amends 5 CFR parts 1201 and 1209 as follows:

## PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for 5 CFR part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. Section 1201.3 is amended by revising paragraph (b)(2) to read as follows:

**§ 1201.3 Appellate jurisdiction.**

* * * * *

(b) * * *

(2) *Appeals involving an allegation that the action was based on appellant's whistleblowing or other protected activity.* Appeals of actions appealable to the Board under any law, rule, or regulation, in which the appellant alleges that the action was taken because of the appellant's whistleblowing or other protected activity, are governed by part 1209 of this title. The provisions of subparts B, C, E, F, and G of part 1201 apply to appeals and stay requests governed by part 1209 unless other specific provisions are made in that part. The provisions of subpart H of this part regarding awards of attorney fees, compensatory damages, and consequential damages under 5 U.S.C. 1221(g) apply to appeals governed by part 1209 of this chapter.

* * * * *

■ 3. Section 1201.113 is amended by revising paragraph (f) to read as follows:

**§ 1201.113 Finality of decision.**

* * * * *

(f) When the Board, by final decision or order, finds there is reason to believe a current Federal employee may have committed a prohibited personnel practice described at 5 U.S.C. 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D), the Board will refer the matter to the Special Counsel to investigate and take appropriate action under 5 U.S.C. 1215.

■ 4. Section 1201.120 is revised to read as follows:

**§ 1201.120 Judicial review.**

Any employee or applicant for employment who is adversely affected by a final order or decision of the Board under the provisions of 5 U.S.C. 7703 may obtain judicial review as provided by 5 U.S.C. 7703. As § 1201.175 of this part provides, an appropriate United States district court has jurisdiction over a request for judicial review of cases involving the kinds of discrimination issues described in 5 U.S.C. 7702.

■ 5. Section 1201.125 is amended by revising the first sentence of paragraph (b) and removing paragraph (c).

The revision reads as follows:

**§ 1201.125 Administrative law judge.**

* * * * *

(b) The administrative law judge will issue an initial decision on the complaint pursuant to 5 U.S.C. 557.

* * *

■ 6. Section 1201.126 is amended by revising paragraph (a) and removing paragraph (c).

The revision reads as follows:

**§ 1201.126 Final decisions.**

(a) In any action to discipline an employee, except as provided in paragraph (b) of this section, the administrative law judge, or the Board on petition for review, may order a removal, a reduction in grade, a debarment (not to exceed five years), a suspension, a reprimand, or an assessment of a civil penalty not to exceed $1,000. 5 U.S.C. 1215(a)(3).

* * * * *

■ 7. Section 1201.132 is amended by revising paragraph (b) to read as follows:

**§ 1201.132 Final decisions.**

* * * * *

(b)(1) Subject to the provisions of paragraph (b)(2) of this section, in any case involving an alleged prohibited personnel practice described in 5 U.S.C. 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D), the judge, or the Board on petition for review, will order appropriate corrective action if the Special Counsel demonstrates that a disclosure or protected activity described under 5 U.S.C. 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D) was a contributing factor in the personnel action that was taken or will be taken against the individual.

(2) Corrective action under paragraph (b)(1) of this section may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure or protected activity. 5 U.S.C. 1214(b)(4)(B).

■ 8. Section 1201.133 is revised to read as follows:

**§ 1201.133 Judicial review.**

An employee, former employee, or applicant for employment who is adversely affected by a final Board decision on a corrective action complaint brought by the Special Counsel may obtain judicial review of the decision as provided by 5 U.S.C. 7703.

■ 9. Section 1201.201 is amended by revising paragraph (d) to read as follows:

**§ 1201.201 Statement of purpose.**

* * * * *

(d) The Civil Rights Act of 1991 (42 U.S.C. 1981a) authorizes an award of compensatory damages to a prevailing party who is found to have been intentionally discriminated against based on race, color, religion, sex, national origin, or disability. The Whistleblower Protection Enhancement Act of 2012 (5 U.S.C. 1221(g)) also authorizes an award of compensatory damages in cases where the Board orders corrective action. Compensatory damages include pecuniary losses, future pecuniary losses, and nonpecuniary losses, such as emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

* * * * *

■ 10. Section 1201.202 is amended by
■ a. Redesignating paragraphs (a)(6) through (8) as paragraphs (a)(7) through (9);,
■ b. Adding new paragraph (a)(6);
■ c. Revising paragraph (b) introductory text;
■ d. Redesignating paragraph (b)(2) as paragraph (b)(3);
■ e. Adding new paragraph (b)(2);
■ f. Adding paragraph (b)(4); and
■ g. Revising paragraph (c).

The additions and revisions read as follows:

**§ 1201.202 Authority for awards.**

(a) * * *

(6) Attorney fees, costs and damages as authorized by 5 U.S.C. 1214(h) where the Board orders corrective action in a Special Counsel complaint under 5 U.S.C. 1214 and determines that the employee has been subjected to an agency investigation that was commenced, expanded or extended in retaliation for the disclosure or protected activity that formed the basis of the corrective action.

* * * * *

(b) *Awards of consequential damages.* The Board may order payment of consequential damages, including medical costs incurred, travel expenses, and any other reasonable and foreseeable consequential damages:

* * * * *

(2) As authorized by 5 U.S.C. 1221(g)(4) where the Board orders corrective action to correct a prohibited personnel practice and determines that the employee has been subjected to an agency investigation that was commenced, expanded, or extended in retaliation for the disclosure or protected activity that formed the basis of the corrective action.

* * * * *

(4) As authorized by 5 U.S.C. 1214(h) where the Board orders corrective action to correct a prohibited personnel practice and determines that the employee has been subjected to an agency investigation that was commenced, expanded, or extended in retaliation for the disclosure or protected activity that formed the basis of the corrective action.

(c) *Awards of compensatory damages.* The Board may order payment of compensatory damages, as authorized by section 102 of the Civil Rights Act of 1991 (42 U.S.C. 1981a), based on a finding of unlawful intentional discrimination but not on an employment practice that is unlawful because of its disparate impact under the Civil Rights Act of 1964, the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990. The Whistleblower Protection Enhancement Act of 2012 (5 U.S.C. 1221(g)) also authorizes an award of compensatory damages in cases where the Board orders corrective action. Compensatory damages include pecuniary losses, future pecuniary losses, and nonpecuniary losses such as emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

* * * * *

## PART 1209—PRACTICES AND PROCEDURES FOR APPEALS AND STAY REQUESTS OF PERSONNEL ACTIONS ALLEGEDLY BASED ON WHISTLEBLOWING OR OTHER PROTECTED ACTIVITY

■ 11. The authority citation for 5 CFR part 1209 is amended to read as follows:

**Authority:** 5 U.S.C. 1204, 1221, 2302(b)(8) and (b)(9)(A)(i), (B), (C), or (D), and 7701.

■ 12. The heading for part 1209 is revised to read as set forth above.

■ 13. Section 1209.1 is revised to read as follows:

**§ 1209.1 Scope.**

This part governs any appeal or stay request filed with the Board by an employee, former employee, or applicant for employment where the appellant alleges that a personnel action defined in 5 U.S.C. 2302(a)(2) was threatened, proposed, taken, or not taken because of the appellant's whistleblowing or other protected activity activities. Included are individual right of action appeals authorized by 5 U.S.C. 1221(a), appeals of otherwise appealable actions allegedly based on the appellant's whistleblowing or other protected activity, and requests for stays of personnel actions allegedly based on whistleblowing or other protected activity.

■ 14. Section 1209.2 is revised to read as follows:

**§ 1209.2 Jurisdiction.**

(a) *Generally.* Under 5 U.S.C. 1221(a), an employee, former employee, or applicant for employment may appeal to the Board from agency personnel actions alleged to have been threatened, proposed, taken, or not taken because of the appellant's whistleblowing or other protected activity.

(b) *Appeals authorized.* The Board exercises jurisdiction over:

(1) *Individual right of action (IRA) appeals.* These are authorized by 5 U.S.C. 1221(a) with respect to personnel actions listed in 1209.4(a) of this part that are allegedly threatened, proposed, taken, or not taken because of the appellant's whistleblowing or other protected activity. If the action is not otherwise directly appealable to the Board, the appellant must seek corrective action from the Special Counsel before appealing to the Board.

*Example 1:* An agency gives Employee X a performance evaluation under 5 U.S.C. chapter 43 that rates him as "minimally satisfactory." Employee X believes that the agency has rated him "minimally satisfactory" because he reported that his supervisor embezzled public funds in violation of Federal law and regulation. Because a performance evaluation is not an otherwise appealable action, Employee X must seek corrective action from the Special Counsel before appealing to the Board or before seeking a stay of the evaluation. If Employee X appeals the evaluation to the Board after the Special Counsel proceeding is terminated or exhausted, his appeal is an IRA appeal.

*Example 2:* As above, an agency gives Employee X a performance evaluation under 5 U.S.C. chapter 43 that rates him as "minimally satisfactory." Employee X believes that the agency has rated him "minimally satisfactory" because he previously filed a Board appeal of the agency's action suspending him without pay for 15 days. Whether the Board would have jurisdiction to review Employee X's performance rating as an IRA appeal depends on whether his previous Board appeal involved a claim of retaliation for whistleblowing. If it did, the Board could review the performance evaluation in an IRA appeal because the employee has alleged a violation of 5 U.S.C. 2302(b)(9)(A)(i). If the previous appeal did not involve a claim of retaliation for whistleblowing, there might be a prohibited personnel practice under subsection (b)(9)(A)(ii), but Employee X could not establish jurisdiction over an IRA appeal. Similarly, if Employee X believed that the current performance appraisal was retaliation for his previous protected equal employment opportunity (EEO) activity, there might be a prohibited personnel practice under subsection (b)(9)(A)(ii), but

Employee X could not establish jurisdiction over an IRA appeal.

*Example 3:* As above, an agency gives Employee X a performance evaluation under 5 U.S.C. chapter 43 that rates him as "minimally satisfactory." Employee X believes that the agency has rated him "minimally satisfactory" because he testified on behalf of a co-worker in an EEO proceeding. The Board would have jurisdiction over the performance evaluation in an IRA appeal because the appellant has alleged a violation of 5 U.S.C. 2302(b)(9)(B).

*Example 4:* Citing alleged misconduct, an agency proposes Employee Y's removal. While that removal action is pending, Employee Y files a complaint with OSC alleging that the proposed removal was initiated in retaliation for her having disclosed that an agency official embezzled public funds in violation of Federal law and regulation. OSC subsequently issues a letter notifying Employee Y that it has terminated its investigation of the alleged retaliation with respect to the proposed removal. Employee Y may file an IRA appeal with respect to the proposed removal.

(2) *Otherwise appealable action appeals.* These are appeals to the Board under laws, rules, or regulations other than 5 U.S.C. 1221(a) that include an allegation that the action was based on the appellant's whistleblowing or other protected activity. Otherwise appealable actions are listed in 5 CFR 1201.3(a). An individual who has been subjected to an otherwise appealable action must make an election of remedies as described in 5 U.S.C. 7121(g) and paragraphs (c) and (d) of this section.

*Example 5:* Same as Example 4 above. While the OSC complaint with respect to the proposed removal is pending, the agency effects the removal action. OSC subsequently issues a letter notifying Employee Y that it has terminated its investigation of the alleged retaliation with respect to the proposed removal. With respect to the effected removal, Employee Y can elect to appeal that action directly to the Board or to proceed with a complaint to OSC. If she chooses the latter option, she may file an IRA appeal when OSC has terminated its investigation, but the only issue that will be adjudicated in that appeal is whether she proves that her protected disclosure was a contributing factor in the removal action and, if so, whether the agency can prove by clear and convincing evidence that it would have removed Employee Y in the absence of the protected disclosure. If she instead files a direct appeal, the agency must prove its misconduct charges, nexus, and the reasonableness of the penalty, and Employee Y can raise any affirmative defenses she might have.

(c) *Issues before the Board in IRA appeals.* In an individual right of action appeal, the only merits issues before the Board are those listed in 5 U.S.C. 1221(e), i.e., whether the appellant has demonstrated that whistleblowing or other protected activity was a contributing factor in one or more covered personnel actions and, if so, whether the agency has demonstrated by clear and convincing evidence that it would have taken the same personnel action(s) in the absence of the whistleblowing or other protected activity. The appellant may not raise affirmative defenses, such as claims of discrimination or harmful procedural error. In an IRA appeal that concerns an adverse action under 5 U.S.C. 7512, the agency need not prove its charges, nexus, or the reasonableness of the penalty, as a requirement under 5 U.S.C. 7513(a), i.e., that its action is taken "only for such cause as will promote the efficiency of the service." However, the Board may consider the strength of the agency's evidence in support of its adverse action in determining whether the agency has demonstrated by clear and convincing evidence that it would have taken the same personnel action in the absence of the whistleblowing or other protected activity.

(d) *Elections under 5 U.S.C. 7121(g).* (1) Under 5 U.S.C. 7121(g)(3), an employee who believes he or she was subjected to a covered personnel action in retaliation for whistleblowing or other protected activity "may elect not more than one" of 3 remedies: An appeal to the Board under 5 U.S.C. 7701; a negotiated grievance under 5 U.S.C. 7121(d); or corrective action under subchapters II and III of 5 U.S.C. chapter 12, i.e., a complaint filed with the Special Counsel (5 U.S.C. 1214), which can be followed by an IRA appeal filed with the Board (5 U.S.C. 1221). Under 5 U.S.C. 7121(g)(4), an election is deemed to have been made based on which of the 3 actions the individual files first.

(2) In the case of an otherwise appealable action as described in paragraph (b)(2) of this section, an employee who files a complaint with OSC prior to filing an appeal with the Board has elected corrective action under subchapters II and III of 5 U.S.C. chapter 12, i.e., a complaint filed with OSC, which can be followed by an IRA appeal with the Board. As described in paragraph (c) of this section, the IRA appeal in such a case is limited to resolving the claim(s) of reprisal for whistleblowing or other protected activity.

(e) *Elements and Order of Proof.* Once jurisdiction has been established, the merits of a claim of retaliation for whistleblowing or other protected activity will be adjudicated as follows:

(1) The appellant must establish by preponderant evidence that he or she engaged in whistleblowing or other protected activity and that his or her whistleblowing or other protected activity was a contributing factor in a covered personnel action. An appellant may establish the contributing factor element through circumstantial evidence, such as evidence that the official taking the personnel action knew of the disclosure or protected activity, and that the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure or protected activity was a contributing factor in the personnel action.

(2) If a finding has been made that a protected disclosure or other protected activity was a contributing factor in one or more covered personnel actions, the Board will order corrective action unless the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure or activity.

■ 15. Section 1209.3 is revised to read as follows:

**§ 1209.3 Application of 5 CFR part 1201.**

Except as expressly provided in this part, the Board will apply subparts A, B, C, E, F, and G of 5 CFR part 1201 to appeals and stay requests governed by this part. The Board will apply the provisions of subpart H of part 1201 regarding awards of attorney fees, compensatory damages, and consequential damages under 5 U.S.C. 1221(g) to appeals governed by this part.

■ 16. Section 1209.4 is amended by revising paragraphs (a)(10) through (12) and (b), redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and adding new paragraph (c) and paragraph (f) to read as follows:

**§ 1209.4 Definitions.**

(a) * * *

(10) A decision to order psychiatric testing or examination;

(11) The implementation or enforcement of any nondisclosure policy, form, or agreement; and

(12) Any other significant change in duties, responsibilities, or working conditions.

(b) *Whistleblowing* is the making of a protected disclosure, that is, a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority, unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences any violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. It does not include a disclosure

that is specifically prohibited by law or required by Executive order to be kept secret in the interest of national defense or foreign affairs, unless such information is disclosed to Congress, the Special Counsel, the Inspector General of an agency, or an employee designated by the head of the agency to receive it.

(c) *Other protected activity* means any of the following:

(1) The exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation with regard to remedying a violation of 5 U.S.C. 2302(b)(8), i.e., retaliation for whistleblowing;

(2) Testifying for or otherwise lawfully assisting any individual in the exercise of any right granted by any law, rule, or regulation;

(3) Cooperating with or disclosing information to Congress, the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(4) Refusing to obey an order that would require the individual to violate a law.

* * * * *

(f) *Reasonable belief.* An employee or applicant may be said to have a reasonable belief when a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence the violation, mismanagement, waste, abuse, or danger in question.

■ 17. Section 1209.6 is amended by revising paragraphs (a)(4) and (a)(5)(ii) to read as follows:

**§ 1209.6 Content of appeal; right to hearing.**

(a) * * *

(4) A description of each disclosure evidencing whistleblowing or other protected activity as defined in § 1209.4(b) of this part; and

(5) * * *

(ii) The personnel action was or will be based wholly or in part on the whistleblowing disclosure or other protected activity, as described in § 1209.4(b) of this part.

* * * * *

■ 18. Section 1209.7 is revised to read as follows:

**§ 1209.7 Burden and degree of proof.**

(a) Subject to the exception stated in paragraph (b) of this section, in any case involving a prohibited personnel practice described in 5 U.S.C. 2302(b)(8) or (b)(9)(A)(i), (B), (C), or (D), the Board will order appropriate corrective action if the appellant shows by a preponderance of the evidence that the disclosure or other protected activity was a contributing factor in the personnel action that was threatened, proposed, taken, or not taken against the appellant.

(b) However, even where the appellant meets the burden stated in paragraph (a) of this section, the Board will not order corrective action if the agency shows by clear and convincing evidence that it would have threatened, proposed, taken, or not taken the same personnel action in the absence of the disclosure or other protected activity.

■ 19. Section 1209.9 is amended by revising paragraph (a)(6)(ii) to read as follows:

**§ 1209.9 Content of stay request and response.**

(a) * * *

(6) * * *

(ii) The action complained of was based on whistleblowing or other protected activity as defined in § 1209.4(b) of this part; and

* * * * *

■ 20. Section 1209.13 is revised to read as follows:

**§ 1209.13 Referral of findings to the Special Counsel.**

When the Board determines in a proceeding under this part that there is reason to believe that a current Federal employee may have committed a prohibited personnel practice described at 5 U.S.C. 2302(b)(8) or (b)(9)(A)(i), (B), (C), or (D), the Board will refer the matter to the Special Counsel to investigate and take appropriate action under 5 U.S.C. 1215.

**William D. Spencer,**

*Clerk of the Board.*

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 253

**[FNS–2009–0006]**

**RIN 0584–AD95**

### Food Distribution Program on Indian Reservations: Amendments Related to the Food, Conservation, and Energy Act of 2008; Approval of Information Collection Request

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule; Notice of Approval of Information Collection Request (ICR).

**SUMMARY:** The final rule entitled Food Distribution Program on Indian Reservations: Amendments Related to the Food, Conservation, and Energy Act of 2008 was published on April 6, 2011. The Office of Management and Budget (OMB) cleared the associated information collection requirements (ICR) on December 20, 2011. This document announces approval of the ICR.

**DATES:** The ICR associated with the final rule published in the **Federal Register** on April 6, 2011, at 76 FR 18861, was approved by OMB on December 20, 2011, under OMB Control Number 0584–0293.

**FOR FURTHER INFORMATION CONTACT:** Dana Rasmussen, Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 506, Alexandria, Virginia 22302, by phone at (703) 305–2662, or via email at *Dana.Rasmussen@fns.usda.gov.*

Dated: June 25, 2013.

**Jeffrey J. Tribiano,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2013–15634 Filed 7–1–13; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 925

**[Doc. No. AMS–FV–13–0005; FV13–925–1 FR]**

### Grapes Grown in Designated Area of Southeastern California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Desert Grape Administrative Committee (Committee) for the 2013 and subsequent fiscal periods from $0.0150 to $0.0165 per 18-pound lug of grapes handled. The Committee locally administers the marketing order that regulates the handling of grapes grown in a designated area of southeastern California. Assessments upon grape handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** Effective July 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathie M. Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Kathie.Notoro@ams.usda.gov* or *Martin.Engeler@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 No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, 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. Under the marketing order now in effect, grape handlers in a designated area of southeastern California are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein is applicable to all assessable grapes beginning on January 1, 2013, and will continue until amended, suspended, or terminated.

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. Such 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 not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2013 and subsequent fiscal periods from $0.0150 to $0.0165 per 18-pound lug of grapes handled.

The grape order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of grapes grown in a designated area of southeastern California. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2012 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA based upon a recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on March 4, 2013, and unanimously recommended 2013 expenditures of $100,000 and an assessment rate of $0.0165 per 18-pound lug of grapes handled. In comparison, last year's budgeted expenditures were $95,500. The recommended assessment rate is $0.0015 higher than the $0.0150 rate currently in effect. The Committee also estimated shipments for the 2013 season to be 5,800,000 lugs. The higher assessment rate, applied to estimated shipments of 5,800,000 lugs, is expected to generate $95,700 in revenue, which is slightly less than the budgeted expenses. However, combining this revenue with $4,300 from financial operating reserves will provide sufficient revenue to cover the Committee's budgeted expenses.

The major expenditures recommended by the Committee for the 2013 fiscal period include $15,500 for research, $17,000 for general office expenses, and $67,500 for management and compliance expenses. In comparison, major expenditures for the 2012 fiscal period included $15,500 for research, $17,500 for general office expenses, and $62,500 for management and compliance expenses.

The assessment rate recommended by the Committee was derived by evaluating several factors, including estimated shipments for the 2013 season, budgeted expenses, and the level of available financial reserves. The Committee determined that it could utilize $4,300 from its financial reserves and still maintain the reserves at an acceptable level. The remaining $95,700 necessary to meet budgeted expenses will need to be raised through assessments. Thus, dividing the $95,700 in necessary assessment revenue by 2013 estimated shipments of 5,800,000 lugs results in an assessment rate of $0.0165.

Reserve funds by the end of 2013 are projected at $53,972, which is well within the amount authorized under the order. Section 925.41 of the order permits the Committee to maintain approximately one fiscal period's expenses in reserve.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA based upon a recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2013 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

**Final 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 rule on small entities. Accordingly, AMS has prepared this final 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 the 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 14 handlers of southeastern California grapes who are subject to regulation under the order and about 41 grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. Nine of the 14 handlers subject to regulation have annual grape sales of less than $7,000,000, according to Committee and USDA data. In addition, it is estimated that ten of the 41 producers have annual receipts of less than $750,000. Based on the foregoing, it may be concluded that a majority of grape handlers regulated under the order, and about ten of the producers could be classified as small entities under the Small Business Administration definitions.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2013 and subsequent fiscal periods. The Committee unanimously recommended an assessment rate of $0.0165 per 18-pound lug of grapes handled, and 2013 expenditures of $100,000. The assessment rate of $0.0165 is $0.0015 higher than the 2012 rate currently in effect. The quantity of assessable grapes for the 2013 season is estimated at 5,800,000 18-pound lugs. Thus, the $0.0165 rate should generate $95,700 in income. Combined with $4,300 from financial reserves, this should provide adequate revenue to meet the 2013 fiscal period expenses. In addition, reserve funds at the end of the year are projected to be $53,972, which is well within the order's limitation of approximately one fiscal period's expenses.

The major expenditures recommended by the Committee for the 2013 fiscal period include $15,500 for research, $17,000 for general office expenses, and $67,500 for management and compliance expenses. In comparison, major expenditures for the 2012 fiscal period included $15,500 for research, $17,500 for general office expenses, and $62,500 for management and compliance expenses.

Prior to arriving at this budget, the Committee considered alternative expenditures and assessment rates, including not increasing the $0.0150 assessment rate currently in effect. Based on a crop estimate of 5,800,000 18-pound lugs, the Committee ultimately determined that revenue generated from an assessment rate of $0.0165, combined with funds from the financial reserve, should adequately cover increased expenses while providing an adequate 2013 ending financial reserve.

A review of historical crop and price information, as well as preliminary information pertaining to the 2013 season indicates that the producer price for southeastern California grapes for the 2013 season could average about $8.00 per 18-pound lug. Utilizing this estimate and the assessment rate of $0.0165, estimated assessment revenue as a percentage of total estimated producer revenue should be 0.20 percent for the 2013 season ($0.0165 divided by $8.00 per 18-pound lug). Thus, the assessment revenue should be well below 1 percent of estimated producer revenue in 2013.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the March 4, 2013, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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. 0581–0189. 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 imposes no additional reporting or recordkeeping requirements on either small or large California grape 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.

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

A proposed rule concerning this action was published in the **Federal Register** on May 14, 2013 (78 FR 28147). Copies of the proposed rule were also mailed or sent via facsimile to all grape handlers. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 15-day comment period ending May 29, 2013, was provided for interested persons to respond to the proposal. No comments were received.

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.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information provided, it is hereby found that this 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 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 2013 fiscal period began on January 1, 2013, and the marketing order requires that the assessment rate for each fiscal period apply to all assessable grapes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed rule.

**List of Subjects in 7 CFR Part 925**

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

## PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 925.215 is revised to read as follows:

**§ 925.215 Assessment rate.**

On and after January 1, 2013, an assessment rate of $0.0165 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: June 25, 2013.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2013–15621 Filed 7–1–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1205

**[Doc. AMS–CN–12–0065]**

### Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports (2013 Amendment)

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Direct Final Rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations, decreasing the value assigned to imported cotton for the purposes of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This amendment is required each year to assure that assessments collected on imported cotton and the cotton content of imported products will be the same as those paid on domestically produced cotton. In addition, AMS is changing two Harmonized Tariff Schedule (HTS) statistical reporting numbers that were amended since the last assessment adjustment in 2012.

**DATES:** This direct final rule is effective September 3, 2013, without further action or notice, unless significant adverse comment is received by August 1, 2013. If significant adverse comment is received, AMS will publish a timely withdrawal of the amendment in the **Federal Register**.

**ADDRESSES:** Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publically disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Comments, identified by AMS–CN–12–0065, may be submitted electronically through the *Federal eRulemaking Portal at http://www.regulations.gov*. Please follow the instructions for submitting comments. In addition, comments may be submitted by m*ail or hand delivery to* Cotton Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406. Comments should be submitted in triplicate. All comments received will be made available for public inspection at Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406. A copy of this notice may be found at: *www.regulations.gov* .

**FOR FURTHER INFORMATION CONTACT:** Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

Amendments to the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Act) were enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 stat. 3909, November 28, 1990). These amendments contained two provisions that authorize changes in the funding procedures for the Cotton Research and Promotion Program. These provisions provide for: (1) the assessment of imported cotton and cotton products; and (2) termination of refunds to cotton producers. (Prior the 1990 amendments to the Act, producers could request assessment refunds.)

As amended, the Cotton Research and Promotion Order (7 CFR part 1205) (Order) was approved by producers and importers voting in a referendum held July 17–26, 1991, and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This direct final rule would amend the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR part 1205.510(b)(2)) that is used to determine the Cotton Research and Promotion assessment on imported cotton and cotton products. The total value of assessment levied on cotton imports is the sum of two parts. The first part of the assessment is based on the weight of cotton imported—levied at a rate of $1 per bale of cotton, which is equivalent to 500 pounds, or $1 per 226.8 kilograms of cotton. The second part of the import assessment (referred to as the supplemental assessment) is based on the value of imported cotton lint or the cotton contained in imported cotton products—levied at a rate of five-tenths of one percent of the value of domestically produced cotton.

Section 1205.510(b)(2) of the Cotton Research and Promotion Rules and Regulations provides for assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products is the same. The source for the average price statistic is *Agricultural Prices,* a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products will yield an assessment that is the same as assessments paid on domestically produced cotton.

The current value of imported cotton as published in 2012 in the **Federal Register** (77 FR 51867) for the purpose of calculating assessments on imported cotton is $0.014109 per kilogram. Using the Average Weighted Priced received by U.S. farmers for Upland cotton for the calendar year 2012, this direct final rule would amend the new value of imported cotton to $0.012876 per kilogram to reflect the price paid by U.S. farmers for Upland cotton during 2012.

An example of the complete assessment formula and how the figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

*One Dollar per Bale Assessment Converted to Kilograms*

A 500-pound bale equals 226.8 kg. (500 × 0.453597).

$1 per bale assessment equals $0.002000 per pound or $0.2000 cents

per pound (1/500) or $0.004409 per kg or $0.4409 cents per kg. (1/226.8).

*Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms*

The 2012 calendar year weighted average price received by producers for Upland cotton is $0.768 per pound or $1.693 per kg. (0.768 × 2.2046).

Five tenths of one percent of the average price equals $0.008467 per kg. (1.693 × 0.005).

*Total Assessment*

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.008467 per kg., which equals $0.012876 per kg.

The current assessment on imported cotton is $0.014109 per kilogram of imported cotton. The revised assessment in this direct final rule is $0.012876, a decrease of $0.001233 per kilogram. This decrease reflects the decrease in the average weighted price of Upland cotton received by U.S. Farmers during the period January through December 2012.

Import Assessment Table in section 1205.510(b)(3) indicates the total assessment rate ($ per kilogram) due for each HTS number that is subject to assessment. This table must be revised each year to reflect changes in supplemental assessment rates. In this direct final rule, AMS is amending the Import Assessment Table.

AMS also compared the current import assessment table with the U.S. International Trade Commission's (ITC) 2013 HTS and information from U.S. Customs and Border Protection and identified two HTS statistical reporting numbers that no longer exist in the HTS and that have been changed by ITC. In this direct final rule, AMS is amending the following HTS statistical reporting numbers for consistency with published ITC numbers:

| 2012 HTS codes | Revised 2013 HTS codes |
|---|---|
| 5513390015 | 5513390115 |
| 5513390091 | 5513390191 |

AMS believes that these amendments are necessary to assure that assessments collected on imported cotton and the cotton content of imported products are the same as those paid on domestically produced cotton. Accordingly, changes reflected in this rule should be adopted and implemented as soon as possible since it is required by regulation.

**B. Good Cause Finding That Proposed Rulemaking Unnecessary**

Rulemaking under section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) ordinarily involves publication of a notice of proposed rulemaking in the **Federal Register** and the public is given an opportunity to comment on the proposed rule; however, an agency may issue a rule without prior notice and comment procedures if it determines for good cause that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest for such rule, and incorporates a statement of the finding with the underlying reasons in the final rule issued.

As described this **Federal Register** notice, the amendment to the value used to determine the Cotton Research and Promotion Program importer assessment will be updated to reflect the assessment already paid by U.S. farmers. For the reasons mentioned in section A of this preamble, AMS finds that publishing a proposed rule and seeking public comment is unnecessary because the change is required annually by regulation in 7 CFR part 1205.510.

Also, this direct-final rulemaking furthers the objectives of Executive Order 13563, which requires that the regulatory process "promote predictability and reduce uncertainty" and "identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends."

Notwithstanding the foregoing, in the "Proposed Rules" section of today's **Federal Register**, AMS is publishing a separate document that will serve as a notice of proposal to amend part 7 CFR part 1205 as described in this direct final rule. If AMS receives significant adverse comment during the comment period, it will publish, in a timely manner, a document in the **Federal Register** withdrawing this direct final rule. AMS will then address public comments in a subsequent final rule based on the proposed rule. AMS will not institute a second comment period on this rule. Any parties interested in commenting must do so during this comment period.

**C. Regulatory Impact Analysis**

*Executive Order 12866*

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

*Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

**Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (importers) as having receipts of no more than $7,000,000. In 2012, an estimated 17,000 importers are subject to the rules and regulations issued pursuant to the Cotton Research and Promotion Order. Most are considered small entities as defined by the Small Business Administration.

This rule would only affect importers of cotton and cotton-containing products and would lower the assessments paid by the importers under the Cotton Research and Promotion Order. The current assessment on imported cotton is $0.014109 per kilogram of imported cotton. The proposed assessment is $0.012876, which was calculated based on the 12-month weighted average of price received by U.S. cotton farmers. Section 1205.510, "Levy of assessments", provides "the rate of the supplemental assessment on imported

cotton will be the same as that levied on cotton produced within the United States." In addition, section 1205.510 provides that the 12-month weighted average of prices received by U.S. farmers will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton.

Under the Cotton Research and Promotion Program, assessments are used by the Cotton Board to finance research and promotion programs designed to increase consumer demand for Upland cotton in the United States and international markets. In 2011 (the last audited year), producer assessments totaled $45.5 million and importer assessments totaled $33.7 million. According to the Cotton Board, should the volume of cotton products imported into the U.S. remain at the same level in 2013, one could expect a decrease of assessments by approximately $3,735,200.

Importers with line-items appearing on U.S. Customs and Border Protection documentation with value of the cotton contained therein results of an assessment of two dollars ($2.00) or less will not be subject to assessments. In addition, imported cotton and products may be exempt from assessment if the cotton content of products is U.S. produced, cotton other than Upland, or imported products that are eligible to be labeled as 100 percent organic under the National Organic Program (7 CFR part 205) and who is not a split operation of organic and non-organic products.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093, National Research, Promotion, and Consumer Information Programs. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

A 30-day comment period is provided to comment on the changes to the Cotton Board Rules and Regulations proposed herein. This period is deemed appropriate because this rule would decrease the assessments paid by importers under the Cotton Research and Promotion Order. An amendment is required to adjust the assessments collected on imported cotton and the cotton content of imported products to be the same as those paid on domestically produced cotton. Accordingly, the change in this rule, if adopted, should be implemented as soon as possible.

**List of Subjects in 7 CFR Part 1205**

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS amends 7 CFR part 1205 as follows:

## PART 1205—COTTON RESEARCH AND PROMOTION

■ 1. The authority citation for Part 1205 continues to read as follows:

**Authority:** 7 U.S.C. 2101–2118.

■ 2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

**§ 1205.510 Levy of assessments.**

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.2876 cents per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5007106010 .. | 0.2713 | 0.3493 |
| 5007106020 .. | 0.2713 | 0.3493 |
| 5007906010 .. | 0.2713 | 0.3493 |
| 5007906020 .. | 0.2713 | 0.3493 |
| 5112904000 .. | 0.1085 | 0.1397 |
| 5112905000 .. | 0.1085 | 0.1397 |
| 5112909010 .. | 0.1085 | 0.1397 |
| 5112909090 .. | 0.1085 | 0.1397 |
| 5201000500 .. | 0 | 1.2876 |
| 5201001200 .. | 0 | 1.2876 |
| 5201001400 .. | 0 | 1.2876 |
| 5201001800 .. | 0 | 1.2876 |
| 5201002200 .. | 0 | 1.2876 |
| 5201002400 .. | 0 | 1.2876 |
| 5201002800 .. | 0 | 1.2876 |
| 5201003400 .. | 0 | 1.2876 |
| 5201003800 .. | 0 | 1.2876 |
| 5204110000 .. | 1.0526 | 1.3553 |
| 5204190000 .. | 0.6316 | 0.8132 |
| 5204200000 .. | 1.0526 | 1.3553 |
| 5205111000 .. | 1 | 1.2876 |
| 5205112000 .. | 1 | 1.2876 |
| 5205121000 .. | 1 | 1.2876 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5205122000 .. | 1 | 1.2876 |
| 5205131000 .. | 1 | 1.2876 |
| 5205132000 .. | 1 | 1.2876 |
| 5205141000 .. | 1 | 1.2876 |
| 5205142000 .. | 1 | 1.2876 |
| 5205151000 .. | 1 | 1.2876 |
| 5205152000 .. | 1 | 1.2876 |
| 5205210020 .. | 1.044 | 1.3443 |
| 5205210090 .. | 1.044 | 1.3443 |
| 5205220020 .. | 1.044 | 1.3443 |
| 5205220090 .. | 1.044 | 1.3443 |
| 5205230020 .. | 1.044 | 1.3443 |
| 5205230090 .. | 1.044 | 1.3443 |
| 5205240020 .. | 1.044 | 1.3443 |
| 5205240090 .. | 1.044 | 1.3443 |
| 5205260020 .. | 1.044 | 1.3443 |
| 5205260090 .. | 1.044 | 1.3443 |
| 5205270020 .. | 1.044 | 1.3443 |
| 5205270090 .. | 1.044 | 1.3443 |
| 5205280020 .. | 1.044 | 1.3443 |
| 5205280090 .. | 1.044 | 1.3443 |
| 5205310000 .. | 1 | 1.2876 |
| 5205320000 .. | 1 | 1.2876 |
| 5205330000 .. | 1 | 1.2876 |
| 5205340000 .. | 1 | 1.2876 |
| 5205350000 .. | 1 | 1.2876 |
| 5205410020 .. | 1.044 | 1.3443 |
| 5205410090 .. | 1.044 | 1.3443 |
| 5205420021 .. | 1.044 | 1.3443 |
| 5205420029 .. | 1.044 | 1.3443 |
| 5205420090 .. | 1.044 | 1.3443 |
| 5205430021 .. | 1.044 | 1.3443 |
| 5205430029 .. | 1.044 | 1.3443 |
| 5205430090 .. | 1.044 | 1.3443 |
| 5205440021 .. | 1.044 | 1.3443 |
| 5205440029 .. | 1.044 | 1.3443 |
| 5205440090 .. | 1.044 | 1.3443 |
| 5205460021 .. | 1.044 | 1.3443 |
| 5205460029 .. | 1.044 | 1.3443 |
| 5205460090 .. | 1.044 | 1.3443 |
| 5205470021 .. | 1.044 | 1.3443 |
| 5205470029 .. | 1.044 | 1.3443 |
| 5205470090 .. | 1.044 | 1.3443 |
| 5205480020 .. | 1.044 | 1.3443 |
| 5205480090 .. | 1.044 | 1.3443 |
| 5206110000 .. | 0.7368 | 0.9487 |
| 5206120000 .. | 0.7368 | 0.9487 |
| 5206130000 .. | 0.7368 | 0.9487 |
| 5206140000 .. | 0.7368 | 0.9487 |
| 5206150000 .. | 0.7368 | 0.9487 |
| 5206210000 .. | 0.7692 | 0.9904 |
| 5206220000 .. | 0.7692 | 0.9904 |
| 5206230000 .. | 0.7692 | 0.9904 |
| 5206240000 .. | 0.7692 | 0.9904 |
| 5206250000 .. | 0.7692 | 0.9904 |
| 5206310000 .. | 0.7368 | 0.9487 |
| 5206320000 .. | 0.7368 | 0.9487 |
| 5206330000 .. | 0.7368 | 0.9487 |
| 5206340000 .. | 0.7368 | 0.9487 |
| 5206350000 .. | 0.7368 | 0.9487 |
| 5206410000 .. | 0.7692 | 0.9904 |
| 5206420000 .. | 0.7692 | 0.9904 |
| 5206430000 .. | 0.7692 | 0.9904 |
| 5206440000 .. | 0.7692 | 0.9904 |
| 5206450000 .. | 0.7692 | 0.9904 |
| 5207100000 .. | 0.9474 | 1.2199 |
| 5207900000 .. | 0.6316 | 0.8132 |
| 5208112020 .. | 1.0852 | 1.3973 |
| 5208112040 .. | 1.0852 | 1.3973 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5208112090 .. | 1.0852 | 1.3973 |
| 5208114020 .. | 1.0852 | 1.3973 |
| 5208114040 .. | 1.0852 | 1.3973 |
| 5208114060 .. | 1.0852 | 1.3973 |
| 5208114090 .. | 1.0852 | 1.3973 |
| 5208116000 .. | 1.0852 | 1.3973 |
| 5208118020 .. | 1.0852 | 1.3973 |
| 5208118090 .. | 1.0852 | 1.3973 |
| 5208124020 .. | 1.0852 | 1.3973 |
| 5208124040 .. | 1.0852 | 1.3973 |
| 5208124090 .. | 1.0852 | 1.3973 |
| 5208126020 .. | 1.0852 | 1.3973 |
| 5208126040 .. | 1.0852 | 1.3973 |
| 5208126060 .. | 1.0852 | 1.3973 |
| 5208126090 .. | 1.0852 | 1.3973 |
| 5208128020 .. | 1.0852 | 1.3973 |
| 5208128090 .. | 1.0852 | 1.3973 |
| 5208130000 .. | 1.0852 | 1.3973 |
| 5208192020 .. | 1.0852 | 1.3973 |
| 5208192090 .. | 1.0852 | 1.3973 |
| 5208194020 .. | 1.0852 | 1.3973 |
| 5208194090 .. | 1.0852 | 1.3973 |
| 5208196020 .. | 1.0852 | 1.3973 |
| 5208196090 .. | 1.0852 | 1.3973 |
| 5208198020 .. | 1.0852 | 1.3973 |
| 5208198090 .. | 1.0852 | 1.3973 |
| 5208212020 .. | 1.0852 | 1.3973 |
| 5208212040 .. | 1.0852 | 1.3973 |
| 5208212090 .. | 1.0852 | 1.3973 |
| 5208214020 .. | 1.0852 | 1.3973 |
| 5208214040 .. | 1.0852 | 1.3973 |
| 5208214060 .. | 1.0852 | 1.3973 |
| 5208214090 .. | 1.0852 | 1.3973 |
| 5208216020 .. | 1.0852 | 1.3973 |
| 5208216090 .. | 1.0852 | 1.3973 |
| 5208224020 .. | 1.0852 | 1.3973 |
| 5208224040 .. | 1.0852 | 1.3973 |
| 5208224090 .. | 1.0852 | 1.3973 |
| 5208226020 .. | 1.0852 | 1.3973 |
| 5208226040 .. | 1.0852 | 1.3973 |
| 5208226060 .. | 1.0852 | 1.3973 |
| 5208226090 .. | 1.0852 | 1.3973 |
| 5208228020 .. | 1.0852 | 1.3973 |
| 5208228090 .. | 1.0852 | 1.3973 |
| 5208230000 .. | 1.0852 | 1.3973 |
| 5208292020 .. | 1.0852 | 1.3973 |
| 5208292090 .. | 1.0852 | 1.3973 |
| 5208294020 .. | 1.0852 | 1.3973 |
| 5208294090 .. | 1.0852 | 1.3973 |
| 5208296020 .. | 1.0852 | 1.3973 |
| 5208296090 .. | 1.0852 | 1.3973 |
| 5208298020 .. | 1.0852 | 1.3973 |
| 5208298090 .. | 1.0852 | 1.3973 |
| 5208312000 .. | 1.0852 | 1.3973 |
| 5208314020 .. | 1.0852 | 1.3973 |
| 5208314040 .. | 1.0852 | 1.3973 |
| 5208314090 .. | 1.0852 | 1.3973 |
| 5208316020 .. | 1.0852 | 1.3973 |
| 5208316040 .. | 1.0852 | 1.3973 |
| 5208316060 .. | 1.0852 | 1.3973 |
| 5208316090 .. | 1.0852 | 1.3973 |
| 5208318020 .. | 1.0852 | 1.3973 |
| 5208318090 .. | 1.0852 | 1.3973 |
| 5208321000 .. | 1.0852 | 1.3973 |
| 5208323020 .. | 1.0852 | 1.3973 |
| 5208323040 .. | 1.0852 | 1.3973 |
| 5208323090 .. | 1.0852 | 1.3973 |
| 5208324020 .. | 1.0852 | 1.3973 |
| 5208324040 .. | 1.0852 | 1.3973 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5208324060 .. | 1.0852 | 1.3973 |
| 5208324090 .. | 1.0852 | 1.3973 |
| 5208325020 .. | 1.0852 | 1.3973 |
| 5208325090 .. | 1.0852 | 1.3973 |
| 5208330000 .. | 1.0852 | 1.3973 |
| 5208392020 .. | 1.0852 | 1.3973 |
| 5208392090 .. | 1.0852 | 1.3973 |
| 5208394020 .. | 1.0852 | 1.3973 |
| 5208394090 .. | 1.0852 | 1.3973 |
| 5208396020 .. | 1.0852 | 1.3973 |
| 5208396090 .. | 1.0852 | 1.3973 |
| 5208398020 .. | 1.0852 | 1.3973 |
| 5208398090 .. | 1.0852 | 1.3973 |
| 5208412000 .. | 1.0852 | 1.3973 |
| 5208414000 .. | 1.0852 | 1.3973 |
| 5208416000 .. | 1.0852 | 1.3973 |
| 5208418000 .. | 1.0852 | 1.3973 |
| 5208421000 .. | 1.0852 | 1.3973 |
| 5208423000 .. | 1.0852 | 1.3973 |
| 5208424000 .. | 1.0852 | 1.3973 |
| 5208425000 .. | 1.0852 | 1.3973 |
| 5208430000 .. | 1.0852 | 1.3973 |
| 5208492000 .. | 1.0852 | 1.3973 |
| 5208494010 .. | 1.0852 | 1.3973 |
| 5208494020 .. | 1.0852 | 1.3973 |
| 5208494090 .. | 1.0852 | 1.3973 |
| 5208496010 .. | 1.0852 | 1.3973 |
| 5208496020 .. | 1.0852 | 1.3973 |
| 5208496030 .. | 1.0852 | 1.3973 |
| 5208496090 .. | 1.0852 | 1.3973 |
| 5208498020 .. | 1.0852 | 1.3973 |
| 5208498090 .. | 1.0852 | 1.3973 |
| 5208512000 .. | 1.0852 | 1.3973 |
| 5208514020 .. | 1.0852 | 1.3973 |
| 5208514040 .. | 1.0852 | 1.3973 |
| 5208514090 .. | 1.0852 | 1.3973 |
| 5208516020 .. | 1.0852 | 1.3973 |
| 5208516040 .. | 1.0852 | 1.3973 |
| 5208516060 .. | 1.0852 | 1.3973 |
| 5208516090 .. | 1.0852 | 1.3973 |
| 5208518020 .. | 1.0852 | 1.3973 |
| 5208518090 .. | 1.0852 | 1.3973 |
| 5208521000 .. | 1.0852 | 1.3973 |
| 5208523020 .. | 1.0852 | 1.3973 |
| 5208523035 .. | 1.0852 | 1.3973 |
| 5208523045 .. | 1.0852 | 1.3973 |
| 5208523090 .. | 1.0852 | 1.3973 |
| 5208524020 .. | 1.0852 | 1.3973 |
| 5208524035 .. | 1.0852 | 1.3973 |
| 5208524045 .. | 1.0852 | 1.3973 |
| 5208524055 .. | 1.0852 | 1.3973 |
| 5208524065 .. | 1.0852 | 1.3973 |
| 5208524090 .. | 1.0852 | 1.3973 |
| 5208525020 .. | 1.0852 | 1.3973 |
| 5208525090 .. | 1.0852 | 1.3973 |
| 5208591000 .. | 1.0852 | 1.3973 |
| 5208592015 .. | 1.0852 | 1.3973 |
| 5208592025 .. | 1.0852 | 1.3973 |
| 5208592085 .. | 1.0852 | 1.3973 |
| 5208592095 .. | 1.0852 | 1.3973 |
| 5208594020 .. | 1.0852 | 1.3973 |
| 5208594090 .. | 1.0852 | 1.3973 |
| 5208596020 .. | 1.0852 | 1.3973 |
| 5208596090 .. | 1.0852 | 1.3973 |
| 5208598020 .. | 1.0852 | 1.3973 |
| 5208598090 .. | 1.0852 | 1.3973 |
| 5209110020 .. | 1.0309 | 1.3274 |
| 5209110025 .. | 1.0309 | 1.3274 |
| 5209110035 .. | 1.0309 | 1.3274 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5209110050 .. | 1.0309 | 1.3274 |
| 5209110090 .. | 1.0309 | 1.3274 |
| 5209120020 .. | 1.0309 | 1.3274 |
| 5209120040 .. | 1.0309 | 1.3274 |
| 5209190020 .. | 1.0309 | 1.3274 |
| 5209190040 .. | 1.0309 | 1.3274 |
| 5209190060 .. | 1.0309 | 1.3274 |
| 5209190090 .. | 1.0309 | 1.3274 |
| 5209210020 .. | 1.0309 | 1.3274 |
| 5209210025 .. | 1.0309 | 1.3274 |
| 5209210035 .. | 1.0309 | 1.3274 |
| 5209210050 .. | 1.0309 | 1.3274 |
| 5209210090 .. | 1.0309 | 1.3274 |
| 5209220020 .. | 1.0309 | 1.3274 |
| 5209220040 .. | 1.0309 | 1.3274 |
| 5209290020 .. | 1.0309 | 1.3274 |
| 5209290040 .. | 1.0309 | 1.3274 |
| 5209290060 .. | 1.0309 | 1.3274 |
| 5209290090 .. | 1.0309 | 1.3274 |
| 5209313000 .. | 1.0309 | 1.3274 |
| 5209316020 .. | 1.0309 | 1.3274 |
| 5209316025 .. | 1.0309 | 1.3274 |
| 5209316035 .. | 1.0309 | 1.3274 |
| 5209316050 .. | 1.0309 | 1.3274 |
| 5209316090 .. | 1.0309 | 1.3274 |
| 5209320020 .. | 1.0309 | 1.3274 |
| 5209320040 .. | 1.0309 | 1.3274 |
| 5209390020 .. | 1.0309 | 1.3274 |
| 5209390040 .. | 1.0309 | 1.3274 |
| 5209390060 .. | 1.0309 | 1.3274 |
| 5209390080 .. | 1.0309 | 1.3274 |
| 5209390090 .. | 1.0309 | 1.3274 |
| 5209413000 .. | 1.0309 | 1.3274 |
| 5209416020 .. | 1.0309 | 1.3274 |
| 5209416040 .. | 1.0309 | 1.3274 |
| 5209420020 .. | 0.9767 | 1.2576 |
| 5209420040 .. | 0.9767 | 1.2576 |
| 5209420060 .. | 0.9767 | 1.2576 |
| 5209420080 .. | 0.9767 | 1.2576 |
| 5209430030 .. | 1.0309 | 1.3274 |
| 5209430050 .. | 1.0309 | 1.3274 |
| 5209490020 .. | 1.0309 | 1.3274 |
| 5209490040 .. | 1.0309 | 1.3274 |
| 5209490090 .. | 1.0309 | 1.3274 |
| 5209513000 .. | 1.0309 | 1.3274 |
| 5209516015 .. | 1.0852 | 1.3973 |
| 5209516025 .. | 1.0852 | 1.3973 |
| 5209516032 .. | 1.0852 | 1.3973 |
| 5209516035 .. | 1.0852 | 1.3973 |
| 5209516050 .. | 1.0852 | 1.3973 |
| 5209516090 .. | 1.0852 | 1.3973 |
| 5209520020 .. | 1.0852 | 1.3973 |
| 5209520040 .. | 1.0852 | 1.3973 |
| 5209590015 .. | 1.0852 | 1.3973 |
| 5209590025 .. | 1.0852 | 1.3973 |
| 5209590040 .. | 1.0852 | 1.3973 |
| 5209590060 .. | 1.0852 | 1.3973 |
| 5209590090 .. | 1.0852 | 1.3973 |
| 5210114020 .. | 0.6511 | 0.8384 |
| 5210114040 .. | 0.6511 | 0.8384 |
| 5210114090 .. | 0.6511 | 0.8384 |
| 5210116020 .. | 0.6511 | 0.8384 |
| 5210116040 .. | 0.6511 | 0.8384 |
| 5210116060 .. | 0.6511 | 0.8384 |
| 5210116090 .. | 0.6511 | 0.8384 |
| 5210118020 .. | 0.6511 | 0.8384 |
| 5210118090 .. | 0.6511 | 0.8384 |
| 5210191000 .. | 0.6511 | 0.8384 |
| 5210192020 .. | 0.6511 | 0.8384 |

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5210192090 .. | 0.6511 | 0.8384 |
| 5210194020 .. | 0.6511 | 0.8384 |
| 5210194090 .. | 0.6511 | 0.8384 |
| 5210196020 .. | 0.6511 | 0.8384 |
| 5210196090 .. | 0.6511 | 0.8384 |
| 5210198020 .. | 0.6511 | 0.8384 |
| 5210198090 .. | 0.6511 | 0.8384 |
| 5210214020 .. | 0.6511 | 0.8384 |
| 5210214040 .. | 0.6511 | 0.8384 |
| 5210214090 .. | 0.6511 | 0.8384 |
| 5210216020 .. | 0.6511 | 0.8384 |
| 5210216040 .. | 0.6511 | 0.8384 |
| 5210216060 .. | 0.6511 | 0.8384 |
| 5210216090 .. | 0.6511 | 0.8384 |
| 5210218020 .. | 0.6511 | 0.8384 |
| 5210218090 .. | 0.6511 | 0.8384 |
| 5210291000 .. | 0.6511 | 0.8384 |
| 5210292020 .. | 0.6511 | 0.8384 |
| 5210292090 .. | 0.6511 | 0.8384 |
| 5210294020 .. | 0.6511 | 0.8384 |
| 5210294090 .. | 0.6511 | 0.8384 |
| 5210296020 .. | 0.6511 | 0.8384 |
| 5210296090 .. | 0.6511 | 0.8384 |
| 5210298020 .. | 0.6511 | 0.8384 |
| 5210298090 .. | 0.6511 | 0.8384 |
| 5210314020 .. | 0.6511 | 0.8384 |
| 5210314040 .. | 0.6511 | 0.8384 |
| 5210314090 .. | 0.6511 | 0.8384 |
| 5210316020 .. | 0.6511 | 0.8384 |
| 5210316040 .. | 0.6511 | 0.8384 |
| 5210316060 .. | 0.6511 | 0.8384 |
| 5210316090 .. | 0.6511 | 0.8384 |
| 5210318020 .. | 0.6511 | 0.8384 |
| 5210318090 .. | 0.6511 | 0.8384 |
| 5210320000 .. | 0.6511 | 0.8384 |
| 5210392020 .. | 0.6511 | 0.8384 |
| 5210392090 .. | 0.6511 | 0.8384 |
| 5210394020 .. | 0.6511 | 0.8384 |
| 5210394090 .. | 0.6511 | 0.8384 |
| 5210396020 .. | 0.6511 | 0.8384 |
| 5210396090 .. | 0.6511 | 0.8384 |
| 5210398020 .. | 0.6511 | 0.8384 |
| 5210398090 .. | 0.6511 | 0.8384 |
| 5210414000 .. | 0.6511 | 0.8384 |
| 5210416000 .. | 0.6511 | 0.8384 |
| 5210418000 .. | 0.6511 | 0.8384 |
| 5210491000 .. | 0.6511 | 0.8384 |
| 5210492000 .. | 0.6511 | 0.8384 |
| 5210494010 .. | 0.6511 | 0.8384 |
| 5210494020 .. | 0.6511 | 0.8384 |
| 5210494090 .. | 0.6511 | 0.8384 |
| 5210496010 .. | 0.6511 | 0.8384 |
| 5210496020 .. | 0.6511 | 0.8384 |
| 5210496090 .. | 0.6511 | 0.8384 |
| 5210498020 .. | 0.6511 | 0.8384 |
| 5210498090 .. | 0.6511 | 0.8384 |
| 5210514020 .. | 0.6511 | 0.8384 |
| 5210514040 .. | 0.6511 | 0.8384 |
| 5210514090 .. | 0.6511 | 0.8384 |
| 5210516020 .. | 0.6511 | 0.8384 |
| 5210516040 .. | 0.6511 | 0.8384 |
| 5210516060 .. | 0.6511 | 0.8384 |
| 5210516090 .. | 0.6511 | 0.8384 |
| 5210518020 .. | 0.6511 | 0.8384 |
| 5210518090 .. | 0.6511 | 0.8384 |
| 5210591000 .. | 0.6511 | 0.8384 |
| 5210592020 .. | 0.6511 | 0.8384 |
| 5210592090 .. | 0.6511 | 0.8384 |
| 5210594020 .. | 0.6511 | 0.8384 |

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5210594090 .. | 0.6511 | 0.8384 |
| 5210596020 .. | 0.6511 | 0.8384 |
| 5210596090 .. | 0.6511 | 0.8384 |
| 5210598020 .. | 0.6511 | 0.8384 |
| 5210598090 .. | 0.6511 | 0.8384 |
| 5211110020 .. | 0.6511 | 0.8384 |
| 5211110025 .. | 0.6511 | 0.8384 |
| 5211110035 .. | 0.6511 | 0.8384 |
| 5211110050 .. | 0.6511 | 0.8384 |
| 5211110090 .. | 0.6511 | 0.8384 |
| 5211120020 .. | 0.6511 | 0.8384 |
| 5211120040 .. | 0.6511 | 0.8384 |
| 5211190020 .. | 0.6511 | 0.8384 |
| 5211190040 .. | 0.6511 | 0.8384 |
| 5211190060 .. | 0.6511 | 0.8384 |
| 5211190090 .. | 0.6511 | 0.8384 |
| 5211202120 .. | 0.6511 | 0.8384 |
| 5211202125 .. | 0.6511 | 0.8384 |
| 5211202135 .. | 0.6511 | 0.8384 |
| 5211202150 .. | 0.6511 | 0.8384 |
| 5211202190 .. | 0.6511 | 0.8384 |
| 5211202220 .. | 0.6511 | 0.8384 |
| 5211202240 .. | 0.6511 | 0.8384 |
| 5211202920 .. | 0.6511 | 0.8384 |
| 5211202940 .. | 0.6511 | 0.8384 |
| 5211202960 .. | 0.6511 | 0.8384 |
| 5211202990 .. | 0.6511 | 0.8384 |
| 5211310020 .. | 0.6511 | 0.8384 |
| 5211310025 .. | 0.6511 | 0.8384 |
| 5211310035 .. | 0.6511 | 0.8384 |
| 5211310050 .. | 0.6511 | 0.8384 |
| 5211310090 .. | 0.6511 | 0.8384 |
| 5211320020 .. | 0.6511 | 0.8384 |
| 5211320040 .. | 0.6511 | 0.8384 |
| 5211390020 .. | 0.6511 | 0.8384 |
| 5211390040 .. | 0.6511 | 0.8384 |
| 5211390060 .. | 0.6511 | 0.8384 |
| 5211390090 .. | 0.6511 | 0.8384 |
| 5211410020 .. | 0.6511 | 0.8384 |
| 5211410040 .. | 0.6511 | 0.8384 |
| 5211420020 .. | 0.7054 | 0.9083 |
| 5211420040 .. | 0.7054 | 0.9083 |
| 5211420060 .. | 0.6511 | 0.8384 |
| 5211420080 .. | 0.6511 | 0.8384 |
| 5211430030 .. | 0.6511 | 0.8384 |
| 5211430050 .. | 0.6511 | 0.8384 |
| 5211490020 .. | 0.6511 | 0.8384 |
| 5211490090 .. | 0.6511 | 0.8384 |
| 5211510020 .. | 0.6511 | 0.8384 |
| 5211510030 .. | 0.6511 | 0.8384 |
| 5211510050 .. | 0.6511 | 0.8384 |
| 5211510090 .. | 0.6511 | 0.8384 |
| 5211520020 .. | 0.6511 | 0.8384 |
| 5211520040 .. | 0.6511 | 0.8384 |
| 5211590015 .. | 0.6511 | 0.8384 |
| 5211590025 .. | 0.6511 | 0.8384 |
| 5211590040 .. | 0.6511 | 0.8384 |
| 5211590060 .. | 0.6511 | 0.8384 |
| 5211590090 .. | 0.6511 | 0.8384 |
| 5212111010 .. | 0.5845 | 0.7526 |
| 5212111020 .. | 0.6231 | 0.8023 |
| 5212116010 .. | 0.8681 | 1.1178 |
| 5212116020 .. | 0.8681 | 1.1178 |
| 5212116030 .. | 0.8681 | 1.1178 |
| 5212116040 .. | 0.8681 | 1.1178 |
| 5212116050 .. | 0.8681 | 1.1178 |
| 5212116060 .. | 0.8681 | 1.1178 |
| 5212116070 .. | 0.8681 | 1.1178 |
| 5212116080 .. | 0.8681 | 1.1178 |

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5212116090 .. | 0.8681 | 1.1178 |
| 5212121010 .. | 0.5845 | 0.7526 |
| 5212121020 .. | 0.6231 | 0.8023 |
| 5212126010 .. | 0.8681 | 1.1178 |
| 5212126020 .. | 0.8681 | 1.1178 |
| 5212126030 .. | 0.8681 | 1.1178 |
| 5212126040 .. | 0.8681 | 1.1178 |
| 5212126050 .. | 0.8681 | 1.1178 |
| 5212126060 .. | 0.8681 | 1.1178 |
| 5212126070 .. | 0.8681 | 1.1178 |
| 5212126080 .. | 0.8681 | 1.1178 |
| 5212126090 .. | 0.8681 | 1.1178 |
| 5212131010 .. | 0.5845 | 0.7526 |
| 5212131020 .. | 0.6231 | 0.8023 |
| 5212136010 .. | 0.8681 | 1.1178 |
| 5212136020 .. | 0.8681 | 1.1178 |
| 5212136030 .. | 0.8681 | 1.1178 |
| 5212136040 .. | 0.8681 | 1.1178 |
| 5212136050 .. | 0.8681 | 1.1178 |
| 5212136060 .. | 0.8681 | 1.1178 |
| 5212136070 .. | 0.8681 | 1.1178 |
| 5212136080 .. | 0.8681 | 1.1178 |
| 5212136090 .. | 0.8681 | 1.1178 |
| 5212141010 .. | 0.5845 | 0.7526 |
| 5212141020 .. | 0.6231 | 0.8023 |
| 5212146010 .. | 0.8681 | 1.1178 |
| 5212146020 .. | 0.8681 | 1.1178 |
| 5212146030 .. | 0.8681 | 1.1178 |
| 5212146090 .. | 0.8681 | 1.1178 |
| 5212151010 .. | 0.5845 | 0.7526 |
| 5212151020 .. | 0.6231 | 0.8023 |
| 5212156010 .. | 0.8681 | 1.1178 |
| 5212156020 .. | 0.8681 | 1.1178 |
| 5212156030 .. | 0.8681 | 1.1178 |
| 5212156040 .. | 0.8681 | 1.1178 |
| 5212156050 .. | 0.8681 | 1.1178 |
| 5212156060 .. | 0.8681 | 1.1178 |
| 5212156070 .. | 0.8681 | 1.1178 |
| 5212156080 .. | 0.8681 | 1.1178 |
| 5212156090 .. | 0.8681 | 1.1178 |
| 5212211010 .. | 0.5845 | 0.7526 |
| 5212211020 .. | 0.6231 | 0.8023 |
| 5212216010 .. | 0.8681 | 1.1178 |
| 5212216020 .. | 0.8681 | 1.1178 |
| 5212216030 .. | 0.8681 | 1.1178 |
| 5212216040 .. | 0.8681 | 1.1178 |
| 5212216050 .. | 0.8681 | 1.1178 |
| 5212216060 .. | 0.8681 | 1.1178 |
| 5212216090 .. | 0.8681 | 1.1178 |
| 5212221010 .. | 0.5845 | 0.7526 |
| 5212221020 .. | 0.6231 | 0.8023 |
| 5212226010 .. | 0.8681 | 1.1178 |
| 5212226020 .. | 0.8681 | 1.1178 |
| 5212226030 .. | 0.8681 | 1.1178 |
| 5212226040 .. | 0.8681 | 1.1178 |
| 5212226050 .. | 0.8681 | 1.1178 |
| 5212226060 .. | 0.8681 | 1.1178 |
| 5212226090 .. | 0.8681 | 1.1178 |
| 5212231010 .. | 0.5845 | 0.7526 |
| 5212231020 .. | 0.6231 | 0.8023 |
| 5212236010 .. | 0.8681 | 1.1178 |
| 5212236020 .. | 0.8681 | 1.1178 |
| 5212236030 .. | 0.8681 | 1.1178 |
| 5212236040 .. | 0.8681 | 1.1178 |
| 5212236050 .. | 0.8681 | 1.1178 |
| 5212236060 .. | 0.8681 | 1.1178 |
| 5212236090 .. | 0.8681 | 1.1178 |
| 5212241010 .. | 0.5845 | 0.7526 |
| 5212241020 .. | 0.6231 | 0.8023 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5212246010 .. | 0.8681 | 1.1178 |
| 5212246020 .. | 0.7054 | 0.9083 |
| 5212246030 .. | 0.8681 | 1.1178 |
| 5212246040 .. | 0.8681 | 1.1178 |
| 5212246090 .. | 0.8681 | 1.1178 |
| 5212251010 .. | 0.5845 | 0.7526 |
| 5212251020 .. | 0.6231 | 0.8023 |
| 5212256010 .. | 0.8681 | 1.1178 |
| 5212256020 .. | 0.8681 | 1.1178 |
| 5212256030 .. | 0.8681 | 1.1178 |
| 5212256040 .. | 0.8681 | 1.1178 |
| 5212256050 .. | 0.8681 | 1.1178 |
| 5212256060 .. | 0.8681 | 1.1178 |
| 5212256090 .. | 0.8681 | 1.1178 |
| 5309213005 .. | 0.5426 | 0.6987 |
| 5309213010 .. | 0.5426 | 0.6987 |
| 5309213015 .. | 0.5426 | 0.6987 |
| 5309213020 .. | 0.5426 | 0.6987 |
| 5309214010 .. | 0.2713 | 0.3493 |
| 5309214090 .. | 0.2713 | 0.3493 |
| 5309293005 .. | 0.5426 | 0.6987 |
| 5309293010 .. | 0.5426 | 0.6987 |
| 5309293015 .. | 0.5426 | 0.6987 |
| 5309293020 .. | 0.5426 | 0.6987 |
| 5309294010 .. | 0.2713 | 0.3493 |
| 5309294090 .. | 0.2713 | 0.3493 |
| 5311003005 .. | 0.5426 | 0.6987 |
| 5311003010 .. | 0.5426 | 0.6987 |
| 5311003015 .. | 0.5426 | 0.6987 |
| 5311003020 .. | 0.5426 | 0.6987 |
| 5311004010 .. | 0.8681 | 1.1178 |
| 5311004020 .. | 0.8681 | 1.1178 |
| 5407810010 .. | 0.5426 | 0.6987 |
| 5407810020 .. | 0.5426 | 0.6987 |
| 5407810030 .. | 0.5426 | 0.6987 |
| 5407810040 .. | 0.5426 | 0.6987 |
| 5407810090 .. | 0.5426 | 0.6987 |
| 5407820010 .. | 0.5426 | 0.6987 |
| 5407820020 .. | 0.5426 | 0.6987 |
| 5407820030 .. | 0.5426 | 0.6987 |
| 5407820040 .. | 0.5426 | 0.6987 |
| 5407820090 .. | 0.5426 | 0.6987 |
| 5407830010 .. | 0.5426 | 0.6987 |
| 5407830020 .. | 0.5426 | 0.6987 |
| 5407830030 .. | 0.5426 | 0.6987 |
| 5407830040 .. | 0.5426 | 0.6987 |
| 5407830090 .. | 0.5426 | 0.6987 |
| 5407840010 .. | 0.5426 | 0.6987 |
| 5407840020 .. | 0.5426 | 0.6987 |
| 5407840030 .. | 0.5426 | 0.6987 |
| 5407840040 .. | 0.5426 | 0.6987 |
| 5407840090 .. | 0.5426 | 0.6987 |
| 5509210000 .. | 0.1053 | 0.1356 |
| 5509220010 .. | 0.1053 | 0.1356 |
| 5509220090 .. | 0.1053 | 0.1356 |
| 5509530030 .. | 0.3158 | 0.4066 |
| 5509530060 .. | 0.3158 | 0.4066 |
| 5509620000 .. | 0.5263 | 0.6777 |
| 5509920000 .. | 0.5263 | 0.6777 |
| 5510300000 .. | 0.3684 | 0.4744 |
| 5511200000 .. | 0.3158 | 0.4066 |
| 5512110010 .. | 0.1085 | 0.1397 |
| 5512110022 .. | 0.1085 | 0.1397 |
| 5512110027 .. | 0.1085 | 0.1397 |
| 5512110030 .. | 0.1085 | 0.1397 |
| 5512110040 .. | 0.1085 | 0.1397 |
| 5512110050 .. | 0.1085 | 0.1397 |
| 5512110060 .. | 0.1085 | 0.1397 |
| 5512110070 .. | 0.1085 | 0.1397 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5512110090 .. | 0.1085 | 0.1397 |
| 5512190005 .. | 0.1085 | 0.1397 |
| 5512190010 .. | 0.1085 | 0.1397 |
| 5512190015 .. | 0.1085 | 0.1397 |
| 5512190022 .. | 0.1085 | 0.1397 |
| 5512190027 .. | 0.1085 | 0.1397 |
| 5512190030 .. | 0.1085 | 0.1397 |
| 5512190035 .. | 0.1085 | 0.1397 |
| 5512190040 .. | 0.1085 | 0.1397 |
| 5512190045 .. | 0.1085 | 0.1397 |
| 5512190050 .. | 0.1085 | 0.1397 |
| 5512190090 .. | 0.1085 | 0.1397 |
| 5512210010 .. | 0.0326 | 0.0420 |
| 5512210020 .. | 0.0326 | 0.0420 |
| 5512210030 .. | 0.0326 | 0.0420 |
| 5512210040 .. | 0.0326 | 0.0420 |
| 5512210060 .. | 0.0326 | 0.0420 |
| 5512210070 .. | 0.0326 | 0.0420 |
| 5512210090 .. | 0.0326 | 0.0420 |
| 5512290010 .. | 0.217 | 0.2794 |
| 5512910010 .. | 0.0543 | 0.0699 |
| 5512990005 .. | 0.0543 | 0.0699 |
| 5512990010 .. | 0.0543 | 0.0699 |
| 5512990015 .. | 0.0543 | 0.0699 |
| 5512990020 .. | 0.0543 | 0.0699 |
| 5512990025 .. | 0.0543 | 0.0699 |
| 5512990030 .. | 0.0543 | 0.0699 |
| 5512990035 .. | 0.0543 | 0.0699 |
| 5512990040 .. | 0.0543 | 0.0699 |
| 5512990045 .. | 0.0543 | 0.0699 |
| 5512990090 .. | 0.0543 | 0.0699 |
| 5513110020 .. | 0.3581 | 0.4611 |
| 5513110040 .. | 0.3581 | 0.4611 |
| 5513110060 .. | 0.3581 | 0.4611 |
| 5513110090 .. | 0.3581 | 0.4611 |
| 5513120000 .. | 0.3581 | 0.4611 |
| 5513130020 .. | 0.3581 | 0.4611 |
| 5513130040 .. | 0.3581 | 0.4611 |
| 5513130090 .. | 0.3581 | 0.4611 |
| 5513190010 .. | 0.3581 | 0.4611 |
| 5513190020 .. | 0.3581 | 0.4611 |
| 5513190030 .. | 0.3581 | 0.4611 |
| 5513190040 .. | 0.3581 | 0.4611 |
| 5513190050 .. | 0.3581 | 0.4611 |
| 5513190060 .. | 0.3581 | 0.4611 |
| 5513190090 .. | 0.3581 | 0.4611 |
| 5513210020 .. | 0.3581 | 0.4611 |
| 5513210040 .. | 0.3581 | 0.4611 |
| 5513210060 .. | 0.3581 | 0.4611 |
| 5513210090 .. | 0.3581 | 0.4611 |
| 5513230121 .. | 0.3581 | 0.4611 |
| 5513230141 .. | 0.3581 | 0.4611 |
| 5513230191 .. | 0.3581 | 0.4611 |
| 5513290010 .. | 0.3581 | 0.4611 |
| 5513290020 .. | 0.3581 | 0.4611 |
| 5513290030 .. | 0.3581 | 0.4611 |
| 5513290040 .. | 0.3581 | 0.4611 |
| 5513290050 .. | 0.3581 | 0.4611 |
| 5513290060 .. | 0.3581 | 0.4611 |
| 5513290090 .. | 0.3581 | 0.4611 |
| 5513310000 .. | 0.3581 | 0.4611 |
| 5513390111 .. | 0.3581 | 0.4611 |
| 5513390115 .. | 0.3581 | 0.4611 |
| 5513390191 .. | 0.3581 | 0.4611 |
| 5513410020 .. | 0.3581 | 0.4611 |
| 5513410040 .. | 0.3581 | 0.4611 |
| 5513410060 .. | 0.3581 | 0.4611 |
| 5513410090 .. | 0.3581 | 0.4611 |
| 5513491000 .. | 0.3581 | 0.4611 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5513492020 .. | 0.3581 | 0.4611 |
| 5513492040 .. | 0.3581 | 0.4611 |
| 5513492090 .. | 0.3581 | 0.4611 |
| 5513499010 .. | 0.3581 | 0.4611 |
| 5513499020 .. | 0.3581 | 0.4611 |
| 5513499030 .. | 0.3581 | 0.4611 |
| 5513499040 .. | 0.3581 | 0.4611 |
| 5513499050 .. | 0.3581 | 0.4611 |
| 5513499060 .. | 0.3581 | 0.4611 |
| 5513499090 .. | 0.3581 | 0.4611 |
| 5514110020 .. | 0.4341 | 0.5589 |
| 5514110030 .. | 0.4341 | 0.5589 |
| 5514110050 .. | 0.4341 | 0.5589 |
| 5514110090 .. | 0.4341 | 0.5589 |
| 5514120020 .. | 0.4341 | 0.5589 |
| 5514120040 .. | 0.4341 | 0.5589 |
| 5514191020 .. | 0.4341 | 0.5589 |
| 5514191040 .. | 0.4341 | 0.5589 |
| 5514191090 .. | 0.4341 | 0.5589 |
| 5514199010 .. | 0.4341 | 0.5589 |
| 5514199020 .. | 0.4341 | 0.5589 |
| 5514199030 .. | 0.4341 | 0.5589 |
| 5514199040 .. | 0.4341 | 0.5589 |
| 5514199090 .. | 0.4341 | 0.5589 |
| 5514210020 .. | 0.4341 | 0.5589 |
| 5514210030 .. | 0.4341 | 0.5589 |
| 5514210050 .. | 0.4341 | 0.5589 |
| 5514210090 .. | 0.4341 | 0.5589 |
| 5514220020 .. | 0.4341 | 0.5589 |
| 5514220040 .. | 0.4341 | 0.5589 |
| 5514230020 .. | 0.4341 | 0.5589 |
| 5514230040 .. | 0.4341 | 0.5589 |
| 5514230090 .. | 0.4341 | 0.5589 |
| 5514290010 .. | 0.4341 | 0.5589 |
| 5514290020 .. | 0.4341 | 0.5589 |
| 5514290030 .. | 0.4341 | 0.5589 |
| 5514290040 .. | 0.4341 | 0.5589 |
| 5514290090 .. | 0.4341 | 0.5589 |
| 5514303100 .. | 0.4341 | 0.5589 |
| 5514303210 .. | 0.4341 | 0.5589 |
| 5514303215 .. | 0.4341 | 0.5589 |
| 5514303280 .. | 0.4341 | 0.5589 |
| 5514303310 .. | 0.4341 | 0.5589 |
| 5514303390 .. | 0.4341 | 0.5589 |
| 5514303910 .. | 0.4341 | 0.5589 |
| 5514303920 .. | 0.4341 | 0.5589 |
| 5514303990 .. | 0.4341 | 0.5589 |
| 5514410020 .. | 0.4341 | 0.5589 |
| 5514410030 .. | 0.4341 | 0.5589 |
| 5514410050 .. | 0.4341 | 0.5589 |
| 5514410090 .. | 0.4341 | 0.5589 |
| 5514420020 .. | 0.4341 | 0.5589 |
| 5514420040 .. | 0.4341 | 0.5589 |
| 5514430020 .. | 0.4341 | 0.5589 |
| 5514430040 .. | 0.4341 | 0.5589 |
| 5514430090 .. | 0.4341 | 0.5589 |
| 5514490010 .. | 0.4341 | 0.5589 |
| 5514490020 .. | 0.4341 | 0.5589 |
| 5514490030 .. | 0.4341 | 0.5589 |
| 5514490040 .. | 0.4341 | 0.5589 |
| 5514490090 .. | 0.4341 | 0.5589 |
| 5515110005 .. | 0.1085 | 0.1397 |
| 5515110010 .. | 0.1085 | 0.1397 |
| 5515110015 .. | 0.1085 | 0.1397 |
| 5515110020 .. | 0.1085 | 0.1397 |
| 5515110025 .. | 0.1085 | 0.1397 |
| 5515110030 .. | 0.1085 | 0.1397 |
| 5515110035 .. | 0.1085 | 0.1397 |
| 5515110040 .. | 0.1085 | 0.1397 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5515110045 .. | 0.1085 | 0.1397 |
| 5515110090 .. | 0.1085 | 0.1397 |
| 5515120010 .. | 0.1085 | 0.1397 |
| 5515120022 .. | 0.1085 | 0.1397 |
| 5515120027 .. | 0.1085 | 0.1397 |
| 5515120030 .. | 0.1085 | 0.1397 |
| 5515120040 .. | 0.1085 | 0.1397 |
| 5515120090 .. | 0.1085 | 0.1397 |
| 5515190005 .. | 0.1085 | 0.1397 |
| 5515190010 .. | 0.1085 | 0.1397 |
| 5515190015 .. | 0.1085 | 0.1397 |
| 5515190020 .. | 0.1085 | 0.1397 |
| 5515190025 .. | 0.1085 | 0.1397 |
| 5515190030 .. | 0.1085 | 0.1397 |
| 5515190035 .. | 0.1085 | 0.1397 |
| 5515190040 .. | 0.1085 | 0.1397 |
| 5515190045 .. | 0.1085 | 0.1397 |
| 5515190090 .. | 0.1085 | 0.1397 |
| 5515290005 .. | 0.1085 | 0.1397 |
| 5515290010 .. | 0.1085 | 0.1397 |
| 5515290015 .. | 0.1085 | 0.1397 |
| 5515290020 .. | 0.1085 | 0.1397 |
| 5515290025 .. | 0.1085 | 0.1397 |
| 5515290030 .. | 0.1085 | 0.1397 |
| 5515290035 .. | 0.1085 | 0.1397 |
| 5515290040 .. | 0.1085 | 0.1397 |
| 5515290045 .. | 0.1085 | 0.1397 |
| 5515290090 .. | 0.1085 | 0.1397 |
| 5515999005 .. | 0.1085 | 0.1397 |
| 5515999010 .. | 0.1085 | 0.1397 |
| 5515999015 .. | 0.1085 | 0.1397 |
| 5515999020 .. | 0.1085 | 0.1397 |
| 5515999025 .. | 0.1085 | 0.1397 |
| 5515999030 .. | 0.1085 | 0.1397 |
| 5515999035 .. | 0.1085 | 0.1397 |
| 5515999040 .. | 0.1085 | 0.1397 |
| 5515999045 .. | 0.1085 | 0.1397 |
| 5515999090 .. | 0.1085 | 0.1397 |
| 5516210010 .. | 0.1085 | 0.1397 |
| 5516210020 .. | 0.1085 | 0.1397 |
| 5516210030 .. | 0.1085 | 0.1397 |
| 5516210040 .. | 0.1085 | 0.1397 |
| 5516210090 .. | 0.1085 | 0.1397 |
| 5516220010 .. | 0.1085 | 0.1397 |
| 5516220020 .. | 0.1085 | 0.1397 |
| 5516220030 .. | 0.1085 | 0.1397 |
| 5516220040 .. | 0.1085 | 0.1397 |
| 5516220090 .. | 0.1085 | 0.1397 |
| 5516230010 .. | 0.1085 | 0.1397 |
| 5516230020 .. | 0.1085 | 0.1397 |
| 5516230030 .. | 0.1085 | 0.1397 |
| 5516230040 .. | 0.1085 | 0.1397 |
| 5516230090 .. | 0.1085 | 0.1397 |
| 5516240010 .. | 0.1085 | 0.1397 |
| 5516240020 .. | 0.1085 | 0.1397 |
| 5516240030 .. | 0.1085 | 0.1397 |
| 5516240040 .. | 0.1085 | 0.1397 |
| 5516240085 .. | 0.1085 | 0.1397 |
| 5516240095 .. | 0.1085 | 0.1397 |
| 5516410010 .. | 0.3798 | 0.4890 |
| 5516410022 .. | 0.3798 | 0.4890 |
| 5516410027 .. | 0.3798 | 0.4890 |
| 5516410030 .. | 0.3798 | 0.4890 |
| 5516410040 .. | 0.3798 | 0.4890 |
| 5516410050 .. | 0.3798 | 0.4890 |
| 5516410060 .. | 0.3798 | 0.4890 |
| 5516410070 .. | 0.3798 | 0.4890 |
| 5516410090 .. | 0.3798 | 0.4890 |
| 5516420010 .. | 0.3798 | 0.4890 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5516420022 .. | 0.3798 | 0.4890 |
| 5516420027 .. | 0.3798 | 0.4890 |
| 5516420030 .. | 0.3798 | 0.4890 |
| 5516420040 .. | 0.3798 | 0.4890 |
| 5516420050 .. | 0.3798 | 0.4890 |
| 5516420060 .. | 0.3798 | 0.4890 |
| 5516420070 .. | 0.3798 | 0.4890 |
| 5516420090 .. | 0.3798 | 0.4890 |
| 5516430010 .. | 0.217 | 0.2794 |
| 5516430015 .. | 0.3798 | 0.4890 |
| 5516430020 .. | 0.3798 | 0.4890 |
| 5516430035 .. | 0.3798 | 0.4890 |
| 5516430080 .. | 0.3798 | 0.4890 |
| 5516440010 .. | 0.3798 | 0.4890 |
| 5516440022 .. | 0.3798 | 0.4890 |
| 5516440027 .. | 0.3798 | 0.4890 |
| 5516440030 .. | 0.3798 | 0.4890 |
| 5516440040 .. | 0.3798 | 0.4890 |
| 5516440050 .. | 0.3798 | 0.4890 |
| 5516440060 .. | 0.3798 | 0.4890 |
| 5516440070 .. | 0.3798 | 0.4890 |
| 5516440090 .. | 0.3798 | 0.4890 |
| 5516910010 .. | 0.0543 | 0.0699 |
| 5516910020 .. | 0.0543 | 0.0699 |
| 5516910030 .. | 0.0543 | 0.0699 |
| 5516910040 .. | 0.0543 | 0.0699 |
| 5516910050 .. | 0.0543 | 0.0699 |
| 5516910060 .. | 0.0543 | 0.0699 |
| 5516910070 .. | 0.0543 | 0.0699 |
| 5516910090 .. | 0.0543 | 0.0699 |
| 5516920010 .. | 0.0543 | 0.0699 |
| 5516920020 .. | 0.0543 | 0.0699 |
| 5516920030 .. | 0.0543 | 0.0699 |
| 5516920040 .. | 0.0543 | 0.0699 |
| 5516920050 .. | 0.0543 | 0.0699 |
| 5516920060 .. | 0.0543 | 0.0699 |
| 5516920070 .. | 0.0543 | 0.0699 |
| 5516920090 .. | 0.0543 | 0.0699 |
| 5516930010 .. | 0.0543 | 0.0699 |
| 5516930020 .. | 0.0543 | 0.0699 |
| 5516930090 .. | 0.0543 | 0.0699 |
| 5516940010 .. | 0.0543 | 0.0699 |
| 5516940020 .. | 0.0543 | 0.0699 |
| 5516940030 .. | 0.0543 | 0.0699 |
| 5516940040 .. | 0.0543 | 0.0699 |
| 5516940050 .. | 0.0543 | 0.0699 |
| 5516940060 .. | 0.0543 | 0.0699 |
| 5516940070 .. | 0.0543 | 0.0699 |
| 5516940090 .. | 0.0543 | 0.0699 |
| 5601210010 .. | 0.9767 | 1.2576 |
| 5601210090 .. | 0.9767 | 1.2576 |
| 5601220010 .. | 0.9767 | 1.2576 |
| 5601220090 .. | 0.9767 | 1.2576 |
| 5601300000 .. | 0.3256 | 0.4192 |
| 5602101000 .. | 0.0543 | 0.0699 |
| 5602109090 .. | 0.4341 | 0.5589 |
| 5602290000 .. | 0.4341 | 0.5589 |
| 5602906000 .. | 0.5426 | 0.6987 |
| 5602909000 .. | 0.3256 | 0.4192 |
| 5603143000 .. | 0.2713 | 0.3493 |
| 5603910010 .. | 0.0217 | 0.0279 |
| 5603910090 .. | 0.0651 | 0.0838 |
| 5603920010 .. | 0.0217 | 0.0279 |
| 5603920090 .. | 0.0651 | 0.0838 |
| 5603930010 .. | 0.0217 | 0.0279 |
| 5603930090 .. | 0.0651 | 0.0838 |
| 5603941090 .. | 0.3256 | 0.4192 |
| 5603943000 .. | 0.1628 | 0.2096 |
| 5603949010 .. | 0.0326 | 0.0420 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5604100000 .. | 0.2632 | 0.3389 |
| 5604909000 .. | 0.2105 | 0.2710 |
| 5605009000 .. | 0.1579 | 0.2033 |
| 5606000010 .. | 0.1263 | 0.1626 |
| 5606000090 .. | 0.1263 | 0.1626 |
| 5607502500 .. | 0.1684 | 0.2168 |
| 5607909000 .. | 0.8421 | 1.0843 |
| 5608901000 .. | 1.0852 | 1.3973 |
| 5608902300 .. | 0.6316 | 0.8132 |
| 5608902700 .. | 0.6316 | 0.8132 |
| 5608903000 .. | 0.3158 | 0.4066 |
| 5609001000 .. | 0.8421 | 1.0843 |
| 5609004000 .. | 0.2105 | 0.2710 |
| 5701101300 .. | 0.0526 | 0.0677 |
| 5701101600 .. | 0.0526 | 0.0677 |
| 5701104000 .. | 0.0526 | 0.0677 |
| 5701109000 .. | 0.0526 | 0.0677 |
| 5701901010 .. | 1 | 1.2876 |
| 5701901020 .. | 1 | 1.2876 |
| 5701901030 .. | 0.0526 | 0.0677 |
| 5701901090 .. | 0.0526 | 0.0677 |
| 5701902010 .. | 0.9474 | 1.2199 |
| 5701902020 .. | 0.9474 | 1.2199 |
| 5701902030 .. | 0.0526 | 0.0677 |
| 5701902090 .. | 0.0526 | 0.0677 |
| 5702101000 .. | 0.0447 | 0.0576 |
| 5702109010 .. | 0.0447 | 0.0576 |
| 5702109020 .. | 0.85 | 1.0945 |
| 5702109030 .. | 0.0447 | 0.0576 |
| 5702109090 .. | 0.0447 | 0.0576 |
| 5702201000 .. | 0.0447 | 0.0576 |
| 5702311000 .. | 0.0447 | 0.0576 |
| 5702312000 .. | 0.0895 | 0.1152 |
| 5702322000 .. | 0.0895 | 0.1152 |
| 5702391000 .. | 0.0895 | 0.1152 |
| 5702392010 .. | 0.8053 | 1.0369 |
| 5702392090 .. | 0.0447 | 0.0576 |
| 5702411000 .. | 0.0447 | 0.0576 |
| 5702412000 .. | 0.0447 | 0.0576 |
| 5702421000 .. | 0.0895 | 0.1152 |
| 5702422020 .. | 0.0895 | 0.1152 |
| 5702422080 .. | 0.0895 | 0.1152 |
| 5702491020 .. | 0.8947 | 1.1520 |
| 5702491080 .. | 0.8947 | 1.1520 |
| 5702492000 .. | 0.0895 | 0.1152 |
| 5702502000 .. | 0.0895 | 0.1152 |
| 5702504000 .. | 0.0447 | 0.0576 |
| 5702505200 .. | 0.0895 | 0.1152 |
| 5702505600 .. | 0.85 | 1.0945 |
| 5702912000 .. | 0.0447 | 0.0576 |
| 5702913000 .. | 0.0447 | 0.0576 |
| 5702914000 .. | 0.0447 | 0.0576 |
| 5702921000 .. | 0.0447 | 0.0576 |
| 5702929000 .. | 0.0447 | 0.0576 |
| 5702990500 .. | 0.8947 | 1.1520 |
| 5702991500 .. | 0.8947 | 1.1520 |
| 5703201000 .. | 0.0452 | 0.0582 |
| 5703202010 .. | 0.0452 | 0.0582 |
| 5703302000 .. | 0.0452 | 0.0582 |
| 5703900000 .. | 0.3615 | 0.4655 |
| 5705001000 .. | 0.0452 | 0.0582 |
| 5705002005 .. | 0.0452 | 0.0582 |
| 5705002015 .. | 0.0452 | 0.0582 |
| 5705002020 .. | 0.7682 | 0.9891 |
| 5705002030 .. | 0.0452 | 0.0582 |
| 5705002090 .. | 0.1808 | 0.2328 |
| 5801210000 .. | 0.9767 | 1.2576 |
| 5801221000 .. | 0.9767 | 1.2576 |
| 5801229000 .. | 0.9767 | 1.2576 |

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5801230000 .. | 0.9767 | 1.2576 |
| 5801260010 .. | 0.7596 | 0.9781 |
| 5801260020 .. | 0.7596 | 0.9781 |
| 5801271000 .. | 0.9767 | 1.2576 |
| 5801275010 .. | 1.0852 | 1.3973 |
| 5801275020 .. | 0.9767 | 1.2576 |
| 5801310000 .. | 0.217 | 0.2794 |
| 5801320000 .. | 0.217 | 0.2794 |
| 5801330000 .. | 0.217 | 0.2794 |
| 5801360010 .. | 0.217 | 0.2794 |
| 5801360020 .. | 0.217 | 0.2794 |
| 5802110000 .. | 1.0309 | 1.3274 |
| 5802190000 .. | 1.0309 | 1.3274 |
| 5802200020 .. | 0.1085 | 0.1397 |
| 5802200090 .. | 0.3256 | 0.4192 |
| 5802300030 .. | 0.4341 | 0.5589 |
| 5802300090 .. | 0.1085 | 0.1397 |
| 5803001000 .. | 1.0852 | 1.3973 |
| 5803002000 .. | 0.8681 | 1.1178 |
| 5803003000 .. | 0.8681 | 1.1178 |
| 5803005000 .. | 0.3256 | 0.4192 |
| 5804101000 .. | 0.4341 | 0.5589 |
| 5804109090 .. | 0.2193 | 0.2824 |
| 5804291000 .. | 0.8772 | 1.1295 |
| 5804300020 .. | 0.3256 | 0.4192 |
| 5805001000 .. | 0.1085 | 0.1397 |
| 5805003000 .. | 1.0852 | 1.3973 |
| 5806101000 .. | 0.8681 | 1.1178 |
| 5806103090 .. | 0.217 | 0.2794 |
| 5806200010 .. | 0.2577 | 0.3318 |
| 5806200090 .. | 0.2577 | 0.3318 |
| 5806310000 .. | 0.8681 | 1.1178 |
| 5806393080 .. | 0.217 | 0.2794 |
| 5806400000 .. | 0.0814 | 0.1048 |
| 5807100510 .. | 0.8681 | 1.1178 |
| 5807102010 .. | 0.8681 | 1.1178 |
| 5807900510 .. | 0.8681 | 1.1178 |
| 5807902010 .. | 0.8681 | 1.1178 |
| 5808104000 .. | 0.217 | 0.2794 |
| 5808107000 .. | 0.217 | 0.2794 |
| 5808900010 .. | 0.4341 | 0.5589 |
| 5810100000 .. | 0.3256 | 0.4192 |
| 5810910010 .. | 0.7596 | 0.9781 |
| 5810910020 .. | 0.7596 | 0.9781 |
| 5810921000 .. | 0.217 | 0.2794 |
| 5810929030 .. | 0.217 | 0.2794 |
| 5810929050 .. | 0.217 | 0.2794 |
| 5810929080 .. | 0.217 | 0.2794 |
| 5811002000 .. | 0.8681 | 1.1178 |
| 5901102000 .. | 0.5643 | 0.7266 |
| 5901904000 .. | 0.8139 | 1.0480 |
| 5903101000 .. | 0.4341 | 0.5589 |
| 5903103000 .. | 0.1085 | 0.1397 |
| 5903201000 .. | 0.4341 | 0.5589 |
| 5903203090 .. | 0.1085 | 0.1397 |
| 5903901000 .. | 0.4341 | 0.5589 |
| 5903903090 .. | 0.1085 | 0.1397 |
| 5904901000 .. | 0.0326 | 0.0420 |
| 5905001000 .. | 0.1085 | 0.1397 |
| 5905009000 .. | 0.1085 | 0.1397 |
| 5906100000 .. | 0.4341 | 0.5589 |
| 5906911000 .. | 0.4341 | 0.5589 |
| 5906913000 .. | 0.1085 | 0.1397 |
| 5906991000 .. | 0.4341 | 0.5589 |
| 5906993000 .. | 0.1085 | 0.1397 |
| 5907002500 .. | 0.3798 | 0.4890 |
| 5907003500 .. | 0.3798 | 0.4890 |
| 5907008090 .. | 0.3798 | 0.4890 |
| 5908000000 .. | 0.7813 | 1.0060 |

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 5909001000 .. | 0.6837 | 0.8803 |
| 5909002000 .. | 0.4883 | 0.6287 |
| 5910001010 .. | 0.3798 | 0.4890 |
| 5910001020 .. | 0.3798 | 0.4890 |
| 5910001030 .. | 0.3798 | 0.4890 |
| 5910001060 .. | 0.3798 | 0.4890 |
| 5910001070 .. | 0.3798 | 0.4890 |
| 5910001090 .. | 0.6837 | 0.8803 |
| 5910009000 .. | 0.5697 | 0.7335 |
| 5911101000 .. | 0.1736 | 0.2235 |
| 5911102000 .. | 0.0434 | 0.0559 |
| 5911201000 .. | 0.4341 | 0.5589 |
| 5911310010 .. | 0.4341 | 0.5589 |
| 5911310020 .. | 0.4341 | 0.5589 |
| 5911310030 .. | 0.4341 | 0.5589 |
| 5911310080 .. | 0.4341 | 0.5589 |
| 5911320010 .. | 0.4341 | 0.5589 |
| 5911320020 .. | 0.4341 | 0.5589 |
| 5911320030 .. | 0.4341 | 0.5589 |
| 5911320080 .. | 0.4341 | 0.5589 |
| 5911400000 .. | 0.5426 | 0.6987 |
| 5911900040 .. | 0.3158 | 0.4066 |
| 5911900080 .. | 0.2105 | 0.2710 |
| 6001106000 .. | 0.1096 | 0.1411 |
| 6001210000 .. | 0.9868 | 1.2706 |
| 6001220000 .. | 0.1096 | 0.1411 |
| 6001290000 .. | 0.1096 | 0.1411 |
| 6001910010 .. | 0.8772 | 1.1295 |
| 6001910020 .. | 0.8772 | 1.1295 |
| 6001920010 .. | 0.0548 | 0.0706 |
| 6001920020 .. | 0.0548 | 0.0706 |
| 6001920030 .. | 0.0548 | 0.0706 |
| 6001920040 .. | 0.0548 | 0.0706 |
| 6001999000 .. | 0.1096 | 0.1411 |
| 6002404000 .. | 0.7401 | 0.9530 |
| 6002408020 .. | 0.1974 | 0.2542 |
| 6002408080 .. | 0.1974 | 0.2542 |
| 6002904000 .. | 0.7895 | 1.0166 |
| 6002908020 .. | 0.1974 | 0.2542 |
| 6002908080 .. | 0.1974 | 0.2542 |
| 6003201000 .. | 0.8772 | 1.1295 |
| 6003203000 .. | 0.8772 | 1.1295 |
| 6003301000 .. | 0.1096 | 0.1411 |
| 6003306000 .. | 0.1096 | 0.1411 |
| 6003401000 .. | 0.1096 | 0.1411 |
| 6003406000 .. | 0.1096 | 0.1411 |
| 6003901000 .. | 0.1096 | 0.1411 |
| 6003909000 .. | 0.1096 | 0.1411 |
| 6004100010 .. | 0.2961 | 0.3813 |
| 6004100025 .. | 0.2961 | 0.3813 |
| 6004100085 .. | 0.2961 | 0.3813 |
| 6004902010 .. | 0.2961 | 0.3813 |
| 6004902025 .. | 0.2961 | 0.3813 |
| 6004902085 .. | 0.2961 | 0.3813 |
| 6004909000 .. | 0.2961 | 0.3813 |
| 6005210000 .. | 0.7127 | 0.9177 |
| 6005220000 .. | 0.7127 | 0.9177 |
| 6005230000 .. | 0.7127 | 0.9177 |
| 6005240000 .. | 0.7127 | 0.9177 |
| 6005310010 .. | 0.1096 | 0.1411 |
| 6005310080 .. | 0.1096 | 0.1411 |
| 6005320010 .. | 0.1096 | 0.1411 |
| 6005320080 .. | 0.1096 | 0.1411 |
| 6005330010 .. | 0.1096 | 0.1411 |
| 6005330080 .. | 0.1096 | 0.1411 |
| 6005340010 .. | 0.1096 | 0.1411 |
| 6005340080 .. | 0.1096 | 0.1411 |
| 6005410010 .. | 0.1096 | 0.1411 |
| 6005410080 .. | 0.1096 | 0.1411 |

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6005420010 .. | 0.1096 | 0.1411 |
| 6005420080 .. | 0.1096 | 0.1411 |
| 6005430010 .. | 0.1096 | 0.1411 |
| 6005430080 .. | 0.1096 | 0.1411 |
| 6005440010 .. | 0.1096 | 0.1411 |
| 6005440080 .. | 0.1096 | 0.1411 |
| 6005909000 .. | 0.1096 | 0.1411 |
| 6006211000 .. | 1.0965 | 1.4119 |
| 6006219020 .. | 0.7675 | 0.9882 |
| 6006219080 .. | 0.7675 | 0.9882 |
| 6006221000 .. | 1.0965 | 1.4119 |
| 6006229020 .. | 0.7675 | 0.9882 |
| 6006229080 .. | 0.7675 | 0.9882 |
| 6006231000 .. | 1.0965 | 1.4119 |
| 6006239020 .. | 0.7675 | 0.9882 |
| 6006239080 .. | 0.7675 | 0.9882 |
| 6006241000 .. | 1.0965 | 1.4119 |
| 6006249020 .. | 0.7675 | 0.9882 |
| 6006249080 .. | 0.7675 | 0.9882 |
| 6006310020 .. | 0.3289 | 0.4235 |
| 6006310040 .. | 0.3289 | 0.4235 |
| 6006310060 .. | 0.3289 | 0.4235 |
| 6006310080 .. | 0.3289 | 0.4235 |
| 6006320020 .. | 0.3289 | 0.4235 |
| 6006320040 .. | 0.3289 | 0.4235 |
| 6006320060 .. | 0.3289 | 0.4235 |
| 6006320080 .. | 0.3289 | 0.4235 |
| 6006330020 .. | 0.3289 | 0.4235 |
| 6006330040 .. | 0.3289 | 0.4235 |
| 6006330060 .. | 0.3289 | 0.4235 |
| 6006330080 .. | 0.3289 | 0.4235 |
| 6006340020 .. | 0.3289 | 0.4235 |
| 6006340040 .. | 0.3289 | 0.4235 |
| 6006340060 .. | 0.3289 | 0.4235 |
| 6006340080 .. | 0.3289 | 0.4235 |
| 6006410025 .. | 0.3289 | 0.4235 |
| 6006410085 .. | 0.3289 | 0.4235 |
| 6006420025 .. | 0.3289 | 0.4235 |
| 6006420085 .. | 0.3289 | 0.4235 |
| 6006430025 .. | 0.3289 | 0.4235 |
| 6006430085 .. | 0.3289 | 0.4235 |
| 6006440025 .. | 0.3289 | 0.4235 |
| 6006440085 .. | 0.3289 | 0.4235 |
| 6006909000 .. | 0.1096 | 0.1411 |
| 6101200010 .. | 1.02 | 1.3134 |
| 6101200020 .. | 1.02 | 1.3134 |
| 6101301000 .. | 0.2072 | 0.2668 |
| 6101900500 .. | 0.1912 | 0.2462 |
| 6101909010 .. | 0.5737 | 0.7387 |
| 6101909030 .. | 0.51 | 0.6567 |
| 6101909060 .. | 0.255 | 0.3283 |
| 6102100000 .. | 0.255 | 0.3283 |
| 6102200010 .. | 0.9562 | 1.2312 |
| 6102200020 .. | 0.9562 | 1.2312 |
| 6102300500 .. | 0.1785 | 0.2298 |
| 6102909005 .. | 0.5737 | 0.7387 |
| 6102909015 .. | 0.4462 | 0.5745 |
| 6102909030 .. | 0.255 | 0.3283 |
| 6103101000 .. | 0.0637 | 0.0820 |
| 6103104000 .. | 0.1218 | 0.1568 |
| 6103105000 .. | 0.1218 | 0.1568 |
| 6103106010 .. | 0.8528 | 1.0981 |
| 6103106015 .. | 0.8528 | 1.0981 |
| 6103106030 .. | 0.8528 | 1.0981 |
| 6103109010 .. | 0.5482 | 0.7059 |
| 6103109020 .. | 0.5482 | 0.7059 |
| 6103109030 .. | 0.5482 | 0.7059 |
| 6103109040 .. | 0.1218 | 0.1568 |
| 6103109050 .. | 0.1218 | 0.1568 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6103109080 .. | 0.1827 | 0.2352 |
| 6103320000 .. | 0.8722 | 1.1230 |
| 6103398010 .. | 0.7476 | 0.9626 |
| 6103398030 .. | 0.3738 | 0.4813 |
| 6103398060 .. | 0.2492 | 0.3209 |
| 6103411010 .. | 0.3576 | 0.4604 |
| 6103411020 .. | 0.3576 | 0.4604 |
| 6103412000 .. | 0.3576 | 0.4604 |
| 6103421020 .. | 0.8343 | 1.0742 |
| 6103421035 .. | 0.8343 | 1.0742 |
| 6103421040 .. | 0.8343 | 1.0742 |
| 6103421050 .. | 0.8343 | 1.0742 |
| 6103421065 .. | 0.8343 | 1.0742 |
| 6103421070 .. | 0.8343 | 1.0742 |
| 6103422010 .. | 0.8343 | 1.0742 |
| 6103422015 .. | 0.8343 | 1.0742 |
| 6103422025 .. | 0.8343 | 1.0742 |
| 6103431520 .. | 0.2384 | 0.3070 |
| 6103431535 .. | 0.2384 | 0.3070 |
| 6103431540 .. | 0.2384 | 0.3070 |
| 6103431550 .. | 0.2384 | 0.3070 |
| 6103431565 .. | 0.2384 | 0.3070 |
| 6103431570 .. | 0.2384 | 0.3070 |
| 6103432020 .. | 0.2384 | 0.3070 |
| 6103432025 .. | 0.2384 | 0.3070 |
| 6103491020 .. | 0.2437 | 0.3138 |
| 6103491060 .. | 0.2437 | 0.3138 |
| 6103492000 .. | 0.2437 | 0.3138 |
| 6103498010 .. | 0.5482 | 0.7059 |
| 6103498014 .. | 0.3655 | 0.4706 |
| 6103498024 .. | 0.2437 | 0.3138 |
| 6103498026 .. | 0.2437 | 0.3138 |
| 6103498034 .. | 0.5482 | 0.7059 |
| 6103498038 .. | 0.3655 | 0.4706 |
| 6103498060 .. | 0.2437 | 0.3138 |
| 6104196010 .. | 0.8722 | 1.1230 |
| 6104196020 .. | 0.8722 | 1.1230 |
| 6104196030 .. | 0.8722 | 1.1230 |
| 6104196040 .. | 0.8722 | 1.1230 |
| 6104198010 .. | 0.5607 | 0.7220 |
| 6104198020 .. | 0.5607 | 0.7220 |
| 6104198030 .. | 0.5607 | 0.7220 |
| 6104198040 .. | 0.5607 | 0.7220 |
| 6104198060 .. | 0.3738 | 0.4813 |
| 6104198090 .. | 0.2492 | 0.3209 |
| 6104320000 .. | 0.8722 | 1.1230 |
| 6104392010 .. | 0.5607 | 0.7220 |
| 6104392030 .. | 0.3738 | 0.4813 |
| 6104392090 .. | 0.2492 | 0.3209 |
| 6104420010 .. | 0.8528 | 1.0981 |
| 6104420020 .. | 0.8528 | 1.0981 |
| 6104499010 .. | 0.5482 | 0.7059 |
| 6104499030 .. | 0.3655 | 0.4706 |
| 6104499060 .. | 0.2437 | 0.3138 |
| 6104520010 .. | 0.8822 | 1.1359 |
| 6104520020 .. | 0.8822 | 1.1359 |
| 6104598010 .. | 0.5672 | 0.7303 |
| 6104598030 .. | 0.3781 | 0.4868 |
| 6104598090 .. | 0.2521 | 0.3246 |
| 6104610010 .. | 0.2384 | 0.3070 |
| 6104610020 .. | 0.2384 | 0.3070 |
| 6104610030 .. | 0.2384 | 0.3070 |
| 6104621010 .. | 0.7509 | 0.9669 |
| 6104621020 .. | 0.8343 | 1.0742 |
| 6104621030 .. | 0.8343 | 1.0742 |
| 6104622006 .. | 0.7151 | 0.9208 |
| 6104622011 .. | 0.8343 | 1.0742 |
| 6104622016 .. | 0.7151 | 0.9208 |
| 6104622021 .. | 0.8343 | 1.0742 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6104622026 .. | 0.7151 | 0.9208 |
| 6104622028 .. | 0.8343 | 1.0742 |
| 6104622030 .. | 0.8343 | 1.0742 |
| 6104622050 .. | 0.8343 | 1.0742 |
| 6104622060 .. | 0.8343 | 1.0742 |
| 6104631020 .. | 0.2384 | 0.3070 |
| 6104631030 .. | 0.2384 | 0.3070 |
| 6104632006 .. | 0.8343 | 1.0742 |
| 6104632011 .. | 0.8343 | 1.0742 |
| 6104632016 .. | 0.7151 | 0.9208 |
| 6104632021 .. | 0.8343 | 1.0742 |
| 6104632026 .. | 0.3576 | 0.4604 |
| 6104632028 .. | 0.3576 | 0.4604 |
| 6104632030 .. | 0.3576 | 0.4604 |
| 6104632050 .. | 0.7151 | 0.9208 |
| 6104632060 .. | 0.3576 | 0.4604 |
| 6104691000 .. | 0.3655 | 0.4706 |
| 6104692030 .. | 0.3655 | 0.4706 |
| 6104692060 .. | 0.3655 | 0.4706 |
| 6104698010 .. | 0.5482 | 0.7059 |
| 6104698014 .. | 0.3655 | 0.4706 |
| 6104698020 .. | 0.2437 | 0.3138 |
| 6104698022 .. | 0.5482 | 0.7059 |
| 6104698026 .. | 0.3655 | 0.4706 |
| 6104698038 .. | 0.2437 | 0.3138 |
| 6104698040 .. | 0.2437 | 0.3138 |
| 6105100010 .. | 0.9332 | 1.2016 |
| 6105100020 .. | 0.9332 | 1.2016 |
| 6105100030 .. | 0.9332 | 1.2016 |
| 6105202010 .. | 0.2916 | 0.3755 |
| 6105202020 .. | 0.2916 | 0.3755 |
| 6105202030 .. | 0.2916 | 0.3755 |
| 6105908010 .. | 0.5249 | 0.6759 |
| 6105908030 .. | 0.3499 | 0.4505 |
| 6105908060 .. | 0.2333 | 0.3004 |
| 6106100010 .. | 0.9332 | 1.2016 |
| 6106100020 .. | 0.9332 | 1.2016 |
| 6106100030 .. | 0.9332 | 1.2016 |
| 6106202010 .. | 0.2916 | 0.3755 |
| 6106202020 .. | 0.4666 | 0.6008 |
| 6106202030 .. | 0.2916 | 0.3755 |
| 6106901500 .. | 0.0583 | 0.0751 |
| 6106902510 .. | 0.5249 | 0.6759 |
| 6106902530 .. | 0.3499 | 0.4505 |
| 6106902550 .. | 0.2916 | 0.3755 |
| 6106903010 .. | 0.5249 | 0.6759 |
| 6106903030 .. | 0.3499 | 0.4505 |
| 6106903040 .. | 0.2916 | 0.3755 |
| 6107110010 .. | 1.0727 | 1.3812 |
| 6107110020 .. | 1.0727 | 1.3812 |
| 6107120010 .. | 0.4767 | 0.6138 |
| 6107120020 .. | 0.4767 | 0.6138 |
| 6107191000 .. | 0.1192 | 0.1535 |
| 6107210010 .. | 0.8343 | 1.0742 |
| 6107210020 .. | 0.7151 | 0.9208 |
| 6107220010 .. | 0.3576 | 0.4604 |
| 6107220015 .. | 0.1192 | 0.1535 |
| 6107220025 .. | 0.2384 | 0.3070 |
| 6107299000 .. | 0.1788 | 0.2302 |
| 6107910030 .. | 1.1918 | 1.5346 |
| 6107910040 .. | 1.1918 | 1.5346 |
| 6107910090 .. | 0.9535 | 1.2277 |
| 6107991030 .. | 0.3576 | 0.4604 |
| 6107991040 .. | 0.3576 | 0.4604 |
| 6107991090 .. | 0.3576 | 0.4604 |
| 6107999000 .. | 0.1192 | 0.1535 |
| 6108199010 .. | 1.0611 | 1.3663 |
| 6108199030 .. | 0.2358 | 0.3036 |
| 6108210010 .. | 1.179 | 1.5181 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6108210020 .. | 1.179 | 1.5181 |
| 6108299000 .. | 0.3537 | 0.4554 |
| 6108310010 .. | 1.0611 | 1.3663 |
| 6108310020 .. | 1.0611 | 1.3663 |
| 6108320010 .. | 0.2358 | 0.3036 |
| 6108320015 .. | 0.2358 | 0.3036 |
| 6108320025 .. | 0.2358 | 0.3036 |
| 6108398000 .. | 0.3537 | 0.4554 |
| 6108910005 .. | 1.179 | 1.5181 |
| 6108910015 .. | 1.179 | 1.5181 |
| 6108910025 .. | 1.179 | 1.5181 |
| 6108910030 .. | 1.179 | 1.5181 |
| 6108910040 .. | 1.179 | 1.5181 |
| 6108920005 .. | 0.2358 | 0.3036 |
| 6108920015 .. | 0.2358 | 0.3036 |
| 6108920025 .. | 0.2358 | 0.3036 |
| 6108920030 .. | 0.2358 | 0.3036 |
| 6108920040 .. | 0.2358 | 0.3036 |
| 6108999000 .. | 0.3537 | 0.4554 |
| 6109100004 .. | 1.0022 | 1.2904 |
| 6109100007 .. | 1.0022 | 1.2904 |
| 6109100011 .. | 1.0022 | 1.2904 |
| 6109100012 .. | 1.0022 | 1.2904 |
| 6109100014 .. | 1.0022 | 1.2904 |
| 6109100018 .. | 1.0022 | 1.2904 |
| 6109100023 .. | 1.0022 | 1.2904 |
| 6109100027 .. | 1.0022 | 1.2904 |
| 6109100037 .. | 1.0022 | 1.2904 |
| 6109100040 .. | 1.0022 | 1.2904 |
| 6109100045 .. | 1.0022 | 1.2904 |
| 6109100060 .. | 1.0022 | 1.2904 |
| 6109100065 .. | 1.0022 | 1.2904 |
| 6109100070 .. | 1.0022 | 1.2904 |
| 6109901007 .. | 0.2948 | 0.3796 |
| 6109901009 .. | 0.2948 | 0.3796 |
| 6109901013 .. | 0.2948 | 0.3796 |
| 6109901025 .. | 0.2948 | 0.3796 |
| 6109901047 .. | 0.2948 | 0.3796 |
| 6109901049 .. | 0.2948 | 0.3796 |
| 6109901050 .. | 0.2948 | 0.3796 |
| 6109901060 .. | 0.2948 | 0.3796 |
| 6109901065 .. | 0.2948 | 0.3796 |
| 6109901070 .. | 0.2948 | 0.3796 |
| 6109901075 .. | 0.2948 | 0.3796 |
| 6109901090 .. | 0.2948 | 0.3796 |
| 6109908010 .. | 0.3499 | 0.4505 |
| 6109908030 .. | 0.2333 | 0.3004 |
| 6110201010 .. | 0.7476 | 0.9626 |
| 6110201020 .. | 0.7476 | 0.9626 |
| 6110201022 .. | 0.7476 | 0.9626 |
| 6110201024 .. | 0.7476 | 0.9626 |
| 6110201026 .. | 0.7476 | 0.9626 |
| 6110201029 .. | 0.7476 | 0.9626 |
| 6110201031 .. | 0.7476 | 0.9626 |
| 6110201033 .. | 0.7476 | 0.9626 |
| 6110202005 .. | 1.1214 | 1.4439 |
| 6110202010 .. | 1.1214 | 1.4439 |
| 6110202015 .. | 1.1214 | 1.4439 |
| 6110202020 .. | 1.1214 | 1.4439 |
| 6110202025 .. | 1.1214 | 1.4439 |
| 6110202030 .. | 1.1214 | 1.4439 |
| 6110202035 .. | 1.1214 | 1.4439 |
| 6110202040 .. | 1.0965 | 1.4119 |
| 6110202045 .. | 1.0965 | 1.4119 |
| 6110202067 .. | 1.0965 | 1.4119 |
| 6110202069 .. | 1.0965 | 1.4119 |
| 6110202077 .. | 1.0965 | 1.4119 |
| 6110202079 .. | 1.0965 | 1.4119 |
| 6110909010 .. | 0.5607 | 0.7220 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6110909012 .. | 0.1246 | 0.1604 |
| 6110909014 .. | 0.3738 | 0.4813 |
| 6110909020 .. | 0.2492 | 0.3209 |
| 6110909022 .. | 0.2492 | 0.3209 |
| 6110909024 .. | 0.2492 | 0.3209 |
| 6110909026 .. | 0.5607 | 0.7220 |
| 6110909028 .. | 0.1869 | 0.2407 |
| 6110909030 .. | 0.3738 | 0.4813 |
| 6110909038 .. | 0.2492 | 0.3209 |
| 6110909040 .. | 0.2492 | 0.3209 |
| 6110909042 .. | 0.2492 | 0.3209 |
| 6110909044 .. | 0.5607 | 0.7220 |
| 6110909046 .. | 0.5607 | 0.7220 |
| 6110909052 .. | 0.3738 | 0.4813 |
| 6110909054 .. | 0.3738 | 0.4813 |
| 6110909064 .. | 0.2492 | 0.3209 |
| 6110909066 .. | 0.2492 | 0.3209 |
| 6110909067 .. | 0.5607 | 0.7220 |
| 6110909069 .. | 0.5607 | 0.7220 |
| 6110909071 .. | 0.5607 | 0.7220 |
| 6110909073 .. | 0.5607 | 0.7220 |
| 6110909079 .. | 0.3738 | 0.4813 |
| 6110909080 .. | 0.3738 | 0.4813 |
| 6110909081 .. | 0.3738 | 0.4813 |
| 6110909082 .. | 0.3738 | 0.4813 |
| 6110909088 .. | 0.2492 | 0.3209 |
| 6110909090 .. | 0.2492 | 0.3209 |
| 6111201000 .. | 1.1918 | 1.5346 |
| 6111202000 .. | 1.1918 | 1.5346 |
| 6111203000 .. | 0.9535 | 1.2277 |
| 6111204000 .. | 0.9535 | 1.2277 |
| 6111205000 .. | 0.9535 | 1.2277 |
| 6111206010 .. | 0.9535 | 1.2277 |
| 6111206020 .. | 0.9535 | 1.2277 |
| 6111206030 .. | 0.9535 | 1.2277 |
| 6111206050 .. | 0.9535 | 1.2277 |
| 6111206070 .. | 0.9535 | 1.2277 |
| 6111301000 .. | 0.2384 | 0.3070 |
| 6111302000 .. | 0.2384 | 0.3070 |
| 6111303000 .. | 0.2384 | 0.3070 |
| 6111304000 .. | 0.2384 | 0.3070 |
| 6111305010 .. | 0.2384 | 0.3070 |
| 6111305015 .. | 0.2384 | 0.3070 |
| 6111305020 .. | 0.2384 | 0.3070 |
| 6111305030 .. | 0.2384 | 0.3070 |
| 6111305050 .. | 0.2384 | 0.3070 |
| 6111305070 .. | 0.2384 | 0.3070 |
| 6111901000 .. | 0.2384 | 0.3070 |
| 6111902000 .. | 0.2384 | 0.3070 |
| 6111903000 .. | 0.2384 | 0.3070 |
| 6111904000 .. | 0.2384 | 0.3070 |
| 6111905010 .. | 0.2384 | 0.3070 |
| 6111905020 .. | 0.2384 | 0.3070 |
| 6111905030 .. | 0.2384 | 0.3070 |
| 6111905050 .. | 0.2384 | 0.3070 |
| 6111905070 .. | 0.2384 | 0.3070 |
| 6112110010 .. | 0.9535 | 1.2277 |
| 6112110020 .. | 0.9535 | 1.2277 |
| 6112110030 .. | 0.9535 | 1.2277 |
| 6112110040 .. | 0.9535 | 1.2277 |
| 6112110050 .. | 0.9535 | 1.2277 |
| 6112110060 .. | 0.9535 | 1.2277 |
| 6112120010 .. | 0.2384 | 0.3070 |
| 6112120020 .. | 0.2384 | 0.3070 |
| 6112120030 .. | 0.2384 | 0.3070 |
| 6112120040 .. | 0.2384 | 0.3070 |
| 6112120050 .. | 0.2384 | 0.3070 |
| 6112120060 .. | 0.2384 | 0.3070 |
| 6112191010 .. | 0.2492 | 0.3209 |
| 6112191020 .. | 0.2492 | 0.3209 |
| 6112191030 .. | 0.2492 | 0.3209 |
| 6112191040 .. | 0.2492 | 0.3209 |
| 6112191050 .. | 0.2492 | 0.3209 |
| 6112191060 .. | 0.2492 | 0.3209 |
| 6112201060 .. | 0.2492 | 0.3209 |
| 6112201070 .. | 0.2492 | 0.3209 |
| 6112201080 .. | 0.2492 | 0.3209 |
| 6112201090 .. | 0.2492 | 0.3209 |
| 6112202010 .. | 0.8722 | 1.1230 |
| 6112202020 .. | 0.3738 | 0.4813 |
| 6112202030 .. | 0.2492 | 0.3209 |
| 6112310010 .. | 0.1192 | 0.1535 |
| 6112310020 .. | 0.1192 | 0.1535 |
| 6112390010 .. | 1.0727 | 1.3812 |
| 6112410010 .. | 0.1192 | 0.1535 |
| 6112410020 .. | 0.1192 | 0.1535 |
| 6112410030 .. | 0.1192 | 0.1535 |
| 6112410040 .. | 0.1192 | 0.1535 |
| 6112490010 .. | 0.8939 | 1.1510 |
| 6113001005 .. | 0.1246 | 0.1604 |
| 6113001010 .. | 0.1246 | 0.1604 |
| 6113001012 .. | 0.1246 | 0.1604 |
| 6113009015 .. | 0.3489 | 0.4492 |
| 6113009020 .. | 0.3489 | 0.4492 |
| 6113009038 .. | 0.3489 | 0.4492 |
| 6113009042 .. | 0.3489 | 0.4492 |
| 6113009055 .. | 0.3489 | 0.4492 |
| 6113009060 .. | 0.3489 | 0.4492 |
| 6113009074 .. | 0.3489 | 0.4492 |
| 6113009082 .. | 0.3489 | 0.4492 |
| 6114200005 .. | 0.9747 | 1.2550 |
| 6114200010 .. | 0.9747 | 1.2550 |
| 6114200015 .. | 0.8528 | 1.0981 |
| 6114200020 .. | 0.8528 | 1.0981 |
| 6114200035 .. | 0.8528 | 1.0981 |
| 6114200040 .. | 0.8528 | 1.0981 |
| 6114200042 .. | 0.3655 | 0.4706 |
| 6114200044 .. | 0.8528 | 1.0981 |
| 6114200046 .. | 0.8528 | 1.0981 |
| 6114200048 .. | 0.8528 | 1.0981 |
| 6114200052 .. | 0.8528 | 1.0981 |
| 6114200055 .. | 0.8528 | 1.0981 |
| 6114200060 .. | 0.8528 | 1.0981 |
| 6114301010 .. | 0.2437 | 0.3138 |
| 6114301020 .. | 0.2437 | 0.3138 |
| 6114302060 .. | 0.1218 | 0.1568 |
| 6114303014 .. | 0.2437 | 0.3138 |
| 6114303020 .. | 0.2437 | 0.3138 |
| 6114303030 .. | 0.2437 | 0.3138 |
| 6114303042 .. | 0.2437 | 0.3138 |
| 6114303044 .. | 0.2437 | 0.3138 |
| 6114303052 .. | 0.2437 | 0.3138 |
| 6114303054 .. | 0.2437 | 0.3138 |
| 6114303060 .. | 0.2437 | 0.3138 |
| 6114303070 .. | 0.2437 | 0.3138 |
| 6114909045 .. | 0.5482 | 0.7059 |
| 6114909055 .. | 0.3655 | 0.4706 |
| 6114909070 .. | 0.3655 | 0.4706 |
| 6115100500 .. | 0.4386 | 0.5647 |
| 6115101510 .. | 1.0965 | 1.4119 |
| 6115103000 .. | 0.9868 | 1.2706 |
| 6115106000 .. | 0.1096 | 0.1411 |
| 6115298010 .. | 1.0965 | 1.4119 |
| 6115309030 .. | 0.7675 | 0.9882 |
| 6115956000 .. | 0.9868 | 1.2706 |
| 6115959000 .. | 0.9868 | 1.2706 |
| 6115966020 .. | 0.2193 | 0.2824 |
| 6115991420 .. | 0.2193 | 0.2824 |
| 6115991920 .. | 0.2193 | 0.2824 |
| 6115999000 .. | 0.1096 | 0.1411 |
| 6116101300 .. | 0.3463 | 0.4459 |
| 6116101720 .. | 0.8079 | 1.0403 |
| 6116104810 .. | 0.4444 | 0.5722 |
| 6116105510 .. | 0.6464 | 0.8323 |
| 6116107510 .. | 0.6464 | 0.8323 |
| 6116109500 .. | 0.1616 | 0.2081 |
| 6116920500 .. | 0.8079 | 1.0403 |
| 6116920800 .. | 0.8079 | 1.0403 |
| 6116926410 .. | 1.0388 | 1.3376 |
| 6116926420 .. | 1.0388 | 1.3376 |
| 6116926430 .. | 1.1542 | 1.4861 |
| 6116926440 .. | 1.0388 | 1.3376 |
| 6116927450 .. | 1.0388 | 1.3376 |
| 6116927460 .. | 1.1542 | 1.4861 |
| 6116927470 .. | 1.0388 | 1.3376 |
| 6116928800 .. | 1.0388 | 1.3376 |
| 6116929400 .. | 1.0388 | 1.3376 |
| 6116938800 .. | 0.1154 | 0.1486 |
| 6116939400 .. | 0.1154 | 0.1486 |
| 6116994800 .. | 0.1154 | 0.1486 |
| 6116995400 .. | 0.1154 | 0.1486 |
| 6116999510 .. | 0.4617 | 0.5945 |
| 6116999530 .. | 0.3463 | 0.4459 |
| 6117106010 .. | 0.9234 | 1.1890 |
| 6117106020 .. | 0.2308 | 0.2972 |
| 6117808500 .. | 0.9234 | 1.1890 |
| 6117808710 .. | 1.1542 | 1.4861 |
| 6117808770 .. | 0.1731 | 0.2229 |
| 6117809510 .. | 0.9234 | 1.1890 |
| 6117809540 .. | 0.3463 | 0.4459 |
| 6117809570 .. | 0.1731 | 0.2229 |
| 6117909003 .. | 1.1542 | 1.4861 |
| 6117909015 .. | 0.2308 | 0.2972 |
| 6117909020 .. | 1.1542 | 1.4861 |
| 6117909040 .. | 1.1542 | 1.4861 |
| 6117909060 .. | 1.1542 | 1.4861 |
| 6117909080 .. | 1.1542 | 1.4861 |
| 6201121000 .. | 0.8981 | 1.1564 |
| 6201122010 .. | 0.8482 | 1.0921 |
| 6201122020 .. | 0.8482 | 1.0921 |
| 6201122025 .. | 0.9979 | 1.2849 |
| 6201122035 .. | 0.9979 | 1.2849 |
| 6201122050 .. | 0.6486 | 0.8351 |
| 6201122060 .. | 0.6486 | 0.8351 |
| 6201134015 .. | 0.1996 | 0.2570 |
| 6201134020 .. | 0.1996 | 0.2570 |
| 6201134030 .. | 0.2495 | 0.3213 |
| 6201134040 .. | 0.2495 | 0.3213 |
| 6201199010 .. | 0.5613 | 0.7227 |
| 6201199030 .. | 0.3742 | 0.4818 |
| 6201199060 .. | 0.3742 | 0.4818 |
| 6201921000 .. | 0.8779 | 1.1304 |
| 6201921500 .. | 1.0974 | 1.4130 |
| 6201922005 .. | 0.9754 | 1.2559 |
| 6201922010 .. | 0.9754 | 1.2559 |
| 6201922021 .. | 1.2193 | 1.5700 |
| 6201922031 .. | 1.2193 | 1.5700 |
| 6201922041 .. | 1.2193 | 1.5700 |
| 6201922051 .. | 0.9754 | 1.2559 |
| 6201922061 .. | 0.9754 | 1.2559 |
| 6201931000 .. | 0.2926 | 0.3768 |
| 6201932010 .. | 0.2439 | 0.3140 |
| 6201932020 .. | 0.2439 | 0.3140 |
| 6201933511 .. | 0.2439 | 0.3140 |
| 6201933521 .. | 0.2439 | 0.3140 |
| 6201999010 .. | 0.5487 | 0.7065 |
| 6201999030 .. | 0.3658 | 0.4710 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6201999060 .. | 0.2439 | 0.3140 |
| 6202121000 .. | 0.8879 | 1.1433 |
| 6202122010 .. | 1.0482 | 1.3497 |
| 6202122020 .. | 1.0482 | 1.3497 |
| 6202122025 .. | 1.2332 | 1.5879 |
| 6202122035 .. | 1.2332 | 1.5879 |
| 6202122050 .. | 0.8016 | 1.0321 |
| 6202122060 .. | 0.8016 | 1.0321 |
| 6202134005 .. | 0.2524 | 0.3250 |
| 6202134010 .. | 0.2524 | 0.3250 |
| 6202134020 .. | 0.3155 | 0.4062 |
| 6202134030 .. | 0.3155 | 0.4062 |
| 6202199010 .. | 0.5678 | 0.7311 |
| 6202199030 .. | 0.3786 | 0.4875 |
| 6202199060 .. | 0.2524 | 0.3250 |
| 6202921000 .. | 0.9865 | 1.2702 |
| 6202921500 .. | 0.9865 | 1.2702 |
| 6202922010 .. | 0.9865 | 1.2702 |
| 6202922020 .. | 0.9865 | 1.2702 |
| 6202922026 .. | 1.2332 | 1.5879 |
| 6202922031 .. | 1.2332 | 1.5879 |
| 6202922061 .. | 0.9865 | 1.2702 |
| 6202922071 .. | 0.9865 | 1.2702 |
| 6202931000 .. | 0.296 | 0.3811 |
| 6202932010 .. | 0.2466 | 0.3175 |
| 6202932020 .. | 0.2466 | 0.3175 |
| 6202935011 .. | 0.2466 | 0.3175 |
| 6202935021 .. | 0.2466 | 0.3175 |
| 6202999011 .. | 0.5549 | 0.7145 |
| 6202999031 .. | 0.37 | 0.4764 |
| 6202999061 .. | 0.2466 | 0.3175 |
| 6203122010 .. | 0.1233 | 0.1588 |
| 6203122020 .. | 0.1233 | 0.1588 |
| 6203191010 .. | 0.9865 | 1.2702 |
| 6203191020 .. | 0.9865 | 1.2702 |
| 6203191030 .. | 0.9865 | 1.2702 |
| 6203199010 .. | 0.5549 | 0.7145 |
| 6203199020 .. | 0.5549 | 0.7145 |
| 6203199030 .. | 0.5549 | 0.7145 |
| 6203199050 .. | 0.37 | 0.4764 |
| 6203199080 .. | 0.2466 | 0.3175 |
| 6203221000 .. | 1.2332 | 1.5879 |
| 6203321000 .. | 0.6782 | 0.8733 |
| 6203322010 .. | 1.1715 | 1.5084 |
| 6203322020 .. | 1.1715 | 1.5084 |
| 6203322030 .. | 1.1715 | 1.5084 |
| 6203322040 .. | 1.1715 | 1.5084 |
| 6203322050 .. | 1.1715 | 1.5084 |
| 6203332010 .. | 0.1233 | 0.1588 |
| 6203332020 .. | 0.1233 | 0.1588 |
| 6203392010 .. | 0.1233 | 0.1588 |
| 6203392020 .. | 0.1233 | 0.1588 |
| 6203399010 .. | 0.5549 | 0.7145 |
| 6203399030 .. | 0.37 | 0.4764 |
| 6203399060 .. | 0.2466 | 0.3175 |
| 6203421000 .. | 1.0616 | 1.3669 |
| 6203422005 .. | 0.7077 | 0.9112 |
| 6203422010 .. | 0.9436 | 1.2150 |
| 6203422025 .. | 0.9436 | 1.2150 |
| 6203422050 .. | 0.9436 | 1.2150 |
| 6203422090 .. | 0.9436 | 1.2150 |
| 6203424003 .. | 1.0616 | 1.3669 |
| 6203424006 .. | 1.1796 | 1.5189 |
| 6203424011 .. | 1.1796 | 1.5189 |
| 6203424016 .. | 0.9436 | 1.2150 |
| 6203424021 .. | 1.1796 | 1.5189 |
| 6203424026 .. | 1.1796 | 1.5189 |
| 6203424031 .. | 1.1796 | 1.5189 |
| 6203424036 .. | 1.1796 | 1.5189 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6203424041 .. | 0.9436 | 1.2150 |
| 6203424046 .. | 0.9436 | 1.2150 |
| 6203424051 .. | 0.8752 | 1.1269 |
| 6203424056 .. | 0.8752 | 1.1269 |
| 6203424061 .. | 0.8752 | 1.1269 |
| 6203431000 .. | 0.1887 | 0.2430 |
| 6203431500 .. | 0.118 | 0.1519 |
| 6203432005 .. | 0.118 | 0.1519 |
| 6203432010 .. | 0.2359 | 0.3037 |
| 6203432025 .. | 0.2359 | 0.3037 |
| 6203432050 .. | 0.2359 | 0.3037 |
| 6203432090 .. | 0.2359 | 0.3037 |
| 6203432500 .. | 0.4128 | 0.5315 |
| 6203433510 .. | 0.059 | 0.0760 |
| 6203433590 .. | 0.059 | 0.0760 |
| 6203434010 .. | 0.1167 | 0.1503 |
| 6203434015 .. | 0.1167 | 0.1503 |
| 6203434020 .. | 0.1167 | 0.1503 |
| 6203434030 .. | 0.1167 | 0.1503 |
| 6203434035 .. | 0.1167 | 0.1503 |
| 6203434040 .. | 0.1167 | 0.1503 |
| 6203491005 .. | 0.118 | 0.1519 |
| 6203491010 .. | 0.2359 | 0.3037 |
| 6203491025 .. | 0.2359 | 0.3037 |
| 6203491050 .. | 0.2359 | 0.3037 |
| 6203491090 .. | 0.2359 | 0.3037 |
| 6203491500 .. | 0.4128 | 0.5315 |
| 6203492015 .. | 0.2359 | 0.3037 |
| 6203492020 .. | 0.2359 | 0.3037 |
| 6203492030 .. | 0.118 | 0.1519 |
| 6203492045 .. | 0.118 | 0.1519 |
| 6203492050 .. | 0.118 | 0.1519 |
| 6203492060 .. | 0.118 | 0.1519 |
| 6203498020 .. | 0.5308 | 0.6835 |
| 6203498030 .. | 0.3539 | 0.4557 |
| 6203498045 .. | 0.2359 | 0.3037 |
| 6204110000 .. | 0.0617 | 0.0794 |
| 6204120010 .. | 0.9865 | 1.2702 |
| 6204120020 .. | 0.9865 | 1.2702 |
| 6204120030 .. | 0.9865 | 1.2702 |
| 6204120040 .. | 0.9865 | 1.2702 |
| 6204132010 .. | 0.1233 | 0.1588 |
| 6204132020 .. | 0.1233 | 0.1588 |
| 6204192000 .. | 0.1233 | 0.1588 |
| 6204198010 .. | 0.5549 | 0.7145 |
| 6204198020 .. | 0.5549 | 0.7145 |
| 6204198030 .. | 0.5549 | 0.7145 |
| 6204198040 .. | 0.5549 | 0.7145 |
| 6204198060 .. | 0.3083 | 0.3970 |
| 6204198090 .. | 0.2466 | 0.3175 |
| 6204221000 .. | 1.2332 | 1.5879 |
| 6204321000 .. | 0.6782 | 0.8733 |
| 6204322010 .. | 1.1715 | 1.5084 |
| 6204322020 .. | 1.1715 | 1.5084 |
| 6204322030 .. | 0.9865 | 1.2702 |
| 6204322040 .. | 0.9865 | 1.2702 |
| 6204398010 .. | 0.5549 | 0.7145 |
| 6204398030 .. | 0.3083 | 0.3970 |
| 6204412010 .. | 0.0603 | 0.0776 |
| 6204412020 .. | 0.0603 | 0.0776 |
| 6204421000 .. | 1.2058 | 1.5526 |
| 6204422000 .. | 0.6632 | 0.8539 |
| 6204423010 .. | 1.2058 | 1.5526 |
| 6204423020 .. | 1.2058 | 1.5526 |
| 6204423030 .. | 0.9043 | 1.1644 |
| 6204423040 .. | 0.9043 | 1.1644 |
| 6204423050 .. | 0.9043 | 1.1644 |
| 6204423060 .. | 0.9043 | 1.1644 |
| 6204431000 .. | 0.4823 | 0.6210 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6204432000 .. | 0.0603 | 0.0776 |
| 6204442000 .. | 0.4316 | 0.5557 |
| 6204495010 .. | 0.5549 | 0.7145 |
| 6204495030 .. | 0.2466 | 0.3175 |
| 6204510010 .. | 0.0631 | 0.0812 |
| 6204510020 .. | 0.0631 | 0.0812 |
| 6204521000 .. | 1.2618 | 1.6247 |
| 6204522010 .. | 1.1988 | 1.5436 |
| 6204522020 .. | 1.1988 | 1.5436 |
| 6204522030 .. | 1.1988 | 1.5436 |
| 6204522040 .. | 1.1988 | 1.5436 |
| 6204522070 .. | 1.0095 | 1.2998 |
| 6204522080 .. | 1.0095 | 1.2998 |
| 6204531000 .. | 0.4416 | 0.5686 |
| 6204532010 .. | 0.0631 | 0.0812 |
| 6204532020 .. | 0.0631 | 0.0812 |
| 6204533010 .. | 0.2524 | 0.3250 |
| 6204533020 .. | 0.2524 | 0.3250 |
| 6204591000 .. | 0.4416 | 0.5686 |
| 6204594010 .. | 0.5678 | 0.7311 |
| 6204594030 .. | 0.2524 | 0.3250 |
| 6204594060 .. | 0.2524 | 0.3250 |
| 6204611010 .. | 0.059 | 0.0760 |
| 6204611020 .. | 0.059 | 0.0760 |
| 6204619010 .. | 0.059 | 0.0760 |
| 6204619020 .. | 0.059 | 0.0760 |
| 6204619030 .. | 0.059 | 0.0760 |
| 6204619040 .. | 0.118 | 0.1519 |
| 6204621000 .. | 0.8681 | 1.1178 |
| 6204622005 .. | 0.7077 | 0.9112 |
| 6204622010 .. | 0.9436 | 1.2150 |
| 6204622025 .. | 0.9436 | 1.2150 |
| 6204622050 .. | 0.9436 | 1.2150 |
| 6204623000 .. | 1.1796 | 1.5189 |
| 6204624003 .. | 1.0616 | 1.3669 |
| 6204624006 .. | 1.1796 | 1.5189 |
| 6204624011 .. | 1.1796 | 1.5189 |
| 6204624021 .. | 0.9436 | 1.2150 |
| 6204624026 .. | 1.1796 | 1.5189 |
| 6204624031 .. | 1.1796 | 1.5189 |
| 6204624036 .. | 1.1796 | 1.5189 |
| 6204624041 .. | 1.1796 | 1.5189 |
| 6204624046 .. | 0.9436 | 1.2150 |
| 6204624051 .. | 0.9436 | 1.2150 |
| 6204624056 .. | 0.9335 | 1.2020 |
| 6204624061 .. | 0.9335 | 1.2020 |
| 6204624066 .. | 0.9335 | 1.2020 |
| 6204631000 .. | 0.2019 | 0.2600 |
| 6204631200 .. | 0.118 | 0.1519 |
| 6204631505 .. | 0.118 | 0.1519 |
| 6204631510 .. | 0.2359 | 0.3037 |
| 6204631525 .. | 0.2359 | 0.3037 |
| 6204631550 .. | 0.2359 | 0.3037 |
| 6204632000 .. | 0.4718 | 0.6075 |
| 6204632510 .. | 0.059 | 0.0760 |
| 6204632520 .. | 0.059 | 0.0760 |
| 6204633010 .. | 0.0603 | 0.0776 |
| 6204633090 .. | 0.0603 | 0.0776 |
| 6204633510 .. | 0.2412 | 0.3106 |
| 6204633525 .. | 0.2412 | 0.3106 |
| 6204633530 .. | 0.2412 | 0.3106 |
| 6204633532 .. | 0.2309 | 0.2973 |
| 6204633535 .. | 0.2309 | 0.2973 |
| 6204633540 .. | 0.2309 | 0.2973 |
| 6204691005 .. | 0.118 | 0.1519 |
| 6204691010 .. | 0.2359 | 0.3037 |
| 6204691025 .. | 0.2359 | 0.3037 |
| 6204691050 .. | 0.2359 | 0.3037 |
| 6204692010 .. | 0.059 | 0.0760 |

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6204692020 .. | 0.059 | 0.0760 |
| 6204692030 .. | 0.059 | 0.0760 |
| 6204692510 .. | 0.2359 | 0.3037 |
| 6204692520 .. | 0.2359 | 0.3037 |
| 6204692530 .. | 0.2359 | 0.3037 |
| 6204692540 .. | 0.2309 | 0.2973 |
| 6204692550 .. | 0.2309 | 0.2973 |
| 6204692560 .. | 0.2309 | 0.2973 |
| 6204696010 .. | 0.5308 | 0.6835 |
| 6204696030 .. | 0.2359 | 0.3037 |
| 6204696070 .. | 0.3539 | 0.4557 |
| 6204699010 .. | 0.5308 | 0.6835 |
| 6204699030 .. | 0.2359 | 0.3037 |
| 6204699044 .. | 0.2359 | 0.3037 |
| 6204699046 .. | 0.2359 | 0.3037 |
| 6204699050 .. | 0.3539 | 0.4557 |
| 6205201000 .. | 1.1796 | 1.5189 |
| 6205202003 .. | 0.9436 | 1.2150 |
| 6205202016 .. | 0.9436 | 1.2150 |
| 6205202021 .. | 0.9436 | 1.2150 |
| 6205202026 .. | 0.9436 | 1.2150 |
| 6205202031 .. | 0.9436 | 1.2150 |
| 6205202036 .. | 1.0616 | 1.3669 |
| 6205202041 .. | 1.0616 | 1.3669 |
| 6205202044 .. | 1.0616 | 1.3669 |
| 6205202047 .. | 0.9436 | 1.2150 |
| 6205202051 .. | 0.9436 | 1.2150 |
| 6205202056 .. | 0.9436 | 1.2150 |
| 6205202061 .. | 0.9436 | 1.2150 |
| 6205202066 .. | 0.9436 | 1.2150 |
| 6205202071 .. | 0.9436 | 1.2150 |
| 6205202076 .. | 0.9436 | 1.2150 |
| 6205301000 .. | 0.4128 | 0.5315 |
| 6205302010 .. | 0.2949 | 0.3797 |
| 6205302020 .. | 0.2949 | 0.3797 |
| 6205302030 .. | 0.2949 | 0.3797 |
| 6205302040 .. | 0.2949 | 0.3797 |
| 6205302050 .. | 0.2949 | 0.3797 |
| 6205302055 .. | 0.2949 | 0.3797 |
| 6205302060 .. | 0.2949 | 0.3797 |
| 6205302070 .. | 0.2949 | 0.3797 |
| 6205302075 .. | 0.2949 | 0.3797 |
| 6205302080 .. | 0.2949 | 0.3797 |
| 6205900710 .. | 0.118 | 0.1519 |
| 6205900720 .. | 0.118 | 0.1519 |
| 6205901000 .. | 0.2359 | 0.3037 |
| 6205903010 .. | 0.5308 | 0.6835 |
| 6205903030 .. | 0.2359 | 0.3037 |
| 6205903050 .. | 0.1769 | 0.2278 |
| 6205904010 .. | 0.5308 | 0.6835 |
| 6205904030 .. | 0.2359 | 0.3037 |
| 6205904040 .. | 0.2359 | 0.3037 |
| 6206100010 .. | 0.5308 | 0.6835 |
| 6206100030 .. | 0.2359 | 0.3037 |
| 6206100040 .. | 0.118 | 0.1519 |
| 6206100050 .. | 0.2359 | 0.3037 |
| 6206203010 .. | 0.059 | 0.0760 |
| 6206203020 .. | 0.059 | 0.0760 |
| 6206301000 .. | 1.1796 | 1.5189 |
| 6206302000 .. | 0.6488 | 0.8354 |
| 6206303003 .. | 0.9436 | 1.2150 |
| 6206303011 .. | 0.9436 | 1.2150 |
| 6206303021 .. | 0.9436 | 1.2150 |
| 6206303031 .. | 0.9436 | 1.2150 |
| 6206303041 .. | 0.9436 | 1.2150 |
| 6206303051 .. | 0.9436 | 1.2150 |
| 6206303061 .. | 0.9436 | 1.2150 |
| 6206401000 .. | 0.4128 | 0.5315 |
| 6206403010 .. | 0.2949 | 0.3797 |

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6206403020 .. | 0.2949 | 0.3797 |
| 6206403025 .. | 0.2949 | 0.3797 |
| 6206403030 .. | 0.2949 | 0.3797 |
| 6206403040 .. | 0.2949 | 0.3797 |
| 6206403050 .. | 0.2949 | 0.3797 |
| 6206900010 .. | 0.5308 | 0.6835 |
| 6206900030 .. | 0.2359 | 0.3037 |
| 6206900040 .. | 0.1769 | 0.2278 |
| 6207110000 .. | 1.0281 | 1.3238 |
| 6207199010 .. | 0.3427 | 0.4413 |
| 6207199030 .. | 0.4569 | 0.5883 |
| 6207210010 .. | 1.0502 | 1.3522 |
| 6207210020 .. | 1.0502 | 1.3522 |
| 6207210030 .. | 1.0502 | 1.3522 |
| 6207210040 .. | 1.0502 | 1.3522 |
| 6207220000 .. | 0.3501 | 0.4508 |
| 6207291000 .. | 0.1167 | 0.1503 |
| 6207299030 .. | 0.1167 | 0.1503 |
| 6207911000 .. | 1.0852 | 1.3973 |
| 6207913010 .. | 1.0852 | 1.3973 |
| 6207913020 .. | 1.0852 | 1.3973 |
| 6207997520 .. | 0.2412 | 0.3106 |
| 6207998510 .. | 0.2412 | 0.3106 |
| 6207998520 .. | 0.2412 | 0.3106 |
| 6208110000 .. | 0.2412 | 0.3106 |
| 6208192000 .. | 1.0852 | 1.3973 |
| 6208195000 .. | 0.1206 | 0.1553 |
| 6208199000 .. | 0.2412 | 0.3106 |
| 6208210010 .. | 1.0026 | 1.2909 |
| 6208210020 .. | 1.0026 | 1.2909 |
| 6208210030 .. | 1.0026 | 1.2909 |
| 6208220000 .. | 0.118 | 0.1519 |
| 6208299030 .. | 0.2359 | 0.3037 |
| 6208911010 .. | 1.0852 | 1.3973 |
| 6208911020 .. | 1.0852 | 1.3973 |
| 6208913010 .. | 1.0852 | 1.3973 |
| 6208913020 .. | 1.0852 | 1.3973 |
| 6208920010 .. | 0.1206 | 0.1553 |
| 6208920020 .. | 0.1206 | 0.1553 |
| 6208920030 .. | 0.1206 | 0.1553 |
| 6208920040 .. | 0.1206 | 0.1553 |
| 6208992010 .. | 0.0603 | 0.0776 |
| 6208992020 .. | 0.0603 | 0.0776 |
| 6208995010 .. | 0.2412 | 0.3106 |
| 6208995020 .. | 0.2412 | 0.3106 |
| 6208998010 .. | 0.2412 | 0.3106 |
| 6208998020 .. | 0.2412 | 0.3106 |
| 6209201000 .. | 1.0967 | 1.4121 |
| 6209202000 .. | 1.039 | 1.3378 |
| 6209203000 .. | 0.9236 | 1.1892 |
| 6209205030 .. | 0.9236 | 1.1892 |
| 6209205035 .. | 0.9236 | 1.1892 |
| 6209205045 .. | 0.9236 | 1.1892 |
| 6209205050 .. | 0.9236 | 1.1892 |
| 6209301000 .. | 0.2917 | 0.3756 |
| 6209302000 .. | 0.2917 | 0.3756 |
| 6209303010 .. | 0.2334 | 0.3005 |
| 6209303020 .. | 0.2334 | 0.3005 |
| 6209303030 .. | 0.2334 | 0.3005 |
| 6209303040 .. | 0.2334 | 0.3005 |
| 6209900500 .. | 0.1154 | 0.1486 |
| 6209901000 .. | 0.2917 | 0.3756 |
| 6209902000 .. | 0.2917 | 0.3756 |
| 6209903010 .. | 0.2917 | 0.3756 |
| 6209903015 .. | 0.2917 | 0.3756 |
| 6209903020 .. | 0.2917 | 0.3756 |
| 6209903030 .. | 0.2917 | 0.3756 |
| 6209903040 .. | 0.2917 | 0.3756 |
| 6210109010 .. | 0.217 | 0.2794 |

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6210109040 .. | 0.217 | 0.2794 |
| 6210203000 .. | 0.0362 | 0.0466 |
| 6210205000 .. | 0.0844 | 0.1087 |
| 6210207000 .. | 0.1809 | 0.2329 |
| 6210303000 .. | 0.0362 | 0.0466 |
| 6210305000 .. | 0.0844 | 0.1087 |
| 6210307000 .. | 0.0362 | 0.0466 |
| 6210309020 .. | 0.422 | 0.5434 |
| 6210403000 .. | 0.037 | 0.0476 |
| 6210405020 .. | 0.4316 | 0.5557 |
| 6210405031 .. | 0.0863 | 0.1111 |
| 6210405039 .. | 0.0863 | 0.1111 |
| 6210405040 .. | 0.4316 | 0.5557 |
| 6210405050 .. | 0.4316 | 0.5557 |
| 6210407000 .. | 0.111 | 0.1429 |
| 6210409025 .. | 0.111 | 0.1429 |
| 6210409033 .. | 0.111 | 0.1429 |
| 6210409045 .. | 0.111 | 0.1429 |
| 6210409060 .. | 0.111 | 0.1429 |
| 6210503000 .. | 0.037 | 0.0476 |
| 6210505020 .. | 0.0863 | 0.1111 |
| 6210505031 .. | 0.0863 | 0.1111 |
| 6210505039 .. | 0.0863 | 0.1111 |
| 6210505040 .. | 0.0863 | 0.1111 |
| 6210505055 .. | 0.0863 | 0.1111 |
| 6210507000 .. | 0.4316 | 0.5557 |
| 6210509050 .. | 0.148 | 0.1906 |
| 6210509060 .. | 0.148 | 0.1906 |
| 6210509070 .. | 0.148 | 0.1906 |
| 6210509090 .. | 0.148 | 0.1906 |
| 6211111010 .. | 0.1206 | 0.1553 |
| 6211111020 .. | 0.1206 | 0.1553 |
| 6211118010 .. | 1.0852 | 1.3973 |
| 6211118020 .. | 1.0852 | 1.3973 |
| 6211118040 .. | 0.2412 | 0.3106 |
| 6211121010 .. | 0.0603 | 0.0776 |
| 6211121020 .. | 0.0603 | 0.0776 |
| 6211128010 .. | 1.0852 | 1.3973 |
| 6211128020 .. | 1.0852 | 1.3973 |
| 6211128030 .. | 0.6029 | 0.7763 |
| 6211200410 .. | 0.7717 | 0.9936 |
| 6211200420 .. | 0.0965 | 0.1243 |
| 6211200430 .. | 0.7717 | 0.9936 |
| 6211200440 .. | 0.0965 | 0.1243 |
| 6211200810 .. | 0.3858 | 0.4968 |
| 6211200820 .. | 0.3858 | 0.4968 |
| 6211201510 .. | 0.7615 | 0.9805 |
| 6211201515 .. | 0.2343 | 0.3017 |
| 6211201520 .. | 0.6443 | 0.8296 |
| 6211201525 .. | 0.2929 | 0.3771 |
| 6211201530 .. | 0.7615 | 0.9805 |
| 6211201535 .. | 0.3515 | 0.4526 |
| 6211201540 .. | 0.7615 | 0.9805 |
| 6211201545 .. | 0.2929 | 0.3771 |
| 6211201550 .. | 0.7615 | 0.9805 |
| 6211201555 .. | 0.41 | 0.5279 |
| 6211201560 .. | 0.7615 | 0.9805 |
| 6211201565 .. | 0.2343 | 0.3017 |
| 6211202400 .. | 0.1233 | 0.1588 |
| 6211202810 .. | 0.8016 | 1.0321 |
| 6211202820 .. | 0.2466 | 0.3175 |
| 6211202830 .. | 0.3083 | 0.3970 |
| 6211203400 .. | 0.1233 | 0.1588 |
| 6211203810 .. | 0.8016 | 1.0321 |
| 6211203820 .. | 0.2466 | 0.3175 |
| 6211203830 .. | 0.3083 | 0.3970 |
| 6211204400 .. | 0.1233 | 0.1588 |
| 6211204815 .. | 0.8016 | 1.0321 |
| 6211204835 .. | 0.2466 | 0.3175 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6211204860 .. | 0.3083 | 0.3970 |
| 6211205400 .. | 0.1233 | 0.1588 |
| 6211205810 .. | 0.8016 | 1.0321 |
| 6211205820 .. | 0.2466 | 0.3175 |
| 6211205830 .. | 0.3083 | 0.3970 |
| 6211206400 .. | 0.1233 | 0.1588 |
| 6211206810 .. | 0.8016 | 1.0321 |
| 6211206820 .. | 0.2466 | 0.3175 |
| 6211206830 .. | 0.3083 | 0.3970 |
| 6211207400 .. | 0.1233 | 0.1588 |
| 6211207810 .. | 0.9249 | 1.1909 |
| 6211207820 .. | 0.2466 | 0.3175 |
| 6211207830 .. | 0.3083 | 0.3970 |
| 6211320003 .. | 0.6412 | 0.8256 |
| 6211320007 .. | 0.8016 | 1.0321 |
| 6211320010 .. | 0.9865 | 1.2702 |
| 6211320015 .. | 0.9865 | 1.2702 |
| 6211320025 .. | 0.9865 | 1.2702 |
| 6211320030 .. | 0.9249 | 1.1909 |
| 6211320040 .. | 0.9249 | 1.1909 |
| 6211320050 .. | 0.9249 | 1.1909 |
| 6211320060 .. | 0.9249 | 1.1909 |
| 6211320070 .. | 0.9249 | 1.1909 |
| 6211320075 .. | 0.9249 | 1.1909 |
| 6211320081 .. | 0.9249 | 1.1909 |
| 6211330003 .. | 0.0987 | 0.1271 |
| 6211330007 .. | 0.1233 | 0.1588 |
| 6211330010 .. | 0.3083 | 0.3970 |
| 6211330015 .. | 0.3083 | 0.3970 |
| 6211330017 .. | 0.3083 | 0.3970 |
| 6211330025 .. | 0.37 | 0.4764 |
| 6211330030 .. | 0.37 | 0.4764 |
| 6211330035 .. | 0.37 | 0.4764 |
| 6211330040 .. | 0.37 | 0.4764 |
| 6211330054 .. | 0.37 | 0.4764 |
| 6211330058 .. | 0.37 | 0.4764 |
| 6211330061 .. | 0.37 | 0.4764 |
| 6211390510 .. | 0.1233 | 0.1588 |
| 6211390520 .. | 0.1233 | 0.1588 |
| 6211390530 .. | 0.1233 | 0.1588 |
| 6211390540 .. | 0.1233 | 0.1588 |
| 6211390545 .. | 0.1233 | 0.1588 |
| 6211390551 .. | 0.1233 | 0.1588 |
| 6211399010 .. | 0.2466 | 0.3175 |
| 6211399020 .. | 0.2466 | 0.3175 |
| 6211399030 .. | 0.2466 | 0.3175 |
| 6211399040 .. | 0.2466 | 0.3175 |
| 6211399050 .. | 0.2466 | 0.3175 |
| 6211399060 .. | 0.2466 | 0.3175 |
| 6211399070 .. | 0.2466 | 0.3175 |
| 6211399090 .. | 0.2466 | 0.3175 |
| 6211420003 .. | 0.6412 | 0.8256 |
| 6211420007 .. | 0.8016 | 1.0321 |
| 6211420010 .. | 0.9865 | 1.2702 |
| 6211420020 .. | 0.9865 | 1.2702 |
| 6211420025 .. | 1.1099 | 1.4291 |
| 6211420030 .. | 0.8632 | 1.1115 |
| 6211420040 .. | 0.9865 | 1.2702 |
| 6211420054 .. | 1.1099 | 1.4291 |
| 6211420056 .. | 1.1099 | 1.4291 |
| 6211420060 .. | 0.9865 | 1.2702 |
| 6211420070 .. | 1.1099 | 1.4291 |
| 6211420075 .. | 1.1099 | 1.4291 |
| 6211420081 .. | 1.1099 | 1.4291 |
| 6211430003 .. | 0.0987 | 0.1271 |
| 6211430007 .. | 0.1233 | 0.1588 |
| 6211430010 .. | 0.2466 | 0.3175 |
| 6211430020 .. | 0.2466 | 0.3175 |
| 6211430030 .. | 0.2466 | 0.3175 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6211430040 .. | 0.2466 | 0.3175 |
| 6211430050 .. | 0.2466 | 0.3175 |
| 6211430060 .. | 0.2466 | 0.3175 |
| 6211430064 .. | 0.3083 | 0.3970 |
| 6211430066 .. | 0.2466 | 0.3175 |
| 6211430074 .. | 0.3083 | 0.3970 |
| 6211430076 .. | 0.37 | 0.4764 |
| 6211430078 .. | 0.37 | 0.4764 |
| 6211430091 .. | 0.2466 | 0.3175 |
| 6211499010 .. | 0.2466 | 0.3175 |
| 6211499020 .. | 0.2466 | 0.3175 |
| 6211499030 .. | 0.2466 | 0.3175 |
| 6211499040 .. | 0.2466 | 0.3175 |
| 6211499050 .. | 0.2466 | 0.3175 |
| 6211499060 .. | 0.2466 | 0.3175 |
| 6211499070 .. | 0.2466 | 0.3175 |
| 6211499080 .. | 0.2466 | 0.3175 |
| 6211499090 .. | 0.2466 | 0.3175 |
| 6212105010 .. | 0.9138 | 1.1766 |
| 6212105020 .. | 0.2285 | 0.2942 |
| 6212105030 .. | 0.2285 | 0.2942 |
| 6212109010 .. | 0.9138 | 1.1766 |
| 6212109020 .. | 0.2285 | 0.2942 |
| 6212109040 .. | 0.2285 | 0.2942 |
| 6212200010 .. | 0.6854 | 0.8825 |
| 6212200020 .. | 0.2856 | 0.3677 |
| 6212200030 .. | 0.1142 | 0.1470 |
| 6212300010 .. | 0.6854 | 0.8825 |
| 6212300020 .. | 0.2856 | 0.3677 |
| 6212300030 .. | 0.1142 | 0.1470 |
| 6212900010 .. | 0.1828 | 0.2354 |
| 6212900020 .. | 0.1828 | 0.2354 |
| 6212900030 .. | 0.1828 | 0.2354 |
| 6212900050 .. | 0.0914 | 0.1177 |
| 6212900090 .. | 0.4112 | 0.5295 |
| 6213201000 .. | 1.1187 | 1.4404 |
| 6213202000 .. | 1.0069 | 1.2965 |
| 6213900700 .. | 0.4475 | 0.5762 |
| 6213901000 .. | 0.4475 | 0.5762 |
| 6213902000 .. | 0.3356 | 0.4321 |
| 6214300000 .. | 0.1142 | 0.1470 |
| 6214400000 .. | 0.1142 | 0.1470 |
| 6214900010 .. | 0.8567 | 1.1031 |
| 6214900090 .. | 0.2285 | 0.2942 |
| 6215100025 .. | 0.1142 | 0.1470 |
| 6215200000 .. | 0.1142 | 0.1470 |
| 6215900015 .. | 1.0281 | 1.3238 |
| 6216000800 .. | 0.0685 | 0.0882 |
| 6216001300 .. | 0.3427 | 0.4413 |
| 6216001720 .. | 0.6397 | 0.8237 |
| 6216001730 .. | 0.1599 | 0.2059 |
| 6216001900 .. | 0.3427 | 0.4413 |
| 6216002110 .. | 0.578 | 0.7442 |
| 6216002120 .. | 0.2477 | 0.3189 |
| 6216002410 .. | 0.6605 | 0.8505 |
| 6216002425 .. | 0.1651 | 0.2126 |
| 6216002600 .. | 0.1651 | 0.2126 |
| 6216002910 .. | 0.6605 | 0.8505 |
| 6216002925 .. | 0.1651 | 0.2126 |
| 6216003100 .. | 0.1651 | 0.2126 |
| 6216003300 .. | 0.5898 | 0.7594 |
| 6216003500 .. | 0.5898 | 0.7594 |
| 6216003800 .. | 1.1796 | 1.5189 |
| 6216004100 .. | 1.1796 | 1.5189 |
| 6217109510 .. | 0.9646 | 1.2420 |
| 6217109520 .. | 0.1809 | 0.2329 |
| 6217109530 .. | 0.2412 | 0.3106 |
| 6217909003 .. | 0.9646 | 1.2420 |
| 6217909005 .. | 0.1809 | 0.2329 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6217909010 .. | 0.2412 | 0.3106 |
| 6217909025 .. | 0.9646 | 1.2420 |
| 6217909030 .. | 0.1809 | 0.2329 |
| 6217909035 .. | 0.2412 | 0.3106 |
| 6217909050 .. | 0.9646 | 1.2420 |
| 6217909055 .. | 0.1809 | 0.2329 |
| 6217909060 .. | 0.2412 | 0.3106 |
| 6217909075 .. | 0.9646 | 1.2420 |
| 6217909080 .. | 0.1809 | 0.2329 |
| 6217909085 .. | 0.2412 | 0.3106 |
| 6301300010 .. | 0.8305 | 1.0694 |
| 6301300020 .. | 0.8305 | 1.0694 |
| 6301900030 .. | 0.2215 | 0.2852 |
| 6302100005 .. | 1.1073 | 1.4258 |
| 6302100008 .. | 1.1073 | 1.4258 |
| 6302100015 .. | 1.1073 | 1.4258 |
| 6302213010 .. | 1.1073 | 1.4258 |
| 6302213020 .. | 1.1073 | 1.4258 |
| 6302213030 .. | 1.1073 | 1.4258 |
| 6302213040 .. | 1.1073 | 1.4258 |
| 6302213050 .. | 1.1073 | 1.4258 |
| 6302215010 .. | 0.7751 | 0.9980 |
| 6302215020 .. | 0.7751 | 0.9980 |
| 6302215030 .. | 0.7751 | 0.9980 |
| 6302215040 .. | 0.7751 | 0.9980 |
| 6302215050 .. | 0.7751 | 0.9980 |
| 6302217010 .. | 1.1073 | 1.4258 |
| 6302217020 .. | 1.1073 | 1.4258 |
| 6302217030 .. | 1.1073 | 1.4258 |
| 6302217040 .. | 1.1073 | 1.4258 |
| 6302217050 .. | 1.1073 | 1.4258 |
| 6302219010 .. | 0.7751 | 0.9980 |
| 6302219020 .. | 0.7751 | 0.9980 |
| 6302219030 .. | 0.7751 | 0.9980 |
| 6302219040 .. | 0.7751 | 0.9980 |
| 6302219050 .. | 0.7751 | 0.9980 |
| 6302221010 .. | 0.5537 | 0.7129 |
| 6302221020 .. | 0.3876 | 0.4991 |
| 6302221030 .. | 0.5537 | 0.7129 |
| 6302221040 .. | 0.3876 | 0.4991 |
| 6302221050 .. | 0.3876 | 0.4991 |
| 6302221060 .. | 0.3876 | 0.4991 |
| 6302222010 .. | 0.3876 | 0.4991 |
| 6302222020 .. | 0.3876 | 0.4991 |
| 6302222030 .. | 0.3876 | 0.4991 |
| 6302290020 .. | 0.2215 | 0.2852 |
| 6302313010 .. | 1.1073 | 1.4258 |
| 6302313020 .. | 1.1073 | 1.4258 |
| 6302313030 .. | 1.1073 | 1.4258 |
| 6302313040 .. | 1.1073 | 1.4258 |
| 6302313050 .. | 1.1073 | 1.4258 |
| 6302315010 .. | 0.7751 | 0.9980 |
| 6302315020 .. | 0.7751 | 0.9980 |
| 6302315030 .. | 0.7751 | 0.9980 |
| 6302315040 .. | 0.7751 | 0.9980 |
| 6302315050 .. | 0.7751 | 0.9980 |
| 6302317010 .. | 1.1073 | 1.4258 |
| 6302317020 .. | 1.1073 | 1.4258 |
| 6302317030 .. | 1.1073 | 1.4258 |
| 6302317040 .. | 1.1073 | 1.4258 |
| 6302317050 .. | 1.1073 | 1.4258 |
| 6302319010 .. | 0.7751 | 0.9980 |
| 6302319020 .. | 0.7751 | 0.9980 |
| 6302319030 .. | 0.7751 | 0.9980 |
| 6302319040 .. | 0.7751 | 0.9980 |
| 6302319050 .. | 0.7751 | 0.9980 |
| 6302321010 .. | 0.5537 | 0.7129 |
| 6302321020 .. | 0.3876 | 0.4991 |
| 6302321030 .. | 0.5537 | 0.7129 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 6302321040 .. | 0.3876 | 0.4991 |
| 6302321050 .. | 0.3876 | 0.4991 |
| 6302321060 .. | 0.3876 | 0.4991 |
| 6302322010 .. | 0.5537 | 0.7129 |
| 6302322020 .. | 0.3876 | 0.4991 |
| 6302322030 .. | 0.5537 | 0.7129 |
| 6302322040 .. | 0.3876 | 0.4991 |
| 6302322050 .. | 0.3876 | 0.4991 |
| 6302322060 .. | 0.3876 | 0.4991 |
| 6302390030 .. | 0.2215 | 0.2852 |
| 6302402010 .. | 0.9412 | 1.2119 |
| 6302511000 .. | 0.5537 | 0.7129 |
| 6302512000 .. | 0.8305 | 1.0694 |
| 6302513000 .. | 0.5537 | 0.7129 |
| 6302514000 .. | 0.7751 | 0.9980 |
| 6302593020 .. | 0.5537 | 0.7129 |
| 6302600010 .. | 1.1073 | 1.4258 |
| 6302600020 .. | 0.9966 | 1.2832 |
| 6302600030 .. | 0.9966 | 1.2832 |
| 6302910005 .. | 0.9966 | 1.2832 |
| 6302910015 .. | 1.1073 | 1.4258 |
| 6302910025 .. | 0.9966 | 1.2832 |
| 6302910035 .. | 0.9966 | 1.2832 |
| 6302910045 .. | 0.9966 | 1.2832 |
| 6302910050 .. | 0.9966 | 1.2832 |
| 6302910060 .. | 0.9966 | 1.2832 |
| 6302931000 .. | 0.4429 | 0.5703 |
| 6302932000 .. | 0.4429 | 0.5703 |
| 6302992000 .. | 0.2215 | 0.2852 |
| 6303191100 .. | 0.8859 | 1.1407 |
| 6303910010 .. | 0.609 | 0.7841 |
| 6303910020 .. | 0.609 | 0.7841 |
| 6303921000 .. | 0.2768 | 0.3564 |
| 6303922010 .. | 0.2768 | 0.3564 |
| 6303922030 .. | 0.2768 | 0.3564 |
| 6303922050 .. | 0.2768 | 0.3564 |
| 6303990010 .. | 0.2768 | 0.3564 |
| 6304111000 .. | 0.9966 | 1.2832 |
| 6304113000 .. | 0.1107 | 0.1425 |
| 6304190500 .. | 0.9966 | 1.2832 |
| 6304191000 .. | 1.1073 | 1.4258 |
| 6304191500 .. | 0.3876 | 0.4991 |
| 6304192000 .. | 0.3876 | 0.4991 |
| 6304193060 .. | 0.2215 | 0.2852 |
| 6304910020 .. | 0.8859 | 1.1407 |
| 6304910070 .. | 0.2215 | 0.2852 |
| 6304920000 .. | 0.8859 | 1.1407 |
| 6304996040 .. | 0.2215 | 0.2852 |
| 6505001515 .. | 1.1189 | 1.4407 |
| 6505001525 .. | 0.5594 | 0.7203 |
| 6505001540 .. | 1.1189 | 1.4407 |
| 6505002030 .. | 0.9412 | 1.2119 |
| 6505002060 .. | 0.9412 | 1.2119 |
| 6505002545 .. | 0.5537 | 0.7129 |
| 6507000000 .. | 0.3986 | 0.5132 |
| 9404901000 .. | 0.2104 | 0.2709 |
| 9404908020 .. | 0.9966 | 1.2832 |
| 9404908040 .. | 0.9966 | 1.2832 |
| 9404908505 .. | 0.6644 | 0.8555 |
| 9404908536 .. | 0.0997 | 0.1284 |
| 9404909505 .. | 0.6644 | 0.8555 |
| 9404909570 .. | 0.2658 | 0.3422 |
| 9619002100 .. | 0.8681 | 1.1178 |
| 9619002500 .. | 0.1085 | 0.1397 |
| 9619003100 .. | 0.9535 | 1.2277 |
| 9619003300 .. | 1.1545 | 1.4865 |
| 9619004100 .. | 0.2384 | 0.3070 |
| 9619004300 .. | 0.2384 | 0.3070 |
| 9619006100 .. | 0.8528 | 1.0981 |

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

| HTS No. | Conv. factor | Cents/kg. |
|---|---|---|
| 9619006400 .. | 0.2437 | 0.3138 |
| 9619006800 .. | 0.3655 | 0.4706 |
| 9619007100 .. | 1.1099 | 1.4291 |
| 9619007400 .. | 0.2466 | 0.3175 |
| 9619007800 .. | 0.2466 | 0.3175 |
| 9619007900 .. | 0.2466 | 0.3175 |

* * * * *

**Authority:** 7 U.S.C. 2101–2118

Dated: June 25, 2013.

**Rex A. Barnes,**

*Associate Administrator.*

[FR Doc. 2013–15748 Filed 7–1–13; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1206

**[Document No. AMS–FV–12–0041]**

## Mango Promotion, Research, and Information Order; Nominations of Foreign Producers and Election of Officers

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Mango Promotion, Research, and Information Order (Order) to allow foreign producers, from countries exporting mangos to the United States, to nominate themselves or other foreign producers for appointment to the National Mango Board (Board). This change would increase the pool of foreign producer nominees. Upon further review, the proposed change to add flexibility to the timing of election of officers to the Board is not made in this rulemaking.

**DATES:** Effective July 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Palmer, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915; toll free (888) 720–9917; fax: (202) 205–2800; email: *Jeanette.Palmer@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Mango Promotion, Research, and Information Order (Order) (7 CFR part 1206). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425).

### Executive Order 12866 and Executive Order 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

Section 524 of the Act (7 U.S.C. 7423) provides that the Act shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Under the Act, a person subject to an order may file a petition with the U.S. Department of Agriculture (Department) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling.

### Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with 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 the small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

The Small Business Administration defines small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms as those having annual receipts of no more than $7 million (13 CFR part 121). First handlers and importers would be considered agricultural service firms, and the majority of mango producers, first handlers and importers would be considered small businesses. Foreign producer associations consisting of foreign producers would reflect the size of the producer entities. Although this criterion does not factor in additional monies that may be received by producers, handlers and importers of mangos, it is an inclusive standard for identifying small entities.

Mango producers are not subject to the assessment. First handlers and importers who market or import less than 500,000 pounds of mangos annually are exempt from the assessment. Mangos that are exported out of the United States are also exempt from assessment. Furthermore, while domestic and foreign producers are not subject to assessment under the Order, such individuals are eligible to serve on the Board along with importers and first handlers. Currently, approximately three first handlers and 193 importers are subject to assessment under the Order.

U.S. production of mangos is located in California, Florida, Hawaii, Texas, and Puerto Rico according to the most recent U.S. Census of Agriculture (Agricultural Census) which was conducted in 2007. The Agricultural Census does not include California production because California has so few producers that publishing production data would reveal confidential information. According to the 2007 Agricultural Census published by the Department's National Agricultural Statistics Service, the U.S. had a total of 2,259 acres of mangos in 2007, which is the most recent data available. Out of the total acreage, 1,212 acres (54 percent) were in Florida, and the remaining 1,047 acres (46 percent) were in Hawaii, California, and Texas. The Agricultural Census does not collect mango production data for Puerto Rico. Individual acreage for Hawaii, California and Texas are not available. U.S. mango acreage rose by 321 acres between 2002 and 2007. Florida saw a decrease of 161 acres between 2002 and 2007 census, but acres in other States rose by 482 acres. Census data is published every five years. The next available census of agriculture data will be available in 2014.

Seven countries account for 99 percent of the mangos imported into the United Sates. These countries and their share of the imports (from April 1, 2011, through March 31, 2012) are: Mexico (68 percent); Ecuador (9 percent); Brazil (7 percent); Peru (7 percent); Guatemala (4 percent); Haiti (3 percent); and Nicaragua (1 percent). For the period from April 1, 2011, through March 31, 2012, the United States imported a total of 396,423 tons of mangos, valued at $280 million.

The Board is composed of 18 members, including eight importers; two domestic producers; one first handler; and seven foreign producers. Nominations and appointments to the Board are conducted pursuant to section 1206.31 of the Order. Nominations for the importer, domestic producer, and first handler seats are made by U.S. importers, domestic producers, and first handlers, respectively. Foreign producers are nominated by foreign producer associations. The Board wants to increase the pool of nominees from the countries that export mangos to the United States by allowing foreign producers in major producing countries to nominate foreign producers to the Board.

Section 515(b)(2)(C) of the Act states the Secretary may make appointments from nominations made pursuant to the method set forth in the order. The Board wants to receive representation from all mango growing regions within the major mango exporting countries to the United States. Section 1206.31(g) of the Order limits the nominations for the foreign producer seats to the foreign mango organizations. At a meeting on September 11, 2009, the Board voted (9 out of 14 in favor) to allow foreign producers from the major countries exporting mangos to the United States to nominate themselves or other foreign producers for appointment to the Board. At a Board meeting, the Board decided to request this change. The change does not limit the foreign producer organizations' ability to submit nominations. The change increases the slate of candidates from which the Secretary may choose to appoint to the Board. It also provides an opportunity to increase diversity on the Board.

In addition, on July 11, 2012, the Board voted unanimously to amend the Order to provide the Board flexibility in the election of officers. Currently, section 1206.34(b) of the Order requires the Board to select a chairperson and a vice chairperson at the start of its fiscal period. Pursuant to section 1206.7, the fiscal period begins January 1. The term of office also begins January 1, pursuant to section 1206.32.

The Board must schedule Board meetings around several domestic and international growing regions in the mango industry. The Board had considered changing its fiscal year, but that change was rejected by the Board members because the Board's fiscal year flows with the mango production cycle, which is a calendar year.

Section 515(c)(3) of the Act allows the Board to meet, organize, and select from among its members its officers as the Board determines appropriate. Therefore, the Board proposed updating the Order to reflect the particular needs of the mango industry and to provide for a more efficient management method. However, as discussed further in the background section, no change is made to section 1206.32 of the Order.

This rule does not impose additional recordkeeping requirements on first handlers, importers, or producers of mangos. There are no Federal rules that duplicate, overlap, or conflict with this rule.

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been previously approved under OMB control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

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.

**Background**

The Order became effective on November 3, 2004, and it is authorized under the Act. The Board is composed of 18 members, including eight importers; two domestic producers; one first handler; and seven foreign producers. Nominations for the importer, domestic producer, and first handler seats are made by U.S. importers, domestic producers, and first handlers, respectively. Currently,

foreign producers are nominated by foreign producer associations.

Under the Order, the Board administers a nationally coordinated program of research and promotion designed to strengthen the position of mangos in the marketplace and to establish, maintain, and expand U.S. markets for mangos. The program is financed by an assessment of three quarters of a cent ($0.0075) per pound on first handlers and importers of 500,000 pounds or more of mangos annually. The Order specifies that first handlers are responsible for submitting assessments to the Board on a monthly basis and maintaining records necessary to verify their reporting. Importers are responsible for paying assessments on mangos imported for marketing in the United States through the U.S. Customs and Border Protection Service of the U.S. Department of Homeland Security.

The Board wants to increase the pool of nominees from the countries that export mangos to the United States by allowing foreign producers in major producing countries to nominate foreign producers to serve on the Board. The Board wants to receive representation from all mango growing regions within the countries that export mangos to the United States. Section 1206.31(g) of the Order limits the nominations for the foreign producer seats to the foreign mango organizations. At a meeting on September 11, 2009, the Board voted to allow foreign producers from the major countries exporting mangos to the United States to nominate themselves or other foreign producers for appointment to the Board. At a meeting, the Board decided to request this change. The change does not limit the foreign producer organizations' ability to submit nominations. It increases the slate of candidates from which the Secretary may choose to appoint members to the Board.

This change is consistent with section 515(b)(2)(C) of the Act, which states the Secretary may make appointments from nominations made pursuant to the method set forth in the Order. The Board wants to expand its slate of candidates for the Secretary's decision for appointment to the Board. Accordingly, section 1206.31(g) of the Order would be revised to allow foreign producers to nominate themselves or other foreign producers to serve on the Board.

In addition, on July 11, 2012, the Board voted unanimously to amend the Order to provide the Board flexibility in the election of officers. Currently, section 1206.34 (b) of the Order requires the Board to select a chairperson and a vice chairperson at the start of its fiscal period. Pursuant to section 1206.7, the fiscal period begins January 1. The term of office also begins January 1, pursuant to section 1206.32.

The Board must schedule Board meetings around several domestic and international growing regions in the mango industry. The Board had considered changing its fiscal year, but that change was rejected because the Board's fiscal year flows with the mango production cycle, which is a calendar year. The Board proposed updating the Order to reflect the particular needs of the mango industry and to provide for a more efficient management method. The proposal noted that the Board believed that electing its officers at the last meeting of the fiscal year would be more advantageous for the Board. We have further considered this matter and believe that the Board could make suggestions concerning officers prior to the start of the fiscal period, and the new Board appointed for the term of office beginning January 1, could consider the prior Board's suggestions before the Board makes its recommendation to the Secretary for approval. This will ensure that newly appointed members who may not have served on the prior Board would have the opportunity to participate in the election of officers. This action could be done on January 1, or soon thereafter through an electronic mail vote, by telephone, or other means of communications pursuant to section 1206.34(f) of the Order. The Board could specify these procedures in its bylaws.

A proposed rule concerning this action was published in the **Federal Register** on February 6, 2013 (78 FR 8441). Copies of the rule were made available through the Internet at *www.regulations.gov*, by the Department, and the Office of the Federal Register. That rule provided a 20-day comment period which ended on February 26, 2013. Two comments were received by the deadline.

**Summary of Comments**

The two comments received supported the proposed change to section 1206.31(g). One commenter made a recommendation regarding the last sentence in section 1206.31(g) of the Order that requires foreign producer nominees to be representative of the major countries exporting mangos to the United States. The commenter suggested that the term "major exporting country" be defined. As previously stated, Mexico, Ecuador, Brazil, Peru, Guatemala, Haiti, and Nicaragua account for 99 percent of the mango imports into the United States. This suggestion was not part of this rulemaking and as such, should be presented to the Board for their consideration. Accordingly, no change has been made to this section.

This commenter also was of the view with regard to the proposed change to section 1206.34, that the Board needs to determine the best time each year to hold election of officers. As discussed previously, the Board has the ability to determine an appropriate time each year to hold election of officers within a given year; however, in order to provide newly appointed members the opportunity to participate in electing officers, the election should take place on or after January 1 as stated in the Order.

After consideration of all relevant material presented, the Board's recommendation, public comments and other information, it is hereby found that this rule, published in the **Federal Register** on February 6, 2013 (78 FR 8441), is consistent with and will effectuate the purposes of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because this action needs to be in effect before the Board makes a call for nominations for the term of office beginning January 1, 2014. Further, this action helps to increase the pool of nominees to be considered for appointment to the Board. Finally, the proposed rule provided for a 20-day comment period, and the two comments received support the changes.

**List of Subjects in 7 CFR Part 1206**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mango promotion, Reporting and recording requirements.

For the reasons set forth in the preamble, 7 CFR part 1206 is amended as follows:

## PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1206 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425 and 7401.

■ 2. In § 1206.31, paragraph (g) is revised to read as follows:

**§ 1206.31 Nominations and appointments.**

* * * * *

(g) Nominees to fill the foreign producer member positions on the Board shall be solicited from organizations of foreign mango producers and from foreign mango

producers. Organizations of foreign mango producers shall submit two nominees for each position, and foreign mango producers may submit their name or the names of other foreign mango producers directly to the Board. The nominees shall be representative of the major countries exporting mangos to the United States.

* * * * *

Dated: June 26, 2013.

**Rex Barnes,**

*Associate Administrator.*

[FR Doc. 2013–15747 Filed 7–1–13; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–1230; Directorate Identifier 2011–NM–107–AD; Amendment 39–17477; AD 2013–11–17]**

**RIN 2120–AA64**

## Airworthiness Directives; Embraer S.A. Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding airworthiness directive (AD) 2010–14–14 that applies to certain Embraer S.A. Model ERJ 170 and ERJ 190 airplanes. AD 2010–14–14 currently requires, for certain airplanes, repetitively replacing the low-stage check valve and associated seals of the right hand (RH) engine's engine bleed system with a new check valve and new seals, replacing the low pressure check valves (LPCVs), and revising the maintenance program. For certain other airplanes, AD 2010–14–14 requires replacing a certain low-stage check valve with an improved low-stage check valve. For certain airplanes, this new AD adds replacing certain LPCVs of the left hand (LH) and RH engines, which would be an option for other airplanes. This AD was prompted by reports of uncommanded engine shutdowns on both Model ERJ 170 and ERJ 190 airplanes due to excessive wear and failure of LPCVs having certain part numbers. We are issuing this AD to prevent the possibility of a dual engine in-flight shutdown due to LPCV failure.

**DATES:** This AD becomes effective August 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 6, 2013.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of August 26, 2010 (75 FR 42585, July 22, 2010).

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 13, 2007 (72 FR 44734, August 9, 2007).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 29, 2005 (70 FR 69075, November 14, 2005).

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

**FOR FURTHER INFORMATION CONTACT:** Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2768; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on December 26, 2012 (77 FR 75911), and proposed to supersede AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010). (AD 2010–14–14 superseded AD 2007–16–09, Amendment 39–15148 (72 FR 44734, August 9, 2007)). AD 2007–16–09 superseded AD 2005–23–14, Amendment 39–14372 (70 FR 69075, November 14, 2005). The NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) for Embraer S.A. Model ERJ 170 airplanes states:

> It has been found the occurrence of an engine in-flight shutdown * * * caused by the LPCV failure P/N [part number] 1001447–3 with 3,900 Flight Hours (FH) installed on ERJ–170. This valve failed [to] open due [to] excessive wear. [I]t was found the occurrence of an engine shutdown on-ground, caused by the LPCV failure P/N 1001447–4 with 1,802 FH installed on ERJ–190 failed due [to] low cycle fatigue. Since the behavior of a valve P/N 1001447–4 removed from ERJ–190 is unknown on ERJ–170 and the P/N 1001447–4 is common between ERJ–170 and ERJ–190 airplane fleet, an action is necessary to prevent the installation, in ERJ–170 airplanes, of LPCVs P/N 1001447–4 previously installed in ERJ–190 airplanes.
>
> * * * * * * *

The MCAI for Embraer S.A. Model ERJ 190 airplanes states:

> It has been found the occurrence of an engine in-flight shutdown * * * caused by the LPCV failure P/N 1001447–3 with 3,900 Flight Hours (FH) installed on ERJ–170. This valve failed [to] open due [to] excessive wear. [I]t was found the occurrence of an engine shutdown on-ground, caused by the LPCV failure P/N 1001447–4 with 1,802 FH installed on ERJ–190 failed due [to] low cycle fatigue. Since the behavior of a valve P/N 1001447–4 removed from ERJ–170 is unknown on ERJ–190 and the P/N 1001447–4 is common between ERJ–170 and ERJ–190 airplane fleet, an action is necessary to prevent the installation, in ERJ–190 airplanes, of LPCVs P/N 1001447–4 previously installed in ERJ–170 airplanes.
>
> * * * * *

The unsafe condition is the possibility of a dual engine in-flight shutdown due to LPCV failure. The required actions include the actions required by AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010), and, for certain airplanes, replacing the LPCVs of the LH and RH engines, which would be an option for certain other airplanes. You may obtain further information by examining the MCAI in the AD docket.

### Comments

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

### Request for Clarification of Approved Method

US Airways requested clarification of paragraph (l) of the NPRM (77 FR 75911, December 26, 2012), which requires installing a new LPCV using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or Agência Nacional de Aviação Civil (ANAC) (or its delegated agent). The commenter requested clarification of the approved method so operators can understand acceptable and unacceptable methods of installation. The commenter also stated that the approved method needs to be stated to avoid having to obtain approval of an alternative method of compliance (AMOC) allowing use of certain documents.

We agree to provide clarification. We have reviewed EMBRAER Service Bulletins 190–36–0014, Revision 01, dated January 14, 2009; 190–LIN–36–0004, dated December 23, 2009; and 170–36–0011, Revision 2, dated July 19, 2007. Those bulletins provide instructions for installing P/N 1001447–

4; however, they may be used to install P/N 1001447–6. We have added paragraphs (l)(2) and (m)(2) to this AD to provide references for installing P/N 1001447–6. We have also added note 1 to paragraph (n) of this AD to provide guidance for an optional terminating action. Embraer has not published installation instructions specifically for the P/N 1001447–6 that can be incorporated by reference in this AD. We will consider approving any alternate installation instructions that operators propose.

**Clarification of Calculation for Equivalent Flight Hours**

We have revised paragraph (k)(4)(ii) of this AD to clarify the calculation for equivalent flight hours.

**Conclusion**

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 75911, December 26, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 75911, December 26, 2012).

**Costs of Compliance**

We estimate that this AD will affect about 253 products of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Cost per product | Number of U.S.-registered airplanes | Cost on U.S. operators |
|---|---|---|---|---|
| Replacement of RH check valves on Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes (retained actions from AD 2010–14–14 (75 FR 42585, July 22, 2010)). | 3 work-hours × $85 per hour = $255 per replacement cycle. | $255 per replacement cycle. | 55 | $14,025 per replacement cycle. |
| Replacement of LH check valves on Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes (retained actions from AD 2010–14–14 (75 FR 42585, July 22, 2010)). | 3 work-hours × $85 per hour = $255 per replacement cycle. | $255 per replacement cycle. | 75 | $19,125 per replacement cycle. |
| Replacement of LPCVs with P/N 1001447–6 (new action). | 2 work-hours × $85 per hour = $170. | $170 | 253 | $43,010. |
| Revision of maintenance program (new action) | 1 work-hour × $85 per hour = $85. | $85 | 253 | $21,505. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 75911, December 26, 2012), 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.

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010), and adding the following new AD:

**2013–11–17 Embraer S.A.:** Amendment 39–17477. Docket No. FAA–2012–1230; Directorate Identifier 2011–NM–107–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective August 6, 2013.

**(b) Affected ADs**

This AD supersedes AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010).

**(c) Applicability**

This AD applies to Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; certificated in any category; having Hamilton Sundstrand low pressure check valve (LPCV) part number (P/N) 1001447–3 or 1001447–4.

**(d) Subject**

Air Transport Association (ATA) of America Code 36, Pneumatic.

**(e) Reason**

This AD was prompted by reports of uncommanded engine shutdowns on both Model ERJ 170 and ERJ 190 airplanes due to excessive wear and failure of LPCVs having certain part numbers. We are issuing this AD to prevent the possibility of a dual engine in-flight shutdown due to LPCV failure.

**(f) Compliance**

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

**(g) Retained Replacement for Right-Hand (RH) Engine on Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU Airplanes**

This paragraph restates the requirements of paragraph (f) of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010). For Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes equipped with LPCVs having P/N 1001447–3: Within 100 flight hours after November 29, 2005 (the effective date of AD 2005–23–14, Amendment 39–14372 (70 FR 69075, November 14, 2005)), or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the RH engine's engine bleed system with a new check valve and new seals, in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005; or paragraph 3.C. of the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005, or Revision 01, dated March 10, 2008. As of August 26, 2010 (the effective date of AD 2010–14–14), only use EMBRAER Service Bulletin 170–36–0004, Revision 01, dated March 10, 2008, for the actions required by this paragraph. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

**(h) Retained Provision for Removed Check Valves from RH Engine**

This paragraph restates the provision specified in paragraph (g) of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010). Although EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005, specifies to send removed check valves to the manufacturer, this AD does not include that requirement.

**(i) Retained Replacement for Left-Hand (LH) Engine on Model ERJ 170 Airplanes**

This paragraph restates requirements of paragraph (h) of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010). For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes equipped with LPCVs having P/N 1001447–3: Within 300 flight hours after September 13, 2007 (the effective date of AD 2007–16–09, Amendment 39–15148 (72 FR 44734, August 9, 2007)), or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the LH engine's engine bleed system with a new check valve and new seals, in accordance with paragraph 3.B. of the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005, or Revision 01, dated March 10, 2008. As of August 26, 2010 (the effective date of AD 2010–14–14), only use EMBRAER Service Bulletin 170–36–0004, Revision 01, dated March 10, 2008. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

**(j) Retained Provision for Removed Check Valves from LH Engine**

This paragraph restates the provision specified in paragraph (i) of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010). Although EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005, specifies to send removed check valves to the manufacturer, this AD does not include that requirement.

**(k) Retained Actions and Compliance With Revised Service Information**

This paragraph restates the requirements of paragraph (j) of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010), with revised service information for paragraphs (k)(3), (k)(7), and (k)(8) of this AD. Unless already done, do the following actions.

(1) For Model ERJ 170–200 LR, –200 STD, and –200 SU airplanes equipped with LPCVs having P/N 1001447–3: Within 100 flight hours after August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the RH engine's engine bleed system with a new check valve and new seals, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, Revision 01, dated March 10, 2008. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

(2) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes equipped with LPCVs having P/N 1001447–3: Replacing the LPCV having P/N 1001447–3 with a new one having P/N 1001447–4, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0011, Revision 02, dated July 19, 2007, terminates the repetitive replacements required by paragraphs (g), (i), and (k)(1) of this AD.

(3) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes equipped with LPCVs having P/N 1001447–3, at the earlier of the times specified in paragraphs (k)(3)(i) and (k)(3)(ii) of this AD, revise the maintenance program to include maintenance Task 36–11–02–002 (Low Stage Bleed Check Valve), specified in Section 1 of the EMBRAER 170 Maintenance Review Board Report (MRBR), MRB–1621, Revision 6, dated January 14, 2010; or Revision 7, dated November 11, 2010. Thereafter, except as provided by paragraph (q) of this AD, no alternative inspection intervals may be approved for the task.

(i) Within 180 days after accomplishing paragraph (k)(2) of this AD.

(ii) Before any LPCV having P/N 1001447–4 accumulates 3,000 total flight hours, or within 300 flight hours after August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), whichever occurs later.

(4) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes equipped with LPCVs having P/N 1001447–3: As of August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), no person may install any LPCV identified in paragraph (k)(4)(i) or (k)(4)(ii) of this AD on any airplane.

(i) Any LPCV having P/N 1001447–3, installed on Model ERJ 170 airplanes, that has accumulated more than 3,000 total flight hours.

(ii) Any LPCV having P/N 1001447–3, installed on Model ERJ 170 and ERJ 190 airplanes, that has accumulated 3,000 or more total flight hours. For Model ERJ 170 airplanes: To install an LPCV having P/N 1001447–3 which was previously installed on a Model ERJ 190 airplane, calculate the equivalent number of flight hours by multiplying the flight hours accumulated on the Model ERJ 190 airplane by a factor of 2 (100 percent).

(5) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: Within 100 flight hours after August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), replace all LPCVs having P/N 1001447–3 that have accumulated 1,500 total flight hours or more as of August 26, 2010 (the effective date of AD 2010–14–14), with a new or serviceable LPCV having P/N 1001447–4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0006, Revision 01, dated July 19, 2007.

(6) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: Replace all LPCVs having P/N 1001447–3 that have accumulated less than 1,500 total flight hours as of August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), before the LPCV accumulates 1,500 total flight hours or within 100 flight hours after August 26, 2010 (the effective date of AD 2010–14–14), whichever occurs later. Replace that LPCV with a new

or serviceable LPCV having P/N 1001447–4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0006, Revision 01, dated July 19, 2007.

(7) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: Within 200 flight hours after August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), or before any LPCV having P/N 1001447–4 installed on the right engine accumulates 2,000 total flight hours since new or since overhaul, whichever occurs later, replace the valve with a new or serviceable LPCV having P/N 1001447–4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0014, Revision 01, dated January 14, 2009 (for Model ERJ 190–100 STD, –100 LR, and –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes); or EMBRAER Service Bulletin 190LIN–36–0004, dated December 23, 2009 (for Model 190–100 ECJ airplanes). Repeat the replacement on the right engine at intervals not to exceed 2,000 total flight hours on the LPCV since new or last overhaul.

(8) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: Within 200 flight hours after August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), or before any LPCV having P/N 1001447–4 installed on the left engine accumulates 2,000 total flight hours since new or last overhaul, whichever occurs later, replace the valve with a new or serviceable LPCV having P/N 1001447–4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0014, Revision 01, dated January 14, 2009 (for Model ERJ 190–100 STD, –100 LR, and –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes); or EMBRAER Service Bulletin 190LIN–36–0004, dated December 23, 2009 (for Model 190–100 ECJ airplanes). Repeat the replacement on the left engine at intervals not to exceed 2,000 total flight hours on the LPCV since new or last overhaul.

(9) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: As of August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), installation on the left and right engines with an LPCV having P/N 1001447–4 is allowed only if the valve has accumulated less than 2,000 total flight hours since new or last overhaul prior to installation.

(10) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: As of August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), no LPCV having P/N 1001447–3 may be installed on any airplane. Any LPCV having P/N 1001447–3 already installed on an airplane may remain in service until reaching the flight-hour limit defined in paragraphs (k)(5) and (k)(6) of this AD.

**(l) New Terminating Action**

For Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes: Except as provided by paragraph (m) of this AD, within 10 months after the effective date of this AD, install a new LPCV having P/N 1001447–6, in accordance with paragraph (l)(1) or (l)(2) of this AD. Installation of P/N 1001447–6 terminates the requirement for installation and repetitive replacements of the LPCV P/N 1001447–3 or 1001447–4 required by paragraph (k) of this AD.

(1) Using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or Agência Nacional de Aviação Civil (ANAC) (or its delegated agent).

(2) The Accomplishment Instructions of EMBRAER Service Bulletins 190–36–0014, Revision 01, dated January 14, 2009 (for Model ERJ 190–100 STD, –100 LR, and –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes), and 190–LIN–36–0004, dated December 23, 2009 (for Model 190–100 ECJ airplanes). The service information has instructions to install P/N 1001447–4, but can also be used to install P/N 1001447–6.

**(m) New Exception to Paragraph (l) of This AD**

For Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; on which an LPCV, P/N 1001447–4, has been installed before the compliance time specified in paragraph (l) of this AD: Prior to the accumulation of 2,000 flight hours on the part since new or overhauled, install a new LPCV having P/N 1001447–6, in accordance with paragraph (m)(1) or (m)(2) of this AD.

(1) Using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or ANAC (or its delegated agent).

(2) The Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0011, Revision 2, dated July 19, 2007. The service information has instructions to install P/N 1001447–4, but can also be used to install P/N 1001447–6.

**(n) New Optional Terminating Action**

For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes: Installation of a new LPCV having P/N 1001447–6 terminates the requirement for installation and repetitive replacements of the LPCV, P/N 1001447–3 or 1001447–4, required by paragraph (k) of this AD.

**Note 1 to paragraph (n) of this AD:** Guidance for installing P/N 1001447–6 can be found in EMBRAER Service Bulletin 170–36–0011, Revision 2, dated July 19, 2007. The service information has instructions to install P/N 1001447–4, but can also be used to install P/N 1001447–6.

**(o) Credit for Previous Actions**

(1) This paragraph provides credit for the actions specified in paragraph (k)(2) of this AD, if those actions were performed before August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), using EMBRAER Service Bulletin 170–36–0011, dated January 9, 2007; or EMBRAER Service Bulletin 170–36–0011, Revision 01, dated May 28, 2007; which are not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions specified in paragraphs (k)(5) and (k)(6) of this AD, if those actions were performed before August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), using EMBRAER Service Bulletin 190–36–0006, dated April 9, 2007, which is not incorporated by reference in this AD.

(3) This paragraph provides credit for the actions specified in paragraph (k)(1) of this AD, if those actions were performed before August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), using EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005, which is not incorporated by reference in this AD.

(4) This paragraph provides credit for the actions specified in paragraph (k)(3) of this AD, if those actions were done before August 26, 2010 (the effective date of AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010)), using Task 36–11–02–002 (Low Stage Bleed Check Valve) specified in Section 1 of the EMBRAER 170 Maintenance Review Board Report (MRBR), MRB–1621, Revision 5, dated November 5, 2008, which is not incorporated by reference in this AD.

**(p) New Parts Installation Limitations**

(1) For Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes: As of the effective date of this AD, no person may install on any airplane an LPCV having P/N 1001447–4 that was previously installed on any Model ERJ–190 airplane unless the valve has been overhauled.

(2) For Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes: As of the effective date of this AD, and until the effective date specified in paragraph (p)(3) of this AD, no person may install on any airplane an LPCV having P/N 1001447–4 that was previously installed on any Model ERJ–170 airplane unless the valve has been overhauled.

(3) For Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes: As of 10 months after the effective date of this AD, no person may install any LPCV having P/N 1001447–4 on any airplane.

**(q) 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: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2768; 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) AMOCs approved previously in accordance with AD 2010–14–14, Amendment 39–16359 (75 FR 42585, July 22, 2010), are not approved as AMOCs for this AD.

**(r) Related Information**

(1) Refer to MCAI Brazilian Airworthiness Directive 2005–09–03R3, effective May 30, 2011 (*http://www2.anac.gov.br/certificacao/da/Textos/1336amd.pdf*); Brazilian Airworthiness Directive 2006–11–01R6, effective May 30, 2011 (*http://www2.anac.gov.br/certificacao/DA/Textos/1337amd.pdf*); for related information.

(2) Service information identified in this AD that is not incorporated by reference in this AD may be obtained at the addresses specified in paragraphs (s)(7) and (s)(8) of this AD.

**(s) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on August 6, 2013.

(i) EMBRAER Service Bulletin 190LIN–36–0004, dated December 23, 2009.

(ii) Task 36–11–02–002 (Low Stage Bleed Check Valve) specified in Section 1 of the EMBRAER 170 Maintenance Review Board Report (MRBR), MRB–1621, Revision 7, dated November 11, 2010.

(4) The following service information was approved for IBR on August 26, 2010 (75 FR 42585, July 22, 2010).

(i) EMBRAER Service Bulletin 170–36–0004, Revision 01, dated March 10, 2008.

(ii) EMBRAER Service Bulletin 170–36–0011, Revision 02, dated July 19, 2007.

(iii) EMBRAER Service Bulletin 190–36–0006, Revision 01, dated July 19, 2007.

(iv) EMBRAER Service Bulletin 190–36–0014, Revision 01, dated January 14, 2009.

(v) Task 36–11–02–002 (Low Stage Bleed Check Valve) specified in Section 1 of the EMBRAER 170 MRBR MRB–1621, Revision 6, dated January 14, 2010.

(5) The following service information was approved for IBR on September 13, 2007 (72 FR 44734, August 9, 2007).

(i) EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005.

(ii) Reserved.

(6) The following service information was approved for IBR on November 29, 2005 (70 FR 69075, November 14, 2005).

(i) EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005.

(ii) Reserved.

(7) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos–SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.*

(8) You may review copies of the 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.

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

Issued in Renton, Washington, on May 29, 2013.

**Jeffrey E. Duven,**

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

[FR Doc. 2013–15637 Filed 7–1–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2008–0620; Directorate Identifier 2007–NM–357–AD; Amendment 39–17499; AD 2013–13–11]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–400, –400D, and –400F series airplanes. This AD 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 AD requires repetitive operational tests of the engine fuel suction feed of the fuel system, and other related testing and corrective actions if necessary. We are issuing this AD to detect and correct loss of the engine fuel suction feed capability of the fuel system, which, in the event of total loss of the fuel boost pumps, could result in multi-engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

**DATES:** This AD is effective August 6, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 6, 2013.

**ADDRESSES:** 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, 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That SNPRM published in the **Federal Register** on July 9, 2012 (77 FR 40307). The original NPRM (73 FR 32248, June 6, 2008) proposed to require repetitive operational tests of the engine fuel suction feed of the fuel system, and other related testing if necessary. The SNPRM proposed to require repetitive operational tests and corrective actions if necessary.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 40307, July 9, 2012) and the FAA's response to each comment. Boeing reviewed the SNPRM and concurs with the content.

**Request To Change the Compliance Time for the Operational Tests**

United Airlines (UAL) asked that we change the compliance times for the operational test in the SNPRM (77 FR 40307, July 9, 2012) from 30,000 flight hours after the effective date of the AD to "within 30,000 flight hours or 72 months after the effective date of the proposed AD, whichever is later." UAL also asked that the repetitive interval be changed to "intervals not to exceed 30,000 flight hours or 72 months." UAL stated that, " . . . Boeing 747–400 MRB No. 28–022–04 requires the initial and repeat operational tests be performed at 1D [maintenance] interval." UAL added that the suggested change would provide an acceptable level of safety and provide operators some degree of flexibility in scheduling the required task.

We do not agree with the request to change the compliance time proposed in the SNPRM (77 FR 40307, July 9, 2012). Boeing Alert Service Bulletin 747–28A2330, dated April 2, 2012, has been revised to change the compliance time and clarify certain procedures in the Work Instructions. We reviewed Boeing Service Bulletin 747–28A2330, Revision 1, dated November 30, 2012, and we are not mandating the newly recommended compliance time in this AD; however, we are including Boeing Service Bulletin 747–28A2330, Revision 1, dated November 30, 2012, in paragraph (g) of this AD as an option to using the original issue of this service information for procedures to accomplish the required actions.

We partially agree with including a compliance time for low-utilization airplanes; however, adding a calendar time of 72 months would constitute a more restrictive compliance time and would necessitate issuing another supplemental NPRM, which would delay issuance of this final rule. We determined that the compliance time of "within 30,000 flight hours or 6 years, whichever is first," as stated in Boeing Service Bulletin 747–28A2330, Revision 1, dated November 30, 2012, was changed to address low-utilization airplanes and will adequately address the unsafe condition identified. Therefore, we have not changed the AD in this regard.

**Request To Correct Errors in Service Information**

UAL asked that a service bulletin information notice (IN) be issued to address two errors in Boeing Alert Service Bulletin 747–28A2330, dated April 2, 2012. UAL noted that the first error is the reserve tank identifications, and the second error is an airplane maintenance manual (AMM) procedure referred to in the Work Instructions that is not identified in UAL's AMM. UAL stated that issuing an IN would prevent alternative method of compliance (AMOC) requests from operators.

We acknowledge and agree with the commenter's concern. As noted previously, we reviewed Boeing Service Bulletin 747–28A2330, Revision 1, dated November 30, 2012, which clarifies the reserve tank identifications. We have added this service information as an option for accomplishing the actions required by paragraph (g) of this AD. However, the second error identified by UAL involves the instructions in operator-customized maintenance manuals published by Boeing. Therefore, UAL should contact Boeing for resolution of the missing procedure in its AMM. Operators need not request AMOC approvals to use Boeing Alert Service Bulletin 747–28A2330, dated April 2, 2012, with regard to these errors since compliance is not affected.

**Request to Allow Alternative Procedures for Performing Operational Test**

UAL asked that paragraph (g) of the SNPRM (77 FR 40307, July 9, 2012) be changed to allow alternative procedures for performing the operational test instead of using the procedures provided in Boeing Alert Service Bulletin 747–28A2330, dated April 2, 2012. UAL stated that an alternative test is specified in the Boeing Model 747–400 AMM 28–22–00, Task 28–22–00–710–801, titled "Engine Fuel Suction Feed—Operational Test." UAL also asked that the procedure specified in AMM Task 28–22–07–706–200, titled "Engine Fuel Feed Manifold Air Pressure Leak Check," be included as an alternative procedure.

We do not agree with the commenter's request, but provide the following clarification. The manifold leak test is not equivalent to the operational test for the purposes of this AD action. The positive internal fuel line pressure applied during the manifold test does not simulate the same conditions encountered during fuel suction feed (i.e., vacuum), and might mask a failure. The action mandated by this AD is necessary in order to screen for system deterioration under suction feed conditions. Based on current requirements, a fuel suction feed test is required after reconnecting the fuel line to the manifold to verify final system integrity. Therefore, we have not changed the AD in this regard.

**Request for Additional Step in Operational Test**

UPS asked that we add a tolerance to the operational test for Steps 10.a and 10.c for the N1, N2, and "Fuel Flow Decrease Monitoring." (UPS stated that this follows the procedures in the referenced service information.) UPS is concerned that the engine parameters monitored using Step 10 might have slight (normal) fluctuations due to external effects, such as wind gusts, which could lead to a false test failure.

We do not agree with the commenter's request. These defined criteria were taken directly from approved AMMs that describe similar testing. These criteria have been used for a very long time with no negative feedback or requests for a similar (wider) tolerance band. In light of these facts, we have made no change to the AD in this regard.

**Request to Provide Credit for Previously Accomplished Operational Tests**

UAL asked that the SNPRM (77 FR 40307, July 9, 2012) be changed to provide credit for operational tests of the engine fuel suction system previously accomplished as specified in MRB Task 28–022–04, titled "Operational Check of the Engine Fuel Suction Feed System." UAL stated that it has incorporated this MRB task into its maintenance program at the MRB recommended level. UAL inferred that other operators of Model 747–400 airplanes have done the same.

We agree that credit might be appropriate for operator equivalent procedures; however, we do not agree with defining this credit within the AD.

Affected operators may request approval of an AMOC under the provisions of paragraph (h) of this AD by submitting data substantiating that the equivalent procedures would provide an acceptable level of safety. We have not changed the AD in this regard.

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously–and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM (77 FR 40307, July 9, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (77 FR 40307, July 9, 2012).

We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

**Costs of Compliance**

We estimate that this AD affects 79 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| Operational Test | 3 work-hours × $85 per hour = $255 per engine, per test. | $1,020, per test | $80,580, per test. |

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

**Authority for this Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2013–13–11 The Boeing Company:** Amendment 39–17499; Docket No. FAA–2008–0620; Directorate Identifier 2007–NM–357–AD.

**(a) Effective Date**

This AD is effective August 6, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 747–400, -400D, and -400F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–28A2330, dated April 2, 2012.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD 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. We are issuing this AD to detect and correct loss of the engine fuel suction feed capability of the fuel system, which, in the event of total loss of the fuel boost pumps, could result in multi-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) Operational Test and Corrective Actions**

Within 30,000 flight hours after the effective date of this AD: Perform an operational test of the engine fuel suction feed of the fuel system, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–28A2330, dated April 2, 2012; or Boeing Service Bulletin 747–28A2330, Revision 1, dated November 30, 2012. Do all applicable corrective actions before further flight. Repeat the operational test thereafter at intervals not to exceed 30,000 flight hours. Thereafter, except as provided in paragraph (h) of this AD, no alternative procedures or repetitive test intervals will be allowed.

**(h) 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.

**(i) Related Information**

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

**(j) Material Incorporated by Reference**

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

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

(i) Boeing Alert Service Bulletin 747–28A2330, dated April 2, 2012.

(ii) Boeing Service Bulletin 747–28A2330, Revision 1, dated November 30, 2012.

(3) 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.*

(4) 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.

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

Issued in Renton, Washington, June 13, 2013.

**Jeffrey E. Duven,**

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

[FR Doc. 2013–15692 Filed 7–1–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0214; Directorate Identifier 2012–NM–152–AD; Amendment 39–17497; AD 2013–13–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Learjet Inc. Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Learjet Inc. Model 60 airplanes. This AD was prompted by a report of a high-speed rejected takeoff caused by all four main landing gear (MLG) tires blowing out during the takeoff roll. This AD requires installing new rigid hydraulic tube assemblies to the MLG struts; installing a new MLG squat switch bracket, modifying the MLG squat switch wire harness; modifying the MLG anti-skid wheel transducer electrical wire harnesses; routing and securing the anti-skid wheel and squat switch electrical wire harnesses to the MLG strut assembly; installing outboard bracket assemblies, anti-skid shield, forward electrical cover on the forward stiffener, upper and lower inboard bracket assemblies, and clamps that support the electrical wire harness; modifying the aft stiffener for the new electrical wire harness support; installing the aft electrical cover and strap on the aft stiffener; installing a new flat landing light lamp if necessary; and, for certain airplanes, installing a new wheel speed detect box assembly, nutplates, and brackets and a new thrust reverser interface box, and modifying the wiring for the new thrust reverser interface box. We are issuing this AD to prevent failure of the braking system or adverse operation of the spoiler and thrust reverser system due to external damage, particularly from tire failure, which could result in loss of control of the airplane.

**DATES:** This AD is effective August 6, 2013.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the AD as of August 6, 2013.

**ADDRESSES:** For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, KS 67209–2942; telephone 316–946–2000; fax 316–946–2220; email *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Don Ristow, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, KS 67209; phone: 316–946–4120; fax: 316–946–4107; email: *donald.ristow@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM published in the **Federal Register** on March 27, 2013 (78 FR 18531). The NPRM proposed to require installing new rigid hydraulic tube assemblies to the MLG struts; installing a new MLG squat switch bracket; modifying the MLG squat switch wire harness; modifying the MLG anti-skid wheel transducer electrical wire harnesses; routing and securing the anti-skid wheel and squat switch electrical wire harnesses to the MLG strut assembly; installing outboard bracket assemblies, anti-skid shield, forward electrical cover on the forward stiffener, upper and lower inboard bracket assemblies, and clamps that support the electrical wire harness; modifying the aft stiffener for the new electrical wire harness support; installing the aft electrical cover and strap on the aft stiffener; installing a new flat landing light lamp if necessary; and, for certain airplanes, installing a new wheel speed detect box assembly, nutplates, and brackets and a new thrust reverser

interface box, and modifying the wiring for the new thrust reverser interface box.

**Comments**

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. The National Transportation Safety Board supported the NPRM (78 FR 18531, March 27, 2013).

**Conclusion**

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 18531, March 27, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 18531, March 27, 2013).

**Interim Action**

We consider this AD to be the second of three ADs that are related to each other, and collectively address unsafe conditions that might result from damage to critical components on the landing gear or in the wheel well that affect the braking, spoiler, and thrust reverser systems. The manufacturer is currently developing a final modification for the thrust reverser. Once the new thrust reverser modification is developed, approved, and available, we might consider additional rulemaking.

**Costs of Compliance**

We estimate that this AD affects 275 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Installation of rigid hydraulic tube assemblies and MLG squat switch bracket; modification of MLG squat switch wire harness and MLG anti-skid wheel transducer electrical wire harnesses; and routing and securing anti-skid wheel and squat switch electrical wire harnesses to MLG strut assembly (Bombardier Service Bulletin 60-32-33, dated July 23, 2012). | Up to 53 work-hours × $85 per hour = $4,505. | $7,093 | Up to $11,598 | Up to $3,189,450. |
| Installation of outboard bracket assemblies, anti-skid shield, forward electrical cover, upper and lower inboard bracket assemblies, and clamps; modification of aft stiffener; and installation of aft electrical cover and strap, and flat landing light lamp (Bombardier Service Bulletin 60–57–7, dated July 23, 2012). | Up to 25 work-hours × $85 per hour = $2,125. | 17,960 | Up to $20,085 | Up to $5,523,375. |
| Installation of wheel speed detect box assembly, nutplates brackets, and thrust reverser interface box; and modification of wiring for serial numbers 60-002 through 60–276 (Bombardier Service Bulletin 60–78–7, Revision 2, dated May 1, 2006) (132 U.S. airplanes). | Up to 65 work-hours × $85 per hour = $5,525. | 1,154 | $6,679 | Up to $881,628. |

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage 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**

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

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

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

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

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2013–13–09 Learjet Inc.:** Amendment 39–17497; Docket No. FAA–2013–0214; Directorate Identifier 2012–NM–152–AD.

**(a) Effective Date**

This AD is effective August 6, 2013.

**(b) Affected ADs**

Certain requirements of this AD affect certain requirements of AD 2010–11–11, Amendment 39–16316 (75 FR 32255, June 8, 2010).

**(c) Applicability**

This AD applies to Learjet Inc. Model 60 airplanes, certificated in any category, serial numbers 60–001 through 60–413 inclusive.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 32, Landing gear; 57, Wings; 78, Engine exhaust.

**(e) Unsafe Condition**

This AD was prompted by a report of a high-speed rejected takeoff caused by all four main landing gear (MLG) tires blowing out during the takeoff roll. We are issuing this AD to prevent failure of the braking system or adverse operation of the spoiler and thrust reverser system due to external damage, particularly from tire failure, which could result in loss of control of the airplane.

**(f) Compliance**

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

**(g) Modification and Installation**

Within 600 flight hours or 12 months after the effective date of this AD, whichever occurs first: Do the actions required by paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable.

(1) For all airplanes: Install new rigid hydraulic tube assemblies to the MLG struts, install a new MLG squat switch bracket and modify the MLG squat switch wire harness, modify the MLG anti-skid wheel transducer electrical wire harnesses, and route and secure the anti-skid wheel and squat switch electrical wire harnesses to the MLG strut assembly, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 60–32–33, dated July 23, 2012.

(2) For all airplanes: Install outboard bracket assemblies, anti-skid shield, forward electrical cover on the forward stiffener, upper and lower inboard bracket assemblies, and clamps that support the electrical wire harness; modify the aft stiffener for the new electrical wire harness support; install the aft electrical cover and strap on the aft stiffener; and install a new flat landing light lamp, as applicable; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 60–57–7, dated July 23, 2012.

(3) For airplanes having serial numbers 60–002 through 60–276 inclusive: Install a new wheel speed detect box assembly, nutplates, brackets, and interface box; and modify the wiring for the new thrust reverser interface box; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 60–78–7, Revision 2, dated May 1, 2006.

**(h) Terminating Action for AD 2010–11–11, Amendment 39–16316 (75 FR 32255, June 8, 2010)**

After accomplishing the actions required by paragraph (g) of this AD, the requirement in paragraph (h) of AD 2010–11–11, Amendment 39–16316 (75 FR 32255, June 8, 2010), to check the nose and main tire pressures before 96 hours prior to takeoff, is terminated. All provisions of paragraphs (g) and (h) of AD 2010–11–11 that are not specifically referenced by this paragraph remain fully applicable and must be complied with.

**(i) Credit for Previous Actions**

This paragraph provides credit for the corresponding actions specified in paragraph (g)(3) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin SB60–78–7, dated February 21, 2005; or Revision 1, dated June 30, 2005; which are not incorporated by reference in this AD.

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

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

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

**(k) Related Information**

For more information about this AD, contact Don Ristow, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, KS 67209; phone: 316–946–4120; fax: 316–946–4107; email: *donald.ristow@faa.gov.*

**(l) Material Incorporated by Reference**

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

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

(i) Bombardier Service Bulletin 60–32–33, dated July 23, 2012.

(ii) Bombardier Service Bulletin 60–57–7, dated July 23, 2012.

(iii) Bombardier Service Bulletin 60–78–7, Revision 2, dated May 1, 2006.

(3) For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, KS 67209–2942; telephone 316–946–2000; fax 316–946–2220; email *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this service information at 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.

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

Issued in Renton, Washington, on June 13, 2013.

**Jeffrey E. Duven,**

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

[FR Doc. 2013–15402 Filed 7–1–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 91

**[Docket No. FAA–2013–0503; Amdt. No. 91–328]**

**RIN 2120–AK25**

## Adoption of Statutory Prohibition on the Operation of Jets Weighing 75,000 Pounds or Less That Are Not Stage 3 Noise Compliant

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

**ACTION:** Final rule.

**SUMMARY:** This rulemaking amends the airplane operating regulations to include certain provisions of the FAA Modernization and Reform Act of 2012 that affect jet airplanes with a maximum weight of 75,000 pounds or less operating in the United States. The law provides that after December 31, 2015, such airplanes will not be allowed to operate in the contiguous United States unless they meet Stage 3 noise levels. This final rule incorporates that prohibition and describes the circumstances under which an otherwise prohibited airplane may be operated.

**DATES:** This rule becomes effective September 3, 2013. Send comments on or before August 1, 2013.

Compliance with the prohibition in § 91.801(e) is required after December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Sandy Liu, AEE–100, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 493–4864; facsimile (202) 267–5594; email: *sandy.liu@faa.gov.*

For legal questions concerning this action, contact Karen Petronis, AGC–200, Office of the Chief Counsel, International Law, Legislation, and Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–3073; email: *karen.petronis@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Good Cause for Immediate Adoption**

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 USC 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

In February 2012, in section 506 of the FAA Modernization and Reform Act of 2012 ("the Act"), Congress prohibited the operation of jet airplanes weighing 75,000 pounds or less in the contiguous United States after December 31, 2015, unless the airplanes meet Stage 3 noise levels. The Act also describes certain circumstances under which otherwise prohibited operations will be allowed. These provisions have been codified at 49 U.S.C. 47534.

This final rule codifies the statutory prohibition and relieving circumstances into the regulations in 14 CFR. The FAA has no discretion to change any provision of the statute, and it is being codified into the regulations as adopted. The statute also directs the Secretary of Transportation to prescribe the regulations necessary to implement the statutory provisions.

Accordingly, the FAA finds that further public comment on the codification of these provisions is unnecessary.

**Authority for This Rulemaking**

The FAA's authority to issue rules on 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 III, Section 44715, Controlling aircraft noise and sonic boom. Under that section, the FAA is charged with prescribing regulations to measure and abate aircraft noise. This rulemaking is also promulgated under the authority of Section 47534, prohibition on operating certain aircraft weighing 75,000 pounds or less and not complying with Stage 3 noises levels. That authority directs the agency to prescribe regulations necessary to implement the requirements of Section 506 of the Act. This regulation is within the scope of that authority.

**I. Overview of This Final Rule**

This final rule adopts into the operating rules certain prohibitions from Section 506 of the Act, codified at 49 USC 47534. That statute prohibits, after December 31, 2015, the operation in the contiguous United States of jet airplanes weighing 75,000 pounds or less that do not meet Stage 3 noise levels as defined in 14 CFR Part 36. This prohibition will decrease airplane noise in the contiguous United States. Operators of these airplanes that do not comply with Stage 3 noise levels may choose to replace them, or to incorporate noise-reduction technologies that may be available to make the airplanes Stage 3 noise compliant.

**II. History of Noise Operating Rules in the United States**

In December 1976, the FAA adopted its first noise operating rules in the United States as Subpart E to Part 91 of Title 14 of the Code of Federal Regulations (14 CFR). That subpart was recodified in August 1989 as Subpart I—Operating Noise Limits. The first regulations prohibited the operation of Stage 1 airplanes by U.S. operators in the United States after December 31, 1984 (41 FR 56046, December 23, 1976). In November 1980, the regulations were amended to include operations conducted by foreign operators in the United States (45 FR 79302, November 28, 1980).

By the late 1980s, more than 400 U.S. airports had adopted some type of airport access restriction or other action in an effort to reduce local noise in their communities. To eliminate this growing patchwork of restrictions, on November 5, 1990, Congress established a national noise policy in the adoption of the Airport Noise and Capacity Act of 1990 (ANCA). The law required the phase-out of Stage 2 airplanes weighing over 75,000 pounds operating in the contiguous United States. The phase-out was completed on December 31, 1999, leaving only Stage 3 large jets operating in the contiguous United States.

**III. Recent Statutory Changes**

The noise from smaller jet airplanes continues to have an impact on communities near airports. In recognition of this impact, Congress addressed the operations of these airplanes in the Act. Section 506 of the Act states:

> "[A]fter December 31, 2015, a person may not operate a civil subsonic jet airplane with a maximum weight of 75,000 pounds or less, and for which an airworthiness certificate (other than an experimental certificate) has been issued, to or from an airport in the United States unless the Secretary of Transportation finds that the aircraft complies with [S]tage 3 noise levels."

The law is applicable to operations in the 48 contiguous United States. The law also provides for operation of otherwise prohibited airplanes after that date under certain circumstances.

This final rule codifies into the regulations of 14 CFR part 91 the operating prohibition of § 47534 (a), and the circumstances for which otherwise prohibited operations may be conducted as listed in § 47534 (c). The circumstances are similar to those that were allowed under the 1990 statute that were codified in 14 CFR 91.858.

This prohibition is being codified into the operating rules as § 91.881. Because Congress included operational circumstances in the Act that were not included in ANCA, we are codifying them separately as § 91.883 to prevent confusion with the circumstances applicable to larger jet airplanes.

**IV. Regulatory Notices and Analyses**

*A. Regulatory Evaluation*

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more

annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination is as follows:

This rule implements those provisions of the Act that prohibit the operation of civil jet airplanes weighing 75,000 pounds or less in the 48 contiguous United States after December 31, 2015, unless they comply with Stage 3 noise levels. This part of the Act completes the elimination of Stage 2 jet airplane noise that was begun in 1990 with the Airport Noise and Capacity Act of 1990 (ANCA), which phased out civil jet airplanes weighing over 75,000 pounds from operating at Stage 2 noise levels, by the end of 1999. As Congress mandated this phase-out, the benefits of the phase-out are presumed to exceed the costs.

The Act affects 457 registered owners of 599 [1] airplanes that range between 25 to 50 years in age. Four hundred and three of the registered owners (88 percent) have only one airplane affected by the ban; 51 of the owners have 2 to 10 affected airplanes; and three owners (all nonscheduled airlines) have a combined total of 51 airplanes affected by the ban.

OPERATOR CATEGORIES FOR CIVIL STAGE 2 JET AIRPLANES WEIGHING 75,000 POUNDS OR LESS

| Operator category | Number of owners | Number of airplanes |
|---|---|---|
| Corporation (Non-Airline) | 349 | 413 |
| Nonscheduled Airline | 55 | 128 |
| Leasing Company/Broker/Parts Dealer/Etc. | 31 | 35 |
| Private Individual | 16 | 17 |
| Financial Institution | 6 | 6 |
| Grand Total | 457 | 599 |

Some models of the banned airplanes can be upgraded to Stage 3 noise levels with the installation of a hushkit. A hushkit is a device used for reducing engine noise. Of the 17 models of airplanes affected by this ban, hushkits had previously been available for six models: the Dassault Falcon 20; the Learjet 23, 24, and 25; and the Gulfstream II and III. An unknown number of these airplanes may have already installed a hushkit.

Currently, the only hushkits available for Stage 2 civil jet airplanes weighing 75,000 pounds or less are for the Gulfstream II and Gulfstream III. There are two companies that perform the Gulfstream engine modifications required to meet Stage 3 noise levels, and each has provided cost estimates to the FAA for this service. The estimates range from $0.85 million to $1.50 million. There are 217 Gulfstream IIs and IIIs that can potentially be hushkitted; however, the cost of the hushkkit for the Gulfstream II exceeds the recorded value of the airplanes.

The hushkit for the Falcon 20 is no longer manufactured and the Supplemental Type Certificate (STC) for the Learjet engine modification was returned to the FAA. There is no indication that hushkits will be manufactured for these airplanes. Thus, of the 599 airplanes affected by the ban, 382 cannot be made Stage 3 compliant.

Owners of civil Stage 2 airplanes that cannot be made Stage 3 compliant will have three alternatives for complying with the mandate: (1) Sell the airplanes for operation outside of the 48 contiguous United States, (2) salvage the airplanes for parts, or (3) scrap the airplanes. The actions of the owners will result in an indeterminate mix of these choices. The FAA uses the retail price of the aircraft as a proxy for its economic value. The true economic cost of the mandate is the pre-law retail price minus the post-law retail price. For the reasons discussed below, the best estimate of the economic cost is the value of the fleet before the mandate minus a couple of special considerations.

The following table provides an estimate of the monetary impact to owners based on the action they may choose to comply with the ban. The table includes the pre-law retail price of selling, scrapping, or hushkitting an airplane by equipment type. Information on airplane salvage value is not available to be included, and with the engines being the most valuable part of these airplanes, the engine value is expected to equal the airplane's scrap value.

PRE-LAW AIRPLANE RETAIL VALUE AND COST OF HUSHKIT INSTALLATION

[Per airplane]

| Equipment | Number of A/C | Average retail value* | | Average scrap value** | Average hushkit installation cost*** |
|---|---|---|---|---|---|
| | | Low | High | | |
| Dassault Falcon 20C/CF/D/DF/DC/ECM/E/F | 69 | $200,000 | $850,000 | $2,118 | N/A |
| Gulfstream II (G–1159/B/TT/SP) | 109 | 250,000 | 1,050,000 | 8,075 | 1,162,500 |
| Gulfstream III (G–1159A) | 108 | 1,000,000 | 2,200,000 | 8,075 | 1,162,500 |
| Hawker Siddeley HS.125–1/2/3 | 8 | 167,000 | 200,000 | 2,440 | N/A |

[1] OAG Aviation Solutions Fleet Database as of November 14, 2012, was used to identify the individual airplanes affected by the ban.

PRE-LAW AIRPLANE RETAIL VALUE AND COST OF HUSHKIT INSTALLATION—Continued

[Per airplane]

| Equipment | Number of A/C | Average retail value* | | Average scrap value ** | Average hushkit installation cost *** |
|---|---|---|---|---|---|
| | | Low | High | | |
| Hawker Siddeley HS.125–400 | 7 | 167,000 | 200,000 | 2,440 | N/A |
| Hawker Siddeley HS.125–600 | 12 | 400,000 | 400,000 | 2,440 | N/A |
| IA1123 | 1 | 400,000 | 400,000 | 2,261 | N/A |
| Learjet 23 | 3 | 100,000 | 100,000 | 1,355 | N/A |
| Learjet 24 | 78 | 100,000 | 280,000 | 1,355 | N/A |
| Learjet 25 | 143 | 150,000 | 600,000 | 1,355 | N/A |
| Learjet 28 | 4 | 400,000 | 400,000 | 1,355 | N/A |
| Lockheed L–1329 Jetstar II | 13 | 550,000 | 800,000 | 4,845 | N/A |
| Rockwell 1121 Jet Commander | 3 | 235,000 | 235,000 | 2,128 | N/A |
| Rockwell Sabre 40 | 15 | 235,000 | 290,000 | 2,518 | N/A |
| Rockwell Sabre 50 | 1 | 235,000 | 235,000 | 2,299 | N/A |
| Rockwell Sabre 60 | 24 | 235,000 | 330,000 | 2,299 | N/A |
| Rockwell UTX/T–39 Sabreliner | 1 | 235,000 | 235,000 | 1,759 | N/A |
| Total | 599 | $100,000 | $2,200,000 | $4,797 | |

*_Airplane Bluebook Price Digest, Winter 2011._ The Airplane Bluebook Price Digest contains the average retail value, by year, model, and serial number for each airplane affected by the ban. The range in value is primarily due to age (i.e., the older an airplane the lower its retail value versus a newer model of the same airplane). Note that this reflects the pre-law airplane value. The post-law values have yet to be determined but they are expected to be lower than the values shown in the table.

**Average scrap value is based on information provided by two companies that perform this work. It does not include incidental expenses associated with delivery of the airplane to a scrap yard.

***Average hushkit installation cost is based on four estimates provided by two companies that perform this work.

The value of these airplanes before this mandate equals their retail value at that time. To determine the pre-law retail value, the Airplane Blue Book Price Digest [2] was used. The "Digest" provides average retail values for airplanes by model, year, and serial number. It is only a guide since the actual condition and upgrades to individual airplanes are not known. For the small minority of airplanes affected by the ban but not listed in the "Digest," a proxy is used based on an airplane of similar type and year. The average pre-law retail value equals the sum of the listed retail value for each of the 599 airplanes. This summation equals $355.5 million ($271.2 million in the year 2016 using 7 percent present value), which is the maximum economic cost for the mandate.

To comply with the mandate and to mitigate economic losses, owners will most likely attempt to sell their Stage 2 airplanes to operators outside of the United States. However, such an action will create a glut in the marketplace. Furthermore, with the Stage 2 ban in effect in the lower 48 states, this further reduction in operating space reduces these airplanes' value to potential buyers.

A Limited World-Wide Market

Many countries have already preceded the U.S. in either banning or legislating limited operations of these airplanes. At least eight countries already ban Stage 2 operations by airplanes of any size. These countries include Australia, Austria, Belgium, Hong Kong, Japan, Macau, Singapore, and Switzerland.[3] The inability to operate the Stage 2 airplanes across all borders will reduce their desirability for ownership.

Excluding the United States, there are 50 countries that have a total of 392 registered airplanes like those banned in the United States. Almost 50 percent of these jets are registered in Mexico. The U.S. ban on Stage 2 operations reduces the value of these airplanes in Mexico as a large potential destination for operators is lost. The limited world-wide market hinders an owner's ability to sell a banned airplane at the pre-law retail value.

FOREIGN COUNTRIES WITH REGISTERED STAGE 2 AIRPLANES WEIGHING 75,000 POUNDS OR LESS

| Rank | Country | Number of airplanes | % Share* |
|---|---|---|---|
| 1 | Mexico | 182 | 46.4 |
| 2 | Republic of South Africa | 25 | 6.4 |
| 3 | Venezuela | 24 | 6.1 |
| 4 | Iran | 17 | 4.3 |
| 5 | United Kingdom | 16 | 4.1 |
| 6 | Brazil | 14 | 3.6 |
| 7 | France | 13 | 3.3 |
| 8 | Argentina | 12 | 3.1 |
| 9 | Republic of Congo | 7 | 1.8 |
| 10 | Saudi Arabia | 7 | 1.8 |
| 11 | Dominican Republic | 6 | 1.5 |
| 12 | Spain | 5 | 1.3 |
| 13 | Bolivia | 4 | 1.0 |

[2] Winter 2011 Edition.

[3] Additionally, other countries have noise restrictions in place or legislation enacted to limit their operation. *http://www.qtaerospace.com/noise_report.htm*

FOREIGN COUNTRIES WITH REGISTERED STAGE 2 AIRPLANES WEIGHING 75,000 POUNDS OR LESS—Continued

| Rank | Country | Number of airplanes | % Share* |
|---|---|---|---|
| 14 | Canada | 4 | 1.0 |
| 15 | Ecuador | 4 | 1.0 |
| 16 | India | 4 | 1.0 |
| 17 | Libya | 3 | 0.8 |
| 18 | Pakistan | 3 | 0.8 |
| 19 | Cameroon | 2 | 0.5 |
| 20 | Egypt | 2 | 0.5 |
| 21 | Israel | 2 | 0.5 |
| 22 | Malaysia | 2 | 0.5 |
| 23 | Morocco | 2 | 0.5 |
| 24 | Nigeria | 2 | 0.5 |
| 25 | Sudan | 2 | 0.5 |
| 26 | Syria | 2 | 0.5 |
| 27 | Turkey | 2 | 0.5 |
| 28 | Ukraine | 2 | 0.5 |
| 29 | Angola | 1 | 0.3 |
| 30 | Bahrain | 1 | 0.3 |
| 31 | Chad | 1 | 0.3 |
| 32 | Chile | 1 | 0.3 |
| 33 | Comoros Islands | 1 | 0.3 |
| 34 | Eritrea | 1 | 0.3 |
| 35 | Gabon | 1 | 0.3 |
| 36 | Ghana | 1 | 0.3 |
| 37 | Guatemala | 1 | 0.3 |
| 38 | Indonesia | 1 | 0.3 |
| 39 | Italy | 1 | 0.3 |
| 40 | Ivory Coast | 1 | 0.3 |
| 41 | Japan | 1 | 0.3 |
| 42 | Philippines | 1 | 0.3 |
| 43 | Portugal | 1 | 0.3 |
| 44 | Russia | 1 | 0.3 |
| 45 | Senegal | 1 | 0.3 |
| 46 | Sweden | 1 | 0.3 |
| 47 | Togo | 1 | 0.3 |
| 48 | United Arab Emirates | 1 | 0.3 |
| 49 | Uruguay | 1 | 0.3 |
| 50 | Zimbabwe | 1 | 0.3 |
| | Total | 392 | 100.0% |
| | United States | 599 | ..... |
| | Grand Total | ..... | 991 |

* Totals in table may exactly add due to rounding.

"Scrappage" of Banned Airplanes

A lack of demand for the banned airplanes will leave most owners with no choice other than to sell the airplanes for their scrap value. The salvage value is likely to equal the scrap value. The single most valuable part on the airplane is the engines which after the ban have essentially no value. Secondarily, the round-dial instrumentation used in the affected fleet is largely obsolete with a small used market.

Hushkits

Other than their sale and scrappage, the remaining option is to hushkit the Gulfstreams. In November 2012, there were 217 Gulfstream II and III airplanes registered in the United States. At that time, these airplanes had a pre-law retail value ranging from $250,000 to $2.2 million. Gulfstream owners will have to weigh the cost of hushkitting against not having use of the airplane.

The cost to hushkit a Gulfstream II or III will average between $0.85 to $1.5 million, per airplane. This cost exceeds the pre-law retail value for most Gulfstream II's. The measure of economic loss for the Gulfstream II equals its pre-mandate value (assuming very few have been sold since that date). However, for a majority of the Gulfstream III's, the cost to hushkit is less than its pre-law retail value. If all Gulfstream III owners hushkit their airplanes the economic loss is the cost of the hushkit which equals $125.6 million.

For the owners of the remaining 491 airplanes, the economic cost is $204.3 million. This cost equals their pre-mandate resale value excluding some minor salvage value. Additionally some of these airplanes may have been sold to foreign buyers. The total economic loss equals the Gulfstream III hushkit loss of $125.6 million plus the $204.3 million equaling $329.9 million, or in present value $251.7 million using 7 percent.

Costs by action and number of aircraft

| Action | Number of aircraft | Millions of 2012$ | Present value in 2016 at 7% discount rate—millions of 2012$ |
|---|---|---|---|
| Hushkit | 108 | $ 125.6 | $ 95.8 |
| Scrapped/Sold Aircraft | 491 | 204.3 | 155.9 |
| Total | 599 | 329.9 | 251.7 |

Since Congress has mandated the prohibition on the operation of certain airplanes weighing 75,000 pounds or less that do not comply with Stage 3 noise levels, Congress has determined that the benefits exceed the costs. The FAA has determined that this final rule is a significant regulatory action as defined in section 3(f) of Executive Order 12866, and is significant as defined in DOT's Regulatory Policies and Procedures.

*B. Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Estimated Number of Small Firms Potentially Impacted

The Act requires that (except as otherwise noted) after December 31, 2015, civil subsonic jet airplanes with a maximum weight of 75,000 pounds or less and for which an airworthiness certificate (other than an experimental certificate) has been issued, shall not be operated to or from an airport in the United States unless the Secretary of Transportation finds that the airplane complies with Stage 3 noise levels. The purpose of this statutory provision is to reduce noise levels at airports and the communities surrounding them across the United States.

Under the RFA, the FAA must determine whether a proposed rule significantly affects a substantial number of small entities. This determination is typically based on small entity size and revenue thresholds that vary depending on the affected industry.[4] To determine the number of small entities affected by the mandate, we searched a commercially available airplane fleet database.[5] The search results identified five operator categories consisting of 457 entities that own 599 airplanes. The entities consist of privately held corporations, financial institutions, leasing companies, non-scheduled airlines, and private individuals. In most cases, the size of the entities cannot be determined because financial and employment data for privately held entities is sparse. Nevertheless, the number of small business entities is believed to be substantial.

Of the 599 affected airplanes, over half (382 airplanes) cannot be converted to Stage 3 noise levels because there are no modifications currently available. Owners of airplanes that are unable to modify their airplanes may choose to (1) Sell their airplanes to an entity whose operations are not constrained by noise restrictions, (2) salvage the airplanes for parts, or (3) sell the airplanes for scrap value. For the remaining 217 airplanes that are able to be converted to Stage 3 noise levels, owners will have to determine if the benefit of operating the airplanes outweighs the cost of making the airplanes Stage 3 noise compliant and the higher operating costs are worth the expense.

As the effective date of the prohibition approaches (January 1, 2016), the resale value of any remaining airplanes in the U.S. fleet will fall dramatically, ultimately to zero. In addition, the value of the entire world fleet of these Stage 2 airplanes will be reduced with the influx of U.S. airplanes available for sale and the prohibition of foreign Stage 2 airplanes from operating in the U.S. Complying with the congressional mandate creates a significant economic impact for owners since the compliance cost requires an owner to either forego the use of its airplane or to purchase one that meets Stage 3 noise levels. Since this rule only places Congress' language of the statutory ban into the civil regulations and has no requirements of its own, the requirements of the Regulatory Flexibility Act do not apply.

*C. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective.

The statute also requires consideration of international standards

[4] Thresholds are based on the North American Industry Classification System (NAICS). The NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

[5] OAG Aviation Solutions Fleet Database as of November 14, 2012.

and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that since it implements an action by Congress, the Trade Agreements Act provisions do not apply.

*D. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. Although this rule exceeds $143.1 million the year it takes effect, it implements the direction of Congress and thus Title II of the Act is not applicable.

*E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new information collection associated with the requirement to demonstrate eligibility under the statutory provisions when making a request for special flight authorization for otherwise prohibited jet airplane operations. That information collection requirement previously was approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and was assigned OMB Control Number 2120–0652.

*F. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

*G. Environmental Analysis*

This rule implements Section 506 of the Act by adding jets weighing 75,000 pounds or less to the applicability of the operating noise subpart in § 91.801. This rule incorporates the prohibition on operations of small jets not meeting Stage 3 noise levels after December 31, 2015. It also incorporates the special operating circumstances allowed by law for these smaller jets. The environmental impacts of this rule, including the reduction in jet noise in the contiguous United States, and the minor impacts of allowing statutorily limited operations of Stage 2 jets, are a result of the statutory requirements. The FAA has no authority to change any of these statutory provisions or their environmental impact.

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) of the Order and involves no extraordinary circumstances.

## IV. Executive Order Determinations

*A. Executive Order 12866*

See the "Regulatory Evaluation" discussion in the "Regulatory Notices and Analyses" section elsewhere in this preamble.

*B. Executive Order 13132, Federalism*

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

*C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

## V. Additional Information

*A. Availability of Rulemaking Documents*

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or
3. Access the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

*B. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

**List of Subjects in 14 CFR Part 91**

Aircraft, Operating noise limits.

**The Amendments**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations as follows:

## PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.801 by adding new paragraph (e) to read as follows:

**§ 91.801 Applicability: Relation to part 36.**

* * * * *

(e) Sections 91.881 through 91.883 of this subpart prescribe operating noise limits and related requirements that apply to any civil subsonic jet airplane with a maximum takeoff weight of 75,000 pounds or less and for which an airworthiness certificate (other than an experimental certificate) has been issued, operating to or from an airport in the contiguous United States under this part, part 121, 125, 129, or 135 of this chapter on and after December 31, 2015.

■ 3. Add new § 91.881 to read as follows:

**§ 91.881 Final compliance: Civil subsonic jet airplanes weighing 75,000 pounds or less.**

Except as provided in § 91.883, after December 31, 2015, a person may not operate to or from an airport in the contiguous United States a civil subsonic jet airplane subject to § 91.801(e) of this subpart unless that airplane has been shown to comply with Stage 3 noise levels.

■ 4. Add new § 91.883 to read as follows:

**§ 91.883 Special flight authorizations for jet airplanes weighing 75,000 pounds or less.**

(a) After December 31, 2015, an operator of a jet airplane weighing 75,000 pounds or less that does not comply with Stage 3 noise levels may, when granted a special flight authorization by the FAA, operate that airplane in the contiguous United States only for one of the following purposes:

(1) To sell, lease, or use the airplane outside the 48 contiguous States;

(2) To scrap the airplane;

(3) To obtain modifications to the airplane to meet Stage 3 noise levels;

(4) To perform scheduled heavy maintenance or significant modifications on the airplane at a maintenance facility located in the contiguous 48 States;

(5) To deliver the airplane to an operator leasing the airplane from the owner or return the airplane to the lessor;

(6) To prepare, park, or store the airplane in anticipation of any of the activities described in paragraphs (a)(1) through (a)(5) of this section;

(7) To provide transport of persons and goods in the relief of an emergency situation; or

(8) To divert the airplane to an alternative airport in the 48 contiguous States on account of weather, mechanical, fuel, air traffic control, or other safety reasons while conducting a flight in order to perform any of the activities described in paragraphs (a)(1) through (a)(7) of this section.

(b) An operator of an affected airplane may apply for a special flight authorization for one of the purposes listed in paragraph (a) of this section by filing an application with the FAA's Office of Environment and Energy. Except for emergency relief authorizations sought under paragraph (a)(7) of this section, applications must be filed at least 30 days in advance of the planned flight. All applications must provide the information necessary for the FAA to determine that the planned flight is within the limits prescribed in the law.

Issued under authority provided by 49 U.S.C. 106(f) and 47534 in Washington, DC, on June 18, 2013.

**Michael P. Huerta,**

*Administrator.*

[FR Doc. 2013–15843 Filed 7–1–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 902

**[Docket No. 110819515–3563–03]**

**RIN 0648–BA98**

## Fisheries in the Western Pacific; Fishing in the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments

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

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

**SUMMARY:** NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in regulations implementing amendments to four western Pacific fishery ecosystem plans, relating to fishing in three marine national monuments. The intent of this final rule is to inform the public that OMB has approved the associated reporting requirements.

**DATES:** This rule is effective August 1, 2013. The new permit and reporting requirements at §§ 665.13, 665.14, and 665.16, and new §§ 665.903(b) and (c), 665.904(b), 665.905, 665.933(b) and (c), 665.934(b), 665.935, 665.963(b) and (c), 665.964(b), and 665.965, published at 78 FR 32996 (June 3, 2013), have been approved by OMB and are effective on August 1, 2013.

**ADDRESSES:** Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, attention Michael D. Tosatto, 1601 Kapiolani Blvd., Honolulu, HI 96814, and to OMB by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Jarad Makaiau, NMFS Pacific Islands Region (PIR), Sustainable Fisheries, tel 808–944–2108.

**SUPPLEMENTARY INFORMATION:** On June 3, 2013, NMFS published in the **Federal Register** a final rule to implement fishing requirements contained in Amendment 3 to the Fishery Ecosystem Plan (FEP) for the Mariana Archipelago, Amendment 2 to the Pacific Remote Island Areas FEP, Amendment 3 to the American Samoa FEP, and Amendment 6 to the Pelagic FEP (78 FR 32996). The requirements of that final rule, other than the collection-of-information requirements, were effective on July 3, 2013. OMB approved the collection-of-information requirements on May 29, 2013; this rule announces the approval and the effective date of the requirements.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

### Classification

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

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

This final rule contains new collection-of-information requirements subject to the PRA under OMB Control Number 0648–0664. Specifically, non-commercial fishermen and recreational charter fishermen are required to obtain Federal permits and complete logbook reports to fish in the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments. These are

new requirements, except that non-commercial fishermen in the Pacific Remote Islands Monument are subject to existing permit requirements at § 665.603, § 665.624, § 665.642, § 665.662 and § 665.801. The public reporting burden for the new requirements is estimated to be 15 minutes to complete a permit application for each vessel, and 20 minutes to complete a daily trip log sheet per trip. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

**List of Subjects in 15 CFR Part 902**

Reporting and recordkeeping requirements.

Dated: June 27, 2013.

**Alan D. Risenhoover,**

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

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

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

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

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

■ 2. In § 902.1, amend the table in paragraph (b), under the entry "50 CFR" by revising the entries for §§ 665.13, 665.14, and 665.16, and adding new entries for §§ 665.905, 665.935, and 665.965, to read as follows:

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

* * * * *

(b) * * *

| CFR part or section where the information collection requirement is located | Current OMB control number (all numbers begin with 0648–) |
|---|---|
| * * * * * * * | |
| 50 CFR | |
| * * * * * * * | |
| 665.13 | –0463, –0490, –0577, –0584, –0586, –0589, and –0664 |
| 665.14 | –0214, –0462, –0577, –0584, –0586, –0589, and –0664 |
| 665.16 | –0361, –0584, –0586, –0589, and –0664 |
| * * * * * * * | |
| 665.905 | –0664 |
| 665.935 | –0664 |
| 665.965 | –0664 |
| * * * * * * * | |

[FR Doc. 2013–15872 Filed 7–1–13; 8:45 am]
BILLING CODE 3510–22–P

## BROADCASTING BOARD OF GOVERNORS

### 22 CFR Part 502

### Domestic Requests for Broadcasting Board of Governors Program Materials

**AGENCY:** Broadcasting Board of Governors.

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

**SUMMARY:** As directed by the National Defense Authorization Act for 2013 and amendments to the U.S. Information and Educational Exchange Act, the Broadcasting Board of Governors issues a rule which establishes procedures for responding to domestic requests for the Agency's program materials. The Agency may, upon request, provide members of the public, organizations, and media with program materials which the Agency disseminated abroad.

**DATES:** This rule is effective July 2, 2013. Comments must be submitted on or before September 3, 2013.

**ADDRESSES:** Please submit comments by email to *acabral@bbg.gov*, or by postal mail or commercial delivery, addressed to April Cabral, Senior Policy Advisor, International Broadcasting Bureau Director's Office, Broadcasting Board of Governors, 330 Independence Avenue SW., Washington, DC 20237. Please state that your comment refers to Interim Final Revisions to 22 CFR Part 502.

Additional information about the Agency and its programs is available on the Internet at *http://www.bbg.gov*.

**FOR FURTHER INFORMATION CONTACT:** April Cabral, Senior Policy Advisor, International Broadcasting Bureau, Broadcasting Board of Governors, 330 Independence Avenue SW., Washington, DC 20237. Telephone number: (202) 203–4515.

**SUPPLEMENTARY INFORMATION:**

### Background

The Broadcasting Board of Governors supervises all U.S. non-military international broadcasting activities in accordance with the broadcasting principles and standards in the U.S. International Broadcasting Act of 1994, including consistency with the broad foreign policy objectives of the United States. As stated in the U.S. International Broadcasting Act of 1994, it is the policy of the United States to promote freedom of opinion and expression and to open communication of information and ideas among the people of the world. 22 U.S.C. 6201. The Agency has adopted as its mission statement: to inform, engage, and connect people around the world in support of freedom and democracy.

Due to recent amendments to section 501 of the U.S. Information and Educational Exchange Act, the Agency may, upon request, provide members of the public, organizations, and media with program materials which the Agency disseminated abroad. It is the Agency's policy to make its program materials available, upon request, whenever doing so is consistent with all statutory authorities, prohibitions, principles, and standards.

**Administrative Procedures Act**

There is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to publish this rule at the time of implementation. Because one of the purposes of this rule and the law underlying this rule is to allow information dissemination outside of the Freedom of Information Act for BBG program materials, and because of the impending effective date of the law, the intent of the law would be frustrated if BBG could not begin implementing this rule and responding to domestic requests for program materials by July 2, 2013. The immediate implementation of this rule by the effective date of the law will advance the Congressional intent to allow the BBG to respond to domestic requests for program material and provide information about its activities to the media and to the public for the purposes of transparency of BBG operations. Moreover, this rule is not significant in nature and impact on the public, since the BBG makes all program materials available on its public Web sites at no cost. Accordingly, BBG finds that normal public rulemaking procedures are impracticable and unnecessary, and that there is good cause under 5 U.S.C. 553 (b)(B) and (d)(3) to exempt this rule from public rulemaking procedures and to implement this rule upon publication. Without prejudice to BBG's determination that there is good cause to exempt this rule from public rulemaking procedures, in the interests of transparency and public participation, BBG is publishing this rule as an interim final rule with a discretionary 60-day provision for public comment.

Furthermore, because this is a substantive rule that relieves restrictions imposed by previous versions of 22 U.S.C. 1461 and 1461–1a, the Agency may implement this rule at the time of publication under 5 U.S.C. 553(d)(1). This rule does not require or prompt the public to take any action; rather, it functions to relieve the prohibition that prevented the Agency from responding to requests for program materials from the U.S. public, U.S. media entities, or other U.S. organizations. This rule benefits the public, media, and other organizations by allowing them to request and access BBG program materials, which previously could not be disseminated within the U.S.

The BBG seeks public comment on all aspects of this interim final rule and will carefully review any comments it receives. The BBG will publish a response in the **Federal Register** to any significant, adverse comments it receives, along with any modifications to this rule, within 60 days after the deadline for public comment.

**Regulatory Flexibility Act/Executive Order 13272: Small Business Impacts**

Because this interim final rule is exempt from 5 U.S.C. 553 under 5 U.S.C. 553(b)(B), (d)(1), and (d)(3), and because no other law requires BBG to give notice of such rulemaking, this interim final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) or Executive Order 13272, section 3(b). In addition, this interim final rule will not have an impact on small businesses or other small entities, because, under this rule, BBG only responds to requests for program materials.

**Executive Order 12866 and 13563**

Because this interim final rule is exempt from 5 U.S.C. 553 under 5 U.S.C. 553(b)(B), (d)(1), and (d)(3), this interim final rule is exempt from the requirements of Executive Order 12866 and 13563. BBG has, nevertheless, reviewed the interim final rule to ensure its consistency with the regulatory philosophy and principles set forth in those Executive Orders. This rule has been designated a non-significant regulatory action as defined by Executive Order 12866.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any year; and it will not significantly or uniquely affect small governments. Therefore, this rule contains no Federal mandates as defined in the Unfunded Mandates Reform Act of 1995, and this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 13132, Federalism**

The policies contained in this rule do not have any substantial, direct effect on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of the Government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

**Executive Order 13175—Consultation and Coordination With Indian Tribal Governments**

The BBG has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

**List of Subjects in 22 CFR Part 502**

Broadcasting, Foreign relations, News media, Public affairs, Radio, Recordings, Smith-Mundt, Television.

Accordingly, the Broadcasting Board of Governors amends chapter V, title 22, Code of Federal Regulations by adding part 502 to read as follows:

## PART 502—DOMESTIC REQUESTS FOR BROADCASTING BOARD OF GOVERNORS PROGRAM MATERIALS

Sec.

502.1 Authority and scope.
502.2 Definitions..
502.3 Availability of program materials on public Web sites.
502.4 Media or organization one-time requests for broadcast quality agency program materials.
502.5 Media or organization requests for ongoing subscriptions to broadcast quality agency program materials.
502.6 Terms of use for accessing program materials available on agency Web sites.
502.7 Denial of requests.
502.8 Fees.

**Authority:** 22 U.S.C. 1461, 1461–1a.

### § 502.1 Authority and scope.

(a) *Authority for this part.* This part is pursuant to Section 1078 of the National Defense Authorization Act for Fiscal Year 2013, Public Law 112–239, as codified in 22 U.S.C. 1461, 1461–1a and the U.S. International Broadcasting Act, 22 U.S.C. 6201 et seq.

(b) *Scope.* This part applies to the public and all divisions of the Federal Government supervised by the Broadcasting Board of Governors under the U.S. International Broadcasting Act of 1994 (collectively "the Agency").

These regulations only cover the procedures for responding to domestic requests for Agency program materials.

(c) *Summary.*

(1) The Broadcasting Board of Governors supervises all U.S. non-military international broadcasting activities in accordance with the broadcasting principles and standards in the U.S. International Broadcasting Act of 1994, 22 U.S.C. 6201 et seq., including consistency with the broad foreign policy objectives of the United States.

(2) As stated in the U.S. International Broadcasting Act of 1994, it is the policy of the United States to promote freedom of opinion and expression and to open communication of information and ideas among the people of the world. The Agency has adopted as its mission statement "to inform, engage, and connect people around the world in support of freedom and democracy."

(3) It is the Agency's policy to make its program materials available, upon request, whenever doing so is consistent with all statutory authorities, prohibitions, principles, and standards. However, the Agency reserves the right to deny requests for program materials under circumstances described in Section 502.7 of this regulation.

(4) Pursuant to section 501 of the U.S. Information and Educational Exchange Act, as amended, as codified in 22 U.S.C. 1461, the Agency may, upon request, provide members of the public, organizations, and media with program materials which the Agency disseminated abroad, in accordance with these regulations.

(5) Pursuant to Section 208 of Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, as amended, as codified at 22 U.S.C. 1461–1a, the Agency is prohibited from using appropriated funds to influence public opinion in the United States, however, the statute clarifies that the Agency may:

(i) Provide information about its operations, programs, or program materials to the media, the public, or Congress in accordance with applicable law;

(ii) Make program materials available in the Unites States, when appropriate, and in accordance with other applicable law.

**§ 502.2 Definitions.**

*As used in this part:*

(a) *Media entity* means any person or entity, that actively gathers information of potential interest to a segment of the public, turns gathered information into a distinct work, or distributes that work to an audience within the United States, and otherwise serves the purposes described in § 502.4.

(b) *Organization* means any corporation, trust, association, cooperative, or other group organized primarily for scientific, educational, service, charitable, or similar purpose, including but not limited to institutions of higher education, and otherwise serves the purposes described in § 502.4.

(c) *Program materials* means radio broadcasts, television broadcasts, and Internet content that the Agency disseminates to audiences outside of the United States, pursuant to: The U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. 1461 et seq.); The U.S. International Broadcasting Act of 1994 (22 U.S.C. 6201 et seq.); The Radio Broadcasting to Cuba Act (22 U.S.C. 1465 et seq.); or The Television Broadcasting to Cuba Act (22 U.S.C. 1465aa et seq.).

(d) *Requestor* means any private person or entity within the United States that requests program materials from the Agency.

**§ 502.3 Availability of program materials on public Web sites.**

(a) The Agency makes program materials available to Requestors through the Agency's news and information Web sites designed for foreign audiences. To access currently-available Agency program materials, please visit *www.voanews.com and www.martinoticias.com.* The homepages of these Web sites display a portion of the Agency's most recent news reporting. Additional program materials are available through the Web sites' search functions.

(b) Program materials are available on Agency Web sites after their dissemination abroad, and may be removed from Agency Web sites solely at the Agency's discretion. The Agency will remove program materials from Agency Web sites when a National Archives and Records Administration (NARA) records schedule goes into effect, or when required by licensing agreements with third-party copyright holders. Once these program materials have been removed from Agency Web sites, they are no longer available from the Agency.

(1) When full programs are removed from the Agency's Web sites in accordance with a NARA records schedule, programs designated as permanent will be transferred to NARA. For information on how to request Agency program materials that have been transferred to NARA, see the Agency's records schedules and NARA's regulations at *www.nara.gov.*

(2) Programs designated as temporary under a NARA records schedule will not be retained by the Agency once they are removed from the Agency's Web sites and are no longer needed for the Agency's use.

(c) Segments incorporated into final programs, including music, interviews, reports, and other program elements, will not be transferred to NARA independently of full program recordings, and will not be available after they have been removed from Agency Web sites.

(d) Draft program materials, and any other program materials not selected for dissemination abroad, are not available.

(e) The Agency shall determine the method of making program materials available, as well as the file type, file format, resolution, and storage medium(s) that are available. Program materials are only available in the same form (i.e. radio or television file-type and file format) and language in which the Agency disseminated them abroad.

**§ 502.4 Media or organization one-time requests for broadcast quality agency program materials.**

Upon request, the Agency may provide a broadcast-quality copy of Agency program materials to Media entities, educational organizations, not-for-profit corporations, or other organizations, provided that the Agency determines that fulfilling such a request for a broadcast-quality copy of the materials would serve the Agency's statutory mission, and that providing the program material is consistent with the Agency Policy for domestic distribution which incorporates the Broadcasting principles and standards, as well as other requirements, found in 22 U.S.C. 1461, 1461–1a, 1462, 6201, 6202, 6203, 6204, 6205, 6206; Public Law 112–239, section 1078(b), 126 Stat. 1632, 1958; agreements with third-parties who hold a copyright in Agency program materials; and Terms of Use on Agency Web sites. Please see § 502.5 for information on ongoing subscriptions to broadcast quality Agency program materials. One-time requests for broadcast quality copies of Agency program materials should be directed to:

(a) The Voice of America Office of Public Relations for broadcast-quality copies of Voice of America program materials; and

(b) The TV Marti Division of the Office of Cuba Broadcasting for broadcast-quality copies of TV or Radio Marti program materials.

**§ 502.5 Media or organization requests for ongoing subscriptions to broadcast quality agency program materials.**

(a) Upon request, the Agency may make program materials available on an ongoing basis to Media entities, or other organizations, through a subscription agreement, provided that the Agency determines that entering into a subscription agreement to make program materials available on an ongoing basis would be consistent with the Agency's mission and authorities. Requested, ongoing subscription agreements must be consistent with the Agency's Policy for domestic distribution which incorporates the Broadcasting principles and standards. And other requirements, found in 22 U.S.C. 1461, 1461–1a, 1462, 6201, 6202, 6203, 6204, 6205, 6206; Public Law 112–239, section 1078(b), 126 Stat. 1632, 1958; agreements with third-parties that hold a copyright in Agency program materials; and Terms of Use on Agency Web sites. Please see § 502.4 for information on one-time requests for broadcast quality Agency program materials.

(b) Media entities, or other organizations, may request ongoing subscriptions by filling out an application form found on the Web site for the Direct System, the Agency's professional distribution system.

**§ 502.6 Terms of use for accessing program materials available on agency Web sites.**

(a) By accessing Agency Web sites, Requestors agree to all the Terms of Use available on those Web sites.

(b) All Requestors are advised that Agency program materials may contain third-party copyrighted material, unless the Agency specifically informs the Requestor otherwise. Accordingly, and as further explained in the Terms of Use mentioned above, by using Agency Web sites to access program materials:

(1) The Requestor agrees that he or she is solely responsible for his or her use of program materials provided by the Agency and any copyrighted portion(s) of those materials;

(2) The Requestor agrees that he or she shall secure all necessary licenses from all persons or organizations that hold a copyright in any portion of requested program materials before making any use of those program materials, except uses of program materials permitted by the Copyright Act of 1976, as amended. Permitted uses include: use of works for which copyright protections have lapsed or expired; use for private viewing, study, scholarship, or research purposes; or uses permitted under the fair use provisions of 17 U.S.C. 107.

**§ 502.7 Denial of requests.**

(a) The Agency reserves the right to deny any request for program materials made pursuant to these regulations for cause, including but not limited to the following circumstances:

(1) For a Requestor's failure to comply with the Terms of Use on Agency Web sites;

(2) For a Requestor's failure to secure necessary rights and licenses to use third-party copyrighted materials when the Requestor uses Agency program materials in any way not explicitly permitted by the Copyright Act of 1976, as amended;

(3) When the Agency's distribution of program materials is restricted by an agreement with a third-party that holds a copyright in a portion of Agency program materials;

(4) If providing the requested materials would be inconsistent with the Agency's statutory authorities, the broadcasting element's charter, or any applicable law or regulation.

(b) For more information on the criteria for accepting or denying requests, please see the Agency's policy for domestic distribution, available at *www.bbg.gov*.

**§ 502.8 Fees.**

(a) The Agency makes program material available at no cost on *www.voanews.com* and *www.martinoticias.com*.

(b) The Agency may collect a fee for reimbursement of the reasonable costs incurred to fulfill a request for Agency program materials, including ongoing subscriptions for Media entities and one-time requests for broadcast-quality copies of Agency program materials. Fees charged for ongoing subscriptions, if any, will be outlined in an agreement between the Media entity and the Agency.

(c) The Agency reserves the right to establish and change fees in accordance with applicable law and regulation.

Dated: June 13, 2013.

**Richard M. Lobo,**

*Director, International Broadcasting Bureau.*

[FR Doc. 2013–14505 Filed 7–1–13; 8:45 am]

BILLING CODE 8610–01–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 23 CFR Parts 1200, 1205, 1206, 1250, 1251, 1252, 1313, 1335, 1345, 1350

**[Docket No. NHTSA–2013–0001]**

**RIN 2127–AL30; RIN 2127–AL29**

## Uniform Procedures for State Highway Safety Grant Programs

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Interim final rule; reopening of comment period.

**SUMMARY:** NHTSA is extending through September 30, 2013, the period for interested persons to submit comments to its Interim Final Rule that that established new uniform procedures governing the implementation of State highway safety grant programs as amended by the Moving Ahead for Progress in the 21st Century Act (MAP–21).

**DATES:** The comment period for the interim final rule published January 23, 2013, at 78 FR 4986, is reopened. Comments must be received by September 30, 2013. Comments received after that date will be considered to the extent possible.

**ADDRESSES:** Written comments to NHTSA may be submitted using any one of the following methods:

- *Mail:* Send comments to: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 493–2251.
- *Internet:* To submit comments electronically, go to the U.S. Government regulations Web site at *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Hand Delivery:* If you plan to submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

Whichever way you submit your comments, please remember to identify the docket number of this document within your correspondence. You may contact the docket by telephone at (202) 366–9324. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

*Privacy Act:* Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

*Docket:* All documents in the dockets are listed in the *http://www.regulations.gov* index. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC. The Docket Management Facility is open between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program issues: Dr. Mary D. Gunnels, Associate Administrator, Regional Operations and Program Delivery, National Highway Traffic Safety Administration, Telephone number: (202) 366–2121; Email: *Maggi.Gunnels@dot.gov*. For legal issues: Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, Telephone number: (202) 366–1834; Email: *Jin.Kim@dot.gov*.

**SUPPLEMENTARY INFORMATION:** On January 23, 2013 (78 FR 4986), NHTSA published an interim final rule (IFR) in the **Federal Register** that established new uniform procedures governing the implementation of State highway safety grant programs as amended by the Moving Ahead for Progress in the 21st Century Act (MAP–21). It also reorganized and amended existing requirements to implement the provisions of MAP–21. In the notice, NHTSA established a deadline of April 23, 2013 for submission of written comments and stated that the agency would publish a notice responding to any comments received and, if appropriate, amend provisions of the regulation.

The notice was issued as an IFR to provide timely guidance about the application procedures for national priority safety program grants in fiscal year 2013 and all Chapter 4 highway safety grants beginning in fiscal year 2014. Since the publication of the IFR, States have submitted their fiscal year 2013 applications (March 25, 2013), and States are preparing their fiscal year 2014 applications which are due July 1, 2013. In order to ensure that interested parties, especially States, have adequate time to comment on the IFR, NHTSA is extending the comment period until September 30, 2013. This extension will provide States with an additional opportunity to comment on the IFR based on their experience submitting applications for two fiscal years' grants. We encourage States and interested parties to submit any additional comments that will help the agency address concerns about the IFR.

Issued in Washington, DC, on: June 25, 2013 under authority delegated in 49 CFR 1.95; 49 CFR 501.8(g).

**Brian McLaughlin,**

*Senior Associate Administrator, Traffic Injury Control, National Highway Traffic Safety Administration.*

[FR Doc. 2013–15751 Filed 7–1–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket No. USCG–2011–0551]**

**RIN 1625–AA08**

## Special Local Regulations; Revision of 2013 America's Cup Regulated Area, San Francisco Bay; San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule with request for comments.

**SUMMARY:** The Coast Guard is revising the regulated area for the 2013 America's Cup sailing events. Previously, the Coast Guard established a special local regulation, on July 17, 2012, for sailing regattas scheduled to be conducted on the waters of San Francisco Bay adjacent to the City of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island. The Coast Guard is amending the rule to modify the eastern boundary of the Primary Regulated Area. The change relocates the northeast corner of the Primary Regulated Area to the east 360 yards and relocates the southeast corner 910 yards to the southwest.

**DATES:** This rule is effective from July 4, 2013, until September 23, 2013.

Comments and related material must be received by the Coast Guard on or before August 1, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2011–0551. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email Commander Aaron Lubrano, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3446 or email at *Aaron.C.Lubrano@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
SLR Special Local Regulation

### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number (USCG–2011–0551) in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2011–0551) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*3. Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

**B. Regulatory History and Information**

On July 17, 2012, the Coast Guard published a temporary final rule regulating the on-water activities associated with the "Louis Vuitton Cup," "Red Bull Youth America's Cup," and "America's Cup Finals Match" scheduled to occur in July, August, and September, 2013 (77 FR 41902). That rule created a special local regulation (SLR) that established regulated areas on the water to enhance safety and maximize access to the affected waterways. The Coast Guard is revising the location of the 2013 regulated area with this interim rule.

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

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable and contrary to the public interest.

Recent on-water testing of the AC72 class racing boats has proven that speeds in excess of forty knots will be regularly achieved, which is faster than previous design forecasts.

The Coast Guard will consider all comments and may incorporate additional changes to the race area to further enhance maritime safety. However, the time required to complete the full NPRM process does not allow for comment, publication, and implementation prior to the first regatta. The Captain of the Port, San Francisco, has determined that the race could pose a risk to public safety and property. Such hazards include vessel collisions in a congested area and potential capsizing of competitor vessels in close proximity to spectator vessels. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a large gathering of sailboats for a race. Based on these concerns, it is in the public interest to have the revised regulation in effect during the entire event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

**C. Basis and Purpose**

Under 33 CFR 100.35, the Coast Guard District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved regatta or marine parade. The Commander of Coast Guard District 11 has delegated to the Captain of the Port (COTP) San Francisco the responsibility of issuing such regulations.

With this interim rule, the Coast Guard is revising the Primary Regulated Area associated with the special local regulation published for the Louis Vuitton Cup challenger selection series and the America's Cup Finals Match occurring in 2013. Recent on-water testing of the AC72 class racing boats has proven that speeds in excess of forty knots will be regularly achieved, which is faster than previous design forecasts.

Modifying the eastern boundary of the Primary Regulated Area will allow event organizers to adjust the race course to better suit the demonstrated speed and maneuverability of the AC72s, while optimizing maritime safety for the spectators, commercial traffic and race participants, and preserving existing buffer zones near environmentally sensitive areas. The reduced size of the regulated area near the San Francisco waterfront is expected to help reduce race-related delays for commuter ferries as they approach or depart San Francisco, and enhance the navigation safety in this area. Due to the changes to the regulated area the entrance to the transit zone needed to be adjusted to align with the eastern boundary. The "T" section of the transit zone was modified to allow for better access and to create a consistent safety buffer during race finishes.

**D. Discussion of the Interim Rule**

The Coast Guard is modifying the Primary Regulated Area established in the special local regulation published on July 17, 2012 (77 FR 41902) associated with the Louis Vuitton Cup challenger selection series and the America's Cup Finals Match occurring in 2013. The revised rule relocates the northeast corner of the Primary Regulated Area to the east 360 yards to 37°49′41″ N, 122°24′17″ W, adds one additional point on the eastern flank at 37°49′10″ N, 122°23′43″ W and relocates the southeast corner 910 yards to the southwest to 37°48′24″ N, 122°23′43″ W. The rule also relocates the entrance to the transit zone near Blossom Rock southeast 400 yards to 37°49′17″ N, 122°23′51″ W and 37°49′10″ N, 122°23′43″ W. An image of the revised Primary Regulated Area for 2013 may also be found in the docket (USCG–2011–0551).

All other provisions in the rule remain the same.

**E. Regulatory Analyses**

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

based on these statutes and executive orders.

*1. Regulatory Planning and Review*

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

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

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking.

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

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action does not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the

Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**List of Subjects in 33 CFR part 100**

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

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

## PART 100—REGATTAS AND MARINE PARADES

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

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

■ 2. Revise paragraphs (a)(1) and (d)(6) of § 100.T11–0551B to read as follows:

**§ 100.T11–0551B Special Local Regulation; 2013 America's Cup Sailing Events.**

(a) * * *

(1) The following area is the Primary Regulated Area for the 2013 America's Cup sailing events: All waters of San Francisco Bay bounded by a line beginning at position 37°48′12″ N, 122°24′04″ W located on the foot of Pier 23, running northeast to position 37°48′24″ N, 122°23′43″ W, running north to position 37°49′10″ N, 122°23′43″ W, running northwest to position 37°49′41″ N, 122°24′17″ W located east of Alcatraz Island, running west to position 37°49′41″ N, 122°27′35″ W, running southwest to position 37°49′02″ N, 122°28′21″ W, running south to position 37°48′32″ N, 122°28′21″ W, and running eastward along the City of San Francisco shoreline ending at position 37°48′12″ N, 122°24′04″ W located on the foot of Pier 23. All coordinates are North American Datum 1983.

* * * * *

(d) * * *

(6) *Transit Zone.* Within the Primary Regulated Area, a transit zone, approximately 200 yards in width, is established along the City of San Francisco waterfront. The transit zone will begin at the face of Pier 23, run westward along the pier faces to the Municipal Pier, and continue westward to the northern boundary of the area defined in paragraph (d)(4). This transit zone is bounded by the following coordinates: 37°48′40″ N, 122°28′21″ W; 37°48′32″ N, 122°28′00″ W; 37°48′32″ N, 122°26′24″ W; 37°48′39″ N, 122°25′27″ W; 37°48′43″ N, 122°25′13″ W; 37°48′41″ N, 122°24′30″ W; 37°48′28″ N, 122°24′04″ W; 37°48′17″ N, 122°23′54″ W; 37°48′21″ N, 122°23′49″ W; 37°48′33″ N, 122°24′00″ W; 37°49′00″ N, 122°24′00″ W; 37°49′10″ N, 122°23′43″ W; 37°49′17″ N, 122°23′51″ W; 37°48′48″ N, 122°24′40″ W; 37°48′49″ N, 122°25′16″ W; 37°48′37″ N, 122°26′22″ W; 37°48′37″ N, 122°28′00″ W; 37°48′47″ N, 122°28′21″ W (NAD 83). This transit zone is for vessels that need to access pier space or facilities at, or to transit along, the City of San Francisco waterfront. It may be marked by buoys and/or America's Cup support vessels. No vessel may anchor, block, loiter in, or otherwise impede transit in the transit zone. In the event the eastern sections of the transit zone are temporarily closed for vessel safety, such as races finishes, vessels must follow the procedures in paragraph (d)(3) to request access.

* * * * *

Dated: June 19, 2013.

**Gregory G. Stump,**

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

[FR Doc. 2013–15809 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2013–0525]**

## Drawbridge Operation Regulation; Lake Washington Ship Canal at Seattle, WA

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs three Seattle Department of Transportation (SDOT) bridges: The Ballard Bridge, mile 1.1, the Fremont Bridge, mile 2.6, and the University Bridge, mile 4.3, all crossing the Lake Washington Ship Canal at Seattle, WA. The deviation is necessary to accommodate heavier than normal roadway traffic associated with a fireworks display over Lake Union. This deviation allows the bridges to remain in the closed position immediately prior to until immediately after the fireworks display.

**DATES:** This deviation is effective from 9 p.m. on July 4, 2013 to 1 a.m. on July 5, 2013.

**ADDRESSES:** The docket for this deviation, [USCG–2013–0525] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Lieutenant Commander Steven Fischer, Thirteenth District Bridge Specialist, Coast Guard; telephone 206–220–7277, email *Steven.M.Fischer2@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The SDOT has requested a temporary deviation from the operating schedule for the Ballard Bridge, mile 1.1, the Fremont Bridge, mile 2.6, and the University Bridge, mile 4.3, all crossing the Lake Washington Ship Canal at Seattle, WA. The requested deviation is to accommodate heavier than normal roadway traffic associated with the 4th of July fireworks display over Lake Union, Seattle, WA. To facilitate this event, the draws of the bridges will be maintained in the closed-to-navigation positions as follows: the Fremont Bridge, mile 2.6, need not open for vessel traffic from 9 p.m. July 4, 2013 until 12:30 a.m. July 5, 2013; the Ballard Bridge, mile 1.1, and the University Bridge, mile 4.3, need not open for vessel traffic from 10 p.m. July 4, 2013 until 1 a.m. July 5, 2013. Vessels which do not require bridge openings may continue to transit beneath these bridges during the closure periods. The Ballard Bridge, mile 1.1, provides a vertical clearance of 29 feet in the closed position, the Fremont Bridge, mile 2.6, provides a vertical clearance of 14 feet in the closed position, and the University Bridge, mile 4.3, provides a vertical clearance of 30 feet in the closed position; all clearances are referenced to the mean water elevation of Lake Washington. The current operating schedule for all three bridges is set out in 33 CFR 117.1051. The normal operating schedule for all three bridges state that the bridges need not

open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday for vessels less than 1000 tons. The normal operating schedule for these bridges also requires one hour advance notification for bridge openings between 11 p.m. and 7 a.m. daily. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridges' operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The bridges will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

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

Dated: June 19, 2013.

**Daryl R. Peloquin,**

*Acting Bridge Administrator.*

[FR Doc. 2013–15805 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[USCG–2013–0408]**

**RIN 1625–AA00**

## Safety Zone, Tennessee River, Mile 625.5 to 626.5

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the waters of the Tennessee River beginning at mile marker 625.5 and ending at mile marker 626.5, extending bank to bank. This zone is necessary to provide safety from the fallout from the Randy Boyd fireworks that are being launched on the Tennessee River at mile marker 626.0. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or designated representative.

**DATES:** This temporary final rule is effective from 9 p.m. through 9:30 p.m. on July 5, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0408]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Petty Officer James Alter, Marine Safety Detachment Nashville, at (615) 736–5421. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice on May 15, 2013 that this fireworks show is planned to take place on July 5, 2013. After a review of the event information and location, the Coast Guard determined that a safety zone is necessary. Given the lack of calendar days between notice from the event sponsor to the Coast Guard and the time of the scheduled event, it would be impracticable to complete the NPRM process within this short period. Immediate action is necessary to protect event participants and members of the public from the possible marine hazards present during a fireworks display on or over the waterway. Delaying the safety zone would also unnecessarily interfere with the planned event.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Providing a full 30 days notice and delaying the effective date for this safety zone would be impracticable because immediate action is necessary to protect event participants and members of the public from the possible marine hazards present during a fireworks display on or over the waterway.

### B. Basis and Purpose

The Randy Boyd fireworks display takes place on the Tennessee River and is launched from a floating platform in the middle of the river at mile marker 626.0. Fireworks displays taking place on or over a waterway pose possible hazards to the marine traffic and spectators on the waterway during the display. The Coast Guard determined that a temporary safety zone is needed to protect life and property during the fireworks display. The legal basis and authorities for this rulemaking establishing a safety zone are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorizes the Coast Guard to establish and define regulatory safety zones. The Captain of the Port Ohio Valley is establishing a safety zone for all waters of the Tennessee River, beginning at mile marker 625.5 and ending at 626.5 to protect persons and property from hazards associated with a fireworks display. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or a designated representative.

### C. Discussion of the Final Rule

The Captain of the Port Ohio Valley is establishing a safety zone for the waters of the Tennessee River, beginning at mile marker 625.5 and ending at 626.5. Vessels shall not enter into, depart from, or move within this safety zone without permission from the Captain of the Port Ohio Valley or designated representative. Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Ohio Valley, or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This rule is effective from 9:00 p.m. until 9:30 p.m. on July 5, 2013. The Captain of the Port Ohio Valley will inform the public through broadcast notices to mariners of the enforcement period for the safety

zone as well as any changes in the planned schedule.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

This safety zone restricts transit on the Tennessee River from mile marker 625.5 through 626.5 and covers a period of one hour, from 9:00 p.m. through 9:30 p.m. on July 5, 2013. Due to its short duration and limited scope, affecting only one mile of the waterway, it does not pose a significant regulatory impact. Broadcast Notices to Mariners will also inform the community of this safety zone so that they may plan accordingly for this short restriction on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit mile marker 625.5 to 626.5 on the Tennessee River, from 9:00 p.m. to 9:30 p.m. on July 5, 2013. The safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for a short period of time, will be of limited scope, and affects only one mile of the waterway. Broadcast Notices to Mariners will also inform the community of this safety zone so that they may plan accordingly for this short restriction on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in

complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a one mile temporary safety zone to provide safety for persons and property nearby fireworks that are being launched on the Tennessee River at mile marker 626.0 scheduled to take place during the evening of July 5, 2013. This rule will be in effect for 30 minutes from 9:00 p.m. to 9:30 p.m. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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

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

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

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

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0408 to read as follows:

**§ 165.T08–0408 Safety Zone; Tennessee River, Miles 625.5 to 626.5, Knoxville, TN.**

(a) *Location.* The following area is a safety zone: all waters of the Tennessee River, beginning at mile marker 625.5 and ending at mile marker 626.5.

(b) *Effective date.* This rule is effective from 9 p.m. to 9:30 p.m. on July 5, 2013.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into or passage through the safety zone must request permission from the Captain of the Port Ohio Valley or a designated representative. U. S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) Informational broadcasts: The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notice to mariners when the safety zone has been established and if there are changes to the enforcement period for this safety zone.

Dated: June 13, 2013.

**L.W. Hewett,**

*Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.*

[FR Doc. 2013–15636 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2011–0451]**

## Safety Zone; Seafair Blue Angels Air Show Performance, Seattle, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the annual Seafair Blue Angels Air Show safety zone on Lake Washington, Seattle, WA from 9 a.m. on August 2, 2013, to 4 p.m. on August 4, 2013. This safety zone is being enforced for the Patriots Jet Team, which will be flying in place of the Blue Angels this year. All of the parameters of the zone as outlined are in effect. This action is necessary to ensure the safety of the public from inherent dangers associated with these annual aerial displays. During the enforcement period, no person or vessel may enter or transit this safety zone unless authorized by the Captain of the Port or Designated Representative.

**DATES:** The regulations in 33 CFR 165.1319 will be effective from 8 a.m. on August 2, 2013, through 11:59 p.m. on August 4, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Ensign Nathaniel P. Clinger, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6045, email *SectorPugetSoundWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Seafair Blue Angels Air Show Performance safety zone in 33 CFR 165.1319 daily from 9 a.m. until 4 p.m. from August 2, 2013, through August 4, 2013, unless canceled sooner by the Captain of the Port.

Under the provisions of 33 CFR 165.1319, the following area is designated as a safety zone: All waters of Lake Washington, Washington State, enclosed by the following points: Near the termination of Roanoke Way 47°35′44″ N, 122°14′47″ W; thence to 47°35′48″ N, 122°15′45″ W; thence to 47°36′02.1″ N, 122°15′50.2″ W; thence to 47°35′56.6″ N, 122°16′29.2″ W; thence to 47°35′42″ N, 122°16′24″ W; thence to the east side of the entrance to the west high-rise of the Interstate 90 bridge; thence westerly along the south side of the bridge to the shoreline on the western terminus of the bridge; thence southerly along the shoreline to Andrews Bay at 47°33′06″ N, 122°15′32″ W; thence northeast along the shoreline of Bailey Peninsula to its northeast point at 47°33′44″ N, 122°15′04″ W; thence easterly along the east-west line drawn tangent to Bailey Peninsula; thence northerly along the shore of Mercer Island to the point of origin. [Datum: NAD 1983]

In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person or vessel may enter or remain in the zone except for support vessels and support personnel, vessels registered with the event organizer, or other vessels authorized by the Captain of the Port or Designated Representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions made by the Captain of the Port or Designated Representative.

The Captain of the Port may be assisted by other federal, state and local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1319 and 5 U.S.C. 552 (a). If the COTP determines that the safety zone need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 3, 2013.

**S.J. Ferguson,**

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

[FR Doc. 2013–15638 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG–2013–0473]**

**RIN 1625–AA00**

## Safety Zone, Fifth Coast Guard District Firework Display, Pagan River; Smithfield, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary Final Rule.

**SUMMARY:** The Coast Guard is temporarily changing the date of a safety zone for one specific recurring fireworks display in the Fifth Coast Guard District. This regulation applies only to one recurring fireworks event, held on the Pagan River in Smithfield, VA. The regulation currently states that the event occurs on July 4, 2013, however this year the event will take place on July 3, 2013. This action is necessary to provide for the safety of life on navigable waters during the Smithfield Independence Day Fireworks. This action is intended to restrict vessel traffic movement on the Pagan River to protect mariners from the hazards associated with fireworks displays.

**DATES:** This rule will be effective from 12:01 a.m. until 11:59 p.m. on July 3, 2013.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2013–0473 and are available online by going to *http://www.regulations.gov*, inserting USCG–2013–0473 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### A. Regulatory History and Information

This fireworks display event is regulated at 33 CFR 165.506, Table to § 165.506, section (c.) line 22. The town of Smithfield wishes to permanently change the date for the recurring fireworks event from July 4, 2013 to July 3, 2013. The Coast Guard plans to permanently amend the regulation at 33 CFR 165.506 at a later date to reflect this change.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Due to the date of the event, publication of an NPRM would be impracticable. The Coast Guard will provide advance notifications to users of the effected waterways of the safety zone via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Providing a full 30 days notice and delaying the effective date for this safety zone would be impracticable because immediate action is necessary to protect event participants and members of the public from the possible marine hazards present during a fireworks display on or over the waterway.

### B. Basis and Purpose

Recurring fireworks displays are frequently held on or adjacent to the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

The regulation listing annual fireworks displays within the Fifth Coast Guard District and safety zones locations is 33 CFR 165.506. The Table to § 165.506 identifies fireworks displays by COTP zone, with the COTP Hampton Roads zone listed in section "(c.)" of the Table.

As noted in the Table to § 165.506, at section (c.) As noted in the Table to § 165.506, at section (c.) event Number "22", provides the details for this recurring fireworks event. This year Isle of Wight County intends to change the date for their fireworks event from July 4, 2013 to July 3, 2013.

Therefore, the event will now be held on the Pagan River at Clontz Park in Smithfield, VA on July 3, 2013. Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to the Pagan River will be temporarily restricted.

### C. Discussion of the Rule

The Coast Guard is temporarily suspending the regulation listed in Table § 165.506, at section (c.) event Number "22", and insert this temporary regulation at Table to § 165.506, at section (c.) event Number "25", in order to reflect the new date. No other portion of the Table to § 165.506 or other provisions in § 165.506 will be affected by this regulation.

This safety zone will encompass all navigable waters within 420 feet of the fireworks launching platform located at position 36°59′18″ N/076°37′45″ W. This safety zone will be enforced from 9:45 p.m. until 10:30 p.m. on July 3, 2013. Access to the safety zone will be restricted during the specified date and times. Except for individuals responsible for launching the fireworks and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

### D. Regulatory Analyses

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) mariners may transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in that portion of the Pagan River from 9:45 p.m. until 10:30 p.m. on July 3, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration, and (ii) Before the enforcement period of July 3, 2013, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

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

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

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

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

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. In § 165.506, in the "Table to § 165.506," make the following amendments:

■ a. Under "(c) Coast Guard Sector Hampton Roads—COTP Zone," suspend entry 22.

■ b. Under, "(c) Coast Guard Sector Hampton Roads—COTP Zone," add entry 25 to read as follows:

**§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays, Pagan River, Smithfield, VA.**

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TABLE TO § 165.506

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**(c.) Coast Guard Sector Hampton Roads—COTP Zone**

* * * * * * * *

| | | | |
|---|---|---|---|
| 25 ..... | July 3, 2013 ..... | Pagan River, Smithfield, VA, Safety Zone. | All waters of the Pagan River located within a 420 foot radius of the fireworks display at approximate position latitude 36°59′18.0″ N, longitude 076°37′45.0″ W near Smithfield, Virginia. |

* * * * *

Dated: June 17, 2013.

**John K. Little,**

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

[FR Doc. 2013–15635 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0373]**

### Safety Zone; Hilton Fourth of July Fireworks, San Joaquin River, Venice Island, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the Hilton Fourth of July Fireworks in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191, Table 1, Item number 17 will be enforced from 10 a.m. on July 2, 2013, to 10 p.m. on July 4, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce a 100 foot safety zone around the fireworks barge during the loading, transit, and arrival of the fireworks barge to the display location and until the start of the fireworks display. From 10 a.m. on July 2, 2013, until 8 a.m. on July 4, 2013, the fireworks barge will be loading off of Dutra Corporation Yard in Rio Vista, CA. From 8 a.m. to 2 p.m. on July 4, 2013, the loaded barge will transit from Dutra Corporation Yard to the launch site near Venice Island, CA in approximate position 38°03′19″ N, 121°31′54″ W (NAD83). Upon the commencement of the 20 minute fireworks display, scheduled to begin at approximately 9:30 p.m. on July 4, 2013, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge within a radius 1,000 feet in approximate position 38°03′19″ N, 121°31′54″ W (NAD83) for the Hilton Fourth of July Fireworks in 33 CFR 165.1191, Table 1, Item number 17. This safety zone will be in effect from 10 a.m. on July 2, 2013, to 10 p.m. on July 4, 2013.

Under the general provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 13, 2013.

**Gregory G. Stump,**

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

[FR Doc. 2013–15810 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0364]**

### Safety Zone; "Lights on the Lake" Fourth of July Fireworks, South Lake Tahoe, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the "Lights on the Lake" Fourth of July Fireworks display, South Lake Tahoe, CA in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of

the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191, Table 1, Item number 21, will be enforced from 9 a.m. on July 3, 2013, until 10:20 p.m. on July 4, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Junior Grade William Hawn, Sector San Francisco Waterways Safety Division, U.S. Coast Guard; telephone 415–399–7442, email *D11-PF-MarineEvents@uscg.mil*.

**SUPPLEMENTARY INFORMATION:**

The Coast Guard will enforce a safety zone in navigable waters around and under the fireworks barges within a radius of 100 feet during the loading, transit, and arrival of the fireworks barges to the display location and until the start of the fireworks display. From 9 a.m. on July 3, 2013, until 9 a.m. on July 4, 2013, the fireworks barges will be loaded off of Tahoe Keys Marina in South Lake Tahoe, CA in approximate position 38°56′05″ N, 120°00′09″ W (NAD 83). From 9 a.m to 12 p.m. on July 4, 2013, the loaded fireworks barges will transit from Tahoe Keys Marina to the launch site off of South Lake Tahoe, CA in approximate position 38°57′56″ N, 119°57′21″ W (NAD 83) where it will remain until the commencement of the fireworks display. Upon the commencement of the 22 minute fireworks display, scheduled to begin at 9:45 p.m. on July 4, 2013, the safety zone will increase in size to encompass the navigable waters around and under the fireworks barges within a radius 1,000 feet in approximate position 38°57′56″ N, 119°57′21″ W (NAD 83) for the "Lights on the Lake" Fourth of July Fireworks, South Lake Tahoe, CA in 33 CFR 165.1191, Table 1, Item number 21. This safety zone will be enforced from 9 a.m. on July 3, 2013, until 10:20 p.m. on July 4, 2013.

Under the general regulations of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 13, 2013.

**Gregory G. Stump,**

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

[FR Doc. 2013–15813 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0385]**

## Safety Zone; Fourth of July Fireworks, City of Pittsburg, Suisun Bay, Pittsburg, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the City of Pittsburg Fourth of July Fireworks display, in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191, Table 1, Item number 15 will be enforced from 9:30 p.m. to 10 p.m. on July 4, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce a 1,000 foot safety zone around the Pittsburg Marina Pier in approximate position 38°02′32″ N, 121°53′19″W (NAD 83) from 9:30 p.m. until 10 p.m. on July 4, 2013. Upon the commencement of the 20 minute fireworks display, scheduled to begin at approximately 9:30 p.m. on July 4, 2013, the safety zone will encompass the navigable waters around and under the Pittsburg Marina Pier within a radius 1,000 feet in approximate position 38°02′32″ N, 121°53′19″ W (NAD83) for the Fourth of July Fireworks, City of Pittsburg in 33 CFR 165.1191, Table 1, Item number 15. This safety zone will be in effect from 9:30 p.m. to 10 p.m. on July 4, 2013. Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so. This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 13, 2013.

**Gregory G. Stump,**

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

[FR Doc. 2013–15814 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG–2013–0365]**

## Safety Zone; Independence Day Fireworks, Kings Beach, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the Independence Day Fireworks, Kings Beach, CA in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191, Table 1, number 20, will be enforced from 7 a.m. through 10 p.m. on July 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Junior Grade William Hawn, Sector San Francisco Waterways Safety Division, U.S. Coast Guard; telephone 415–399–7442, email *D11-PF-MarineEvents@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce a safety zone in navigable waters around and under the fireworks barge within a radius of 100 feet during the loading, transit, and arrival of the fireworks barge to the display location and until the start of the fireworks display. From 7 a.m. until 9 a.m. on July 3, 2013, the fireworks barge will be loaded off of Tahoe Keys Marina in South Lake Tahoe, CA in approximate position 38° 56′05″ N, 120° 00′09″ W (NAD 83). From 9 a.m. to 11 a.m. on July 3, 2013, the loaded barge will transit from Tahoe Keys Marina to the launch site off of Kings Beach, CA in approximate position 39° 13′55″ N, 120° 01′42″ W (NAD 83) where it will remain until the commencement of the fireworks display. Upon the commencement of the 20 minute fireworks display, scheduled to begin at 9:30 p.m. on July 3, 2013, the safety zone will increase in size to encompass the navigable waters around and under the fireworks barge within a radius 1,000 feet in approximate position 39° 13′55″ N, 120° 01′42″ W (NAD 83) for the Independence Day Fireworks, Kings beach, CA in 33 CFR 165.1191, Table 1, Item number 20. This safety zone will be in effect from 7 a.m. until 10 p.m. on July 3, 2013.

Under the general regulations of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so. This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 13, 2013.

**Gregory G. Stump,**

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

[FR Doc. 2013–15815 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG–2013–0443]**

**RIN 1625–AA00**

## Safety Zone; Fort Monroe Fireworks Display, Chesapeake Bay, Hampton, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary Final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Chesapeake Bay in Hampton, VA to support the Fort Monroe Fireworks. This action is intended to restrict vessel traffic movement in the specified area in order to protect the life and property of the maritime public and spectators from the hazards associated with fireworks displays.

**DATES:** This safety zone will be effective from 9 p.m. to 10 p.m. on July 4, 2013.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2013–0443 and are available online by going to *http://www.regulations.gov*, inserting USCG–2013–0443 in the "SEARCH" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive information from the sponsor about this event with enough time to undertake an NPRM. Any delay encountered in this regulation's effective date by publishing a NPRM would be impracticable since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. The Coast Guard will provide advance notifications to users of the effected waterways of the safety zone via marine information broadcasts, local notice to

mariners, commercial radio stations, and area newspapers.

Under 5 U.S.C. 553(d)(3), for the same reasons as discussed earlier, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Waiting a full 30 days after publication in the **Federal Register** is impracticable and contrary to the public interest.

**B. Background and Purpose**

On July 4, 2013, the Fort Monroe Authority will host a fireworks display in the Chesapeake Bay off of Fort Monroe in Hampton, VA. The fireworks debris fallout area will extend over the navigable waters of Chesapeake Bay. Due to the need to protect mariners and spectators from the hazards associated with the fireworks displays, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted within the fireworks fall out area.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

**C. Discussion of the Rule**

The Coast Guard is establishing a safety zone on specified waters of the Chesapeake Bay near Fort Monroe, Hampton, VA. This safety zone will encompass all navigable waters within a 420 foot radius of the fireworks launching platform located at position 37°00′5″ N, 076°18′17″ W.

This safety zone will be established and enforced from 9 p.m. until 10 p.m. on July 4, 2013. Access to the safety zone will be restricted during the specified date and times. Except for individuals responsible for launching the fireworks and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) mariners may transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; , and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

*2. Impact on Small Entities*

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in that portion of the Chesapeake Bay from 9 p.m. until 10 p.m. on July 4th, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration. (ii) Before the enforcement period of July 4th, 2013 maritime advisories will be issued allowing mariners to adjust their plans accordingly.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES.**

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

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

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

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

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0443 to read as follows:

**§ 165.T05–0443 Safety Zone, Chesapeake Bay, Hampton, VA.**

(a) *Location.* The following area is a safety zone: Specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, all waters of the Chesapeake Bay near Fort Monroe in Hampton, VA within 420 foot radius of position 37°00′5″ N 076°18′17″ W.

(b) *Definition.* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

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

(d) Enforcement Period. This section will be enforced on Thursday July, 4th 2013, from 9 p.m. to 10 p.m.

Dated: June 5, 2013.

**John K. Little,**

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

[FR Doc. 2013–15817 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0495]**

**RIN 1625–AA00**

## Safety Zone, Sugar House Casino Fireworks Display, Delaware River; Philadelphia, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Delaware River in Philadelphia, PA. The safety zone will restrict vessel traffic on a portion of the Delaware River from operating while a fireworks event is taking place. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with a fireworks display.

**DATES:** This rule is effective on July 5, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0495]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Veronica Smith, Chief Waterways Management, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271–4851, email *veronica.l.smith@uscg.mil*. If you have

questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

DHS Department of Homeland Security
NPRM Notice of Proposed Rulemaking

**A. Regulatory History and Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to provide for the safety of life and property in the navigable water. In addition, publishing an NPRM is impracticable given that the final details for this event were not received by the Coast Guard with sufficient time for a notice and comment period to run before the start of the event. Thus, delaying this rule to wait for a notice and comment period to run would be contrary to public policy and would inhibit the Coast Guard's ability to protect the public from the hazards associated with maritime fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the establishment of the safety zone could result in mariners approaching the fireworks location, creating a hazardous scenario with potential for loss of life and property. For the same reasons discussed in the preceding paragraph, a 30-day notice period would be impracticable and contrary to the public interest.

**B. Basis and Purpose**

On the evening of July 5, 2013, fireworks will be launched from a barge with a fall out zone that covers part of the Delaware River. Sugar House Casino has contracted with Pyrotecnico Fireworks to arrange for this display. The Captain of the Port, Sector Delaware Bay, has determined that the Sugar House Casino Fireworks Display will pose significant risks to the public. The purpose of the rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the event.

**C. Discussion of the Final Rule**

To mitigate the risks associated with the Sugar House Casino Fireworks Display, the Captain of the Port, Sector Delaware Bay will enforce a temporary safety zone in the vicinity of the launch site. The safety zone will encompass all waters of the Delaware River within a 350 yard radius of the fireworks launch platform in approximate position 39°57′46.51″ N, 075°07′45.45″ W in Philadelphia, PA. The safety zone will be effective and enforced from 8:30 p.m. to 10:00 p.m. on July 5, 2013. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Delaware Bay, or her on-scene representative. The Captain of the Port, Sector Delaware Bay, or her on-scene representative may be contacted via VHF channel 16.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

Although this regulation will restrict vessel traffic from operating within the safety zone on the navigable waters of the Delaware River, Philadelphia, PA, the effect of this regulation will not be significant due to the limited duration that the safety zone will be in effect. The enforcement window lasts for 1 hour and 30 minutes in an open area that does conflict with transiting commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities:

(1) This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate, transit, or anchor in a portion of the Delaware River between 8:30 p.m. and 10:00 p.m. on July 5, 2013.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced for a short period of time. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Delaware Bay, to transit through the safety zone. Before activation of the zone, we will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

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

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

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

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

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary 165.T05–0495, to read as follows:

**§ 165.T05–0495 Safety Zone, Sugar House Casino Fireworks Display, Delaware River; Philadelphia, PA.**

(a) *Regulated Area.* The following area is a safety zone: The safety zone will encompass all waters of the Delaware River within a 350 yard radius of the fireworks launch platform in approximate position 39°57′46.51″ N, 075°07′45.45″ W in Philadelphia, PA.

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section § 165.T05–0495.

(1) All persons and vessels are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port or her designated representative.

(2) All persons or vessels wishing to transit through the Safety Zone must request authorization to do so from the Captain of the Port or her designated representative one hour prior to the intended time of transit.

(3) Vessels granted permission to transit through the Safety Zone must do so in accordance with the directions provided by the Captain of the Port or her designated representative to the vessel.

(4) To seek permission to transit this safety zone, the Captain of the Port or her designated representative can be contacted via Sector Delaware Bay Command Center (215) 271–4940.

(5) This section applies to all vessels wishing to transit through the safety zone except vessels that are engaged in the following operations: (i) Enforcing laws; (ii) servicing aids to navigation, and (iii) emergency response vessels.

(6) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(7) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(8) The Captain of the Port may take possession and control of any vessel in the safety zone;

(9) The Captain of the Port may remove any person, vessel, article, or thing from a safety zone;

(10) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(11) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(c) *Definitions.* (1) *Captain of the Port* means the Commander, Coast Guard Sector Delaware Bay, or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

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

(e) *Enforcement period.* This section will be enforced from 8:30 p.m. until 10:00 p.m. on July 5, 2013.

Dated: June 21, 2013.

**T.C. Wiemers,**

*Captain, U.S. Coast Guard, Alternate Captain of the Port, Delaware Bay.*

[FR Doc. 2013–15818 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0439]**

**RIN 1625–AA00**

## Safety Zone; Northside Park Pier Fireworks Display, Assawoman Bay, Ocean City, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of Assawoman Bay in Ocean City, MD to support the Northside Park Pier Fireworks. This action is intended to restrict vessel traffic movement in the designated area in order to protect the life and property of the maritime public and spectators from the hazards associated with fireworks displays.

**DATES:** This safety zone is effective from 8:45 p.m. on July 14, 2013, until 9:45 p.m. on August 25, 2013. This safety zone will be enforced from 8:45 p.m. to 9:45 p.m. on the dates listed below in the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2013–0439 and are available online by going to *http://www.regulations.gov*, inserting USCG–2013–0439 in the "SEARCH" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. There is insufficient time remaining to complete an NPRM and any delay encountered in this regulation's effective date by publishing a NPRM is impracticable since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. The Coast Guard will provide advance notifications to users of the effected waterways of the safety zone via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers.

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

### B. Background and Purpose

On each Sunday from July 14, 2013, through August 25, 2013, Special Event Productions, Inc., will host fireworks displays over Assawoman Bay off the pier at Northside Park in Ocean City, MD. The fireworks debris fallout area will extend over the navigable waters of Assawoman Bay. Due to the need to protect mariners and spectators from the hazards associated with the fireworks displays, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted within the fireworks launch and fallout area.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

### C. Discussion of the Rule

The Coast Guard is establishing a safety zone on specified waters of Assawoman Bay in Ocean City, MD. This safety zone will encompass all navigable waters within a 420 foot radius of the fireworks launching platform located at position 38°25′55″ N, 075°03′50.92″ W.

This safety zone will be established and enforced from 8:45 p.m. until 9:45 p.m. on the following: Sundays July 14, 21, & 28, 2013, and August 4, 11, 18, & 25, 2013. In the interest of public safety, general navigation and access to the safety zone will be restricted during the specified date and times. Except for individuals responsible for launching the fireworks and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

### D. Regulatory Analyses

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) mariners may transit the waters in and around this safety

zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

*2. Impact on Small Entities*

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in that portion of Assawoman Bay from 8:45 p.m. until 9:45 p.m. on each Sunday beginning July 14, 2013, and ending August 25, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration. (ii) Before the enforcement period of July 14, 2013 through August 25, 2013, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

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

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

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

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

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0439 to read as follows:

**165.T05–0439 Safety Zone, Assawoman Bay, Ocean City, MD.**

(a) *Location.* The following area is a safety zone: specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, all water of the Assawoman Bay in Ocean City, MD within a 420 foot radius of position 38°25′55″ N 075°03′50.92″ W.

(b) *Definition.* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

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

(d) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 9:45 p.m. on the following dates: July 14, 21 & 28, 2013 and ending August 4, 11, 18 & 25, 2013.

Dated: June 5, 2013.

**John K. Little,**

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

[FR Doc. 2013–15822 Filed 7–1–13; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket No. USCG–2013–0540]

RIN 1625–AA00

## Safety Zone; City of Menominee 4th of July Fireworks, Green Bay, Menominee, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waters of Green Bay near Menominee, MI. This safety zone is intended to restrict vessels from a portion of Green Bay due to a fireworks display. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the fireworks display.

**DATES:** This rule is effective and will be enforced from 9 p.m. until 10:30 p.m. on July 4, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0540. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an notice NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

Under 5 U.S.C. 553(d)(3), The Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

### B. Basis and Purpose

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

The City of Menominee will sponsor a fireworks display on the waters of Green Bay from the break wall of Menominee Memorial Marina during the evening of July 4, 2013. The Coast Guard anticipates that a large number of spectators will congregate around the launch position during the display. The Captain of the Port, Lake Michigan, has determined that the fireworks display will pose a significant risk to public safety and property. Such hazards include falling debris, flaming debris, and collisions among spectator vessels.

### C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the fireworks display

within Green Bay. This zone will be effective and enforced from 9 p.m. until 10:30 p.m. on July 4, 2013. This zone will encompass all waters of Green Bay near Menominee, MI within a 800-foot radius of an approximate launch position at 45°6′25.2″ N, 87°36′4.8″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be small and enforced for only one day in July. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Green Bay on July 4, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons discussed in the *Regulatory Planning and Review* section. Additionally, before enforcement of the zone, we will issue a local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

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

*14. Environment*

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

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

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

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

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

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0540 to read as follows:

**§ 165.T09–0540 Safety Zone; City of Menominee 4th of July Fireworks, Green Bay, Menominee, MI.**

(a) *Location.* All waters of Green Bay near Menominee, MI within a 800-foot radius of an approximate launch position from the break wall at Menominee Memorial Marina at 45°6′25.2″ N, 87°36′4.8″ W (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective and will be enforced from 9 p.m. until 10:30 p.m. on July 4, 2013.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Lake Michigan or his on-scene representative may be contacted via VHF Channel 16.

Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Lake Michigan, or his on-scene representative.

Dated: June 21, 2013.

**M.W. Sibley,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2013–15832 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0541]**

**RIN 1625–AA00**

## Safety Zone; Summer in the City Water Ski Show; Fox River, Green Bay, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Fox River in Green Bay, WI. This safety zone is intended to restrict vessels from a portion of the Fox River due to a water ski show. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the water ski show.

**DATES:** This rule is effective from 6 p.m. on July 10, 2013, until 7:30 p.m. on August 28, 2013. This rule will be enforced from 6 p.m. until 6:30 p.m. and again from 7 p.m. until 7:30 p.m. on each day of July 10, 17, 24, 31, and August 7, 14, 21, and 28, of 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0541. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

**A. Regulatory History and Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to

protect spectators and vessels from the hazards associated with a water ski show, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

**B. Basis and Purpose**

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

For 4 days in July and 4 days in August, 2013, the Waterboard Warrior Ski Team will perform two 30-minute shows on the Fox River between the Hwy 141 Bridge and the West Walnut Street Bridge in Green Bay, WI. These water ski shows will consist of 25 participants and three boats, operating within the main channel of the Fox River. The Captain of the Port, Lake Michigan, has determined that these water ski shows will pose a significant risk to public safety and property. Such hazards include collisions among the water ski show participant vessels and passing traffic on the Fox River.

**C. Discussion of the Final Rule**

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the water ski shows in Green Bay, WI. This rule is will be enforced from 6 p.m. until 6:30 p.m., and again from 7 p.m. until 7:30 p.m. on each day of July 10, 17, 24, 31, and August 7, 14, 21, and 28, 2013. The safety zone will encompass all waters of the Fox River in Green Bay, WI from the Highway 141 Bridge in position 44°31′5.7″ N 88°0′54.7″ W to the West Walnut Street Bridge in position 44°30′54.3″ N 88°1′ 5.3″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be small and enforced for only 30-minute intervals on 4 days in July and 4 days in August, 2013. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended, requires federal agencies to consider the potential impact of this proposed rule on small entities. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Fox River during the times that this zone is enforced in July and August, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the safety zone, the Coast Guard will issue a local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

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

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

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

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

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0541 to read as follows:

**§ 165.T09–0541 Safety Zone; Summer in the City Water Ski Show; Fox River, Green Bay, WI.**

*(a) Location.* All waters of the Fox River in Green Bay, WI from the Highway 141 Bridge in position 44°31′5.7″ N 88°0′54.7″ W to the West Walnut Street Bridge in position 44°30′54.3″ N 88°1′5.3″ W (NAD 83).

*(b) Effective and Enforcement Period.* This rule is effective from 6 p.m. on July 10, 2013 until 7:30 p.m. on August 28, 2013. This rule will be enforced from 6 p.m. until 6:30 p.m., and again from 7 p.m. until 7:30 p.m. on each day of July 10, 17, 24, 31, and August 7, 14, 21, and 28, 2013.

*(c) Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Lake Michigan or his on-scene representative may be contacted via VHF Channel 16.

Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Lake Michigan, or his on-scene representative.

Dated: June 21, 2013.

**M.W. Sibley,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2013–15837 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0059]**

**RIN 1625–AA00**

## Safety Zone; Big Bay Boom, San Diego Bay; San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing four temporary safety zones upon the navigable waters of the San Diego Bay for the annual Port of San Diego Fourth of July Big Bay Boom Fireworks display on the evening of July 4, 2013. These temporary safety zones are necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these temporary safety zones unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective from 8:45 p.m. to 10 p.m. on July 4, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0059. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant John Bannon, Chief of Waterways, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7261, email *d11marineeventssd@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

**A. Regulatory History and Information**

The Coast Guard is issuing this temporary final rule after publishing a Notice of Proposed Rulemaking (NPRM) on May 20, 2013 (78 FR 29289). The Coast Guard received no comments on that NPRM and as such, no changes have been made to this safety zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because it is impracticable and contrary to the public interest. The Coast Guard did not have the necessary event information about this fireworks display in time to provide both a comment period and allow for a 30 day delayed effective date. The Coast Guard was able to take comments on this safety zone prior to publication and enforcement. Immediate action is required to ensure the safety zone is in place to protect participants, crew, spectators, participating vessels, and other vessels and users of the waterway during the event.

**B. Basis and Purpose**

The Ports and Waterways Safety Act gives the Coast Guard authority to create and enforce safety zones. The Coast Guard is establishing four temporary safety zones on the navigable waters of the San Diego Bay for the Fourth of July Big Bay Boom. This event will occur between 8:45 p.m. and 10 p.m. on July 4, 2013. The safety zones will include all navigable waters within 1,000 feet of each tug and barge. The tugs and barges will be located in the following approximate positions:

Shelter Island Barge: 32°42.8′ N, 117°13.2′ W

Harbor Island Barge: 32°43.3′ N, 117°12.0′ W

Embarcadero Barge: 32°42.9′ N, 117°10.8′ W

Seaport Village Barge: 32°42.2′ N, 117°10.0′ W

These temporary safety zones are necessary to provide for the safety of the crew, spectators, and participants of the event, participating vessels, and other vessels and users of the waterway.

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

The Coast Guard received 0 comments on the NPRM for this rule and as such, no changes have been made to the final rule.

The Coast Guard is establishing safety zones that will be enforced from 8:45 p.m. until 10 p.m. on July 4, 2013. These safety zones are necessary to provide for the safety of the crews, spectators, participants, and other vessels and users of the waterway. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative. The temporary safety zones include a portion of waters in the San Diego Bay.

Before the effective period, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the event and associated safety zones. Immediately before and during the fireworks display, Coast Guard Sector San Diego Joint Harbor Operations Center will issue Broadcast Notice to Mariners on the location and enforcement of the safety zones.

Vessels will be able to transit the surrounding area and may be authorized to transit through the safety zones with the permission of the Captain of the Port or the designated representative. Before activating the zones, the Coast Guard will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size, duration and location of the safety zones. The safety zones are relatively small in size, less than half a mile across, and short in duration, 75 minutes long. Although the safety zones would apply to multiple parts of San Diego Bay, traffic would be allowed to pass through the zone with the permission of the Captain of the Port. Additionally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in specified portions of San Diego Bay from 8:45 p.m. to 10 p.m. on July 4, 2013.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will only be in effect for one hour and fifteen minutes late in the evening when vessel traffic is low. Vessel traffic can transit safely around the safety zones while the zones are in effect.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

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

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

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

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

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–548 to read as follows:

**§ 165.T11–548 Safety Zone; Big Bay Boom, San Diego Bay; San Diego, CA.**

(a) *Location.* This rule establishes four temporary safety zones. The safety zones will include all navigable waters within 1,000 feet each tug and barge site. The tug and barge sites will be located in the following approximate positions:

Shelter Island Barge: 32°42.8′ N, 117°13.2′ W
Harbor Island Barge: 32°43.3′ N, 117°12.0′ W
Embarcadero Barge: 32°42.9′ N, 117°10.8′ W
Seaport Village Barge: 32°42.2′ N, 117°10.0′ W

(b) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 10 p.m. on July 4, 2013. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement

vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(3) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: June 21, 2013.

**S.M. Mahoney,**

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

[FR Doc. 2013–15828 Filed 7–1–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 690

**[Docket ID ED–2012–OPE–0006]**

**RIN 1840–AD11**

## Federal Pell Grant Program

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Final rule.

**SUMMARY:** The Secretary adopts as final, without change, the interim final rule published on May 2, 2012, that amended regulations for the Federal Pell Grant program, to prohibit a student from receiving two consecutive Federal Pell Grants in a single award year. The final amendments implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011.

**DATES:** Effective July 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn C. Butler, U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8053, Washington, DC 20006–8542. Telephone: (202) 502–7890.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:** On May 2, 2012, the Secretary published an interim final rule in the **Federal Register** (77 FR 25893), corrected on July 11, 2012 (77 FR 40805), implementing provisions of the Higher Education Act of 1965 (HEA), as amended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, § 1860(a)(2), 125 Stat. 169–70 (2011).

In the interim final rule, the Secretary—

- Delineated the conditions for calculating a Federal Pell Grant for a payment period (77 FR 25894);
- Removed the provision for awarding Federal Pell Grant payments from two Scheduled Awards (77 FR 25894);
- Specified when an institution may assign a crossover payment period that occurs over two award years (77 FR 25894);
- Specified when an institution may pay a transfer student attending more than one institution during an award year (77 FR 25894); and
- Removed regulations that established procedures for awarding a student his or her second Scheduled Award in an award year (77 FR 25895).

The interim final rule was effective on the date of publication, May 2, 2012, and the Secretary requested public comment on whether changes to the regulations were warranted. Additionally, the interim final rule was corrected on July 11, 2012 (77 FR 40805). After considering all comments, the Secretary adopts the interim final rule without change. This document contains a discussion of the comments we received.

### Analysis of Comments and Changes

In response to the Secretary's invitation, 10 parties submitted comments on the interim final rule.

An analysis of the comments received since publication of the interim final rule follows. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

*General Comments*

*Comments:* Several commenters expressed support for the regulatory changes in the interim final rule. One commenter objected to the Secretary's decision to waive rulemaking. The commenter noted that the public should have the opportunity to comment on proposed regulations through a notice of proposed rulemaking.

*Discussion:* The Secretary appreciates the commenters' support. We disagree with the comment that these regulations should have been submitted to the public as proposed regulations for notice and comment. As we discussed in the interim final rule, under the *Waiver of Rulemaking and Delayed Effective Date* section, the Department generally offers interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553). However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). The Secretary determined that there was good cause to waive rulemaking under the APA because the statutory change to prohibit a student from receiving two Federal Pell Grants in a single award year would have resulted in some students losing their Federal Pell Grant eligibility if we delayed making the regulatory change to amend § 690.64 (77 FR 25897). Notice and comment to amend §§ 690.63, 690.65, and 690.67 was unnecessary because we merely updated these sections to reflect statutory changes in Public Law 112–10 that prohibit a student from receiving two Federal Pell Grants in a single award year.

*Changes:* None.

**Payment Period in Two Award Years (§ 690.64)**

*Comments:* One commenter asked if, for a crossover payment period, more than six months of a payment period occurs in an award year, must the Federal Pell Grant award be made from that award year. Another commenter thanked the Department for the regulatory change under § 690.64(a) and (b), noting that the change would allow an institution to comply with the regulations governing the standards of administrative capability under 34 CFR 668.16 when awarding a Federal Pell Grant.

*Discussion:* In August 2008, the Higher Education Opportunity Act (HEOA), Public Law 110–315, added section 401(b)(5) to the HEA, and allowed an eligible student to receive two Federal Pell Grant Scheduled Awards during a single award year. Before then, institutions were required

to assign a payment period that crossed over two award years to the award year where more than six months were scheduled to occur. With the removal of the two Pell provision from the statute, we did not revert back to the pre-HEOA regulations. Instead, the interim final rule amended § 690.64(a)(2) to provide that an institution must determine for each Federal Pell Grant recipient the award year in which the payment period will be placed, giving institutions the ability to assign a crossover payment period in a way that best meets the needs of its students.

The Secretary agrees with the commenter about the effect of § 690.64(a) and (b).

*Changes:* None.

**Transfer Student: Attendance at More Than One Institution During an Award Year (§ 690.65(c) and (f))**

*Comments:* One commenter requested confirmation on whether the regulations apply to the annual Scheduled Award amount or the amount of the Pell Grant Lifetime Eligibility Used. This commenter also questioned whether a transfer student is required to repay the Federal Pell Grant funds that exceeded his or her Scheduled Federal Pell Grant for the award year. Two commenters were concerned that the change to these regulations would negatively affect transfer students. One commenter noted that students who transfer mid-year to a different school would be harmed by these regulations.

*Discussion:* The term used throughout the Federal Pell Grant program regulations is "Scheduled Federal Pell Grant" which is the amount of a Federal Pell Grant that is paid to a full-time student for a full academic year. In other publications, e.g., the Federal Student Aid Handbook, we use the term "Scheduled Award" which has the same meaning as "Scheduled Federal Pell Grant." The term "Pell Grant Lifetime Eligibility Used" is the total of each award year's percentage of the student's Scheduled Award that was disbursed for the student. The Pell Grant Lifetime Eligibility Used is required to comply with the Consolidated Appropriations Act of 2012 (Pub. L. 112–74). The law included a provision that limits a student's eligibility for Federal Pell Grant funds to a maximum of 12 semesters (or its equivalent).

Because the maximum amount of a Scheduled Federal Pell Grant award a student can receive each year is equal to 100 percent, a student's Pell Grant Lifetime Eligibility Used must not exceed six years or a total of six Scheduled Federal Pell Grants (600 percent).

Section 690.79 provides that a student is liable for any Federal Pell Grant overpayment made to him or her, except if the overpayment occurred because the institution failed to follow the procedures in the Federal Pell Grant program regulations or the Student Assistance General Provisions regulations under 34 CFR part 668, in which case, the institution would be liable. A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a Federal Pell Grant overpayment if the amount of the overpayment is less than $25 and is not a remaining balance.

A student who receives a Federal Pell Grant at one institution and then subsequently transfers to a second institution in the same award year may receive a Federal Pell Grant at the second institution for that portion of the award year in which the student is enrolled and has remaining Federal Pell Grant eligibility at that institution that does not exceed the student's Scheduled Award.

Although the commenter is correct that a transfer student may be negatively affected, e.g., the student will receive only the remaining portion of his or her Scheduled Federal Pell Grant award rather than a full Scheduled Federal Pell Grant award at the second institution, the change in the law prohibits a student from receiving more than one Scheduled Federal Pell Grant award during a single award year.

*Changes:* None.

**Receiving Up to Two Scheduled Awards During a Single Award Year (§ 690.67)**

*Comments:* Four commenters opposed the removal of the provision that allows an otherwise eligible student to receive a second Federal Pell Grant Scheduled Award in an award year. One commenter noted that with the reduction in Federal Pell Grant funds, students will be limited by the number of classes they may register for, and this may discourage accelerated program completion. Other commenters opined that without the additional Federal Pell Grant funds, students will be forced to incur more loan debt in order to complete their postsecondary education.

*Discussion:* Section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Public Law 112–10), repealed section 401(b)(5) of the HEA under which an otherwise eligible student could receive more than one Federal Pell Grant in an award year. While we understand the commenters' concerns, the Secretary does not have the authority to change statutory requirements.

*Changes:* None.

**Executive Orders 12866 and 13563**

*Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

The statutory elimination of the two Pell Grant option as reflected in this regulatory action is economically significant and subject to review by OMB under section 3(f)(1) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety,

and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are adopting this interim rule as final without change only after a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis presented in the interim final rule, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. We discussed the potential costs and benefits of these regulations in the interim final rule. (77 FR 25895).

**Waiver of Delayed Effective Dates**

The Administrative Procedure Act (APA) generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). In addition, these final regulations are a major rule for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, et seq.). Generally, under the CRA, a major rule takes effect 60 days after the date on which the rule is published in the **Federal Register.** Section 808(2) of the CRA, however, provides that any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

As stated in detail in the interim final rule, 77 FR 25897 (May 2, 2012), because these final regulations merely reflect statutory changes and remove obsolete regulatory provisions and, in the case of § 690.64, protect students from receiving reduced amounts of Pell Grant funds, there is good cause to waive the delayed effective dates under the APA and the CRA and make these final regulations effective on the day they are published.

**Regulatory Flexibility Act**

*Final Regulatory Flexibility Analysis*

These final regulations affect institutions that participate in title IV, HEA programs, and individual Pell Grant recipients. The effect of the elimination of two Pell Grants in one year will depend on the extent students replace the funds from other sources or change their academic plans, the distribution of recipients of a second Pell Grant, and the alternative use of the funds. This Final Regulatory Flexibility Analysis presents an estimate of the effect on small institutions of the statutory changes implemented through these final regulations. In the interim final rule, the Department welcomed comments about the estimates of the costs and benefits of the changes implemented in these final regulations. While some commenters questioned the benefits of Pell Grants or the effect of the changes on transfer students, no comments were received about the specific estimates of the effect on small entities presented in the Initial Regulatory Flexibility Analysis (77 FR 25895–25897).

**Succinct Statement of the Objectives of, and Legal Basis for, These Final Regulations**

These final regulations remove regulatory provisions related to the availability of two Pell Grants in one year to comply with section 1860(a)(2) of division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10), which repealed section 401(b)(5) of the HEA under which an otherwise eligible student could receive more than one Federal Pell Grant in an award year.

**Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which These Final Regulations Will Apply**

These final regulations affect institutions that participate in title IV, HEA programs and loan borrowers. The definition of "small entity" in the Regulatory Flexibility Act encompasses "small businesses," "small organizations," and "small governmental jurisdictions." The definition of "small business" comes from the definition of "small business concern" under section 3 of the Small Business Act as well as regulations issued by the U.S. Small Business Administration (SBA). The SBA defines a "small business concern" as one that is "organized for profit; has a place of business in the U.S.; operates primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor . . . ." "Small organizations" are further defined as any "not-for-profit enterprise that is independently owned and operated and not dominant in its field." The definition of "small entity" also includes "small governmental jurisdictions," which includes "school districts with a population less than 50,000."

Data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 3,448 institutions representing approximately 63 percent of those institutions participating in the Federal student assistance programs meet the definition of "small entities" when all private nonprofit institutions are classified as small because none is dominant in the field. If the $7 million in revenue requirement were applied to private nonprofit institutions, the number of small entities would be reduced to 2,386 or 43.6 percent of institutions. Table 2 summarizes small institutions and their percent of AY 2008–2009 Pell Grant recipients and amounts by sector.

TABLE 2—AY 2008–2009 PELL GRANT RECIPIENTS AND AMOUNTS BY SECTOR

| | Small institutions | | Percent of Pell Grant recipients | $ (percent) |
|---|---|---|---|---|
| | Recipients No. | Percent of sector recipients | | |
| Public 4-year | 4 | 0.7 | 0.0 | 0.0 |
| Private nonprofit 4-year* | 444 | 30.0 | 5.6 | 5.9 |
| Private for-profit 4-year | 52 | 24.6 | 1.0 | 1.0 |
| Public 2-year | 88 | 8.5 | 0.8 | 0.7 |
| Private nonprofit 2-year* | 147 | 86.5 | 54.6 | 53.3 |
| Private for-profit 2-year | 405 | 69.6 | 21.1 | 21.5 |
| Public <2-year | 202 | 87.4 | 62.6 | 61.6 |
| Private nonprofit <2-year* | 61 | 93.8 | 51.4 | 51.1 |
| Private for-profit <2-year | 983 | 89.4 | 44.5 | 44.4 |

Source: IPEDS 2008–2009.

* Applies $7 million revenue standard to private nonprofit institutions for informational purposes. If not applied, the number of institutions in the private nonprofit sectors would be 1,479 four-year, 170 two-year, and 65 less-than-two-year institutions. All Pell Grant recipients and Pell Grant disbursements in the private nonprofit sectors would be small entities.

Using the distribution of Pell Grant recipients and amounts at small institutions from Table 2 and the Department's estimated two Pell Grant recipients and amounts, the estimated maximum cost to small institutions across all sectors for the period from 2011–2012 to 2015–2016 is approximately $1.67 billion. The estimated recipients and amounts by type of institution are summarized in Table 3. The amount of grant aid lost for any individual institution will depend on the extent the second Pell Grant option was utilized at that school. If distributed evenly across all small entities, with nonprofit institutions subject to the $7 million revenue requirement for a more uniform profile of institutions, an annual average of $150,000 would not be available from second Pell Grants in one award year. As discussed in the *Summary of Potential Cost and Benefits* section of the interim final rule, much of this revenue will be available from other sources including the preservation of the maximum grant level in the Pell Grant Program, student earnings or savings, and increased student debt.

TABLE 3—ESTIMATED PELL GRANT RECIPIENTS AND AMOUNTS AT SMALL INSTITUTIONS

| | Estimated Pell Grant recipients at small institutions | | | | |
|---|---|---|---|---|---|
| | AY 2011–12 | AY 2012–13 | AY 2013–14 | AY 2014–15 | AY 2015–16 |
| Public 2 yr | 4,060 | 4,963 | 4,997 | 5,123 | 5,256 |
| Public 4 yr | 143 | 175 | 176 | 181 | 185 |
| Private | 18,152 | 22,190 | 22,342 | 22,904 | 23,501 |
| Proprietary | 78,907 | 96,459 | 97,120 | 99,562 | 102,157 |
| Total | 101,263 | 123,787 | 124,636 | 127,770 | 131,100 |

| | Estimated Pell Grant amounts in millions at small institutions | | | | |
|---|---|---|---|---|---|
| | AY 2011–12 | AY 2012–13 | AY 2013–14 | AY 2014–15 | AY 2015–16 |
| Public 2 yr | 10.6 | 13.0 | 13.3 | 13.8 | 14.5 |
| Public 4 yr | 0.4 | 0.5 | 0.5 | 0.5 | 0.5 |
| Private | 43.9 | 53.8 | 55.1 | 57.3 | 59.9 |
| Proprietary | 215.7 | 264.4 | 270.8 | 282.0 | 294.6 |
| Total | 270.5 | 331.6 | 339.6 | 353.7 | 369.4 |

Source: IPEDS 2008–2009 and Department of Education estimates.

**Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of These Final Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary For Preparation of the Report or Record**

These final regulations do not impose any new reporting, record keeping, or other compliance requirements on institutions.

**Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With These Final Regulations**

These final regulations are unlikely to conflict with or duplicate existing Federal regulations.

**Alternatives Considered**

No alternatives were considered for the amendments to §§ 690.63(g)(1), 690.63(h), 690.65(c), 690.65(f), and 690.67 because these changes implement changes to the HEA enacted by Congress and the Department did not exercise discretion in developing these amendments. With respect to § 690.64, the Department could have left the current regulations in place. However, such an action would have led to potentially serious adverse effects on students, as described in the *Waiver of Rulemaking and Delayed Effective Date*

section of the preamble in the interim final rule.

**Paperwork Reduction Act of 1995**

These final regulations do not create any information collection requirements. With the removal of §§ 690.63(h) and 690.67 and the revision of § 690.64, due to the statutory changes, the paperwork burden associated with those sections are also removed. This change results in the discontinuation of information collection 1845–0098 and, therefore, the elimination of 109,605 burden hours associated with that collection.

**Intergovernmental Review**

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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(Catalog of Federal Domestic Assistance Number: 84.063 Federal Pell Grants)

**List of Subjects in 34 CFR Part 690**

Colleges and universities, Elementary and secondary education, Grant programs-education, Student aid.

Dated: June 26, 2013.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in the preamble, the interim final rule that amended 34 CFR part 690, published at 77 FR 25893 on May 2, 2012, is adopted as final without change.

[FR Doc. 2013–15709 Filed 7–1–13; 8:45 am]

BILLING CODE 4000–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 51, 53, 63, and 64**

**[CC Docket Nos. 95–20, 98–10, WC Docket No. 10–132; FCC 13–69]**

## Data Practices, Computer III Further Remand: BOC Provision of Enhanced Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Report and Order eliminates comparably efficient interconnection (CEI) and open network architecture (ONA) narrowband reporting requirements applicable to the Bell Operating Companies (BOCs). These requirements have been in place to monitor the BOCs' compliance with access and interconnection services that they must offer to competitive enhanced service providers (ESPs). The Commission no longer relies on the reports in the course of its decision making, and there is nothing in the record indicating that the reports contain information that is useful to ESPs. Eliminating them will improve the way the Commission collects, uses, and disseminates data, including by altering or eliminating collections that are no longer useful or necessary to carry out our statutory responsibilities.

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

**FOR FURTHER INFORMATION CONTACT:** Jodie May, WCB, CPD, (202) 418–1580 or *Jodie.May@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** In this Report and Order, we permanently eliminate annual, semi-annual, quarterly, and non-discrimination reporting requirements applicable to the BOCs' narrowband CEI and ONA services. The Commission implemented these reporting requirements under its Computer III framework to monitor the BOCs' compliance with the obligation to provide non-discriminatory access to basic network services for unaffiliated ESPs. In August 2011, the Commission Bureau waived the reporting requirements pending resolution of the issues in the Report and Order. The Report and Order furthers the Commission's efforts to modernize agency data collections and reduce reporting burdens where appropriate and consistent with the public interest.

### I. Background

1. On February 8, 2011, in a Notice of Proposed Rulemaking (CEI/ONA Notice), the Commission proposed eliminating the legacy CEI/ONA narrowband reporting requirements required under the Computer III safeguards "due to a lack of continuing relevance and utility." 76 FR 11407–01 (Mar 2, 2011). The CEI/ONA Notice stated that the Commission does not rely on any of the submissions in the course of its decision making. On August 11, 2011, the Bureau granted on its own motion a waiver of the CEI/ONA narrowband reporting requirements pending resolution of the CEI/ONA Notice. The Bureau stated that, while it did not prejudge the outcome of the rulemaking, the record suggested that the reports are of limited utility and did not justify the burden and expense of preparing them. Review of Wireline Competition Bureau Data Practices, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements, Notice of Proposed Rulemaking, WC Docket No. 10–132, CC Docket Nos. 95–20, 98–10, 26 FCC Rcd 11280, 11280–81, para. 3 (2011). No commenter to the CEI/ONA Notice supported retaining the reporting requirements.

2. The CEI/ONA Notice sought comment on eliminating the BOCs' annual, semi-annual, quarterly, and non-discrimination reporting requirements. Prior to the waiver described above, the BOCs filed annual reports containing projected deployment schedules for ONA services by type of service and percentage of access lines and by market area; disposition of individual requests for ONA services, including action on requests deemed technically infeasible; information about ONA services that were offered through technologies that were new at the time the Commission adopted the requirements, such as Signaling System 7 and Integrated Services Digital Network systems; information about operations support services and billing; and extensive lists of services that the BOC used for its own enhanced services operations. The BOCs were also required to file semi-annual reports containing a consolidated nationwide matrix of ONA services and corresponding state and federal tariff descriptions, computer diskettes and printouts of all tariffs, information on 118 categories of network capabilities requested by ESPs, and the BOC's "ONA Services User Guide," all on paper and diskette. They filed non-discrimination reports or affidavits, most on a quarterly basis, that published intervals for installation, repair dates, trouble reports, and timelines for BOC

operations as compared to BOC provisioning of service to competitors. For CEI, the Commission permits the BOCs to post their substantive CEI plans on the Internet and then notify the Bureau at the time of the postings. The BOCs are no longer required to obtain Commission pre-approval before posting the plans, but CEI reporting obligations required the BOCs to file paper reports demonstrating compliance with certain nondiscrimination standards.

## II. Report and Order

3. In this Report and Order, we eliminate the CEI/ONA narrowband reporting requirements. The Commission no longer relies on any of the reports in the course of its decision making, and there is nothing in the record indicating that the reports contain information that remains useful to competitive ESPs. No commenter has indicated that it uses the reported data.

4. The narrowband reporting requirements are outdated in many respects. For example, the BOCs are required to report on installation and maintenance intervals for detailed categories of ONA service that the Commission established in 1990. Those reporting categories were based on service codes that were in use by the BOCs' provisioning systems during the 1980s. Recent ONA reports contain data for reporting categories that are still active, such as business and Centrex-based services, but many of the original category codes contain no provisioning data.

5. The BOCs argue that the reports increased their costs of providing service. CenturyLink states that, for each semi-annual report, which was over 500 pages and filed in older file formatting technology, it incurred internal costs plus the cost of outside consultants to prepare the reports. It further states that it incurred costs associated with having to prepare the reports jointly with other BOCs. The Commission itself has identified inefficiencies associated with requiring each BOC to file its own ONA information even though some of this information does not vary among providers. For example, each BOC reported on the network capabilities it used to provide basic narrowband services even if the capabilities did not vary in the industry. In addition, the Commission has previously inquired about whether the annual and semi-annual reports required redundant information on ONA service availability, some of which is already delineated in state and federal tariffs filed by the BOCs. Overall, the record in the CEI/ONA Notice contains no evidence that continuing the reports would provide useful information, and we are convinced that the costs and burdens of preparing them outweigh the benefits. The Commission has stated that it must "collect the data it needs, and only the data it needs to carry out its statutory responsibilities." Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules, IB Docket No. 04–112, First Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 7274, 7275, para. 1 (2011). Unnecessary filing and reporting requirements impose administrative costs on carriers that can lead to increased rates for consumers and are not in the public interest.

6. In light of these conclusions, we find that continued application of the narrowband CEI and ONA reporting requirements is no longer necessary. Since the Bureau waived the requirements in 2011, no commenters have indicated that the elimination of the required reports has impeded their enhanced service offerings or otherwise prevented them from obtaining non-discriminatory access to CEI/ONA services. We find that it is more efficient to detect possible access discrimination by looking at specific, focused information in the context of an individual complaint proceeding under section 208 of the Act than through these outdated monitoring reports. 47 U.S.C. 208.

## III. Procedural Matters

### *A. Paperwork Reduction Analysis*

7. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3501–3520. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

### *B. Congressional Review Act*

8. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

### *C. Final Regulatory Flexibility Analysis*

9. Final Regulatory Flexibility Certification. The Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601 et seq., requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

10. This Report and Order eliminates CEI/ONA narrowband reporting requirements that have been in place to monitor the BOCs' compliance with access and interconnection services that they must offer to competitive ESPs. It finds that the Commission does not rely on any of the reports in the course of its decision making, and there is nothing in the record indicating that the reports contain information that is currently useful to competitive ESPs. In addition, no commenter to the proceeding indicated that we should retain the reports. The underlying substantive requirements associated with CEI and ONA with which the BOCs must comply will remain in effect.

11. SBA defines small telecommunications entities as those with 1,500 or fewer employees. 13 CFR 121.201, NAICS Code 517110, Wired Telecommunications Carriers. This proceeding pertains to the BOCs, which, because they would not be deemed a "small business concern" under the Small Business Act and have more than 1,500 employees, do not qualify as small entities under the RFA. Therefore, we certify that the requirements of this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Report and Order including a copy of this final certification in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 801(a)(1)(A). In addition, the Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and is published in the **Federal Register**. 5 U.S.C. 605(b).

## IV. Ordering Clause

12. *It is ordered* that, pursuant to Sections 1, 2, 4, 11, 201–205, 251, 272, 274–276, and 303(r) of the

Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 161, 201–205, 251, 272, 274–276, and 303(r) this Report and Order in WC Docket No. 10–132 *is adopted.* The requirements of this Report and Order *shall be effective* 30 days after publication in the **Federal Register.**

Federal Communications Commission.

**Sheryl Todd,**

*Deputy Secretary.*

[FR Doc. 2013–15642 Filed 7–1–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 79

**[MB Docket No. 11–154; FCC 13–84]**

### Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission affirms, modifies, and clarifies certain decisions adopted in the *Report and Order* in MB Docket No. 11–154 regarding closed captioning requirements for video programming delivered using Internet protocol ("IP") and apparatus used by consumers to view video programming. The action is taken in response to three petitions for reconsideration of the *Report and Order,* which adopted rules governing the closed captioning requirements for the owners, providers, and distributors of IP-delivered video programming and rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming.

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

**FOR FURTHER INFORMATION CONTACT:** Diana Sokolow, *Diana.Sokolow@fcc.gov,* or Maria Mullarkey, *Maria.Mullarkey@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order on Reconsideration,* FCC 13–84, adopted on June 13, 2013 and released on June 14, 2013. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

### Paperwork Reduction Act of 1995 Analysis

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### Summary of the Order on Reconsideration

#### I. Introduction

1. In this *Order on Reconsideration,* we affirm, modify, and clarify certain decisions adopted in the *Report and Order* in MB Docket No. 11–154 regarding closed captioning requirements for video programming delivered using Internet protocol ("IP") and apparatus used by consumers to view video programming. The actions we take will provide the industry and consumers with certainty about the scope of the captioning obligations before the January 1, 2014 compliance deadline for apparatus.

2. Specifically, we address three petitions for reconsideration of the *Report and Order,* which adopted rules governing the closed captioning requirements for the owners, providers, and distributors of IP-delivered video programming and rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming. First, we address the Petition for Reconsideration of the Consumer Electronics Association ("CEA") by: (1) Granting narrow class waivers for certain apparatus that are primarily designed for activities other than receiving or playing back video programming, while denying CEA's broader request that the Commission narrow the scope of § 79.103 of its rules; (2) denying CEA's request that removable media players are not subject to the closed captioning requirements but, at the same time, temporarily extending the compliance deadlines for Blu-ray players as well as for those DVD players that do not currently render or pass through captions, pending resolution of the *Further Notice of Proposed Rulemaking* ("FNPRM"); [1] and (3) granting CEA's request to modify the January 1, 2014 deadline applicable to apparatus to refer only to the date of manufacture, and not to the date of importation, shipment, or sale. Second, we deny the Petition for Reconsideration of TVGuardian, LLC ("TVGuardian"), which requests that the Commission reconsider its decision to allow video programming providers and distributors to enable the rendering *or* pass through of captions to end users and instead to require video programming providers and distributors, and digital source devices, to pass through closed captioning data to consumer equipment. Third, we address the Petition for Reconsideration of Consumer Groups by: (1) deferring resolution of whether to reconsider the Commission's decision to exclude video clips from the scope of the IP closed captioning rules, and directing the Media Bureau to issue a Public Notice to seek updated information on this topic within six months; and (2) issuing an *FNPRM* to obtain further information necessary to determine whether the Commission should impose synchronization requirements on device manufacturers. Our goal in this proceeding remains to implement Congress's intent to better enable individuals who are deaf or hard of hearing to view video programming. In considering the requests made in the petitions for reconsideration, we have evaluated the effect on consumers who are deaf or hard of hearing as well as the cost of compliance to affected entities.

#### II. Background

3. On October 8, 2010, President Obama signed into law the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA"). The CVAA required the Commission, by January 12, 2012, to establish closed captioning rules for the owners, providers, and distributors of IP-delivered video programming, and for certain apparatus on which consumers view video programming. The CVAA also required the Commission to establish an advisory committee known as the Video Programming Accessibility

[1] The *FNPRM,* adopted with the *Order on Reconsideration,* is published elsewhere in this publication.

Advisory Committee ("VPAAC"), which submitted its statutorily mandated report on closed captioning of IP-delivered video programming to the Commission on July 12, 2011 ("VPAAC First Report"). The Commission initiated this proceeding in September 2011, and it adopted the *Report and Order* on January 12, 2012. In the *NPRM* and the *Report and Order*, the Commission provided extensive background information regarding the history of closed captioning, IP-delivered closed captioning, applicable provisions of the CVAA, the VPAAC First Report, and the evolution of video programming distribution, which we need not repeat here.

4. The *Report and Order* was published in the **Federal Register** on March 30, 2012. CEA, TVGuardian, and Consumer Groups each filed a timely petition for reconsideration within 30 days of the **Federal Register** publication date. Each of the petitions for reconsideration is discussed in turn below.

## III. Order On Reconsideration

### *A. Petition for Reconsideration of the Consumer Electronics Association*

#### 1. Scope of the Apparatus Closed Captioning Rules

5. As explained below, we address CEA's claims regarding the scope of the Commission's apparatus closed captioning rules, adopted pursuant to section 203 of the CVAA, by: (1) Affirming the Commission's decision that, to determine what an apparatus was "designed to" accomplish, we should consider the capabilities of the apparatus and not the manufacturer's subjective intent; (2) revising the note to paragraph (a) of § 79.103 of our rules to be more consistent with the statute; and (3) exempting through waiver certain narrow classes of apparatus that are primarily designed for activities unrelated to receiving or playing back video programming [2] transmitted simultaneously with sound.

6. *Meaning of "designed to."* We affirm the Commission's decision in the *Report and Order* that the determination of whether an apparatus was "*designed to* receive or play back video programming transmitted simultaneously with sound" and therefore covered by section 203 of the CVAA, should turn on the capabilities of the apparatus, not the manufacturer's intent. CEA argues that the statutory phrase "designed to" suggests that the closed captioning apparatus rules may only reach apparatus that the manufacturer intends to receive, play back, or record video programming.[3] We disagree. Nowhere does the statute reference the "intent" underlying the design and manufacture of an apparatus.

7. We disagree with CEA that Congress meant its use of the word "designed" to impose a consideration of the manufacturer's intent. Instead, we reiterate our finding in the *Report and Order* that we should look to the device's functionality, *i.e.*, whether it is capable of receiving or playing back video programming, to determine what the device was designed to accomplish. CEA's proposed approach of considering the manufacturer's intent would allow the manufacturer unilaterally to dictate whether an apparatus falls within the scope of the rules, which could harm consumers by making compliance with the apparatus closed captioning requirements effectively voluntary. Such an approach would not be consistent with Congress's intent to "ensure[] that devices consumers use to view video programming are able to display closed captions," because devices that consumers actually use to view video programming might not have closed captioning capability if manufacturers could evade our requirements by claiming that they did not intend such use. CEA has not raised any new arguments that persuade us that the Commission's reasoning in the *Report and Order* was incorrect. Accordingly, we affirm our findings in the *Report and Order* and deny CEA's petition for reconsideration on this issue.

8. *Definition of video player.* We revise our definition of "apparatus" to make clear that the "video players" it includes are those capable of displaying video programming transmitted simultaneously with sound. The note to paragraph (a) of § 79.103 of our rules currently reads: "Apparatus includes the physical device and the video players that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players that manufacturers direct consumers to install after sale." CEA argues that the Commission should revise the note to § 79.103(a) of our rules to replace the term "video player" with "video programming player," and that we should define a "video programming player" as "a component, application, or system that is specifically intended by the manufacturer to enable access to video programming, not video in general." CEA claims that its approach would be consistent with Congress's intent to limit the application of the apparatus closed captioning rules to apparatus containing a subset of video players, not all video players, and that the Commission's approach in the *Report and Order* exceeded its statutory authority by going beyond this intent. Consumer Groups indicate their broad opposition to CEA's arguments, but they do not make more specific assertions regarding the definition of "video players" subject to our rules.

9. To address CEA's argument that our rules should only reach a subset of video players, and to make the language in our rule more consistent with the statute, we revise the note to § 79.103(a) of our rules to replace references to "video players" with "video player(s) capable of displaying video programming transmitted simultaneously with sound." Here, as elsewhere in the rules adopted in the *Report and Order*, we intend the term "video programming" to have the same meaning it was given in the CVAA. Accordingly, a video player that is not capable of displaying programming provided by, or generally considered comparable to programming provided by, a television broadcast station, excluding consumer-generated media, is not subject to the rules. For example, a video player that is only capable of displaying home videos that a consumer recorded on the device is not "capable of displaying *video programming* transmitted simultaneously with sound." We believe that by clarifying the language of our rules to specify video players that are capable of displaying "video programming transmitted simultaneously with sound," we will address CEA's fundamental concern that our definition of "apparatus" should be consistent with the CVAA.

10. We decline to replace the term "video player" with "video programming player" in the note to § 79.103(a). CEA's proposed definition of "video programming player" relies upon a consideration of the manufacturer's intent, by defining a "video programming player" as "a component, application, or system that is specifically intended by the

[2] Herein we use the phrase "video programming" as the CVAA defines the term, which is "programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media. . . ." 47 U.S.C. 613(h)(2).

[3] Consumer Groups point out that CEA fails to add any substance to its argument on this issue from what it argued during the rulemaking proceeding, and argue that the Commission should reject the argument again. CEA disagrees, citing to specific new facts and arguments that it presented in its petition, and arguing that reconsideration is warranted to serve the public interest.

manufacturer to enable access to video programming." As discussed above, we disagree with CEA that we should look to manufacturer intent. In any event, such a change is unnecessary because the revised definition we adopt in this *Order on Reconsideration* accomplishes CEA's goal of making the definition no broader than Congress intended.

11. *Narrow class waivers for certain apparatus.* Even with the clarification above that our closed captioning apparatus rules cover video players capable of displaying video programming transmitted simultaneously with sound, we find a waiver to be appropriate for certain narrow classes of apparatus. For example, digital still cameras may be covered by our apparatus rules because they may enable consumers to use a memory card to view video programming via the apparatus's video player. Accordingly, in response to CEA's petition for reconsideration, we now exempt through waiver certain narrow classes of apparatus that are "primarily designed" for activities unrelated to receiving or playing back video programming transmitted simultaneously with sound. The CVAA provides the Commission with authority, on its own motion or in response to a petition, to waive the apparatus closed captioning requirements for any apparatus or class of apparatus "primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound." The *Report and Order* stated that such waivers will be addressed on a case-by-case basis and rejected overly broad waiver requests made by several commenters. CEA argues that certain apparatus, such as digital still cameras and consumer video cameras, should not be subject to our rules because their manufacturers did not intend these apparatus to be used for receiving or playing back video programming. Although, for the reasons stated above, we do not agree that our analysis turns on the manufacturer's intent, we agree with CEA that these types of devices should not be subject to our rules and, as described below, we grant waivers to those devices that meet the statutory criteria for waiver as described below.

12. We grant a waiver pursuant to section 303(u)(2)(C)(i) for two classes of apparatus that we find, based on the standard described below, are "primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound." Upon consideration of that standard, we conclude that the following two classes of apparatus qualify for waiver: (i) devices that are primarily designed to capture and display still and/or moving images consisting of consumer-generated media, or of other images that are not video programming as defined under the CVAA and our rules, and that have limited capability to display video programming transmitted simultaneously with sound;[4] and (ii) devices that are primarily designed to display still images and that have limited capability to display video programming transmitted simultaneously with sound.[5] In determining whether an apparatus or class of apparatus falls within the scope of the "primarily designed" waiver, we look at the various functions and capabilities of the apparatus or class of apparatus. Where the apparatus's ability to display video programming, as that term is defined in the CVAA and our rules, is only incidental, then we will determine that such apparatus is "primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound." In determining whether an apparatus's ability to display video programming is incidental, we objectively look at the activities for which consumers use the apparatus, based on the apparatus's functions and capabilities and the ease with which consumers can use the apparatus to receive or play back video programming.[6] Again, the manufacturer's subjective intent is not considered in this analysis.

13. For example, applying this analysis to digital cameras, we find that it would be difficult for consumers to view video programming on digital cameras with no ability to receive content from the Internet because doing so would require transferring video programming to a memory card on another device, and then inserting the memory card into the camera. The inconvenience of taking these steps in order to view video programming on the camera screen, including the fact that a camera lacks the full panoply of playback controls typically used to view video programming, leads us to conclude that the device's ability to display video programming is incidental. Accordingly, digital cameras are an example of a device that is subject to the waiver as part of the first class of apparatus described above: devices that are primarily designed to capture and display still and/or moving images consisting of consumer-generated media, or of other images that are not video programming as defined under the CVAA and our rules, and that have limited capability to display video programming transmitted simultaneously with sound. In contrast, if a digital camera includes a general purpose operating system such as Android, and it can receive content from the Internet and easily display video programming transmitted simultaneously with sound in that manner, then its ability to display video programming will be considered to be more than incidental because it includes more video playback controls (via its Internet connectivity) and the ability to receive content from the Internet suggests that consumers use the apparatus to view video programming available online.

14. As stated above, under the test described herein, we find the following two classes of devices will qualify for waiver: (i) devices that are primarily designed to capture and display still and/or moving images consisting of consumer-generated media, or of other images that are not video programming as defined under the CVAA and our rules, and that have limited capability to display video programming transmitted simultaneously with sound; and (ii)

[4] This category includes, for example, digital still cameras, digital video cameras, baby monitors, security cameras, digital video camera microscopes, digital playback binoculars (which act as a combination of a binocular and a digital camera), and digital probes for viewing and playing video of enclosed spaces (which capture still and/or moving images of spaces that are difficult to reach). One factor critical to our waiver analysis is that for the listed devices, consumers use the video playback feature or function to play back the consumer-generated images (still or moving) taken by the device; but it would take additional effort by the consumer to adapt the device to access video programming. By contrast, this category does not include devices such as cell phones that capture images but that consumers use for other purposes, including receiving or playing back video programming transmitted simultaneously with sound, as evidenced, for example, by the inclusion of Internet capability on such devices. Finally, we emphasize that the list of devices identified above is intended to be merely illustrative, and not exhaustive, of the types of devices that qualify under this waiver class.

[5] This category includes, for example, digital picture frames. It does not include digital picture frames that are primarily designed to display still photographs *and* video, because consumers could use such frames to display video programming, and thus the frames could operate much like a television screen.

[6] We find that in general, the devices about which CEA expressed specific concerns (digital still cameras, digital video cameras, baby monitors, security cameras, digital video camera microscopes, digital playback binoculars, digital picture frames that display photos, and digital probes for viewing and playing video of enclosed spaces) have only an incidental ability to view video programming, if there is any such capability, because consumers purchase the devices for activities unrelated to receiving or playing back video programming (for example, in the case of digital still cameras, for taking photographs), and consumers cannot easily use the devices to receive or play back video programming.

devices that are primarily designed to display still images and that have limited capability to display video programming transmitted simultaneously with sound. We find that identifying the classes of apparatus that qualify for waiver rather than identifying a finite set of specific devices will provide industry with adequate certainty and will alleviate the need for manufacturers to seek individual waivers for each and every device that meets the specified criteria for the waiver class.[7] If it is unclear whether a particular apparatus qualifies for the waiver described herein, or if the manufacturer seeks a waiver pursuant to a separate provision of the CVAA that authorizes waivers for multi-purpose devices, then the device manufacturer may file a waiver request, which we will consider on a case-by-case basis.

15. Although CEA would have preferred that the Commission amend its rules so that they do not encompass certain devices,[8] we find that our approach of defining narrow class waivers serves the objectives of, and is most consistent with, the CVAA, which specifically grants us authority to waive the closed captioning requirements for specific classes of apparatus.[9] As explained above, we thus exercise our discretion to proceed by waiver consistent with the statute. We expect that the class waivers granted herein will provide manufacturers with certainty as to the status of the devices subject to the waivers, and thus, will not stifle innovation.

2. Application of the Apparatus Rules to Removable Media Players

16. CEA requests that the Commission reconsider its legal analysis that concludes that removable media players are apparatus covered by § 79.103 of the Commission's rules, and thus must be equipped with capability to display closed-captioned programming. Although we deny CEA's petition for reconsideration on this issue, we find that some DVD players currently satisfy the closed captioning requirements of the CVAA. With regard to other DVD players as well as Blu-ray players, we temporarily extend the deadline for compliance with our apparatus closed captioning rules pending resolution of the *FNPRM* on this issue.[10]

17. As an initial matter, we reject two statutory arguments CEA makes in support of its request to exempt removable media players from the scope of the apparatus closed captioning rules. First, we reject CEA's argument that the phrase "transmitted simultaneously with sound" appearing in section 203 requires transmission by wire or radio, and not merely the act of a user playing back video programming. CEA has reiterated its previous arguments regarding this issue, arguing again that "transmitted" means sent across a distance by wire or radio. The Commission has already considered, addressed, and rejected these arguments in the *Report and Order*. We reaffirm the Commission's prior analysis that the phrase "transmitted simultaneously with sound" describes how video programming is conveyed from the device to the end user, and not how the video programming arrives at the device.[11]

18. Second, we reject CEA's claim that Congress did not intend to reach removable media players within the scope of the closed captioning requirements, and that their inclusion thus exceeds Commission authority. CEA has reiterated its previous arguments regarding this issue, arguing that "Congress meant to extend coverage to devices that play back content that was sent to the device by means (*e.g.*, via IP) other than traditional broadcasting or cable service," and not to "extend[] captioning requirements to removable media players." The Commission has already considered, addressed, and rejected these arguments in the *Report and Order*. We reaffirm the Commission's prior analysis in this proceeding, finding that Congress indicated that section 203 of the CVAA applies to "apparatus designed to receive or play back video programming," and it did not limit the scope of covered apparatus from reaching apparatus that only play back video programming as CEA claims.

19. *DVD players.* Having rejected CEA's statutory arguments, we find that some DVD players currently satisfy the closed captioning requirements of the CVAA. For other DVD players we temporarily extend the deadline for compliance with our apparatus closed captioning rules pending resolution of the *FNPRM* on this issue. The apparatus closed captioning rules and the CVAA itself require apparatus to "be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming." To the extent that any DVD players render closed captions, they are not subject to the extension granted herein because they comply with the CVAA and our implementing rules since they are "equipped with built-in closed caption decoder circuitry . . . designed to display closed-captioned video programming" on a television. Other DVD players use their analog output to pass through closed captions to the television, which then renders the captions. We find that DVD players with pass through capability

[7] We find that there is good cause to grant the waivers. Specifically, the waivers would serve the public interest by avoiding imposing captioning compliance costs on apparatus where there is no evidence that consumers purchase such apparatus to receive or play back video programming transmitted simultaneously with sound. Additionally, the waivers are narrow and consistent with the CVAA: they apply only to apparatus primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound, where any ability to display video programming is only incidental.

[8] CEA also argues that the presence of a waiver mechanism cannot save or justify an irrational rule.

[9] Manufacturers are free to file additional requests for waiver with respect to other apparatus or classes of apparatus and we will rule on those requests based upon the facts presented. The CVAA provides the Commission with the authority to waive the apparatus closed captioning requirements based on the apparatus's primary purpose either in response to a petition by a manufacturer or on its own motion. 47 U.S.C. 303(u)(2)(C). Thus, we reject Consumer Groups' claims that we should decline to act on CEA's request in this *Order on Reconsideration* and instead should require manufacturers to file individual requests for waiver. We find that addressing the waivers herein is the most administratively efficient approach, and we note that Consumer Groups have not objected on the merits to the grant of the waivers for these narrow classes of apparatus.

[10] Although DVD players generally are single-purpose devices, manufacturers often include Blu-ray players in multi-purpose devices. The extension granted herein applies only to the removable media playback function of a DVD or Blu-ray player, and it does not apply to any other function of a device that contains a DVD or Blu-ray player. For example, if a Blu-ray player also records video programming or receives or plays back IP-delivered video programming, then the extension does not apply with respect to the non-removable media playback function.

[11] Section 203 of the CVAA expressly applies to "apparatus designed to receive or *play back* video programming transmitted simultaneously with sound." 47 U.S.C. 303(u)(1) (emphasis added). Accordingly, we reject CEA's claim that the Commission's interpretation of "transmitted simultaneously with sound" as describing how the video programming is conveyed from the device to the end user is inconsistent with section 2(a) of the Communications Act of 1934, as amended (the "Act"), which generally limits the Commission's jurisdiction to "interstate and foreign communication by wire or radio" and "does not extend to the playback function of a consumer electronics device designed to play back content that is outside the scope of the Commission's authority." Rather, the plain language of the CVAA states that the Commission's apparatus closed captioning rules apply to apparatus that play back video programming transmitted simultaneously with sound, and this specific grant of jurisdiction is not limited by the authority granted in section 2(a) of the Act. *See Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 384–85 (1992) ("it is a commonplace of statutory construction that the specific governs the general"). Nonetheless, industry members have provided new factual evidence regarding DVD and Blu-ray players, which persuades us to grant the extension discussed below.

also comply with the CVAA because a DVD player that passes through closed captions to the television is "equipped with built-in . . . capability designed to display closed-captioned video programming." In this scenario, because a DVD player does not itself contain a screen, the closed captions contained in the video programming that is being accessed through the DVD player are rendered by the television and displayed on the television screen, just as the video programming itself is being displayed. Thus, DVD players equipped with an analog output that passes through closed captioning satisfy the closed captioning requirement set forth in section 303(u)(1)(A) of the Act and our rules because they are equipped with a capability designed to display closed-captioned video programming, *i.e.*, they enable closed captions to be viewed by consumers on their television sets.[12] At the same time, we recognize that DVD players that have multiple outputs, only one of which is an analog output that passes through closed captions to the television, may not comply with the Commission's interconnection mechanism rule, which requires that "[a]ll video outputs of covered apparatus shall be capable of conveying from the source device to the consumer equipment the information necessary to permit or render the display of closed captions." We find good cause, however, to waive this requirement because requiring compliance with this rule would impose increased costs on otherwise low-cost devices that have been in the marketplace for a long time and for which the market is declining, as discussed below, and because there is already some capability for consumers to view closed captions through the compliant analog output. Accordingly, in the instant case, the public interest benefits of requiring complete compliance with the Commission's interconnection mechanism rule are outweighed by the additional costs on manufacturers.

20. Regarding DVD players that do not either render or pass through closed captions, policy considerations justify an extension of the compliance deadline[13] pending resolution of the *FNPRM* on this issue. Manufacturers have expressed concerns about the costs of modifying DVD players to render the closed captioning themselves. Specifically, the record shows that DVD players generally have been in the marketplace for a long time and tend to be low-cost, and that adding captioning functionality may have a significant impact on manufacturing costs that would not be supported by consumers in the general public, potentially curtailing the continued availability of such devices in the U.S. market. Because the record demonstrates that this is a declining market, we are sensitive to imposing additional costs at this time without an adequate record. However, the current record does not identify the specific costs to manufacturers of including in DVD players an analog output that passes through closed captions to the television. Nor does it address the benefits to consumers who are deaf or hard of hearing were we to require this pass through obligation, or conversely, the harm to such consumers were we to eliminate all closed captioning obligations for DVD players. Given the above concerns, we temporarily extend the deadline for compliance with the apparatus closed captioning requirements for DVD players that do not either render or pass through closed captions, pending resolution of the *FNPRM* on this issue. We find that any hardship on consumers resulting from a temporary extension of the compliance deadline will be minimized because there are certain models of DVD players currently available that pass through closed captions to the television, which will provide a means for some individuals who are deaf or hard of hearing to view closed captions contained on DVDs.

21. *Blu-ray players.* For Blu-ray players, we temporarily extend the deadline for compliance with our apparatus closed captioning rules pending resolution of the *FNPRM* on this issue. There is no evidence in the record to suggest that any Blu-ray players today either render closed captioning themselves or pass through closed captions via the type of analog output used by DVD players. And, we have little information on the record as to what the costs would be for Blu-ray players to render or pass though captions. Moreover, we note that many, if not all, Blu-ray players are capable of playing DVDs (in addition to Blu-ray discs) but the record currently contains insufficient information regarding the technical changes required for manufacturers to ensure that these players can render or pass through captions from DVDs. These issues are further complicated by the fact that Blu-ray discs today do not contain closed captions,[14] and no industry-wide standard currently exists for closed captioning on Blu-ray discs. Given that there is no closed captioning standard for Blu-ray discs, Blu-ray players could not, as a technical matter, render closed captions on Blu-ray discs in the short term because manufacturers of the players would not know what standards to comply with. Moreover, as the Commission has previously recognized, manufacturers require some period of time to design, develop, test, manufacture, and make available for sale new products, which likely could extend beyond the compliance deadline. Thus, requiring Blu-ray players to comply with the apparatus closed captioning requirements by the January 1, 2014 compliance deadline would raise special difficulties for manufacturers. Accordingly we temporarily extend the compliance deadline with respect to Blu-ray players, pending resolution of the *FNPRM* where we seek more information on these issues. We find that any hardship on consumers resulting from a temporary extension of the compliance deadline will be minimized because Blu-ray discs currently include subtitles, which will provide a means for some individuals who are deaf or hard of hearing to access dialogue. A temporary extension will provide the Commission with an opportunity to develop a complete record with respect to Blu-ray players so that we can develop a long-term policy with respect to such devices.

22. *Other removable media players.* The temporary extensions granted herein do not apply to all "removable media players"; rather they are expressly limited to DVD players that do not render or pass through closed captions and Blu-ray players. We decline to apply this extension more broadly because, although DVD and Blu-ray players are the current types of removable media players in the marketplace, if new types of "removable media players" are developed in the future, we would expect those devices to be designed with closed captioning

[12] To the extent that video technologies evolve resulting in consumers viewing video programming from DVD players on apparatus that are not capable of rendering and displaying closed captions, we will revisit this issue to ensure that consumers are not deprived of access to closed captioning of video programming. *See, e.g.*, 47 CFR 79.103(b)(1) (display-only monitors with no playback capability are exempt from our apparatus closed caption requirements).

[13] The compliance deadline for apparatus closed captioning otherwise is January 1, 2014. *See* 47 CFR 79.103(a).

[14] Subtitles for the deaf and hard of hearing ("SDH") make some video programming accessible to consumers who are deaf or hard of hearing via existing Blu-ray and DVD players. The Commission explained in the *Report and Order* that SDH does not provide all of the features available with closed captions.

capability in mind, as required under the CVAA.

3. Application of the January 1, 2014 Deadline Only to the Date of Manufacture

23. We grant CEA's request that we specify that the January 1, 2014 apparatus compliance deadline refers only to the date of manufacture, and not to the date of importation, shipment, or sale of apparatus manufactured before that date. In the *Report and Order*, the Commission adopted a compliance deadline of January 1, 2014 for the apparatus covered by our rules. The rules that the Commission adopted to implement this deadline arguably create some ambiguity as to whether it applies to the date of importation, manufacture, or shipment of apparatus. CEA explains that, while the phrase "manufactured in the United States or imported for use in the United States" mirrors provisions of section 203 of the CVAA,[15] the Commission should clarify that the rules apply only to devices manufactured on or after the deadline, as it has done in other equipment compliance rules by including explanatory notes. We agree with CEA that this clarification would serve the public interest because manufacturers can identify and control the date of manufacture, but the date of importation is affected by variables outside of the manufacturer's control, and thus a deadline triggered by the date of importation may be unworkable in many situations for manufacturers. CEA also explains that its proposal will have little effect on the availability of new compliant products because of the normally brief interval between a product's manufacture and its importation. Accordingly, we add explanatory notes to §§ 79.101(a)(2), 79.102(a)(3), 79.103(a), and 79.104(a) of our rules, to clarify that the new obligations in the rules apply only to apparatus *manufactured* on or after January 1, 2014. We note that this approach is consistent with the Commission's past practices regarding similar equipment deadlines.[16]

24. Consumer Groups claim that consumer confusion may result from CEA's proposal because consumers expect that any apparatus for sale after the January 1, 2014 deadline will be compliant. Consumer Groups overlook the fact that nothing in the current apparatus rules expressly ties the compliance deadline to the date of sale. Instead, while the current rules are ambiguous with respect to the triggering event for the January 1, 2014 compliance deadline, nothing in the rules references the date of sale. Additionally, as CEA explains, while manufacturers can identify and control the date of manufacture, the date of sale is affected by variables outside of the manufacturer's control. Further, we expect that a compliance deadline based on the date of sale would create complications for retail vendors with noncompliant apparatus in their inventory after the deadline. For all of these reasons, we conclude that tying the compliance deadline to date of manufacture would best serve the public interest.

25. Further, we agree with CEA that Consumer Groups' proposal that we require manufacturers to label products to indicate which devices are compliant or noncompliant after January 1, 2014 should be dismissed as a late-filed petition for reconsideration of the *Report and Order*. Consumer Groups raised this issue in an opposition but not in a petition for reconsideration.[17] Similarly, we also agree with CEA that Consumer Groups' proposed compliance deadline based on the date of a product's sale should be dismissed as a late-filed petition for reconsideration of the *Report and Order*. Again, Consumer Groups raised this issue in an opposition but not in a petition for reconsideration.[18]

*B. Petition for Reconsideration of TVGuardian, LLC*

26. We deny TVGuardian's petition requesting that the Commission reconsider its decision to allow video programming providers and distributors to enable the rendering *or* pass through of captions to end users and instead require video programming providers and distributors, and digital source devices, to pass through closed caption data to consumer equipment.[19] In the *Report and Order*, the Commission required video programming providers and distributors to convey all required captions to the end user, but it allowed the provider or distributor to select whether to render the captions or pass them through. Pursuant to this requirement, the Commission stated that "[w]hen a [video programming provider or distributor] initially receives a program with required captions for IP delivery, we will require the [video programming provider or distributor] to include those captions at the time it makes the program file available to end users." The Commission also implemented the interconnection mechanism provision of the CVAA, which directs the Commission to require that "interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary to permit or render the display of closed captions." Consistent with that provision, the Commission required all video outputs of covered apparatus to be capable of conveying from the source device (such as an MVPD set-top box) to the consumer equipment (such as a television) the information necessary to permit or render the display of closed captions. As a result, a digital source device (such as a set-top box) is permitted to use a video output such as HDMI, which does not pass through captions in a closed manner (*i.e.*, HDMI does not transmit the closed captions to the receiving device as data alongside the video stream), provided the source device renders the closed captioning (*i.e.*, decodes and mixes the closed captions into the video stream).

27. TVGuardian asks the Commission to reconsider its finding that video programming providers and distributors may enable the rendering (instead of the pass through) of all required captions to the end user, and that video outputs of covered apparatus may convey from the source device to the consumer equipment the information necessary to render the display of closed captions (instead of passing through the closed

[15] The CVAA does not, however, impose the January 1, 2014 deadline that the Commission adopted in the *Report and Order*, nor does it specify whether the deadline must apply to the date of manufacture, the date of importation, or both.

[16] *See, e.g.*, Notes to 47 CFR 15.120(a), 79.101(a)(1), 79.102(a)(1), (2). We clarify that our application of the apparatus compliance deadline only to the date of manufacture applies only to the rules and requirements at issue in this proceeding and not to any other compliance rules, which may have deadlines that are not based solely on the date of manufacture.

[17] Additionally, from a practical standpoint, we note that a labeling requirement would impose additional compliance costs on manufacturers with little practical benefit to consumers. Specifically, labels could provide confusing and misleading information about the capabilities of apparatus. Apparatus manufactured prior to January 1, 2014 would not bear the label, even if such apparatus supported closed captions. Further, a labeling requirement would extend indefinitely, imposing costs and burdens on manufacturers despite our expectation that few, if any, noncompliant apparatus will be on store shelves within a few months of the compliance deadline.

[18] Additionally, we note that Consumer Groups misconstrue a reference in the *Report and Order* to "mak[ing] available for sale new products" as applying the compliance deadline based upon the date of sale. This reference was part of a sentence explaining that it generally takes two years to bring a new product to market, and it did not apply the compliance deadline to a product's date of sale.

[19] Because we reject TVGuardian's argument on substantive grounds, we find it unnecessary to address the procedural arguments raised in various oppositions filed in this proceeding.

caption data). TVGuardian claims that Congress intended to permit the rendering of captions only if passing them through would be technically infeasible. We reject TVGuardian's proposed interpretation because such an approach would effectively read the term "or" out of the statutory language, which permits the rendering *or* the pass through of closed captions by video programming providers, distributors, and interconnection mechanisms, thus indicating an intent by Congress to permit alternative means by which a video programming provider or distributor and an interconnection device may satisfy the statute. Not only is TVGuardian's proposed interpretation inconsistent with the statute, but also nothing in the legislative history supports TVGuardian's claim that Congress only intended to permit the rendering of closed captions if passing them through would be technically infeasible. Had Congress intended to permit rendering only if pass through is technically infeasible, it would have included language to this effect. Instead, the statute contains no such limitation.

28. The consumer electronics industry has coalesced around the use of HDMI,[20] which permits the use of rendered captions but does not pass through closed captions, meaning that it only conveys captions when they have been decoded and mixed into the video stream. The Commission found in the *Report and Order* that HDMI complies with the interconnection mechanism requirements, and TVGuardian has not presented any arguments that persuade us that the Commission should modify this determination. Rather, TVGuardian has reiterated its prior arguments that the Commission should require HDMI to pass through closed caption data. The Commission considered and rejected such arguments in the *Report and Order* when it concluded in implementing the interconnection mechanism provision of the CVAA "that it is sufficient, for purposes of this provision, if the video output of a digital source device renders the closed captioning in the source device. Accordingly, we find that the manner in which the HDMI connection carries captions satisfies the statutory requirement for interconnection mechanisms." We also find persuasive commenters' rebuttal to TVGuardian's claim that it would not be costly to modify HDMI to pass through closed captions and that no additional hardware would be needed. We agree with commenters that the costs of any required compliance with a pass through requirement, including both hardware changes and standard revisions, would outweigh the benefits, as we find that any particular benefit to consumers who are deaf or hard of hearing is unclear. We note that TVGuardian's petition fails to identify any resulting benefits to individuals who are deaf or hard of hearing arising from its proposed interpretation. Rather, TVGuardian's request appears to be focused solely on enabling the use of its foul language filter, which operates through the pass through of closed caption data.[21] TVGuardian's foul language filter will not operate with rendered closed captions in the video stream because the foul language filter can only read data passed through as closed captions. Significantly, Consumer Groups did not file any comments in support of TVGuardian's petition for reconsideration.

29. We also reject TVGuardian's claims that the provisions of the CVAA on recording devices and interconnection mechanisms must be read together, which TVGuardian argues would require the pass through of closed caption data to consumer equipment. TVGuardian claims that its proposed approach is necessary to ensure that recording devices enable viewers to activate and deactivate closed captions, as required by the CVAA. We instead agree with HDMI Licensing that nothing about the Commission's interpretation of these two provisions is incompatible, because a pass through mandate on HDMI is not needed to enable recording devices to activate and deactivate closed captions on recorded programming, as explained below. Commenters persuasively express several problems with TVGuardian's claims that the Commission's interpretation of the recording device provision and the interconnection mechanism provision are inconsistent. Specifically, commenters explain that the Commission does not need to change its interpretation of these provisions because most recording devices already comply with the requirement that they enable viewers to activate and deactivate closed captions, and they explain that most consumer recording devices such as DVRs do not use interconnection mechanisms to receive content in any event so revisions to the implementation of the interconnection mechanism provision would have no effect on those recording devices.[22] In other words, few, if any, recording devices acquire video programming via an HDMI connection. Rather, the overwhelming majority of DVRs acquire programming via a built-in cable or over-the-air tuner or via a built-in IP connection. Thus, recording devices are merely required to record the closed captioning stream in addition to the video stream for consumers to be able to turn captioning on and off during playback. Even if a recording device utilizes HDMI to connect to additional consumer electronics devices, it may render closed captions instead of passing them through, and the consumer viewing programming on a recording device may activate and deactivate the closed captions.

### *C. Petition for Reconsideration of Consumer Groups*

#### 1. Application of the IP Closed Captioning Rules to Video Clips

30. At this time, we defer a final decision on whether to reconsider the issue of whether "video clips" [23] should

[20] TVGuardian asserts that HDMI violates the existing television closed captioning rules, seemingly based on the erroneous assumption that those rules include an interconnection obligation between the set-top box and the consumer display device. The television closed captioning rules are unrelated to the Commission's implementation of the CVAA in the *Report and Order*. In any event, we agree with commenters that HDMI in fact complies with the television closed captioning rules, and that TVGuardian has improperly raised the issue of HDMI's compliance with the television closed captioning rules through a petition for reconsideration of the *Report and Order*, which did not revise or address the television closed captioning rules.

[21] We note that nothing in our IP closed captioning rules prevents TVGuardian from negotiating with video programming distributors or equipment manufacturers to obtain access to closed caption data.

[22] We also reject TVGuardian's assertion that the word "permit" in the interconnection mechanism provision ("interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary to permit or render the display of closed captions") is meant to require recording devices and other consumer equipment to enable the viewer to activate and deactivate the closed captions, which it claims requires the pass through of closed caption data. Rather, as explained above, the CVAA permits either the rendering or the pass through of closed captions. The rendering of closed captions prior to transmission of video over HDMI does not preclude the viewer from activating and deactivating the captions, when that function is present in the source device. In other words, even when HDMI renders closed captions instead of passing them through, the viewer may activate and deactivate the captions. Separately, because as explained above we are not persuaded by TVGuardian's central argument that we should require video programming providers and distributors and digital video source devices to pass through closed caption data to consumer equipment, we need not consider its claims that we should make other related rule revisions that would be necessitated by the grant of its petition. We note that apparatus synchronization requirements, which TVGuardian references, are discussed further below.

[23] The Commission has defined "video clips" as "[e]xcerpts of full-length video programming." 47 CFR 79.4(a)(12). It has defined "full-length video

Continued

be covered by the IP closed captioning rules, and we will keep the record open pending the development of additional information regarding the availability of captioned video clips.[24] To ensure that the Commission obtains updated information on this issue, we direct the Media Bureau to issue a Public Notice within six months of the date of release of this *Order on Reconsideration*, seeking information on the industry's progress in captioning IP-delivered video clips. Consumer Groups argue that the Commission should undertake a reconsideration of this issue at this time and should find that IP-delivered "video clips" must be captioned.[25] Consumers have expressed particular concern about availability of captioned news clips, which tend to be live or near-live. We note that live or near-live programming only recently became subject to the IP closed captioning requirements on March 30, 2013. Now that this implementation deadline has passed, we expect that entities subject to the IP closed captioning rules will have developed more efficient processes to handle captioning of live and near-live programming, including news clips that are posted on Web sites. Thus we expect that these entities voluntarily will caption an increased volume of video clips, particularly news clips, even though the Commission's IP closed captioning requirements apply to full-length programming and not video clips. In the *Report and Order*, the Commission "encourage[d] the industry to make captions available on all TV news programming that is made available online, even if it is made available through the use of video clips." Accordingly, we will monitor industry actions with respect to captioning of video clips, and within six months we direct the Media Bureau to issue a Public Notice to seek updated information on this topic. If the record developed in response to that Public Notice demonstrates that consumers are denied access to critical areas of video programming due to lack of captioning of IP-delivered video clips, we may reconsider our decision on this issue.

2. Propriety of Synchronization Requirements for Apparatus

31. Consumer Groups argue that the Commission should reconsider its decision not to impose any timing obligations on device manufacturers pursuant to section 203, and that this decision contravened Congress's intent and the VPAAC's consensus. In the *Report and Order*, the Commission considered the timing of the presentation of caption text with respect to the video in the context of apparatus requirements, and it concluded that "it is inappropriate to . . . address[] the timing of captions with video, here," concluding instead that "ensuring that timing data is properly encoded and maintained through the captioning interchange and delivery system is an obligation of [s]ection 202 [video programming distributors and providers] and not of device manufacturers." Consumer Groups argue that the Commission should reconsider this conclusion and instead should impose on manufacturers obligations related to the synchronization of caption text and the corresponding video. We find that we need more information before we resolve this issue, because commenters disagree as to whether apparatus may cause captions to appear out of synch with the video, whether existing standards would enable manufacturers to address the timing of captions, and whether video programming owners, providers, and distributors are better suited than manufacturers to ensure proper captioning synchronization. Accordingly, in the *FNPRM* we consider whether we should impose closed captioning synchronization requirements on apparatus, and if so, what those requirements should entail.

## IV. Procedural Matters

### *A. Regulatory Flexibility Act*

32. The Regulatory Flexibility Act of 1980, as amended ("RFA") requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

33. *Final Regulatory Flexibility Certification.* As required by the RFA, as amended, the Commission has prepared this Final Regulatory Flexibility Certification of the possible impact on small entities of the *Order on Reconsideration*. In this proceeding, the Commission's goal remains to implement Congress's intent to better enable individuals who are deaf or hard of hearing to view video programming. The Commission addresses three petitions for reconsideration of the *IP Closed Captioning Order*, which created rules for the owners, providers, and distributors of IP-delivered video programming and for the apparatus on which consumers view video programming.

34. Pursuant to the RFA, a Final Regulatory Flexibility Analysis ("FRFA") was incorporated into the *IP Closed Captioning Order*. The instant *Order on Reconsideration* grants certain narrow class waivers of the apparatus requirements, and grants temporary extensions of the compliance deadline to some DVD players and to Blu-ray players, which will have, if anything, a positive impact on small entities subject to the requirements, thereby reducing any potential economic impact. The *Order on Reconsideration* also changes the Commission's rules by: (1) Revising references to "video programming players" in a note to § 79.103 of our rules to better conform to the statutory text of the CVAA; and (2) clarifying that the January 1, 2014 deadline refers only to the date of manufacture, and not to the date of importation, shipment, or sale. These rule changes merely serve to better conform the rule language to the language codified by Congress, and to clarify the deadline applicable to apparatus. Therefore, we certify that the requirements of this *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

35. The Commission will send a copy of the *Order on Reconsideration*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C.

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programming" as "[v]ideo programming that appears on television and is distributed to end users, substantially in its entirety, via Internet protocol, excluding video clips or outtakes." *Id.* 79.4(a)(2).

[24] Consumer Groups recently submitted a report on the state of closed captioning of IP-delivered video programming in which they address the current lack of captioning of video clips, among other topics. We note that the Consumer Groups May 2013 Report also urges the Commission to impose quality standards on television closed captioning. This issue is properly addressed in the pending proceeding on the quality of closed captioning on television.

[25] Google agrees with Consumer Groups that video clips should be captioned, which would increase accessibility. Some commenters argue that Consumer Groups failed to meet the procedural requirements for petitions for reconsideration. Consumer Groups respond that there is no procedural impropriety because reconsideration would serve the public interest, and in such cases petitions for reconsideration are always appropriate. Because we decline, at this time, to resolve Consumer Groups' request regarding video clips, we need not consider these procedural issues here.

801(a)(1)(A). In addition, the *Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

*B. Paperwork Reduction Act*

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

*C. Ex Parte Rules*

37. *Permit-But-Disclose.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*D. Additional Information*

38. For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov*, or Maria Mullarkey, *Maria.Mullarkey@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

**V. Ordering Clauses**

39. Accordingly, *it is ordered* that pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, this *Order on Reconsideration is adopted*, effective thirty (30) days after the date of publication in the **Federal Register**.

40. *It is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, the Commission's rules *are hereby amended* as set forth below.

41. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Order on Reconsideration* in MB Docket No. 11–154, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

42. *It is further ordered* that the Commission *shall send* a copy of the *Order on Reconsideration* in MB Docket No. 11–154 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

43. *It is further ordered* that CEA's Petition for Reconsideration, filed April 30, 2012, is *granted in part* and *denied in part*, to the extent provided herein.

44. *It is further ordered* that TVGuardian's Petition for Reconsideration, filed April 16, 2012, is *denied*.

45. *It is further ordered* that, pursuant to the authority found in section 303(u)(2)(C)(i) of the Communications Act of 1934, as amended, and § 1.3 of the Commission's rules, 47 CFR 1.3, a waiver of the closed captioning requirements for two narrow classes of apparatus *is granted* to the extent provided herein.

46. *It is further ordered* that a temporary extension of the closed captioning compliance deadline for DVD players that do not render or pass through closed captions, and for Blu-ray players, *is granted* to the extent provided herein.

47. *It is further ordered* that, pursuant to the authority found in § 1.3 of the Commission's rules, 47 CFR 1.3, a waiver of the Commission's interconnection mechanism requirement for DVD players that use their analog output to pass through closed captions to the television *is granted* to the extent provided herein.

**List of Subjects in 47 CFR Part 79**

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

## PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.101 by adding a note to paragraph (a)(2) to read as follows:

**§ 79.101 Closed caption decoder requirements for analog television receivers.**

(a) * * *

(2) * * *

**Note to paragraph (a)(2):** This paragraph places no restrictions on the importing, shipping, or sale of television receivers that were manufactured before January 1, 2014.

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■ 3. Amend § 79.102 by adding a note to paragraph (a)(3) to read as follows:

**§ 79.102 Closed caption decoder requirements for digital television receivers and converter boxes.**

(a) * * *

(3) * * *

**Note to paragraph (a)(3):** This paragraph places no restrictions on the importing, shipping, or sale of digital television receivers and separately sold DTV tuners that were manufactured before January 1, 2014.

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■ 4. Amend § 79.103 by revising the note to paragraph (a) to read as follows:

**§ 79.103 Closed caption decoder requirements for all apparatus.**

(a) * * *

**Note 1 to paragraph (a):** Apparatus includes the physical device and the video player(s) capable of displaying video programming transmitted simultaneously with sound that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players capable of displaying video programming transmitted simultaneously with sound that manufacturers direct consumers to install after sale.

**Note 2 to paragraph (a):** This paragraph places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before January 1, 2014.

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■ 5. Amend § 79.104 by adding a note to paragraph (a) to read as follows:

**§ 79.104 Closed caption decoder requirements for recording devices.**

(a) * * *

**Note to paragraph (a):** This paragraph places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before January 1, 2014.

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[FR Doc. 2013–15718 Filed 7–1–13; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R2–ES–2013–0064; 4500030114]**

**RIN 1018–AZ68**

## Endangered and Threatened Wildlife and Plants; Critical Habitat Map for the Fountain Darter

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are correcting the critical habitat map for the fountain darter (*Etheostoma fonticola*) in our regulations. We are taking this action to ensure regulated entities and the general public have an accurate critical habitat map for the species. This action does not change the designated critical habitat for the fountain darter.

**DATES:** This rule is effective July 2, 2013.

**ADDRESSES:** This final rule is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0064.

**FOR FURTHER INFORMATION CONTACT:** Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512–490–0057; or facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** Section 17.95 of the regulations in title 50 of the Code of Federal Regulations (CFR) provides critical habitat information, including maps and textual descriptions, for endangered and threatened wildlife.

On July 14, 1980, we published a final rule (45 FR 47355) designating critical habitat for the fountain darter; that critical habitat entry provided both a correct map and correct textual description. However, starting with the 1986 publication, and continuing in the 1989 publication through the current edition, of the CFR, the critical habitat entry for the fountain darter includes an incorrect critical habitat map for that species. Instead of showing the correct map, the fountain darter's entry shows the critical habitat map for the San Marcos gambusia (*Gambusia georgei*). The textual description of the designated critical habitat for the fountain darter has remained correct since its 1980 publication, and the incorrect map does not match the correct textual description of critical habitat.

This final rule removes the incorrect critical habitat map, and adds in its place the correct critical habitat map, for the fountain darter. It does not change the designated critical habitat for the fountain darter, as, according to 50 CFR 17.94(b)(2), for critical habitat designations published and effective on or prior to May 31, 2012, the map provided by the Secretary of the Interior is for reference purposes to guide Federal Agencies and other interested parties in locating the general boundaries of the critical habitat. In such cases, the map does not, unless otherwise indicated, constitute the definition of the boundaries of a critical habitat.

This action is administrative in nature. We are providing regulated entities and the general public with an accurate critical habitat map, which is for reference purposes only, for the fountain darter. This is a final rule. In accordance with 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, we may make this rule effective in less than 30 days if we have "good cause" to do so. The rule provides an accurate map, and this action will benefit regulated entities and the general public. Therefore, we find that we have "good cause" to make this rule effective immediately.

### Required Determinations

*Regulatory Planning and Review—Executive Orders 12866 and 13563*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule 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 rule in a manner consistent with these requirements.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will

not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities. This rule corrects the map, which is for reference purposes only, in the critical habitat entry for the fountain darter. We are taking this action to ensure that regulated entities and the general public have an accurate critical habitat map for this species. This rule will not result in any costs or benefits to any entities, large or small.

Therefore, we certify that, because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant economic impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more. There are no costs to any entities resulting from this correction to the regulations.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This action does not affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not "significantly or uniquely" affect small governments in a negative way. A small government agency plan is not required.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

*Takings*

In accordance with E.O. 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

*Federalism*

This rule does not have sufficient Federalism effects to warrant preparation of a federalism impact summary statement under E.O. 13132.

*Civil Justice Reform*

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This rule does not contain any information collection that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

We evaluated the environmental impacts of the changes to the regulations, and determined that this rule does not have any environmental impacts.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that this rule will not interfere with Tribes' ability to manage themselves or their funds. This rule offers Tribes and the general public an accurate critical habitat map for the fountain darter.

*Energy Supply, Distribution, or Use*

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is administrative, it is not a significant regulatory action under E.O. 12866, and it will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17 of subchapter B, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.95(e), the entry for "Fountain Darter (*Etheostoma fonticola*)," is amended by removing the map and by adding the following map in its place.

**§ 17.95 Critical habitat—wildlife.**

* * * * *

(e) *Fishes.*

* * * * *

BILLING CODE 4310–55–P

FOUNTAIN DARTER

Hays County, TEXAS

* * * * *

Dated: June 20, 2013.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary Fish and Wildlife and Parks.*

[FR Doc. 2013–15628 Filed 7–1–13; 8:45 am]

BILLING CODE 4310–55–C

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC739

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2013 total allowable catch of Pacific ocean perch in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), July 1, 2013, through 2400 hours, A.l.t., December 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA is 2,040 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish of the (78 FR 13162, February 26, 2013).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2013 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA will be taken as incidental catch in directed fisheries for other species. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt, and is setting aside 2,040 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 26, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: June 27, 2013.

**Kelly Denit,**

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

[FR Doc. 2013–15851 Filed 6–27–13; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 78, No. 127
Tuesday, July 2, 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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1205

**[Doc. AMS–CN–13–0052]**

## Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports (2013 Amendment)

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule is a companion to the Agricultural Marketing Service's (AMS) direct final rule (published today in the "Rules and Regulations" section of the **Federal Register**), amending the Cotton Board Rules and Regulations by decreasing the value assigned to imported cotton for calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An amendment is required to adjust the value assigned to imported cotton and the cotton content of imported products so that it is the same as those paid on domestically produced cotton. In addition, AMS is updating two Harmonized Tariff Schedule (HTS) statistical reporting numbers that were amended since the last assessment adjustment. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**. AMS is publishing this amendment as a direct final rule without prior proposal because the agency is contemplated by statute and required by regulation in 7 CFR 1205.510 and anticipates no significant adverse comment. AMS has explained its reasons in the preamble of the direct final rule. If AMS receives no significant adverse comment during the comment period, no further action on this proposed rule will be taken. If, however, AMS receives significant adverse comment, AMS will withdraw the direct final rule and it will not take effect. In that case, AMS will address all public comments in a subsequent final rule based on this proposed rule. AMS will not institute a second comment period on this rule. Any parties interested in commenting must do so during this comment period.

**DATES:** Comments must be received on or before August 1, 2013.

**ADDRESSES:** Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Please do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publically disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Comments, identified by AMS–CN–12–0065, may be submitted electronically through the *Federal eRulemaking Portal at http://www.regulations.gov*. Please follow the instructions for submitting comments. In addition, comments may be submitted by *mail or hand delivery to* Cotton Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406. Comments should be submitted in triplicate. All comments received will be made available for public inspection at Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406. A copy of this notice may be found at: *www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** As noted above, in the "Rules and Regulations" section of today's **Federal Register**, the direct final rule being published would amend the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)) that is used to determine the Cotton Research and Promotion assessment on imported cotton and cotton products.

The total value of assessment levied on cotton imports is the sum of two parts. The first part of the assessment is based on the weight of cotton imported—levied at a rate of $1 per bale of cotton, which is equivalent to 500 pounds, or $1 per 226.8 kilograms of cotton. The second part of the import assessment (referred to as the supplemental assessment) is based on the value of imported cotton lint or the cotton contained in imported cotton products—levied at a rate of five-tenths of one percent of the value of domestically produced cotton.

Section 1205.510(b)(2) of the Cotton Research and Promotion Rules and Regulations provides for assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products is the same. The source for the average price statistic is *Agricultural Prices*, a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products will yield an assessment that is the same as assessments paid on domestically produced cotton.

The current value of imported cotton as published in 2012 in the **Federal Register** (77 FR 51867) for the purpose of calculating assessments on imported cotton is $0.014109 per kilogram. Using the Average Weighted Priced received by U.S. farmers for Upland cotton for the calendar year 2012, the direct final rule would amend the new value of imported cotton to $0.012876 per kilogram to reflect the price paid by U.S. farmers for Upland cotton during 2012.

An example of the complete assessment formula and how the figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

### One Dollar per Bale Assessment Converted to Kilograms

A 500-pound bale equals 226.8 kg. (500 × 0.453597).

$1 per bale assessment equals $0.002000 per pound or $0.2000 cents

per pound (1/500) or $0.004409 per kg or $0.4409 cents per kg. (1/226.8).

**Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms**

The 2012 calendar year weighted average price received by producers for Upland cotton is $0.768 per pound or $1.693 per kg. (0.768 × 2.2046).

Five tenths of one percent of the average price equals $0.008467 per kg. (1.693 × 0.005).

**Total Assessment**

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.008467 per kg., which equals $0.012876 per kg.

The current assessment on imported cotton is $0.014109 per kilogram of imported cotton. The revised assessment in the direct final rule is $0.012876, a decrease of $0.001233 per kilogram. This decrease reflects the decrease in the average weighted price of Upland cotton received by U.S. Farmers during the period January through December 2012.

Import Assessment Table in section 1205.510(b)(3) indicates the total assessment rate ($ per kilogram) due for each HTS number that is subject to assessment. This table must be revised each year to reflect changes in supplemental assessment rates. In the direct final rule, AMS amends the Import Assessment Table. AMS also compared the current import assessment table with the U.S. International Trade Commission's (ITC) 2013 HTS and information from U.S. Customs and Border Protection and identified two HTS statistical reporting numbers that no longer exist in the HTS and that have been changed by ITC. In the direct final rule, AMS is amending the following HTS statistical reporting numbers for consistency with published ITC numbers:

| 2012 HTS codes | Revised 2013 HTS codes |
|---|---|
| 5513390015 | 5513390115 |
| 5513390091 | 5513390191 |

AMS believes that these amendments are necessary to assure that assessments collected on imported cotton and the cotton content of imported products are the same as those paid on domestically produced cotton. Accordingly, changes reflected in this rule should be adopted and implemented as soon as possible since it is required by regulation.

The amendment proposed by this notice is the same as the amendment contained in the direct final rule. Please refer to the preamble and regulatory text of the direct final rule for further information and the actual text of the amendment. Statutory review and Executive Orders for this proposed rule can be found in the **SUPPLEMENTARY INFORMATION** section of the direct final rule.

A 30-day comment period is provided to comment on the changes to the Cotton Board Rules and Regulations proposed herein. This period is deemed appropriate because this rule would decrease the assessments paid by importers under the Cotton Research and Promotion Order. An amendment is required to adjust the assessments collected on imported cotton and the cotton content of imported products to be the same as those paid on domestically produced cotton. Accordingly, the change in this rule, if adopted, should be implemented as soon as possible.

**Authority:** 7 U.S.C. 2101–2118.

Dated: June 25, 2013.

**Rex A. Barnes,**

*Associate Administrator.*

[FR Doc. 2013–15625 Filed 7–1–13; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2013–0541; Directorate Identifier 2011–NM–097–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

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

**SUMMARY:** We propose to supersede three existing airworthiness directives (ADs) that apply to The Boeing Company Model 757–200, –200PF, and –200CB series airplanes. The existing ADs currently require repetitive inspections and audible tap tests of the upper and lower skins of the trailing edge wedges on certain slats, and related investigative and corrective actions if necessary. Since we issued these ADs, we have received reports of slats disbonding on airplanes on which the terminating actions of the existing ADs were completed and also reports of slats disbonding on airplanes outside of the applicability of the existing ADs. This proposed AD would require a determination of the type of trailing edge wedges of the leading edge slats, repetitive inspections on certain trailing edge wedges for areas of skin-to-core disbonding, and corrective actions if necessary. This proposed AD would also provide an optional terminating action for the repetitive inspections. This AD would revise the applicability of the existing ADs to include additional airplanes. We are proposing this AD to prevent delamination of the trailing edge wedge of the leading edge slats, possible loss of pieces of the trailing edge wedge assembly during flight, reduction of the reduced maneuver and stall margins, and consequent reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by August 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 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, 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:** Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *Nancy.Marsh@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–2013–0541; Directorate Identifier 2011–NM–097–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

On October 23, 1990, we issued AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990), for certain Boeing Model 757 series airplanes, which requires close visual inspections of the trailing edge wedges on the leading edge slats to detect delamination and physical damage, and replacement or repair of defective parts if necessary.

On December 18, 1991, we issued AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992), for certain Boeing Model 757 series airplanes, which requires repetitive inspections to detect delamination of or physical damage to the trailing edge wedges on the leading edge wing slats, and repair if necessary.

On March 22, 2005, we issued AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005), for certain Boeing Model 757–200 and –200PF series airplanes, which requires repetitive inspections and audible tap tests of the upper and lower skins of the trailing edge wedges on certain slats, and related investigative and corrective actions if necessary. This AD also provides an optional terminating action for the repetitive inspections and audible tap tests, which consists of replacing the trailing edge wedge assemblies with new, improved wedge assemblies.

Those ADs resulted from multiple reports of damage to the leading edge slats. We issued those ADs to prevent delamination of the leading edge slats, possible loss of pieces of the trailing edge wedge assembly during flight, reduction of the reduced maneuver and stall margins, and consequent reduced controllability of the airplane.

**Actions Since Existing ADs Were Issued**

Since we issued AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005), we have received reports of slat disbonding on airplanes on which the optional terminating action of AD 2005–07–08 was completed, and also reports of slats disbonding on airplanes outside of the applicability of the existing ADs. Additionally, the manufacturer has developed a new terminating action, which, when accomplished, terminates the repetitive inspections of AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990); AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992); and AD 2005–07–08.

**Relevant Service Information**

We reviewed Boeing Special Attention Service Bulletin 757–57–0066, dated April 5, 2011. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0541.

**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 retain all requirements of AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990); AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992); and AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005). This proposed AD would add airplanes to the applicability statement. This proposed AD would also require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Information." Accomplishment of the new initial proposed inspection and applicable corrective actions would terminate the existing requirements.

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) are actions that 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.

**Change to Existing AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990)**

This proposed AD would retain all the requirements of AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990). Since AD 90–23–06 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990) | Corresponding requirement in this proposed AD |
|---|---|
| paragraph (A) | paragraph (g)(1). |
| paragraph (B) | paragraph (g)(2). |
| paragraph (C) | paragraph (g)(3). |
| paragraph (D) | paragraph (h). |

**Change to Existing AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992)**

The corresponding paragraph identifiers also have been changed for AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992), and are listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992) | Corresponding requirement in this proposed AD |
|---|---|
| paragraph (a) | paragraph (i)(1). |
| paragraph (a)(1) | paragraph (i)(1)(i). |
| paragraph (a)(2) | paragraph (i)(1)(ii). |
| paragraph (b) | paragraph (i)(2). |
| paragraph (c) | paragraph (j). |

**Change to Existing AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005)**

This proposed AD also would retain all the requirements of AD 2005–07–08,

Amendment 39–14032 (70 FR 16403, March 31, 2005). Since AD 2005–07–08 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005) | Corresponding requirement in this proposed AD |
|---|---|
| paragraph (f) | paragraph (k). |
| paragraph (g) | paragraph (l). |
| paragraph (h) | paragraph (m). |
| paragraph (i) | paragraph (n). |
| paragraph (j) | paragraph (o). |

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

Boeing Special Attention Service Bulletin 757–57–0066, dated April 5, 2011, specifies to contact the manufacturer for instructions on how to repair certain conditions; but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

**Costs of Compliance**

We estimate that this proposed AD affects 640 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/test [retained actions from existing ADs]. | 6 work-hours × $85 per hour = $510 per inspection cycle. | $0 | $510 per inspection cycle ..... | $326,400 per inspection cycle. |
| Inspection/test [new proposed action]. | Up to 20 work-hours × $85 per hour = $1,700 per inspection cycle. | 0 | Up to $1,700 per inspection cycle. | Up to $1,088,000 per inspection cycle. |

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990); AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992); and AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2013–0541; Directorate Identifier 2011–NM–097–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by August 16, 2013.

**(b) Affected ADs**

This AD supersedes AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005); AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992); and AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990).

**(c) Applicability**

This AD applies to all The Boeing Company Model 757–200, –200PF, and –200CB series airplanes, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

**(e) Unsafe Condition**

This AD was prompted by reports of slat disbonding on airplanes that had performed the terminating actions of an AD; and we have received reports of slats disbonding on airplanes outside of the applicability of the existing ADs. We are issuing this AD to prevent delamination of the trailing edge

wedge of the leading edge slats, possible loss of pieces of the trailing edge wedge assembly during flight, reduction of the reduced maneuver and stall margins, and consequent reduced controllability of the airplane.

**(f) Compliance**

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

**(g) Retained Repetitive Inspections of Trailing Edge Wedges**

This paragraph restates the requirements of paragraphs A., B., and C. of AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990).

(1) For Model 757 series airplanes, line numbers 001 through 091: Prior to the accumulation of 11,000 flight hours, or within the next 10 calendar days after September 21, 1990 (the effective date of telegraphic AD T90–20–51), whichever occurs later, perform a close detailed visual inspection of the trailing edge wedges on all the leading edge slats for delamination and physical damage, in accordance with Boeing Alert Service Bulletin 757–57A0038, dated September 21, 1990; Boeing Alert Service Bulletin 757–57A0038, Revision 1, dated September 25, 1990; or Boeing Alert Service Bulletin 757–57A0038, Revision 2, dated October 10, 1990.

**Note 1 to paragraph (g)(1) of this AD:** Telegraphic AD T90–20–51 was sent directly to owners and operators of the affected airplanes on September 21, 1990. AD T90–20–51 was not published in the **Federal Register**, because it was promptly superseded by AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990).

(2) For Model 757 series airplanes, line numbers 092 through 158: Prior to the accumulation of 11,000 flight hours, or within the next 10 calendar days after November 19, 1990 (the effective date of AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990)), whichever occurs later, perform a close detailed visual inspection of the trailing edge wedges on all the leading edge slats for delamination and physical damage, in accordance with Boeing Alert Service Bulletin 757–57A0038, dated September 21, 1990; Boeing Alert Service Bulletin 757–57A0038, Revision 1, dated September 25, 1990; or Boeing Alert Service Bulletin 757–57A0038, Revision 2, dated October 10, 1990.

(3) Repeat the inspections required by paragraph (g)(1) or (g)(2) of this AD, as applicable, at intervals not to exceed 300 flight hours. Doing the initial inspection and applicable corrective actions required by paragraph (p) of this AD terminates the requirements of paragraph (g) of this AD.

**(h) Retained Repair or Replacement for Paragraph (g) of This AD**

This paragraph restates the repair or replacement required by paragraph D. of AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990). If delamination and/or physical damage are found during any inspection required by paragraph (g) of this AD, prior to further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD or replace with new parts. Doing the initial inspection and applicable corrective actions required by paragraph (p) of this AD terminates the requirements of paragraph (h) of this AD.

**(i) Retained Repetitive Inspections for Certain Airplanes**

This paragraph restates the repetitive inspections required by paragraphs (a) and (b) of AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992). For Model 757 series airplanes, line numbers 140 through 335, accomplish the following:

(1) Perform a close detailed visual inspection of the trailing edge wedges of slats 1 through 4 and 7 through 10, for delamination and physical damage, in accordance with Boeing Alert Service Bulletin 757–57A0045, dated October 16, 1991, at the times specified below, until the initial inspection and applicable corrective actions required by paragraph (p) of this AD are accomplished.

(i) For airplanes that have accumulated 5,000 or more flight hours as of January 24, 1992 (the effective date AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992)): Within the next 10 calendar days after January 24, 1992, and thereafter at intervals not to exceed 300 flight hours.

(ii) For airplanes that have accumulated less than 5,000 flight hours as of January 24, 1992 (the effective date AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992)): Within the next 300 flight hours after January 24, 1992, and thereafter at intervals not to exceed 300 flight hours.

(2) Within the next 300 flight hours after January 24, 1992 (the effective date of AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992), perform a "coin-tap" inspection of the trailing edge wedges of slats 1 through 4 and 7 through 10 for delamination and physical damage, in accordance with Boeing Alert Service Bulletin 757–57A0045, dated October 16, 1991. Repeat this inspection at intervals not to exceed 1,500 flight hours.

**(j) Retained Repair or Replacement for Paragraph (i) of This AD**

This paragraph restates the repair or replacement required by paragraph (c) of AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992). If delamination and/or physical damage are found as a result of the inspections required by paragraph (i)(1) or (i)(2) of this AD, prior to further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD or replace with new parts. If a repair is accomplished or if new parts are installed, the inspections required by paragraphs (i)(1) and (i)(2) of this AD must be continued. Doing the initial inspection and applicable corrective actions in paragraph (p) of this AD terminates the requirements of paragraphs (i) and (j) of this AD.

**(k) Retained Repetitive Inspections and Tests**

This paragraph restates the repetitive inspections and tests required by paragraph (f) of AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005).

(1) For Model 757–200 and –200PF series airplanes identified in Boeing Alert Service Bulletin 757–57A0063, dated June 26, 2003: Within 18 months after May 5, 2005 (the effective date of AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005)), do a detailed inspection and an audible tap test of the upper and lower skins of the trailing edge wedges on slats No. 2 through No. 4 inclusive and No. 7 through No. 9 inclusive, for evidence of damage or cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–57A0063, dated June 26, 2003. Repeat the detailed inspection and audible tap test thereafter at intervals not to exceed 18 months. Doing the initial inspection and applicable corrective actions in paragraph (p) of this AD terminates the requirements of paragraph (k) of this AD.

(2) For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

**(l) Retained Related Investigative and Corrective Actions**

This paragraph restates the related investigative and corrective actions required by paragraph (g) of AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005). If any damage or cracking is found during any inspection or audible tap test required by paragraph (k) of this AD: Before further flight, do the related investigative action, if applicable, and replace the affected part with a new trailing edge wedge assembly or repair the affected part, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–57A0063, dated June 26, 2003. Accomplishing the replacement terminates the repetitive inspections and audible tap tests required by paragraph (k) of this AD for that wedge assembly only. Doing the initial inspection and applicable corrective actions in paragraph (p) of this AD terminates the requirements of paragraph (l) of this AD.

**(m) Retained Credit for Previous Actions**

This paragraph restates the credit for actions accomplished previously as specified in paragraph (h) of AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005). This paragraph provides credit for the actions required by paragraph (k) of this AD, if those actions were performed before May 5, 2005 (the effective date of AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005)) using all of the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 757–57A0038, Revision 5, dated July 16, 1992; or Boeing Service Bulletin 757–57A0038, Revision 6, dated November 10, 1994; in conjunction with the use of BMS 5–137 adhesive.

**(n) Retained Parts Installation Limitations**

This paragraph restates the parts installation limitation of paragraph (i) of AD

2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005), with new actions. For Model 757–200 and –200PF series airplanes identified in Boeing Alert Service Bulletin 757–57A0063, dated June 26, 2003: As of May 5, 2005 (the effective date of AD 2005–07–08), no trailing edge wedge assembly having a part number listed in the "Existing Part Number" column of the table in paragraph 2.C.3. of Boeing Alert Service Bulletin 757–57A0063, dated June 26, 2003, may be installed on any airplane, unless it has been inspected, tested, and had any necessary corrective actions accomplished in accordance with paragraphs (k) and (l) of this AD or in accordance with paragraphs (p) and (q) of this AD. As of the effective date of this AD, no part identified in this paragraph may be installed on any airplane unless it has been inspected, tested, and had all applicable corrective actions accomplished in accordance with paragraphs (p) and (q) of this AD.

**(o) Retained Optional Terminating Action**

This paragraph restates the optional terminating action previously specified in paragraph (j) of AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005). Replacing all trailing edge wedge assemblies with new, improved wedge assemblies (type B) in accordance with Part III of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–57A0063, dated June 26, 2003, terminates the requirements of paragraph (k) of this AD.

**(p) New Inspection To Determine Slat Wedge Type**

At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–57–0066, dated April 5, 2011, except as specified in paragraph (s) of this AD: Do an inspection of the trailing edge wedges of the leading edge slats, or a review of airplane maintenance records, to determine whether each slat wedge is a type A or a type B, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–57–0066, dated April 5, 2011.

**(q) New Type A Slat Wedge Repetitive Inspections and Corrective Actions**

For each type A trailing edge slat wedge found during the inspection or records review required by paragraph (p) of this AD: At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–57–0066, dated April 5, 2011, except as specified in paragraph (s) of this AD, do an ultrasonic or tap test inspection for disbonds of each leading edge slat trailing edge wedge, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–57–0066, dated April 5, 2011. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles or 24 months, whichever occurs first.

(1) For any disbond found during any inspection required by paragraph (q) of this AD that is less than or equal to 1.50 inches in maximum dimension, and is located more than or equal to 1.0 inch from the edge of the panel, and is located more than or equal to 4 times the disbond maximum dimension, measured edge to edge, from adjacent damage: Within 600 flight cycles after the disbond was found, do the inspection required by paragraph (q) of this AD of the disbond area, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–57–0066, dated April 5, 2011. Repeat the inspection thereafter at intervals not to exceed 600 flight cycles. Within 3,000 flight cycles after the disbond was found: Repair the disbond, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–57–0066, dated April 5, 2011; or replace the affected trailing edge slat wedge using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(2) For any disbond found during any inspection required by paragraph (q) of this AD that is more than 1.50 inches in maximum dimension, or is located less than 1.0 inch from the edge of the panel, or is located less than 4 times the disbond maximum dimension, measured edge to edge, from adjacent damage: Before further flight, repair or replace using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

**(r) Repetitive Inspections of Certain Replaced or Repaired Wedges**

(1) For any trailing edge slat wedge that is replaced with a type A wedge: Within 3,000 flight cycles after the replacement or within 24 months after the replacement, whichever occurs first, do the actions required by paragraph (q) of this AD on the replaced type A trailing edge slat wedge. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles or 24 months, whichever occurs first.

(2) For any trailing edge type A slat wedge that is repaired: Within 600 flight cycles after the repair, do the actions required by paragraph (q) of this AD on the repaired area. Repeat the inspection thereafter at intervals not to exceed 600 flight cycles.

**(s) Exception to Compliance Time**

Where Paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–57–0066, dated April 5, 2011, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time "after the effective date of this AD".

**(t) New Terminating Actions**

(1) Doing the initial inspection specified in paragraph (q) of this AD and applicable type A trailing edge slat wedge repair or replacement, in accordance with the actions specified in paragraph (q)(1) or (q)(2) of this AD, terminates the requirements of paragraphs (g), (h), (i), (j), (k), and (l) of this AD.

(2) Replacing a type A wedge with a type B wedge using a method approved in accordance with the procedures specified in paragraph (u) of this AD terminates the repetitive inspections of a type A trailing edge slat wedge of the leading edge required by paragraph (q) of this AD.

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

(1) The Manager, Seattle 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.

(4) AMOCs approved previously in accordance with the ADs specified in paragraphs (u)(4)(i), (u)(4)(ii), and (u)(4)(iii) of this AD are approved as AMOCs for the corresponding provisions of this AD.

(i) AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990).

(ii) AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992).

(iii) AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005).

**(v) Related Information**

(1) For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *Nancy.Marsh@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may 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 June 14, 2013.

**Jeffrey E. Duven,**

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

[FR Doc. 2013–15694 Filed 7–1–13; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 997**

**[Docket No. 120813326–3458–01]**

**RIN 0648–BC18**

## U.S. Integrated Ocean Observing System; Regulations To Certify and Integrate Regional Coordination Entities

**AGENCY:** U.S. Integrated Ocean Observing System Program Office (IOOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Integrated Ocean Observing System Program Office, which the National Oceanic and Atmospheric Administration (NOAA) is the lead agency for, proposes rules to implement provisions of the Integrated Coastal and Ocean Observation System Act of 2009 (ICOOS Act). Among other things, the ICOOS Act directs the Interagency Ocean Observation Committee (IOOC) to develop and approve certification criteria and procedures for integrating regional information coordination entities (RICEs) into the National Integrated Coastal and Ocean Observation System (System). This proposed rule would accomplish that goal. This rule also implements the provisions of the ICOOS Act establishing that certified entities integrated into the System are, for the purposes of determining liability arising from the dissemination and use of observation data, considered part of NOAA and therefore their employees engaged in the collection, management, and dissemination, of observation data in the System receive the same tort protections for use of that data as Federal employees.

**DATES:** Comments on this proposed rule must be received by August 1, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NOS–2013–0083, 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-NOS-2013-0083*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Dave Easter, U.S. Integrated Ocean Observing System Program Office, 1100 Wayne Ave., Suite 1225, Silver Spring, MD 20910.
- *Fax:* (301) 427–2073; Attn: Dave Easter

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Dave Easter, U.S. Integrated Ocean Observing System Program Office, at (301) 427–2451.

**SUPPLEMENTARY INFORMATION:**

### Background

The Integrated Coastal and Ocean Observation System Act of 2009 (Pub. L. 111–11) (ICOOS Act or Act, codified at 33 U.S.C. 3601–3610) directs the President, acting through the National Ocean Research Leadership Council (Council), to establish a National Integrated Coastal and Ocean Observation System (System). The System must "include[] in situ, remote, and other coastal and ocean observation, technologies, and data management and communication systems, and [be] designed to address regional and national needs for ocean information, to gather specific data on key coastal, ocean, and Great Lakes variables, and to ensure timely and sustained dissemination and availability of these data." 33 U.S.C. 3601(1). Another purpose of the System is "to fulfill the Nation's international obligations to contribute to the Global Earth Observation System of Systems and the Global Ocean Observing System." 33 U.S.C. 3601(1) and 3603(a).

The System is built upon a national-regional partnership, with contributions from both Federal and non-Federal organizations, promoting the quick and organized collection and distribution of ocean, coastal, and Great Lakes data and data products to meet critical societal needs. System data is used by both governmental and non-governmental concerns, to, among other things, "support national defense, marine commerce, navigation safety, weather, climate, and marine forecasting, energy siting and production, economic development, ecosystem-based marine, coastal, and Great Lakes resource management, public safety, and public outreach training and education." It is also used to promote public awareness and stewardship of the Nation's waterways, coasts and ocean resources, and to advance scientific understanding of the use, conservation, management, and understanding of healthy ocean, coastal, and Great Lake resources. 33 U.S.C. 3601(1)(A)–(C).

The ICOOS Act directs the Council to establish or designate an Interagency Ocean Observation Committee (IOOC). In 2010, the Joint Subcommittee on Ocean Science and Technology (JSOST), acting on behalf of the Council, established the IOOC. The IOOC replaced, and assumed and expanded the role of its predecessor, the Interagency Working Group on Ocean Observations, which was originally established by the JSOST under the Ocean Action Plan.

Under the ICOOS Act, the IOOC must "develop contract certification standards and compliance procedures for all non-Federal assets, including regional information coordination entities, to establish eligibility for integration into the System." 33 U.S.C. 3603(c)(2)(E). To create the certification criteria, the IOOC chartered two working groups consisting of subject matter experts on IOOS data partners and regional entities to draft recommended certification criteria. The recommended draft criteria were approved by the IOOC in October 2011 and released for public input. After a sixty-day public comment period and adjudication of public input, the IOOC drafted final certification criteria.

In developing certification criteria, the IOOC focused on identifying the governance and management criteria a RICE—organizations that coordinate regional observing efforts; manage and operate observing assets; manage and distribute data; and engage user groups in product development—must have in place to allow NOAA to coordinate non-federal assets for the purposes of the ICOOS Act. The IOOC certification standards ensure the necessary policies, standards, data, information, and services associated with eligibility for integration into the System are appropriately established, coordinated, overseen and enforced.

This rule would, if implemented, establish the criteria and procedures for how RICEs can apply and become certified for and integrated into System. Integration into the System formally

establishes the role of the RICE and ensures that the data collected and distributed by the RICE are managed according to the best practices, as identified by NOAA.

Additionally, under the ICOOS Act, employees of RICEs that NOAA has certified and incorporated into the System who gather and disseminate information under this Act are, for the purposes of determining liability arising from the dissemination and use of observation data, considered to be part of NOAA. In other words, they are federal employees for the purposes of tort liability relating to their work directly related to the System. Only those non-federal entities that agree to meet the standards established under the process described in the ICOOS Act, and that are designated by NOAA as certified entities in the System, will be considered as "certified" for purposes of these regulations.

These proposed regulations satisfy the ICOOS Act requirement that NOAA, as the lead Federal agency for implementing the System, "promulgate program guidelines to certify and integrate non-federal assets, including regional information coordination entities, into the System." 33 U.S.C. 3603(c)(3)(C). Accordingly, they detail the compliance procedures and requirements for certifying RICEs that satisfy the IOOC-approved certification standards.

Among other things, to become certified, RICEs must provide NOAA with information about their organizational structure and operations, including capacity to gather required System observation data. They must also document their ability to accept and disburse funds and to enter into legal agreements with other entities. RICEs must have by-laws, accountability measures governing boards and an explanation of how they are selected, and be able to provide information about RICE diversity, user feedback processes, and transparency. Moreover, RICEs must submit to NOAA a strategic operation plan to ensure the efficient and effective administration and operation of programs and assets to support the System, and agree to and actually work cooperatively with other governmental and non-governmental entities to the benefit of the System. Importantly, an application for certification must include a description of the RICE's management of ongoing regional system operations and maintenance. The RICE must illustrate its standard operating procedures for ensuring the continued validity and maintenance of equipment used; strategies to enhance the System. Additionally, a RICE must also provide a Data Management and Communications Plan documenting how the RICE maintains and controls data quality and distribution. Certification lasts for five years, after which time a certified RICE must apply for re-certification.

These regulations apply to the certification of RICEs only. Further regulations will be developed by NOAA to provide certification for other non-federal assets that do not meet the definition of RICEs.

**Classification**

*Executive Order 12866*

Under Executive Order (E.O.) 12866, if the proposed regulations, including regulations such as those proposed here, are a "significant regulatory action" as defined in § 3(f) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget (OMB). OMB has determined that this action is not a "significant" regulatory action under E.O. 12866.

*Regulatory Flexibility Act*

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

The ICOOS Act directs NOAA to "promulgate program guidelines to certify and integrate non-Federal assets, including regional information coordination entities into the System." 33 U.S.C. 3603(c)(3)(C). This action establishes the criteria and procedures for certifying and integrating RICEs into the Integrated Coastal and Ocean Observation System (System), in compliance with the ICOOS Act.

Specifically, this action proposes to require RICEs to provide NOAA with certain information about their organizational structures, financial capabilities and makeup, oversight, and data quality assurance methods in order to obtain certification under the ICOOS Act. Although most of the affected entities already meet the majority of the requirements proposed here, there may be some minimal costs for some or all of those entities to come into full compliance with these regulations.

Currently, there are eleven RICEs that NOAA expects may be impacted by these regulations. RICEs are generally partnerships of entities in the academic, private, governmental, tribal, and non-governmental sectors, and are organized either pursuant to § 501(c)(3) of the Internal Revenue Code or by Memorandums of Agreement. Most of these eleven RICEs employ from three to five full- or part-time individuals, either directly or as contractors. They therefore fit into the Regulatory Flexibility Act's size standards as small organizations, because they "are not-for-profit enterprises independently owned and operated and not dominant in their field." 5 U.S.C. 601(4).

RICEs primarily depend on funds from NOAA for their operations. Through a series of cooperative agreements, NOAA has been funding these eleven RICEs since FY 2005 to develop the organizational structure, operating procedures, and data management capacity necessary to serve as the entities responsible for planning, coordinating, and operating the regional observing systems. Funding levels to build the organization and coordination capacity of these eleven RICEs, made available through these cooperative agreements, varies by region, but has typically ranged from $300K to $400K per year per RICE.

In addition, beginning in FY 2008, each of these eleven RICEs entered into cooperative agreements with NOAA to support data collection, data management, and development of products and services. In FY 2012, the funding amounts for these eleven RICEs ranged from $1.4 million to $2.5 million per RICE.

Notably, many of the proposed regulations are an extension of the effort to build the capacity of these eleven RICEs to perform successfully the duties of a RICE as identified in the ICOOS Act. As such, the regulations will likely not impose additional expenses on the affected RICEs, because those entities are, for the most part, already engaging in those activities.

NOAA expects that the greatest economic impacts to RICEs of these regulations will be associated with the staff time necessary to organize and submit to NOAA the information required for certification. However, these costs may be low, because in many cases the RICE may already have the information necessary to meet the certification requirements. In a few cases, some staff effort will be required to develop new materials, but notably that effort will be essentially funded through the RICE's cooperative agreement with NOAA. Moreover, NOAA expects that RICEs will incur these costs only once every five years,

given the duration of certification and need for renewal, and that the costs associated with preparing the certification materials may be reflected in a temporary loss of coordination capacity. Each RICE's specific information needs are not clear at this time, so the costs cannot be determined with accuracy; however, because most of the information needed to become certified likely already is in the RICE's possession, these costs are likely low.

Another cost that may arise due to these regulations relates to implementation of new procedures at RICEs to manage data and ensure data quality. Most RICEs have some data management and quality assurance programs in place, but satisfying the certification requirements proposed here may result in some RICEs having to re-allocate their existing funds to provide additional resources to improve their data quality and management. As the data quality standards of each RICE currently differs, NOAA cannot determine the costs this rule would impose on any given RICE to meet the new requirements. However, NOAA believes that such costs would likely be a small percentage of their overall operating budgets, and so would not constitute a significant economic impact to the affected entities.

One benefit to RICEs provided by these regulations and the ICOOS Act is the extension of liability protection to RICE employees for data collected and disseminated pursuant to the ICOOS Act. Specifically, employees of entities that are certified and integrated into the System are, for the purposes of determining liability arising from the dissemination and use of observation data, considered to be part of NOAA.

The extension of tort liability protection may in some instances benefit RICEs and their employees. However, NOAA notes that this benefit may be minimal, as past claims against NOAA and the Department for damages arising from allegedly incorrect data are rare and have been for relatively low amounts. Thus, any financial benefits in terms of liability may be limited.

Finally, certification is a voluntary step by RICEs. Although NOAA expects any entity that may qualify as a RICE and currently receives NOAA funds under the ICOOS Act to seek certification, lack of certification does not preclude funding opportunities.

These regulations will affect eleven known small organizations. However, the rules impose no mandatory costs on any of those organizations; rather, the costs to these organizations to become certified are born by the RICEs voluntarily. Nonetheless, because the affected entities will likely possess most of the information needed for certification, IOOS expects that the overall costs to the entities that result from these rules will be minimal. Because this rule, if implemented, will not result in a substantial economic impact on a significant number of small entities, no Regulatory Flexibility Analysis is required, and none has been prepared.

*Paperwork Reduction Act*

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for certification as a RICE is estimated to average 293 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to U.S Integrated Ocean Observing System Program Office, National Ocean Service, NOAA at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Dated: June 26, 2013.

**Holly A. Bamford,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

**List of Subjects in 15 CFR Part 997**

Science and technology, Ocean observing, Certification requirements.

For the reasons set forth in the preamble, NOAA proposes to amend 15 CFR chapter IX by adding part 997 to read as follows:

**SUBCHAPTER G—REQUIREMENTS FOR CERTIFICATION BY NOAA OF NON-FEDERAL ASSETS INTO THE INTEGRATED COASTAL AND OCEAN OBSERVATION SYSTEM**

## PART 997—REGIONAL INFORMATION COORDINATION ENTITIES

**Subpart A—General**

Sec
997.1 Definitions
997.2 Acceptance of Procedures by a RICE

**Subpart B—Certification and Decertification Process for a Regional Information Coordination Entity (RICE)**

Sec
997.10 Eligibility
997.11 Application Process
997.12 Review by NOAA
997.13 Certification Process
997.14 Certification Duration and Renewal
997.15 Audit and Decertification
997.16 Final Action

**Subpart C—Certification and Application Requirements for a RICE**

Sec
997.20 General
997.21 Organizational Structure
997.22 Membership Policy
997.23 Strategic Operational Plan
997.24 Gaps Identification
997.25 Financial Oversight
997.26 [Reserved]
997.27 [Reserved]
997.28 [Reserved]
997.29 [Reserved]
997.30 Civil Liability

**Authority:** 33 U.S.C. 3603 *et seq.*

### Subpart A—General

**§ 997.1 Definitions.**

*Certification.* For purposes of these regulations, the term "certification" means the granting by NOAA of status to a non-federal entity as a participating RICE of the System authorized by § 12304 of the ICOOS Act. An applicant will not be considered to be participating in the System unless (1) it agrees to meet the certification standards issued by the Administrator issued herein, and (2) the Administrator declares the applicant to be part of the System as a certified RICE.

*Non-Federal Assets.* The term "non-federal assets" means all relevant coastal and ocean observation technologies, related basic and applied technology research and development, and public education and outreach programs that are integrated into the System and are managed through State, regional organizations, universities, nongovernmental organizations, or the private sector.

*Owned and/or operated by the RICE.* Non-Federal Assets that are either owned and/or operated directly by the RICE, or supported financially in part or in full by the RICE.

*Regional Information Coordination Entity.* The term "regional information coordination entity" means an organizational body that is certified or established by contract or memorandum by the lead Federal agency (NOAA) designated in the ICOOS Act, and that coordinates State, Federal, local, and private interests at a regional level with the responsibility of engaging the private and public sectors in designing, operating, and improving regional coastal and ocean observing systems in order to ensure the provision of data and information that satisfy the needs of user groups from the respective regions. The term "regional information coordination entity" includes regional associations described in the System Plan.

*Employee of a Regional Information Coordination Entity.* An individual identified in subsections 997.23(d)(3) or 997.23(f)(1) of these Regulations.

*System.* The term "System" means the National Integrated Coastal and Ocean Observation System established in accordance with § 12304 of the ICOOS Act (33 U.S.C. 3603).

*System Plan.* The term "System Plan" means the plan contained in the document entitled "Ocean.US Publication No. 9, The First Integrated Ocean Observing System (IOOS) Development Plan," as updated by the Council under these regulations.

### § 997.2 Acceptance of Procedures by a RICE.

By its voluntary entrance or participation in the System, the RICE acknowledges and accepts the procedures and requirements established by these regulations.

## Subpart B—Certification and Decertification Process for a Regional Information Coordination Entity (RICE)

### § 997.10 Eligibility.

Any non-Federal entity may submit an application for certification as a RICE as defined in the ICOOS Act and these Regulations.

### § 997.11 Application Process.

(a) The applicant for certification shall submit an application package containing the information and documentation outlined in Subpart C—Certification and Application Requirements for a RICE of these Regulations. The submission package shall include the application form, available online at *http://www.ioos.noaa.gov/certification.*

(b) Submission shall be made to NOAA at the address below, or to such other address as may be indicated in the future: Director U.S. IOOS Program Office, NOAA, 1100 Wayne Ave, Suite 1225, Silver Spring, MD 20910. Submissions may also be made online at *http://www.ioos.noaa.gov/certification.*

### § 997.12 Review by NOAA.

(a) After receiving an application package, NOAA shall have up to 90 calendar days to review the application package and decide whether to certify the applicant.

(b) Before the 90 calendar days have elapsed, NOAA may request additional information, in which case NOAA shall have up to 30 additional calendar days after that additional information has been received by NOAA, above and beyond the original 90 calendar days, to review the application package and decide whether to certify the applicant.

(c) NOAA's decision whether to certify the applicant shall be based on whether the RICE demonstrates that it satisfies the current IOOC certification criteria and these regulations.

### § 997.13 Certification Process.

(a) NOAA's decision whether to certify the applicant, along with the reason for its decision, shall be delivered to the applicant via letter delivered by first class mail and by electronic means.

(b) Applicants receiving a certification determination in the affirmative shall be designated as "certified" RICEs by NOAA. NOAA shall memorialize this status via a memorandum of agreement with the applicant. Certification shall mean that a RICE is incorporated into the System.

(c) A certified RICE shall provide NOAA with written notification of the RICE's intention to change any details of its organizational structure or Strategic Operational Plan, from those details originally provided to satisfy the requirements of these Regulations, and shall request approval from NOAA for the change. After receiving the written notification, NOAA shall have up to 30 calendar days to review the requested change and decide whether to approve the requested change. NOAA's decision, along with the reason for its decision, shall be included in a written notification to the RICE.

### § 997.14 Certification Duration and Renewal.

(a) Certification of a RICE shall be for a term of 5 years, unless otherwise specified by the NOAA Administrator.

(b) Certification may be renewed, at the request of the RICE, for a period of five years. A RICE seeking to renew its certification shall provide NOAA with a written request to renew at least 120 calendar days before the expiration of the existing certification. The request shall include the application form, available online at *http://www.ioos.noaa.gov/certification,* and all information providing evidence that the applicant satisfies the IOOC certification criteria and NOAA regulations promulgated to certify and integrate non-Federal assets into the System.

(c) After receiving a written request for renewal of certification, NOAA shall have up to 90 calendar days to review the request and decide whether to renew the certification.

(d) Before the 90 calendar days have elapsed, NOAA may request additional information, in which case NOAA shall have up to 30 additional calendar days after that additional information has been received by NOAA, above and beyond the original 90 calendar days, to review the request and decide whether to renew the certification.

(e) NOAA's decision whether to renew the certification shall be based on whether the RICE continues to demonstrate that it satisfies the current IOOC certification criteria and these regulations. NOAA's decision, along with the reason for its decision, shall be included in a written notification to the RICE.

### § 997.15 Audit and Decertification.

(a) NOAA may audit a RICE that it has certified to ensure compliance with the IOOC certification criteria and these regulations. NOAA may conduct an audit without advance notice.

(b) NOAA may decertify a RICE. In general, a RICE may be decertified when:

(1) The results of an audit indicate that the RICE no longer satisfies the requirements under which it was certified;

(2) Other relevant reasons for decertification become apparent.

(c) NOAA's intent to decertify a RICE, along with the identification of a specific deficiency(ies) and a recommended corrective action(s), shall be included in a written notification to the RICE. After receiving NOAA's written notification, a RICE shall have up to 30 calendar days to request in writing that NOAA reconsider its intent to decertify the RICE. The RICE's request for reconsideration shall contain sufficient information for NOAA to determine whether to grant the request for reconsideration. Alternatively, the RICE may correct the deficiency(ies)

identified by NOAA within 30 calendar days, notify NOAA in writing of the corrective action(s) taken, and provide sufficient evidence for NOAA to determine the correctness and effectiveness of the corrective action(s) taken.

(d) If a RICE submits to NOAA a written request for reconsideration or a written assertion that the identified deficiency(ies) has been corrected, NOAA shall have up to 60 calendar days after receipt of the request or assertion, to review the request for reconsideration or the assertion of corrective action. NOAA's decision, along with the reason for its decision, shall be delivered to the applicant via letter delivered by first class mail and by electronic means.

(e) Upon decertification, a RICE shall no longer be incorporated into the System.

(f) A RICE may act voluntarily to terminate its certification at any time by notifying NOAA in writing of its desire to do so. Upon receipt of the notification by NOAA, the RICE will no longer be incorporated into the System.

**§ 997.16 Final Action.**

NOAA's decision, whether to certify, renew or decertify a RICE shall be considered final agency action.

## Subpart C—Certification and Application Requirements for a RICE

**§ 997.20 General.**

(a) For the purposes of these certification regulations, when the verb "describe" is used it indicates that the RICE shall give an account in text that responds to the requirement. This text shall contain sufficient information to demonstrate how the RICE satisfies the certification requirement. The RICE may include a link(s) to additional information. When the verb "document" is used, it indicates that the RICE shall furnish a document(s) that responds to the requirement. A text statement accompanying the document(s) will normally be necessary to provide context for the document(s) and to demonstrate how the RICE satisfies the certification requirement. The RICE may include a link to a document in the accompanying text statement.

(b) Documentation that addresses the certification requirements may include references to existing RICE documents. All documents and materials may be submitted directly to the U.S. IOOS Program Office or made accessible for public viewing on the RICE's Web site.

**§ 997.21 Organizational Structure.**

(a) To become certified, a RICE must

Demonstrate an organizational structure capable of gathering required System observation data, supporting and integrating all aspects of coastal and ocean observing and information programs within a region and that reflects the needs of State and local governments, commercial interests, and other users and beneficiaries of the System and other requirements specified under this subtitle and the System Plan. 33 U.S.C. 3603(c)(4)(A)(i).

(b) A RICE's application shall

(1) Describe the RICE's organizational structure (e.g., 501(c)(3) tax-exempt organization, establishment via MOU or MOA).

(2) Document the RICE's ability to satisfy applicable legal criteria for accepting and disbursing funds, and entering into agreements. Sufficient documentation may be provided in the form of: (1) Evidence of a current grant, cooperative agreement, or contract in good standing with the Federal government; or (2) evidence of fiscal agreements, standard operating procedures for financial activities, and proof of an audit process.

(3) Document the RICE's measures for addressing issues of accountability and liability. For this criterion, accountability and liability refer to the RICE's governance and management activities. Sufficient documentation may be provided in the form of (1) a conflict of interest policy for the Governing Board or governing body, which clearly states that a member of the governing board will declare any conflict of interest he or she may have and will recuse him or herself from associated funding decisions, and (2) a policy statement in the RICE's by-laws that addresses liability issues.

(4) Describe the process the RICE uses to set priorities for distributing funds (e.g., requirement for Governing Board or governing body approval when responding to funding opportunities or adjusting to funding level changes in existing agreements).

(5) Document the by-laws, signed articles of agreement, or any binding agreements that demonstrate how the RICE establishes and maintains a Governing Board or governing body. The documentation shall demonstrate:

(i) How the composition of the Governing Board or governing body is selected and how it is representative of regional ocean observing interests. NOAA defines "representative" in this specific context to include geographic, sector, expertise, and stakeholder considerations.

(ii) How and with what frequency the RICE solicits and receives advice on RICE participant diversity, stakeholder coordination, and engagement strategies, to ensure the provision of data and information that satisfy the needs of user groups.

(iii) How the RICE collects and assesses user feedback to gauge the effectiveness of the regional system and subsystems in satisfying user needs, and how the RICE responds to this user feedback in setting its priorities. Sufficient documentation may be provided in the form of a description of the method the RICE uses in its annual planning process to assess priorities among the identified user needs in the region and to respond to those user needs.

(iv) Steps the RICE takes to ensure decisions on priorities and overall regional system design are transparent and available. At a minimum, RICE priorities and regional system design decisions shall be made accessible for public viewing on the RICE's Web site.

**§ 997.22 Membership Policy.**

The RICE application shall describe:

(a) The process by which individuals or organizations may formally participate in the governance activities of the RICE;

(b) The rights and responsibilities of this participation;

(c) The process by which the RICE strives for organizational diversity through intra-regional geographic representation, and diversity of activities and interests from both public and private sectors; and

(d) How the RICE allows for participation from adjacent regions or nations.

**§ 997.23 Strategic Operational Plan.**

(a) To become certified, a RICE must:

Develop and operate under a strategic operational plan that will ensure the efficient and effective administration of programs and assets to support daily data observations for integration into the System, pursuant to the standards approved by the Council;

and

work cooperatively with governmental and non-governmental entities to identify and provide information products of the System for multiple users within the service area of the regional information coordination entities.

The Strategic Operational Plan is a high-level document that outlines how a RICE manages and operates an integrated regional observing system. This Plan should evolve as a RICE matures, new technologies become available, regional priorities change, and new users and stakeholders are identified. The Plan may be responsive

to changing funding levels, and shall contain the following sections, referencing other plans directly when applicable. The RICE application shall provide descriptions and documentation that the Strategic Operational Plan satisfies the requirements of § 997.23.

(b) Background and Context

The RICE shall describe:

(1) The role of the RICE in furthering the development of the regional component of the System;

(2) The process by which the RICE updates the Strategic Operational Plan at least once every five years and how the RICE seeks inputs from the broader user community; and

(3) The RICE's primary partners and any contributing observing systems. For the purposes of § 997.23, NOAA defines a primary partner as any organization or individual that contributes significant staff time, funding or other resources to project activities. This is not an exhaustive list of all RICE partners but the primary partners the RICE is working with on a given project.

(c) Goals and Objectives

The RICE shall describe:

(1) How the RICE addresses marine operations; coastal hazards; ecosystems, fisheries and water quality; and climate variability and change; and

(2) The major objectives that guide the RICE's priorities for data collection and management, development of products and services, research and development, and education and outreach.

(d) Operational Plan for the Observing System

The RICE's Strategic Operational Plan shall include or reference an Operational Plan for the Observing System that:

(1) Describes the key products, services and outcomes that the observing system will deliver;

(2) Describes the elements of the operational integrated observing system that will deliver those products, services and outcomes;

(3) Documents to NOAA's satisfaction that the individual(s) responsible for RICE operations has the necessary qualifications and possesses relevant professional education and work experience to deliver observations successfully. At a minimum the RICE shall:

(i) Identify the individual responsible for overall RICE management;

(ii) Identify, as applicable, the individual responsible for observations system management in the region;

(iii) Provide the curriculum vitae for each identified individual; and

(iv) Identify the procedures used to evaluate the capability of the individual(s) identified in subsection 997.23(d)(3) to conduct the assigned duties responsibly.

(4) Describes how the RICE manages ongoing regional system operations and maintenance. At a minimum the RICE shall:

(i) Describe the RICE's standard operating procedures for ensuring that those responsible for managing hardware owned and/or operated by the RICE calibrate, validate, operate, and maintain equipment regularly and in accordance with manufacturer guidance or industry best practice (other management factors that influence the delivery of quality data, such as managing software applications, are addressed in subsection 997.23(f); and

(ii) Describe the RICE's standard operating procedures for ensuring that those responsible for managing hardware owned and/or operated by the RICE maintain equipment inventories, shipping logs and instrument history logs.

(e) Development of a Strategy To Sustain and Enhance the System

The RICE shall describe its strategy for balancing changes in regional priorities with the need to maintain established data sets, the primary value of which may be in their long-term records. At a minimum the description shall:

(1) Identify the guiding principles that inform the strategy;

(2) Reference and show connections to a long-term (five-to-ten-year) regional Build-out Plan for the full implementation of the regional observing system based on the RICE's priorities and identified user needs; and

(3) Relate the annual planning process the RICE uses to review its priorities in light of funding levels and its plans for system enhancement as outlined in the regional Build-out Plan.

(f) Data Management and Communications (DMAC) Plan

The RICE's Strategic Operational Plan shall include or reference a DMAC Plan that:

(1) Documents to NOAA's satisfaction that the individual responsible for management of data operations for the RICE has the necessary technical skills, and possesses relevant professional education and work experience to support DMAC capabilities and functionality for the System. At a minimum the DMAC Plan shall:

(i) Identify the individual responsible for the coordination and management of observation data in the region; and

(ii) Provide the curriculum vitae for the identified individual.

(iii) Identify the procedures used to evaluate the capability of the individual identified in subsection 997.23(f)(1) to conduct the assigned duties responsibly.

(2) Describes how data are ingested, managed and distributed, including a description of the flow of data through the RICE data assembly center from the source to the public dissemination/access mechanism. The description shall include any transformations or modifications of data along the data flow pathway including, but not limited to, format translations or aggregations of component data streams into an integrated product.

(3) Describes the data quality control procedures that have been applied to data that are distributed by the RICE. All data shall be quality controlled. For each data stream, describe the quality control procedure applied to the data, by the RICE or other named entity, between the data's collection and publication by the RICE. The description will also include a reference to the procedure used (e.g., QARTOD, JCOMM/IODE, scientific literature).

(4) Adheres to the NOAA Data Sharing Procedural Directive.[1] The System is an operational system; therefore the RICE should strive to provide as much data as possible, in real-time or near real-time, to support the operation of the System. When data are collected in part or in whole with funds distributed to a RICE through the U.S. IOOS Program Office, the RICE should strive to make the data available as soon as logistically feasible for each data stream. When data are not collected with funds distributed to a RICE through the U.S. IOOS Program Office, the data may be made available in accordance with any agreement made with the data provider.

(5) Describes how the RICE will implement data management protocols promulgated by the IOOC and the U.S. IOOS Program Office in a reasonable and timely manner as defined for each protocol.

(6) Documents the RICE's data archiving process or describes how the RICE intends to archive data at a national archive center (e.g., NODC, NGDC, NCDC) in a manner that follows guidelines outlined by that center. Documentation shall be in the form of a Submission Agreement, Submission Information Form (SIF) or other, similar data producer-archive agreement.

[1] NOAA Data Sharing Policy for Grants and Cooperative Agreements Procedural Directive, Version 2.0 *https://www.nosc.noaa.gov/EDMC/documents/EDMC_PD-DSPNG_final_v2.pdf.*

(g) Budget Plan

The RICE's Strategic Operational Plan shall include or reference a Budget Plan that:

(1) Identifies who supports the RICE financially;

(2) Outlines the RICE's plans and strategies for diversifying funding sources and opportunities;

(3) Identifies how RICE priorities guide funding decisions; and

(4) Assesses funding constraints and the associated risks to the observing System that the RICE must address for the future.

**§ 997.24 Gaps Identification.**

(a) To become certified, a RICE must identify gaps in observation coverage needs for capital improvements of Federal assets and non-Federal assets of the System, or other recommendations to assist in the development of annual and long-terms plans and transmit such information to the Interagency Ocean Observing Committee via the Program Office[.] 33 U.S.C. 3603(c)(4)(A)(ii).

(b) The RICE application shall

(1) Document that the RICE's asset inventory contains up-to-date information. This could be demonstrated by a database or portal accessible for public viewing and capable of producing a regional summary of observing capacity;

(2) Provide a regional Build-out Plan that identifies the regional priorities for products and services, based on its understanding of regional needs, and a description of the integrated system (observations, modeling, data management, product development, outreach, and R&D). The RICE shall review and update the Build-out Plan at least once every five years; and

(3) Document the priority regional gaps in observation coverage needs, as determined by an analysis of the RICE asset inventory and Build-out Plan. The RICE shall review and update the analysis of priority regional gaps in observation coverage needs at least once every five years.

**§ 997.25 Financial Oversight.**

(a) To become certified, a RICE must comply with all financial oversight requirements established by the Administrator, including requirement relating to audits. 33 U.S.C. 3603(c)(4)(A)(v).

(b) The RICE's application shall document compliance with the terms and conditions set forth in 2 CFR Part 215—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, Subpart C—Post Award Requirements. This Subpart prescribes standards for financial management systems, among others. (Compliance with this criterion can be demonstrated by referencing any existing grant, cooperative agreement, or contract the RICE has with NOAA.)

(c) The RICE shall document annually the RICE's operating and maintenance costs for all observing platforms and sensors, etc., owned and/or operated by the RICE.

**§§ 997.26 through 997.29 [Reserved]**

**§ 997.30 Civil Liability.**

(a) For purposes of determining liability arising from the dissemination and use of observation data gathered pursuant to the ICOOS Act and these regulations, any non-Federal asset or regional information coordination entity incorporated into the System by contract, lease, grant, or cooperative agreement that is participating in the System shall be considered to be part of the National Oceanic and Atmospheric Administration. Any employee of such a non-Federal asset or regional information coordination entity, while operating within the scope of his or her employment in carrying out the purposes of this subtitle, with respect to tort liability, is deemed to be an employee of the Federal Government.

(b) The ICOOS Act's grant of civil liability protection (and thus the RICE's limited status as part of NOAA) applies only to a RICE that:

(1) Is participating in the System, meaning the RICE has been certified by NOAA in accordance with the ICOOS Act and these regulations; and

(2) has been integrated into the System by contract, lease, grant or cooperative agreement with NOAA.

(c) An "employee" of a regional information coordination entity is an individual who satisfies all of the following requirements:

(1) The individual is employed or contracted by a certified RICE that has been integrated into the System by contract, lease, grant or cooperative agreement with NOAA, and that is participating in the System, as defined in § 997.30(b), above;

(2) The individual is identified by the RICE, as required in § 997.23(d)(3), as one of three individuals responsible for the collection, management, or dissemination of ocean, coastal, and Great Lakes observation data; and

(3) The individual is responsive to federal government control.

(d) The protection afforded to employees of a RICE with regard to liability applies only to specific individuals employed or contracted by a RICE who meet the requirements of 997.30(c) and who are responsible for the collection, management, or dissemination of ocean, coastal, and Great Lakes observation data. The RICE must identify to NOAA's satisfaction: (1) The individual responsible for overall system management, (2) as applicable, the individual responsible for observations system management, and (3) the individual responsible for management of data operations. In accepting certification, the RICE will concede to NOAA the power to ensure these individuals comply with the requirements of the program regulations in their daily operations and that they are responsive to NOAA through the agreement the RICE has with NOAA.

[FR Doc. 2013–15823 Filed 7–1–13; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–140789–12]**

**RIN 1545–BL42**

## Information Reporting for Affordable Insurance Exchanges

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to requirements for Affordable Insurance Exchanges (Exchanges) to report information relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. These proposed regulations affect Exchanges that make qualified health plans available to individuals and employers.

**DATES:** Written (including electronic) comments and requests for a public hearing must be received by September 3, 2013.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–140789–12), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–140789–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at

*www.regulations.gov* (IRS REG–140789–12).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Arvind Ravichandran, (202) 622–4920; concerning the submission of comments, and/or requests for a public hearing, Oluwafunmilayo Taylor, (202) 622–7180 (not toll-free calls).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking is covered under OMB Control Number 1545–2232 and will be submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 3, 2013. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in § 1.36B–5 and will be reported on Form 1095–A. The collection of information is necessary to compute the premium tax credit and to reconcile the amount of the premium tax credit with advance credit payments made under section 1412 of the Patient Protection and Affordable Care Act (42 U.S.C. 18082). The collection of information is required to comply with the provisions of section 36B(f)(3) of the Internal Revenue Code (Code). The likely respondents are Exchanges established under section 1311 or 1321 of the Patient Protection and Affordable Care Act (42 U.S.C. 13031 or 42 U.S.C. 18041).

The estimated total annual reporting burden is 12,060 hours. The estimated annual burden per respondent is 670 hours and the estimated number of respondents is 18.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

**Background**

Beginning in 2014, under the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act), individuals and small businesses will be able to purchase private health insurance through competitive marketplaces called Exchanges (also called Health Insurance Marketplaces). Section 1401 of the Affordable Care Act enacted section 36B, allowing a refundable premium tax credit to help individuals and families afford health insurance purchased through an Exchange. The section 36B credit makes health insurance affordable by reducing a taxpayer's out-of-pocket premium cost.

Under section 1411 of the Affordable Care Act (42 U.S.C. 18081), an Exchange makes an advance determination of credit eligibility for individuals enrolling in coverage through the Exchange and seeking financial assistance. Using information available at the time of enrollment, the Exchange determines (1) whether the individual meets the income and other requirements for advance credit payments, and (2) the amount of the advance payments. Advance credit payments are made monthly under section 1412 of the Affordable Care Act (42 U.S.C. 18082) to the issuer of the qualified health plan in which the individual enrolls.

Under section 36B(f)(1), taxpayers who receive advance credit payments must reconcile the amount of the advance payment with the amount of the premium tax credit computed on the taxpayer's income tax return. A taxpayer who receives excess advance payments must treat the excess amount as additional tax under section 36B(f)(2). Taxpayers whose credit amount exceeds the amount of advance payments for the taxable year may receive the excess as additional credit. Taxpayers who do not seek advance credit payments also may claim the premium tax credit on the income tax return.

Section 36B(f)(3) directs Exchanges to report to the IRS and to taxpayers certain information required to reconcile the premium tax credit with advance credit payments and to administer the premium tax credit generally. The required information relates to the enrollment of a taxpayer and taxpayer's family in a qualified health plan through the Exchange and includes (1) the level of coverage, (2) identifying information for the primary insured and each enrollee, (3) the amount of premiums and advance credit payments for the coverage, (4) information (concerning, for example, a change in circumstances) provided to the Exchange necessary to determine eligibility for and the amount of the credit, and (5) other information necessary to determine if a taxpayer has received the appropriate advance credit payments.

Final regulations under section 36B (TD 9590) were issued on May 23, 2012 (77 FR 30377). Section 1.36B–5 identifies the information (primarily based on the statutory language) that Exchanges must report to the IRS and taxpayers and indicates that the time and manner requirements for reporting this information would be provided in subsequent guidance. Accordingly, these proposed regulations amend § 1.36B–5, propose detailed rules for information reporting by Exchanges, and describe specific information that has been identified since publication of the final regulations that is necessary for efficient tax administration.

**Explanation of Provisions**

*1. Information Reporting to the IRS*

a. Information Required To Be Reported

The proposed regulations require Exchanges to report information concerning individuals enrolled in qualified health plans, including the monthly amount of advance credit payments, if any. Consistent with the statute, the proposed regulations require Exchanges to report taxpayer identification numbers. It is anticipated that Exchanges will report only Social Security numbers and provide an individual's date of birth if a Social Security number is not available.

b. Time and Manner of Reporting

The proposed regulations require Exchanges to report the specified information for each qualified health plan electronically to the IRS on an annual and, to facilitate efficient tax administration, a monthly basis, and specify the information that must be reported in each category. Under the proposed regulations, Exchanges must

make a monthly report to the IRS on or before the fifteenth day of the month following the month of coverage. The information reported monthly will be cumulative, containing monthly data for each month beginning with January through the most recent completed month. For example, information reported in September will contain information for each month from January through August. The annual report for the calendar year must be made on or before January 31 of the year following the year of coverage. Information for more than one tax household will be on the same annual report if the individuals enroll in one qualified health plan.

*2. Statements Furnished to Taxpayers or Responsible Adults*

The proposed regulations direct Exchanges to furnish to each taxpayer or responsible adult who enrolled, or whose family member enrolled, in a qualified health plan through the Exchange a written statement that includes the information the Exchange must report to the IRS annually. Exchanges may use Form 1095–A for this statement and must furnish the statement on or before January 31 of the year following the calendar year of coverage.

Section 36B(f)(3) and the proposed regulations require that Exchanges furnish statements only to the individual identified to the Exchange as the taxpayer or the responsible adult. Section 36B information reporting may be included in the IRS truncated taxpayer identification number program, see proposed regulations at 78 FR 913 (January 7, 2013). Comments are requested on whether and under what circumstances Exchanges should furnish a statement to another individual (who may, for example, require the statement to determine tax liability).

The proposed regulations permit electronic delivery of statements to the taxpayer or responsible adult if the taxpayer or responsible adult consents.

The IRS plans to make educational materials available to taxpayers to explain the multiple statements taxpayers may receive under sections 6055, 6056, and 36B.

**Effective/Applicability Date**

These regulations are proposed to apply for taxable years ending after December 31, 2013. Exchanges and taxpayers may apply these proposed regulations until publication of final regulations or other guidance. The need for additional transition relief will be considered at that time.

**Special Analyses**

It has been determined that this notice of proposed rulemaking 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 has also 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 requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal authors of these proposed regulations are Shareen S. Pflanz and Stephen J. Toomey of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

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

Section 1.36B–0 also issued under 26 U.S.C. 36B(g).

Section 1.36B–5 also issued under 26 U.S.C. 36B(g).

■ **Par. 2.** Section 1.36B–0 is amended by revising the entries for § 1.36B–5 to read as follows:

**§ 1.36B–0 Table of Contents.**

* * * * *

**§ 1.36B–5 Information Reporting by Exchanges.**

(a) In general.

(b) Information required to be reported.

(1) Information reported annually.

(2) Information reported monthly.

(c) Alternative to reporting applicable benchmark plan.

(d) Electronic filing.

(e) Annual statement to be furnished to taxpayer.

(1) In general.

(2) Form of the statement.

(3) Time and manner for furnishing statements.

(f) Electronic furnishing of statements.

(1) In general.

(2) Consent.

(i) In general.

(ii) Withdrawal of consent.

(iii) Change in hardware or software requirements.

(iv) Examples.

(3) Required disclosures.

(i) In general.

(ii) Paper statement.

(iii) Scope and duration of consent.

(iv) Post-consent request for a paper statement.

(v) Withdrawal of consent.

(vi) Notice of termination.

(vii) Updating information.

(viii) Hardware and software requirements.

(4) Format.

(5) Notice.

(i) In general.

(ii) Undeliverable electronic address.

(iii) Corrected statement.

(6) Access period.

(7) Paper statements after withdrawal of consent.

(g) Effective/applicability date.

■ **Par. 3.** Section 1.36B–5 is revised to read as follows:

**§ 1.36B–5 Information reporting by Exchanges.**

(a) *In general.* An Exchange must report to the Internal Revenue Service (IRS) information required by section 36B(f)(3) and this section relating to the qualified health plans in which individuals enroll.

(b) *Information required to be reported—*(1) *Information reported annually.* An Exchange must report to

the Internal Revenue Service on or before January 31 of the year following the calendar year of coverage the following information for each qualified health plan in which an individual or a member of the individual's family enrolls through the Exchange—

(i) The name, address, and taxpayer identification number (TIN), or date of birth if a TIN is not available, of an individual enrolling, or enrolling a family member, in coverage and approved for advance credit payments (taxpayer), and the name and TIN of the individual's spouse, if applicable;

(ii) The name, address, and TIN, or date of birth if a TIN is not available, of an adult enrolling in coverage or enrolling one or more members of a family in coverage and either not requesting or not approved for advance credit payments (responsible adult);

(iii) The name and TIN, or date of birth if a TIN is not available, and dates of coverage for each individual covered under the plan;

(iv) The monthly premium for the applicable benchmark plan used to compute advance credit payments;

(v) For a responsible adult, the premium for the applicable benchmark plan that would apply to the individuals enrolled in a qualified health plan;

(vi) The monthly premium for the plan or plans in which a taxpayer, responsible adult, or family member enrolls, without reduction for advance credit payments, including the amount of premiums for a stand-alone dental plan allocated to pediatric dental benefits;

(vii) The amount of the advance credit payments made on a taxpayer's behalf each month;

(viii) The name of the qualified health plan issuer and the issuer's employer identification number (EIN);

(ix) The qualified health plan policy number;

(x) The Exchange's unique identifier; and

(xi) Any other information specified by forms or instructions or in published guidance, see § 601.601(d) of this chapter.

(2) *Information reported monthly.* For each calendar month, an Exchange must report to the Internal Revenue Service, on or before the fifteenth day following each month of coverage, the information described in paragraph (b)(1) of this section and the following information—

(i) Whether the individuals enrolled in the qualified health plan are the taxpayer's dependents;

(ii) Information on employment (to the extent this information is provided to the Exchange) consisting of—

(A) The name, address, and EIN of each employer of the taxpayer, taxpayer's spouse, and each individual covered by the qualified health plan or plans; and

(B) An indication of whether an employer offered minimum essential coverage, and, if so, the amount of the employee's required contribution for self-only coverage and the Exchange's determination of whether the employer coverage was affordable and provided minimum value;

(iii) The unique number that identifies the specific account of the taxpayer or responsible individual to enable data association from month to month;

(iv) The name and TIN, or date of birth if a TIN is not available, of each individual for whom the Exchange has granted an exemption from coverage under section 5000A(e) and the related regulations, the months for which the exemption is in effect, and the exemption certificate number; and

(v) Any other information specified by forms or instructions or in published guidance, see § 601.601(d) of this chapter.

(c) *Alternative to reporting applicable benchmark plan.* An Exchange satisfies the requirement in paragraph (b)(1)(v) of this section if, on or before January 1 of each year after 2014, the Exchange provides a reasonable method that any individual may use to determine the premium for the applicable benchmark plan that applies to the individual's coverage family for the prior calendar year for purposes of determining the individual's premium tax credit.

(d) *Electronic filing.* An Exchange must submit the reports to the IRS required under this section in electronic format. The information reported monthly will be submitted to the IRS through the Department of Health and Human Services.

(e) *Annual statement to be furnished to taxpayer*—(1) *In general.* An Exchange must furnish to each taxpayer or responsible adult who enrolled, or whose family member enrolled, in a qualified health plan through the Exchange a written statement showing—

(i) The name and address of the taxpayer or responsible adult; and

(ii) The information described in paragraph (b)(1) of this section for the previous calendar year.

(2) *Form of the statement.* A statement required under this paragraph (e) may be made by furnishing to the taxpayer or responsible adult identified in the annual report a copy of the report filed with the IRS or on a substitute statement. A substitute statement must include the information required to be shown on the report filed with the IRS and must comply with requirements in published guidance (see § 601.601(d)(2) of this chapter) relating to substitute statements. An IRS truncated taxpayer identifying number may be used as the identifying number for an individual in lieu of the identifying number appearing on the corresponding information report filed with the IRS.

(3) *Time and manner for furnishing statements.* An Exchange must furnish the statements required under this paragraph (e) on or before January 31 of the year following the calendar year of coverage. If mailed, the statement must be sent to the taxpayer's or responsible person's last known permanent address or, if no permanent address is known, to the taxpayer's or responsible person's temporary address. An Exchange may furnish the statement electronically in accordance with paragraph (f) of this section.

(f) *Electronic furnishing of statements*—(1) *In general.* An Exchange required to furnish a statement under paragraph (e) of this section may furnish the statement to the taxpayer or responsible adult (recipient) in an electronic format in lieu of a paper format. An Exchange that meets the requirements of paragraphs (f)(2) through (7) of this section is treated as furnishing the statement in a timely manner.

(2) *Consent*—(i) *In general.* A recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient is able to access the statement in the electronic format in which it will be furnished. Alternatively, the consent may be made in a paper document that is confirmed electronically.

(ii) *Withdrawal of consent.* An Exchange may provide that the withdrawal of consent takes effect either on the date the Exchange receives it or on another date no more than 60 days later. The Exchange may provide that a request by the recipient for a paper statement will be treated as a withdrawal of consent to receive the statement in an electronic format. If the Exchange furnishes a statement after the withdrawal of consent takes effect, the recipient has not consented to receive the statement in electronic format.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that a recipient will not be able to access a statement, an Exchange must, prior to changing the hardware or software, notify the recipient. The notice must

describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the Exchange. After implementing the revised hardware and software, the Exchange must obtain a new consent or confirmation of consent from the recipient to receive the statement electronically.

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

*Example 1.* Furnisher F sends Recipient R a letter stating that R may consent to receive the statement required under section 36B electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statement electronically by accessing the Web site, downloading and completing the consent document, and emailing the completed consent to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished statement. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (f)(2)(i) of this section.

*Example 2.* Furnisher F sends Recipient R an email stating that R may consent to receive the statement required under section 36B electronically instead of in a paper format. The email contains an attachment instructing R how to consent to receive the statement required under section 36B electronically. The email attachment uses the same electronic format that F will use for the electronically furnished statement. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (f)(2)(i) of this section.

*Example 3.* Furnisher F posts a notice on its Web site stating that Recipient R may receive the statement required under section 36B electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statements electronically. R accesses the secure Web page and follows the instructions for giving consent. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (f)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general.* Prior to, or at the time of, an individual's consent, an Exchange must provide to the individual a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (f)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* An Exchange must inform the recipient that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* An Exchange must inform the recipient of the scope and duration of the consent. For example, the Exchange must inform the recipient whether the consent applies to each statement required to be furnished after the consent is given until it is withdrawn or only to the first statement required to be furnished following the consent.

(iv) *Post-consent request for a paper statement.* An Exchange must inform the recipient of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (f)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* An Exchange must inform the recipient that—

(A) The recipient may withdraw consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and email address is provided in the disclosure statement;

(B) An Exchange will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (f) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* An Exchange must inform the recipient of the conditions under which the Exchange will cease furnishing statements electronically to the recipient.

(vii) *Updating information.* An Exchange must inform the recipient of the procedures for updating the information needed to contact the recipient and notify the recipient of any change in the Exchange's contact information.

(viii) *Hardware and software requirements.* An Exchange must provide the recipient with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site. The Exchange must advise the recipient that the statement may be required to be printed and attached to a Federal, State, or local income tax return.

(4) *Format.* The electronic version of the statement must contain all required information and comply with applicable published guidance (see § 601.601(d) of this chapter) relating to substitute statements to recipients.

(5) *Notice*—(i) *In general.* If a statement is furnished on a Web site, the Exchange must notify the recipient. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement and include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, this statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (f)(5)(i) of this section is returned as undeliverable, and the Exchange cannot obtain the correct electronic address from the Exchange's records or from the recipient, the Exchange must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statement.* An Exchange must furnish a corrected statement to the recipient electronically if the original statement was furnished electronically. If the original statement was furnished through a Web site posting, the Exchange must notify the recipient that it has posted the corrected statement on the Web site in the manner described in paragraph (f)(5)(i) of this section within 30 days of the posting. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new email address.

(6) *Access period.* Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) *Paper statements after withdrawal of consent.* An Exchange must furnish a paper statement if a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished.

A paper statement furnished under this paragraph (f)(7) after the statement due date is timely if furnished within 30 days after the date the Exchange receives the withdrawal of consent.

(g) *Effective/applicability date.* This section applies for taxable years ending after December 31, 2013.

**Beth Tucker,**

*Deputy Commissioner for Operations Support.*

[FR Doc. 2013–15943 Filed 6–28–13; 4:15 pm]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 890

**[Docket No. FDA–2013–N–0568]**

## Physical Medicine Devices; Reclassification of Stair-Climbing Wheelchairs; Correction

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

**ACTION:** Proposed order; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a proposed order that appeared in the **Federal Register** of June 12, 2013 (78 FR 35173). The document proposed to reclassify stair-climbing wheelchairs. The document was published with typographical errors in the **DATES** section of the document. This document corrects those errors.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Nipper, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 1540, Silver Spring, MD 20993, 301–796–6527.

**SUPPLEMENTARY INFORMATION:** In the FR Doc. 2013–13864, appearing on page 35173 in the **Federal Register** of Wednesday, June 12, 2013, the following correction is made.

On page 35173, in the third column, the first sentence under **DATES** is corrected to read "Submit either electronic or written comments on this proposed order by September 10, 2013."

Dated: June 26, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–15789 Filed 7–1–13; 8:45 am]

**BILLING CODE 4160–01–P**

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### 36 CFR Part 1196

**[Docket No. ATBCB–2013–0003]**

**RIN 3014–AA11**

## Passenger Vessels Accessibility Guidelines

*Correction*

In proposed rule document 2013–14367, appearing on pages 38102–38159 in the issue of Tuesday, June 25, 2013, make the following correction:

### PART 1196—PASSENGER VESSELS ACCESSIBILITY GUIDELINES [CORRECTED]

On page 38159, the figures titled as "Figure V703.7.2.2 International Symbol of TTY" and "Figure V703.7.2.3 Assistive Listening Systems" were inadvertently omitted after the figure titled "Figure V703.7.2.1 International Symbol of Accessibility" and are added to read as set forth below:

**Figure V703.7.2.2 International Symbol of TTY**

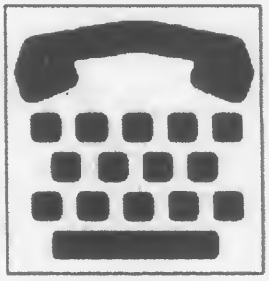

**Figure V703.7.2.3 Assistive Listening Systems**

[FR Doc. C1–2013–14367 Filed 7–1–13; 8:45 am]
BILLING CODE 1505–01–D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2013–0299; FRL–9829–4]

## Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) submittals from the State of West Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. West Virginia has made submittals addressing the infrastructure requirements for the 2008 8-hour ozone NAAQS. This action approves portions of those submittals.

**DATES:** Written comments must be received on or before August 1, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID EPA–R03–OAR–2013–0299 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0299, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2013–0299. 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 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 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:** Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On February 17, 2012, the West Virginia Department of Environmental Protection (WVDEP) submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS.

### I. Background

On March 27, 2008, EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS to 0.075 parts per million (ppm). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The content of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 8-hour ozone NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS.

### II. Summary of SIP Revision

On February 17, 2012, the WVDEP provided a submittal to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS. This submittal addressed the following infrastructure elements or portions thereof, which EPA is proposing to approve: CAA section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). A detailed summary of EPA's

review and rationale for approving West Virginia's submittal may be found in the Technical Support Document (TSD) for this proposed rulemaking action, which is available online at *www.regulations.gov*, Docket number EPA–R03–OAR–2013–0299.

### III. Proposed Action

EPA is proposing to approve the following elements or portions thereof of West Virginia's February 17, 2012 SIP revision: (A), (B), (C), (D)(i)(II), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). West Virginia's SIP revision provides the basic program elements specified in CAA section 110(a)(2) necessary to implement, maintain, and enforce the 2008 ozone NAAQS. This action does not include any proposed action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process. This action also does not include proposed action on section 110(a)(2)(D)(i)(I) of the CAA, because this element, or portions thereof, is not required to be submitted by a state to meet CAA section 110(a)(2)(D)(i)(I) until the EPA has quantified a state's obligations under that section. *See EME Homer City Generation, LP* v. *EPA*, 696 F.3d 7 (DC Cir. 2012), *reh'g denied* 2013 U.S. App. LEXIS 1623 (Jan. 24, 2013).

Additionally, EPA has taken separate action on the portions of CAA section 110(a)(2) infrastructure elements for the 2008 ozone NAAQS as they relate to West Virginia's PSD program, as required by part C of Title I of the CAA. This includes portions of the following infrastructure elements: CAA section 110(a)(2)(C), (D)(i)(II), and (J). *See* (77 FR 63736, October 17, 2012) and (78 FR 27062, May 9, 2013). EPA will take later separate action on CAA section 110(a)(2)(E)(ii) for the 2008 ozone NAAQS as it relates to CAA section 128, "State Boards."

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### 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 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this proposed rule, which satisfies the infrastructure requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS, 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, Ozone, Volatile organic compounds, Nitrogen dioxide, Record keeping.

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

Dated: June 13, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2013–15893 Filed 7–1–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2013–0211; FRL–9829–8]**

## Approval and Promulgation of Air Quality Implementation Plans; Virginia; Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia addressing the basic program elements specified in 110(a)(2) of the Clean Air Act (CAA) necessary to implement, maintain, and enforce the 2008 ozone national ambient air quality standards (NAAQS). This submission is commonly referred to as an infrastructure SIP. This action does not include any proposed action on element (I) which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate action. This action is being taken under the CAA.

**DATES:** Written comments must be received on or before August 1, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0211 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0211, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2013–

0211. 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 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 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov*.

**SUPPLEMENTARY INFORMATION:** On July 23, 2012, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS.

## I. Background

On March 27, 2008, EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS to 0.075 parts per million (ppm). Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS or within such shorter period as EPA may prescribe. The contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(1) provides the procedural and timing requirements for SIPs and section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. More specifically, section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 8-hour ozone NAAQS.

States were required to submit such SIPs for the 2008 8-hour ozone NAAQS to EPA no later than March 2011.

## II. Summary of SIP Revision

On July 23, 2012, VADEQ provided a submittal to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS. This submittal addressed the following infrastructure elements, which EPA is proposing to approve: CAA section 110(a)(2)(A), (B), (C) (for enforcement and regulation of minor sources), (D)(i)(II) (for visibility protection), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. EPA is taking separate action on the portions of (C), (D)(i)(II), and (J) as they relate to Virginia's PSD program and (E)(ii) as it relates to CAA section 128 (State Boards). This action does not include any proposed action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process. This action also does not include proposed action on section 110(a)(2)(D)(i)(I) of the CAA, because this element, or portions thereof, is not required to be submitted by a state to meet CAA section 110(a)(2)(D)(i)(I) until the EPA has quantified a state's obligations under that section. *See EME Homer City Generation, LP* v. *EPA*, 696 F.3d 7 (D.C. Cir. 2012), *reh'g denied* 2013 U.S. App. LEXIS 1623 (Jan. 24., 2013). A detailed summary of EPA's review and rationale for approving Virginia's submittal may be found in the Technical Support Document (TSD) for this proposed rulemaking action, which is available online at *www.regulations.gov*, Docket number EPA–R03–OAR–2013–0211.

## III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger

to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its PSD, NSR, or Title V programs consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

## IV. Proposed Action

EPA is proposing to approve the following CAA section 110(a)(2) elements of Virginia's SIP revision: (A), (B), (C) (for enforcement and regulation of minor sources), (D)(i)(II) (for visibility protection), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. Virginia's SIP revision provides the basic program elements specified in CAA section 110(a)(2) necessary to implement, maintain, and enforce the 2008 ozone NAAQS. This SIP revision was submitted on July 23, 2012. This action does not include any proposed action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process. This action also does not include proposed action on section 110(a)(2)(D)(i)(I) of the CAA, because this element, or portions thereof, is not required to be submitted by a state to meet CAA section 110(a)(2)(D)(i)(I) until the EPA has quantified a state's obligations under that section. EPA is taking separate action on the portions of (C), (D)(i)(II), and (J) as they relate to Virginia's PSD program and (E)(ii) as it relates to CAA section 128 (State Boards). EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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

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

In addition, this proposed rule, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS for the Commonwealth of Virginia, 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, Ozone, Volatile organic compounds, Nitrogen dioxide.

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

Dated: June 13, 2013.

**W. C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2013–15890 Filed 7–1–13; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

**[EPA–R05–OAR–2011–0673; FRL–9830–2]**

## Approval, and Promulgation of Air Quality Implementation Plans; Michigan; Redesignation of the Detroit-Ann Arbor Area to Attainment of the 1997 Annual Standard and the 2006 24-Hour Standard for Fine Particulate Matter

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

**ACTION:** Proposed rule.

**SUMMARY:** On July 5, 2011, the Michigan Department of Environmental Quality (MDEQ) submitted a request for EPA to redesignate the Detroit-Ann Arbor Michigan nonattainment area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties), referred to as the Detroit-Ann Arbor area, to attainment of the Clean Air Act (CAA or Act) 1997 annual and the 2006 24-hour national ambient air quality standards (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). EPA is proposing to redesignate the area. EPA is also proposing several additional related actions. EPA is proposing to determine that the entire Detroit-Ann Arbor area continues to attain both the annual and 24-hour $PM_{2.5}$ standards. EPA is proposing to approve, as revisions to the Michigan state implementation plan (SIP), the state's plan for maintaining the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS through 2022 in the area. EPA previously approved the base year emissions inventory for the Detroit-Ann Arbor area, which met the comprehensive emissions inventory requirement of the Act. Michigan's maintenance plan submission includes a budget for the mobile source contribution of $PM_{2.5}$ and nitrogen oxides ($NO_X$) to the Detroit-Ann Arbor Michigan $PM_{2.5}$ area for transportation conformity purposes, which EPA is proposing to approve. EPA is proposing to take this action in accordance with the CAA and EPA's implementation regulations regarding the 1997 and the 2006 $PM_{2.5}$ NAAQS.

**DATES:** Comments must be received on or before August 1, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0673, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 886–4447.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2011–0673. 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 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 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. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* 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 Carolyn Persoon, Environmental Engineer, at (312) 353–8290 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What actions is EPA proposing to take?
III. What is the background for these actions?
IV. What are the criteria for redesignation to attainment?
V. What is EPA's analysis of the state's request?
  1. Attainment
  2. The Area Has Met All Applicable Requirements Under Section 110 and Part D and Has a Fully Approved SIP Under Section 110(k) (Section 107(d)(3)(E)(ii) and (v))
  3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIPs and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))
  4. Michigan Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))
  5. Motor Vehicle Emissions Budget (MVEBs) for the Mobile Source Contribution to $PM_{2.5}$ and $NO_X$
  6. 2005 Comprehensive Emissions Inventory
  7. Summary of Proposed Actions
VI. What are the effects of EPA's proposed actions?
VII. Statutory and Executive Order Reviews

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

When submitting comments, remember to:

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

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

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

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

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

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

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

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

## II. What actions is EPA proposing to take?

EPA is proposing to take several actions related to redesignation of the Detroit-Ann Arbor area to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

EPA is proposing to approve Michigan's $PM_{2.5}$ maintenance plan for the Detroit-Ann Arbor area as a revision to the Michigan SIP, including the motor vehicles emissions budget for $PM_{2.5}$ and $NO_X$ for the mobile source contribution of the Michigan portion of the Detroit-Ann Arbor $PM_{2.5}$ area. EPA's analysis for this proposed action is discussed in Section V. of today's proposed rulemaking.

EPA has previously approved (77 FR 66547) the 2005 primary $PM_{2.5}$, $NO_X$, volatile organic compounds (VOCs), ammonia, and sulfur dioxide ($SO_2$) base year emissions inventory which satisfied the requirement in section 172(c)(3) for a current, accurate and comprehensive emission inventory.

EPA also is proposing to find that Michigan meets the requirements for redesignation of the Detroit-Ann Arbor area to attainment of the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus proposing to grant Michigan's request to change the designation of its portion of the Detroit-Ann Arbor area from nonattainment to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS.

## III. What is the background for these actions?

Fine particulate pollution can be emitted directly from a source (primary $PM_{2.5}$) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary particulate formed from $SO_2$ emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of $NO_X$ from power plants, mobile sources, and other combustion sources.

The first air quality standards for $PM_{2.5}$ were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) of ambient air, based on a three-year average of the annual mean $PM_{2.5}$ concentrations at each monitoring site. In the same rulemaking, EPA promulgated a 24-hour $PM_{2.5}$ standard of 65 $\mu g/m^3$, based on a three-year average of the annual 98th percentile of 24-hour $PM_{2.5}$ concentrations at each monitoring site.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations for the 1997 annual $PM_{2.5}$ standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties) as nonattainment for the 1997 annual $PM_{2.5}$ standard.

On October 17, 2006, (71 FR 61144), EPA promulgated a 24-hour standard of 35 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentration, as set forth at 40 CFR 50.13. On December 13, 2009, (74 FR 58688), EPA made designation determinations, as required by CAA section 107(d)(1), for the 2006 24-hour $PM_{2.5}$ NAAQS. In that action, EPA designated the Detroit-Ann Arbor area as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS.

EPA's rulemaking promulgating the revised 24-hour standard retained as the 2006 annual $PM_{2.5}$ standard the 1997 annual standard of 15 $\mu g/m^3$ (2006 annual $PM_{2.5}$ standard). In response to legal challenges of the 2006 annual $PM_{2.5}$ standard, the U.S. Court of Appeals for District of Columbia Circuit (D.C. Circuit or Court) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA*, 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual $PM_{2.5}$ standards are essentially identical, attainment of the 1997 annual $PM_{2.5}$ standard would also indicate attainment of the remanded 2006 annual standard. Since the Detroit-Ann Arbor area is designated only for 1997 annual standard and not the 2006 annual standard, today's proposed actions address the 1997 annual and the 2006 24-hour $PM_{2.5}$ standards.

In this proposed redesignation, EPA takes into account two decisions of the D.C. Circuit. On August 21, 2012, in *EME Homer City Generation, L.P.* v. *EPA*, 696 F.3d 7 (D.C. Cir. 2012), the D.C. Circuit vacated and remanded the Cross State Air Pollution Rule (CSAPR) and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) "pending . . . development of a valid replacement." *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. In the second decision, on January 4, 2013, the D.C. Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)" final rule (73 FR 28321, May 16, 2008). *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013).

## IV. What are the criteria for redesignation to attainment?

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, or other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

## V. What is EPA's analysis of the state's request?

EPA is proposing to approve the redesignation of the Detroit-Ann Arbor area to attainment of the 1997 annual $PM_{2.5}$ NAAQS and is proposing to approve Michigan's maintenance plan for the area and other related SIP revisions. The bases for these actions follow.

*1. Attainment*

In accordance with section 179(c) of the CAA, 42 U.S.C. 7509(c) and 40 CFR 51.1004(c), EPA is proposing to determine that Detroit-Ann Arbor Michigan has attained the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. This proposed determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2009–2011 and 2010–2012 monitoring period that shows this area has monitored attainment of both $PM_{2.5}$ NAAQS.

Under EPA's regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the area. Under EPA regulations in 40 CFR 50.13 and in accordance with 40 CFR part 50, appendix N, the 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration is less than or equal to 35 $\mu g/m^3$.

EPA has reviewed the ambient air quality monitoring data in the Detroit-Ann Arbor area, consistent with the requirements contained at 40 CFR part 50. EPA's review focused on data recorded in the EPA Air Quality System (AQS) database for the Detroit-Ann Arbor area for $PM_{2.5}$ nonattainment area from 2009–2011 and 2010–2012.

The Detroit-Ann Arbor area had fourteen monitors located in Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties that reported design values from 2010–2012 for $PM_{2.5}$ that ranged from 8.4 to 11.5 $\mu g/m^3$ for the 1997 annual standard and 22 to 28 $\mu g/m^3$ for the 2006 24-hour standard, as shown in Table 1.

All monitors in the Detroit-Ann Arbor area recorded complete data in accordance with criteria set forth by EPA in 40 CFR part 50 appendix N, where a complete year of air quality data comprises four calendar quarters, with each quarter containing data from at least 75% capture of the scheduled sampling days. Data available are considered to be sufficient for comparison to the NAAQS if three consecutive complete years of data exist. Recently state certified data for 2010–2012 show the area continues to attain.

TABLE 1—ANNUAL AND 24-HOUR $PM_{2.5}$ DESIGN VALUES FOR DETROIT-ANN ARBOR AREA MONITORS WITH COMPLETE DATA FOR THE 2009–2011 AND 2010–2012 DESIGN VALUES IN $\mu G/M^3$

| County | Monitor | Annual standard 2009–2011 ($\mu g/m^3$) | 24-Hour standard 2009–2011 ($\mu g/m^3$) | Annual standard 2010–2012 ($\mu g/m^3$) | 24-Hour standard 2010–2012 ($\mu g/m^3$) |
|---|---|---|---|---|---|
| Macomb | New Haven 260990009 | 9.0 | 25 | 8.4 | 22 |
| Monroe | Luna Pier 261150005 | 9.9 | 24 | 9.2 | 24 |
| Oakland | Oak Park 261250001 | 9.4 | 27 | 8.8 | 24 |
| St. Clair | Port Huron 261470005 | 9.3 | 26 | 9.6 | 25 |
| Washtenaw | Ypsilanti 261610008 | 9.6 | 25 | 9.3 | 25 |
| Wayne | Allen Park 261630001 | 10.5 | 27 | 9.2 | 24 |
| | Dearborn 261630033 | 11.6 | 32 | 9.3 | 23 |
| | E 7 Mile 261630019 | 9.9 | 27 | 10.2 | 25 |
| | FIA 261630039 | 10.4 | 28 | 10.9 | 25 |
| | Linwood 261630016 | 10.1 | 28 | 10.0 | 26 |
| | Livonia 261630025 | 9.5 | 26 | 9.7 | 28 |
| | Newberry 261630038 | 10.3 | 27 | 9.4 | 24 |
| | SW HS 261630015 | 10.9 | 28 | 11.5 | 28 |
| | Wyandotte 261630036 | 9.6 | 24 | 9.2 | 22 |

EPA has found that the Detroit-Ann Arbor area has attained both the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQs, and has attained the standards by the attainment date.

*2. The Area Has Met All Applicable Requirements Under Section 110 and Part D and Has a Fully Approved SIP Under Section 110(k) (Section 107(d)(3)(E)(ii) and (v))*

We have determined that Michigan has met all currently applicable SIP requirements for purposes of redesignation for the Detroit-Ann Arbor area under section 110 of the CAA (general SIP requirements). We are also proposing to find that the Michigan submittal meets all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, we are proposing to find that all applicable requirements of the Michigan SIP for purposes of redesignation have been approved, in accordance with section 107(d)(3)(E)(ii). As discussed above, EPA previously approved Michigan's 2005 emissions inventory as meeting the section 172(c)(3) comprehensive emissions inventory requirement.

In making these proposed determinations, we have ascertained which SIP requirements are applicable for purposes of redesignation, and concluded that the Michigan SIP includes measures meeting those requirements and that they are fully approved under section 110(k) of the CAA.

a. Michigan Has Met All Applicable Requirements for Purposes of Redesignation of the Detroit-Ann Arbor Area Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification

and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA believes that the requirements linked with a particular nonattainment area's designation are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation are the relevant measures which we may consider in evaluating a redesignation request. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176 (October 10, 1996)) and (62 FR 24826 (May 7, 1997)); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458 (May 7, 1996)); and Tampa, Florida, final rulemaking (60 FR 62748 (December 7, 1995)). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890 (June 19, 2000)), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399 (October 19, 2001)).

We have reviewed the Michigan SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of Michigan's SIP addressing section 110 requirements (including provisions addressing particulate matter), at 40 CFR 52.1173.

On December 6, 2007, September 19, 2008, and April 6, 2011, Michigan made submittals addressing "infrastructure SIP" elements required under CAA section 110(a)(2). EPA finalized approval of the December 6, 2007, submittal on July 13, 2011, at 76 FR 41075. An August 15, 2011, submittal for the 2006 standard was approved on October 29, 2012 (77 FR 65478). The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Detroit-Ann Arbor area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the state's $PM_{2.5}$ redesignation request.

ii. Part D Requirements

EPA has determined that, upon approval of the base year emissions inventories discussed in section IV.C. of this rulemaking, the Michigan SIP will meet the applicable SIP requirements for the Detroit-Ann Arbor area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas.

*1. Subpart 1*

(a) Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Detroit-Ann Arbor area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all states to consider all available control measures for all nonattainment areas and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because the Detroit-Ann Arbor area has reached attainment, Michigan does not need to address additional measures to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. (40 CFR 51.918).

The reasonable further progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of the Detroit-Ann Arbor redesignation because the area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. The requirement to submit the section 172(c)(9) contingency measures is similarly not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Michigan submitted a 2005 base year emissions inventory in the required attainment plan. As discussed previously, and below in section IV.C., EPA approved the 2005 base year inventory as meeting the section 172(c)(3) emissions inventory requirement for the Detroit-Ann Arbor area on November 6,2012 (77 FR 66547).

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Michigan's current NSR program on January 27, 1982 (47 FR 3764), but has not approved updates since that time. Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved NSR program for purposes of redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Michigan has demonstrated that the Detroit-Ann Arbor area will be able to maintain the standard without part D NSR in effect; therefore, the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Detroit-Ann Arbor area upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids,

Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Michigan's SIP meets the applicable requirements of section 110(a)(2) for purposes of redesignation.

(b) Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State transportation conformity regulations must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA approved Michigan's general and transportation conformity SIPs on December 18, 1996 (61 FR 666079 and 61 FR 66609, respectively). Michigan has submitted an on-road motor vehicle emissions budget (MVEB) for the Detroit-Ann Arbor area calculated by the local metropolitan planning organization (MPO), SEMCOG. The area must use the MVEB from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

*2. Effect of the January 4, 2013, DC Circuit Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4*

a. Background

As discussed above, on January 4, 2013, in *Natural Resources Defense Council* v. *EPA*, the DC Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)" final rule (73 FR 28321, May 16, 2008) (collectively, "1997 $PM_{2.5}$ Implementation Rule"). 706 F.3d 428 (DC Cir. 2013). The Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of part D of title I. Although the Court's ruling did not directly address the 2006 $PM_{2.5}$ standard, EPA is taking into account the Court's position on subpart 4 and the 1997 $PM_{2.5}$ standard in evaluating redesignations for the 2006 standard.

b. Proposal on This Issue

EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Detroit-Ann Arbor area to attainment. Even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA's longstanding interpretation is that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard are not applicable for purposes of evaluating a redesignation request. Second, even if EPA applies the subpart 4 requirements to the Detroit-Ann Arbor redesignation request and disregards the provisions of its 1997 $PM_{2.5}$ implementation rule recently remanded by the Court, the state's request for redesignation of this area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

i. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 $PM_{2.5}$ NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Michigan's redesignation request for the area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not "applicable" for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Detroit-Ann Arbor redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean that the part D provisions which are "applicable" and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). *See also* "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992," Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of "applicable" under the statute is "whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment").[1] In this case, at the time that Michigan submitted its redesignation request, requirements under subpart 4 were not due, (and indeed, were not yet known to apply.)

EPA's view that, for purposes of evaluating the Detroit-Ann Arbor redesignation, the subpart 4 requirements were not due at the time the state submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision,

[1] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that "applicable requirements", for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.*, Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be "applicable" for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of CAA Section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet "all requirements 'applicable' to the area under section 110 and part D." Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the "applicable" SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of "applicable" as only those requirements that came due prior to submission of a complete redesignation request. First, holding states seeking redesignation to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If "applicable requirements" were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the Court's January 4, 2013, decision in *NRDC* v. *EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. The state submitted its redesignation request on July 5, 2011, but the Court did not issue its decision remanding EPA's 1997 $PM_{2.5}$ implementation rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require the state's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the Court announced only in January 2013, would be to give retroactive effect to such requirements when the state had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman*, 285 F.3d 63 (D.C. Cir. 2002),[2] where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it "would likely impose large costs on states, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time." *Id.* at 68. Similarly, it would be unreasonable to penalize the state of Michigan by rejecting its redesignation request for an area that is already attaining the 1997 $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club v. Whitman*.

ii. Subpart 4 Requirements and Michigan Redesignation Request

Even if EPA were to take the view that the Court's January 4, 2013, decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the state submitted its redesignation request, EPA proposes to determine that the Detroit-Ann Arbor area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Detroit-Ann Arbor area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Detroit-Ann Arbor area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4, itself, contains specific planning and scheduling requirements for $PM_{10}$[3] nonattainment areas, and under the Court's January 4, 2013, decision in *NRDC* v. *EPA*, these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See*, "State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (the "General Preamble"). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were, to an extent, "subsumed by, or integrally related to, the more specific PM–10 requirements." 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM,

[2] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA*. 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

[3] $PM_{10}$ refers to particulates nominally 10 micrometers in diameter or smaller.

RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the Detroit-Ann Arbor area to be a "moderate" $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as "moderate" nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a "serious" nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Section 189(a) and (c) of subpart 4 applies to moderate nonattainment areas and includes the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to $PM_{10}$, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[4] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a PSD program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[5] when EPA evaluates a redesignation request under subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

> The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

"General Preamble for the Interpretation of Title I of the CAA Amendments of 1990"; (57 FR 13498, 13564, April 16, 1992).

> The General Preamble also explained that [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Id.

EPA similarly stated in its 1992 Calcagni memorandum that, "[t]he requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard."

It is evident that, even if we were to consider the Court's January 4, 2013, decision in *NRDC* v. *EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively[6] and thus are now past due, those requirements do not apply to an area that is attaining the 1997 and 2006 $PM_{2.5}$ standard, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret "applicable requirements" in the redesignation context. *See Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligation to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior "Clean Data Policy" rulemakings for the $PM_{10}$ NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* "Determination of Attainment for Coso Junction Nonattainment Area," (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed $PM_{10}$ redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the area has attained the 1997 and 2006 $PM_{2.5}$ standards. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under sections 172(c)1 and 189(a)(1)(c), a RFP demonstration under section 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

iii. Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit in *NRDC* v. *EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. In this section, EPA addresses the Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for $PM_{10}$ has allowed for control of $PM_{10}$ precursors, such as $NO_X$, from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that

[4] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

[5] I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

[6] As EPA has explained above, we do not believe that the Court's January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman*, *supra*.

control requirements for major stationary sources of direct $PM_{10}$ shall also apply to $PM_{10}$ precursors from those sources, except where EPA determines that major stationary sources of such precursors "do not contribute significantly to $PM_{10}$ levels which exceed the standard in the area."

EPA's 1997 $PM_{2.5}$ implementation rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was "not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures." EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013 decision made reference to both section 189(e) and 40 CFR 51. 1002, and stated that, "[i]n light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions." *NRDC* v. *EPA,* at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed:

> [a]mmonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and $PM_{10}$. For a $PM_{10}$ nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].

*Id.* at 21, n.7. For a number of reasons, EPA believes that its proposed redesignation of the Detroit-Ann Arbor area is consistent with the Court's decision on this aspect of subpart 4. First, while the Court, citing section 189(e), stated that "for a $PM_{10}$ area governed by subpart 4, a precursor is 'presumptively regulated,'" the Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors (and any similar provisions reflected in the guidance for the 2006 $PM_{2.5}$ standard), the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of Detroit-Ann Arbor, EPA believes that doing so is consistent with proposing redesignation of the area for the 1997 $PM_{2.5}$ standard. The Detroit-Ann Arbor area has attained both standards without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of $PM_{10}$ precursors.[7] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of ammonia and VOC. Thus, we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 1997 $PM_{2.5}$ standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other Act requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e) (57 FR 13542). EPA in this proposal proposes to determine that Michigan has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed supplemental determination is based on our findings that (1) the Detroit-Ann Arbor area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[8] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the area, which is attaining the 1997 annual $PM_{2.5}$ standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 $PM_{2.5}$ standard in the Detroit-Ann Arbor area. *See* 57 FR 13539–42.

EPA notes that its 1997 $PM_{2.5}$ implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 annual $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for "presumptive regulation" of ammonia and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring Michigan to address precursors differently than it has already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for $PM_{10}$ contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control

[7] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[8] The Detroit-Ann Arbor area has reduced VOC emissions through the implementation of various SIP approved VOC control programs and various on-road and nonroad motor vehicle control programs.

purposes.[9] Courts have upheld this approach to the requirements of subpart 4 for $PM_{10}$.[10] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Detroit-Ann Arbor area has already attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation to consider additional precursors under subpart 4 in evaluating this redesignation request, it would not affect EPA's approval here of Michigan's request for redesignation of the Detroit-Ann Arbor area. In the context of a redesignation, the area has shown that it has attained both standards. Moreover, the state has shown, and EPA has proposed to determine, that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Detroit-Ann Arbor area to attainment for the 1997 $PM_{2.5}$ NAAQS at this time.

In sum, even if Michigan were required to address precursors for the Detroit-Ann Arbor area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded $PM_{2.5}$ implementation rule, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3(E)(ii) and (v).

b. Michigan Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has found that Michigan has a fully approved SIP under section 110(k) of the CAA for all requirements applicable for purposes of redesignation to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. EPA may rely on prior SIP approvals in approving a redesignation request (*See* page 3 of the September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Michigan has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under particulate matter standards. EPA previously approved Michigan's 2005 base year emissions inventory for the Detroit-Ann Arbor area as meeting the requirement of section 172(c)(3) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards.

c. Nonattainment Requirements

Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. On April 5, 2008, Michigan submitted a state-wide attainment demonstration for the 1997 annual standard for $PM_{2.5}$, including the Detroit-Ann Arbor area. However, pursuant to 40 CFR 51.1004(c), EPA's determination that the area has attained the 1997 annual and the 2006 24-hour $PM_{2.5}$ standards suspends the requirement to submit certain planning SIPs related to attainment, including attainment demonstration requirements, the Reasonably Available Control Technology (RACT)—RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA. The attainment demonstration requirement for the 2006 24-hour $PM_{2.5}$ standard has a deadline of December 14, 2012, and, therefore, this action relieves Michigan of the requirement to submit an attainment demonstration for the 2006 24-hour standard.

As a result, the only remaining requirement under section 172 to be considered is the emissions inventory required under section 172(c)(3). As discussed previously, EPA approved the inventory that Michigan submitted as part of its attainment plan as satisfying this requirement on November 6, 2012 (77 FR 66547). This approval included inventories for all four precursors ($SO_2$, $NO_X$, VOCs, and ammonia).

No SIP provisions applicable for redesignation of the Detroit-Ann Arbor area are currently disapproved, conditionally approved, or partially approved. Michigan has, to date, a fully approved SIP for all requirements applicable for purposes of redesignation.

*3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIPs and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))*

EPA believes that Michigan has demonstrated that the observed air quality improvement in the Detroit-Ann Arbor area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIPs, Federal measures, and other state-adopted measures.

In making this demonstration, Michigan has calculated the change in emissions between 2005, one of the years used to designate the area as nonattainment, and 2008, one of the years the Detroit-Ann Arbor area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Detroit-Ann Arbor area and contributing areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the area:

i. Federal Emission Control Measures

Reductions in direct emissions of fine particles and in emissions of fine particle precursors have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

*Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards.* These emission control requirements result in lower $NO_X$ and $SO_2$ emissions from new cars and light duty trucks, including sport utility vehicles. Emission standards established under EPA's rules became effective between 2004 and 2009. The EPA has estimated that, emissions of $NO_X$ from new vehicles have decreased by the following percentages: Passenger cars (light duty vehicles)—77%; light duty trucks, minivans, and sports utility vehicles—86%; and, larger sports utility vehicles, vans, and heavier trucks—69 to 95%. EPA expects fleet-wide average

[9] *See, e.g.*, "Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM–10 Standards," 69 FR 30006 (May 26, 2004) (approving a $PM_{10}$ attainment plan that impose controls on direct $PM_{10}$ and $NO_X$ emissions and did not impose controls on $SO_2$, VOC, or ammonia emissions).

[10] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006. Most gasoline sold in Michigan prior to January 2006 had a sulfur content of about 500 ppm.

*Heavy-Duty Diesel Engine Rule.* EPA issued this rule in July 2000. This rule, which went into effect in 2004, includes standards limiting the sulfur content of diesel fuel. A second phase, which took effect in 2007, reduced fine particle emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to have achieved a 90% reduction in direct $PM_{2.5}$ emissions and a 95% reduction in $NO_X$ emissions for new engines using low sulfur diesel, compared to previously existing engines using higher sulfur content diesel. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

*Nonroad Diesel Rule.* In May 2004, EPA promulgated a new rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining equipment, to be phased in between 2008 and 2014. The rule reduces the sulfur content in nonroad diesel fuel by over 99%. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm by 2010. The combined engine and fuel rules will reduce $NO_X$ and PM emissions from large nonroad diesel engines by over 90%, compared to nonroad engines using higher sulfur content diesel. It is estimated that compliance with this rule will cut $NO_X$ emissions from nonroad diesel engines by up to 90%. This rule achieved some emission reductions by 2008 and was fully implemented by 2010. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

*Nonroad Large Spark-Ignition Engine and Recreational Engine Standards.* In November 2002, EPA promulgated emission standards for groups of previously unregulated nonroad engines. These engines include large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. Emission standards from large spark-ignition engines were implemented in two tiers, with Tier 1 starting in 2004 and Tier 2 in 2007. Recreational vehicle emission standards were phased in between 2006 and 2012. Marine Diesel engine standards were phased in from 2006 through 2009. With full implementation of the entire nonroad spark-ignition engine and recreational engine standards, EPA expects an 80% reduction in $NO_X$ emissions by 2020. Some of these emission reductions occurred by the 2008–2010 period used to demonstrate attainment, and additional emission reductions will occur during the maintenance period.

ii. Control Measures in Contributing Areas

Given the significance of sulfates and nitrates in the Detroit-Ann Arbor area, the area's air quality is strongly affected by regulated emissions from power plants.

*$NO_X$ SIP Call.* On October 27, 1998 (63 FR 57356), EPA issued a $NO_X$ SIP Call requiring the District of Columbia and 22 states to reduce emissions of $NO_X$. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the $NO_X$ SIP Call are permanent and enforceable.

*CAIR.* On May 12, 2005, EPA promulgated CAIR, which requires significant reductions in emissions of $SO_2$ and $NO_X$ from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. *See* 76 FR 70093. The Court initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the court's decision, EPA promulgated CSAPR to address interstate transport of $NO_X$ and $SO_2$ in the eastern United States. *See* 76 FR 48208 (August 8, 2011).

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule. The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR "pending the promulgation of a valid replacement." *EME Homer City,* 696 F.3d at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court, but those petitions have not been acted on to date.

In light of these unique circumstances and for the reasons explained below, to the extent that attainment is due to emission reductions associated with CAIR, EPA is here proposing to determine that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A. EPA therefore proposes to approve the redesignation request and the related SIP revision for Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties in Michigan, including Michigan's plan for maintaining attainment of the $PM_{2.5}$ standard in the Detroit-Ann Arbor area.

As directed by the D.C. Circuit, CAIR remains in place and enforceable until substituted by a valid replacement rule. Michigan's SIP revision, which lists CAIR as a control measure, was approved by EPA on December 20, 2007 (72 FR 72256), for the purpose of reducing $SO_2$ and $NO_X$ emissions. CAIR was thus in place and getting emission reductions when the Detroit-Ann Arbor began monitoring attainment of the 1997 annual and 2006 24-hour NAAQS. The quality-assured, certified monitoring data used to demonstrate the area's attainment of the 1997 annual $PM_{2.5}$ NAAQS by the April 2010 attainment deadline was also impacted by CAIR.

To the extent that the Detroit-Ann Arbor area relies on CAIR to maintain the standards, the recent directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule to address interstate transport to replace CSAPR and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. The Court's clear instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an

additional backstop: By definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years." *EME Homer City*, 696 F.3d at 38. The accumulated reliance interests include the interests of states that reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

iii. Consent Decrees and Permanent Shutdowns

Michigan has also submitted multiple permanent and enforceable measures to address $PM_{2.5}$ and precursors at single sources, by retiring credits from permits once an emissions source has shut down. A discussion of single source shutdowns and their emissions are found in the Appendix to Michigan's submission. These single site emission reductions include multiple facility shutdowns, which have resulted in the retirement of permitted emission credits, including the following facilities: Ajax Materials Corporation, Edison Energy Services, Great Lakes Petroleum Terminal, LLC, and M-Lok Incorporated. These facility shutdowns resulted in an estimated reduction of over 100 tpy of $NO_X$ and over 4 tpy of direct $PM_{2.5}$. Michigan has also attributed emission reductions to various permanent and enforceable controls required at multiple point source facilities in the Detroit-Ann Arbor area. Controls required on facilities through permanent and Federally enforceable construction permits and consent orders through enforcement actions include: Baghouse controls on several blast furnace operations the basic oxygen furnace at Severstal steel mill (permit #182–05B) and baghouse upgrades on blast furnaces at US Steel (Consent Order 1–2005).

b. Emission Reductions

Michigan developed an emissions inventory for $NO_X$, direct $PM_{2.5}$, and $SO_2$ for 2005, one of the years used to designate the area as nonattainment, and 2008, one of the years the Detroit-Ann Arbor area monitored attainment of the standard. EPA previously approved the emissions inventory for the 2005 base year on November 6, 2012 (77 FR 66547).

Emissions of $SO_2$ and $NO_X$ from electric generating units (EGUs) were derived from EPA's Clean Air Market's acid rain database. These emissions reflect Michigan $NO_X$ emission budgets resulting from EPA's $NO_X$ SIP call. All other point source emissions were obtained from Michigan's source facility emissions reporting.

Area source emissions the Detroit-Ann Arbor area for 2005 were taken from periodic emissions inventories.[11] These 2005 area source emission estimates were extrapolated to 2008. Source growth factors were supplied by the Lake Michigan Air Directors Consortium (LADCO).

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA's 2005 National Emissions Inventory (NEI). Contractors were employed by LADCO to estimate emissions for commercial marine vessels and railroads.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOVES2010a, in conjunction with transportation model results developed by local Metropolitan Planning Organization SEMCOG.

All emissions estimates discussed below were documented in the submittals and appendices to Michigan's redesignation request submittal of July 5, 2011. For these data and additional emissions inventory data, the reader is referred to EPA's digital docket for this rule, *http://www.regulations.gov*, for docket number EPA–R05–OAR–2011–0673, which includes a digital copy of Michigan's submittal.

Emissions data in tons per year (tpy) for the Detroit-Ann Arbor area are shown in Tables 2, 3, and 4 below.

TABLE 2—COMPARISON OF 2005 EMISSIONS FROM THE NONATTAINMENT YEAR AND 2008 EMISSIONS FOR AN ATTAINMENT YEAR FOR $NO_X$ IN THE DETROIT-ANN ARBOR AREA (TPY)

| | 2005 | 2008 | Net change (2005–2008) |
|---|---|---|---|
| Point (EGU) | 69,756.71 | 70,008.00 | 251.29 |
| Non-EGU | 18,684.20 | 18,817.18 | 132.98 |
| Area | 15,949.67 | 17,157.57 | 1,207.90 |
| Nonroad | 28,829.50 | 24,065.61 | −4,763.89 |
| Marine, Air, and Rail | 7,380.89 | 6,380.17 | −1,000.72 |
| On-road | 154,294.00 | 119,194.00 | −35,100.00 |
| Total | 294,894.98 | 255,622.53 | −39,272.45 |

[11] Periodic emission inventories are derived by states every three years and reported to the EPA. These periodic emission inventories are required by the Federal Consolidated Emissions Reporting Rule, codified at 40 CFR Subpart A. EPA revised these and other emission reporting requirements in a final rule published on December 17, 2008, at 73 FR 76539.

TABLE 3—COMPARISON OF 2005 EMISSIONS FROM THE NONATTAINMENT YEAR AND 2008 EMISSIONS FOR AN ATTAINMENT YEAR FOR $SO_2$ IN THE DETROIT-ANN ARBOR AREA (TPY)

| | 2005 | 2008 | Net change (2005–2008) |
|---|---|---|---|
| Point (EGU) | 227,751.98 | 233,870.64 | 6,118.66 |
| Non-EGU | 16,240.13 | 19,793.49 | 3,553.36 |
| Area | 4,629.99 | 5,702.94 | 1,072.95 |
| Nonroad | 2,739.34 | 426.61 | −2,312.73 |
| Marine, Air, and Rail | 681.42 | 588.82 | −92.60 |
| On-road | 3,809.00 | 1,066.00 | −2,743.00 |
| Total | 255,851.86 | 261,448.50 | 5,596.64 |

TABLE 4—COMPARISON OF 2005 EMISSIONS FROM THE NONATTAINMENT YEAR AND 2008 EMISSIONS FOR AN ATTAINMENT YEAR FOR DIRECT $PM_{2.5}$ IN THE DETROIT-ANN ARBOR AREA (TPY)

| | 2005 | 2008 | Net change (2005–2008) |
|---|---|---|---|
| Point (EGU) | 1,105.51 | 1,375.31 | 269.80 |
| Non-EGU | 2,454.95 | 1,605.72 | −849.23 |
| Area | 5,456.25 | 5,406.06 | −50.19 |
| Nonroad | 2,203.67 | 1,773.31 | −430.36 |
| MAR | 193.09 | 165.62 | −27.47 |
| On-road | 5,323.00 | 4,360.00 | −963.00 |
| Total | 16,736.47 | 14,686.02 | −2,050.45 |

Table 2 and 4 show reductions in both $NO_X$ and direct $PM_{2.5}$ emissions for the Detroit-Ann Arbor area by 39,272.45 tpy for $NO_X$, and 2,050.45 tpy for direct $PM_{2.5}$ between 2005, a nonattainment year and 2008, an attainment year.

Although Table 3 shows an increase in $SO_2$ emissions of 5,596.64 tpy, the state submission includes sufficient evidence to show that, even with the increase in $SO_2$, the area has reached attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and will continue to maintain that designation into the future due to multiple actions by the state. The evidence submitted by the state contains modeling, monitoring, and trend analysis. Based on monitoring data, the trend analysis for the area shows a steady decline in $PM_{2.5}$ emissions, with a significant drop in concentrations beginning in 2006. Since meteorology can play a large part in dispersion of $PM_{2.5}$, which can greatly affect monitored concentrations, LADCO and the state have normalized the data to remove meteorological effects using a statistical analysis, and the state has shown in its submission that the concentrations observed are due to real reductions in $PM_{2.5}$ and its precursors, not just meteorological effects.

The state has also submitted monitored data showing $PM_{2.5}$ composition. $PM_{2.5}$ can be classified by its chemical composition, allowing the state and EPA to discern what percentage each major precursor contributes to $PM_{2.5}$ concentrations in the Detroit-Ann Arbor area. $PM_{2.5}$ composition attributed to $SO_2$ is, on average, 20–30% of total $PM_{2.5}$ monitored concentrations, so, although $SO_2$ emissions have increased, $NO_X$ and $PM_{2.5}$ emissions (which contribute 60–75% of the total $PM_{2.5}$ monitored concentrations, and are both significant contributors under EPA guidance) have each been reduced by more than 10%, and $PM_{2.5}$ emissions have declined.

Based on the information summarized above, Michigan has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

*4. Michigan Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))*

In conjunction with Michigan's request to redesignate the Detroit-Ann Arbor nonattainment area to attainment status, Michigan has submitted a SIP revision to provide for maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the area through 2022.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future $PM_{2.5}$ violations.

The September 4, 1992, Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: The attainment emissions inventory, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." EPA has interpreted this as a showing of maintenance "for a period of ten years following redesignation." Calcagni memorandum,

p. 9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9–10.

As discussed in detail in the section below, the state's maintenance plan submission expressly documents that the area's emissions inventories will remain below the attainment year inventories through 2022. In addition, for the reasons set forth below, EPA believes that the state's submission, in conjunction with additional supporting information, further demonstrates that the area will continue to maintain the 1997 annual and 2006 24-hour NAAQS at least through 2023. Thus, any EPA action to finalize its proposed approval of the redesignation request and maintenance plans in 2013, will be based on a showing, in accordance with section 175A, that the state's maintenance plan provides for maintenance for at least ten years after redesignation.

b. Attainment Inventory

Michigan developed an emissions inventory for $NO_X$, direct $PM_{2.5}$, and $SO_2$ for 2008, one of the years in the period during which the Detroit-Ann Arbor area monitored attainment of the 1997 annual $PM_{2.5}$ standard, as described previously. The attainment level of emissions is summarized in Tables 2, 3, and 4, above.

c. Demonstration of Maintenance

Along with the redesignation request, Michigan submitted a revision to its $PM_{2.5}$ SIP to include a maintenance plan for the Detroit-Ann Arbor area, as required by section 175A of the CAA. Michigan's plan demonstrates maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ standard through 2022 by showing that current and future emissions of $NO_X$, directly emitted $PM_{2.5}$ and $SO_2$ in the area remain at or below attainment year emission levels. Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." EPA has interpreted this as a showing of maintenance "for a period of ten years following redesignation." Calcagni memorandum, p. 9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9–10.

As discussed in detail in the section below, the state's maintenance plan submission expressly documents that the area's emissions inventories will remain below the attainment year inventories through 2022. In addition, for the reasons set forth below, EPA believes that the state's submission, in conjunction with additional supporting information, further demonstrates that the area will continue to maintain the $PM_{2.5}$ standard at least through 2023. Thus, if EPA finalizes its proposed approval of the redesignation request and maintenance plans in 2013, it will be based on a showing, in accordance with section 175A, that the state's maintenance plan provides for maintenance for at least ten years after redesignation.

Michigan's plan demonstrates maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS through 2022 by showing that current and future emissions of $NO_X$, directly emitted $PM_{2.5}$ and $SO_2$ for the area remain at or below attainment year emission levels.

The rate of decline in emissions of $PM_{2.5}$, $NO_X$, and $SO_2$ from the attainment year 2008 through 2022 indicates that emissions inventory levels not only significantly decline between 2008 and 2022, but that the reductions will continue in 2023 and beyond. The average annual rate of decline is 1,367 tpy for $SO_2$, 8,495 tpy of $NO_X$, and 264 tpy of direct PM. These rates of decline are consistent with monitored and projected air quality trends, emissions reductions achieved through emissions controls and regulations that will remain in place beyond 2023 and through fleet turnover that will continue beyond 2023, among other factors. We are proposing to find the mobile source contribution to these emissions is expected to remain insignificant in 2023 and beyond because of fleet turnover in upcoming years that will result in cleaner vehicles and cleaner fuels.

A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003). Michigan uses emissions inventory projections for the years 2018 and 2022 to demonstrate maintenance for the entire Detroit-Ann Arbor area. The projected emissions were estimated by Michigan, with assistance from LADCO and SEMCOG, who used the MOVES2010a model for mobile source projections. Projection modeling of inventory emissions was done for the 2018 interim year emissions using estimates based on the 2009 and 2018 LADCO modeling inventory, using LADCO's growth factors, for all sectors. The 2022 maintenance year emission estimates were based on emissions estimates from the 2018 LADCO modeling. Table 5 shows the 2008 attainment base year emission estimates and the 2018 and 2022 emission projections for the Detroit-Ann Arbor area, taken from Michigan's July 5, 2011, submission.

TABLE 5—COMPARISON OF 2008, 2018 AND 2022 $NO_X$, DIRECT $PM_{2.5}$, AND $SO_2$ EMISSION TOTALS (TPY) FOR THE DETROIT-ANN ARBOR AREA

| | $SO_2$ | $NO_X$ | $PM_{2.5}$ |
|---|---|---|---|
| 2008 (baseline) | 261,447.50 | 255,622.53 | 14,686.02 |
| 2018 | 231,218.01 | 146,017.66 | 11,363.91 |
| 2022 | 242,301.62 | 136,679.11 | 10,976.30 |
| Net Change (2008–2022) | −19,145.88 | −118,943.42 | −3,709.72 |
| | 8% decrease | 47% decrease | 26% decrease |

Table 5 shows that, for the period between 2008 and the maintenance projection for 2022, the Detroit-Ann Arbor area will reduce $NO_X$ emissions by 118,943.42 tpy; direct $PM_{2.5}$ emissions by 3,709.72 tpy; and $SO_2$ emissions by 19,145.88 tpy. The 2022 projected emissions levels are significantly below attainment year inventory levels, and, based on the rate of decline, it is highly improbable that any increases in these levels will occur in 2023 and beyond. Thus, the emissions inventories set forth in Table 5 show that the area will continue to maintain the annual and 24-hour $PM_{2.5}$ standards during the maintenance period and at least through 2023.

As Table 1 demonstrates, monitored $PM_{2.5}$ design value concentrations in Detroit-Ann Arbor are well below the NAAQS in the years beyond 2008, an attainment year for the area. Further, those values are trending downward as time progresses. Based on the future projections of emissions in 2015 and 2022 showing significant emissions reductions in direct $PM_{2.5}$, $NO_X$, and $SO_2$, it is very unlikely that monitored $PM_{2.5}$ values in 2023 and beyond will show violations of the NAAQS. Additionally, the 2009–2011 design values of 11.6 and 32 μg/m³ (annual and 24-hour, respectively) provide a sufficient margin in the unlikely event emissions rise slightly in the future.

*Maintenance Plan Evaluation of Ammonia and VOCs*

With regard to the redesignation of the Detroit-Ann Arbor area, in evaluating the effect of the Court's remand of EPA's implementation rule, which included presumptions against consideration of VOC and ammonia as $PM_{2.5}$ precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 1997 and 2006 $PM_{2.5}$ standards and that the state has shown that attainment of those standards is due to permanent and enforceable emission reductions.

EPA proposes to determine that the state's maintenance plan shows continued maintenance of the standards by tracking the levels of the precursors whose control brought about attainment of the 1997 and 2006 $PM_{2.5}$ standard in the Detroit-Ann Arbor area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013, decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by the state and supporting information, EPA believes that the maintenance plan for the Detroit-Ann Arbor area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Detroit-Ann Arbor area are very low, estimated to be less than 7,000 tpy. *See* Table 6 below. This amount of ammonia emissions appears especially small in comparison to the total amounts of $SO_2$, $NO_X$, and even direct $PM_{2.5}$ emissions from sources in the area. Third, as described below, available information shows that no precursor, including VOC and ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the state's maintenance demonstration.

Michigan's maintenance plan shows that emissions of direct $PM_{2.5}$, $SO_2$, and $NO_X$ are projected to decrease by 3,709.72 tpy, 19,145.88 tpy, and 118,943.42 tpy, respectively, over the maintenance period. *See* Table 5 above. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 $PM_{2.5}$ NAAQS show that VOC and ammonia emissions are projected to decrease by 61,993 tpy and 577 tpy, respectively between 2007 and 2020. *See* Table 6 below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that this downward trend would not continue through 2022. Given that the Detroit-Ann Arbor area is already attaining the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS even with the current level of emissions from sources in the area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the state is addressing for purposes of the 1997 $PM_{2.5}$ NAAQS indicate that the area should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2020 and 2022, the overall emissions reductions projected in direct $PM_{2.5}$, $SO_2$, and $NO_X$ would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential $PM_{2.5}$ precursors will not increase to the extent that they will cause monitored $PM_{2.5}$ levels to violate the 1997 or the 2006 $PM_{2.5}$ standard during the maintenance period.

TABLE 6—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE DETROIT-ANN ARBOR AREA [12]

| Sector | VOC | | | Ammonia | | |
|---|---|---|---|---|---|---|
| | 2007 | 2020 | Net change 2007–2020 | 2007 | 2020 | Net change 2007–2020 |
| Point | 15,250 | 15,324 | 73 | 210 | 566 | 356 |
| Area | 64,265 | 60,714 | −3,552 | 4,531 | 4,627 | 96 |
| Nonroad | 25,717 | 13,823 | −11,894 | 28 | 35 | 6 |
| On-road | 67,242 | 20,682 | −46,561 | 2,119 | 1,104 | −1,015 |
| Fires | 124 | 124 | 0 | 344 | 349 | 6 |
| Total | 172,599 | 110,666 | −61,933 | 6,897 | 6,341 | −557 |

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current air quality annual and 24-hour design values for the area are 11.6 and 32 μg/m³ (based on 2009–11 air quality data), which are well below the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS of 15 and 35 μg/m³. Moreover, the modeling analysis conducted for the RIA for the 2012 $PM_{2.5}$ NAAQS indicates that the design values for this area are expected to continue to decline through 2020. In the RIA analysis, the highest 2020 modeled design value for the Detroit-Ann Arbor area is 11.6 μg/m³. Given that precursor emissions are projected to decrease through 2022, it is reasonable to conclude that monitored $PM_{2.5}$ levels in this area will also continue to decrease through 2022.

Thus, EPA believes that there is ample justification to conclude that the Detroit-Ann Arbor area should be

[12] These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 $PM_{2.5}$ NAAQS which can be found in the docket.

redesignated, even taking into consideration the emissions of other precursors potentially relevant to $PM_{2.5}$. After consideration of the D.C. Circuit's January 4, 2013 decision, and for the reasons set forth in this notice, EPA proposes to approve the state's maintenance plan and its request to redesignate the Detroit-Ann Arbor area to attainment for the $PM_{2.5}$ 1997 annual and 2006 24-hour NAAQS.

Based on the information summarized above, Michigan has adequately demonstrated maintenance of both $PM_{2.5}$ standards in this area for a period extending in excess of ten years from expected final action on Michigan's redesignation request.

d. Monitoring Network

Michigan's maintenance plan includes additional elements. Michigan's plan includes a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. Michigan currently operates 14 $PM_{2.5}$ monitors in the Detroit-Ann Arbor Michigan.

e. Verification of Continued Attainment

Michigan remains obligated to continue to quality-assure monitoring data and enter all data into the AQS in accordance with Federal guidelines. Michigan will use these data, supplemented with additional information as necessary, to assure that the area continues to attain the standard. Michigan will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions. Both of these actions will help to verify continued attainment in accordance with 40 CFR part 58.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. *See* section 175A(d) of the CAA.

Michigan's contingency plan defines an Action Level Response. The Action Level Response will be prompted by standard two-year annual average of 15 $\mu g/m^3$ or higher (annual standard) and a two-year 98th percentile average monitored value of 35 $\mu g/m^3$ or higher (24-hour standard) within the maintenance area. If an Action Level Response is triggered, Michigan will adopt and implement appropriate control measures within 18 months from the end of the year in which monitored air quality triggering a response occurs.

Michigan's candidate contingency measures include the following:

i. Wood stove change-out program;

ii. Steel mill controls;

iii. Coke battery controls;

iv. Diesel retrofit program;

v. Reduced idling program;

vi. ICI boiler controls;

vii. Food preparation flame broiler control and;

viii. EGU controls.

Michigan further commits to conduct ongoing review of its data, and if monitored concentrations or emissions are trending upward, Michigan commits to take appropriate steps to avoid a violation if possible. Michigan commits to continue implementing SIP requirements upon and after redesignation. EPA believes that Michigan's contingency measures, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of section 175A(d).

As required by section 175A(b) of the CAA, Michigan commits to submit to the EPA an updated $PM_{2.5}$ maintenance plan eight years after redesignation of the Detroit-Ann Arbor area to cover an additional ten year period beyond the initial ten year maintenance period. As required by section 175A of the CAA, Michigan has also committed to retain the $PM_{2.5}$ control measures contained in the SIP prior to redesignation.

For all of the reasons set forth above, EPA is proposing to approve Michigan's 1997 annual and 2006 24-hour $PM_{2.5}$ maintenance plan for the Detroit-Ann Arbor area as meeting the requirements of CAA section 175A.

*5. Motor Vehicle Emissions Budget (MVEBs) for the Mobile Source Contribution to $PM_{2.5}$ and $NO_X$*

a. How are MVEBs developed and what are the MVEBs for the Detroit-Ann Arbor area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for $PM_{2.5}$ nonattainment areas and for areas seeking redesignation to attainment of the $PM_{2.5}$ standards. These emission control strategy SIP revisions (*e.g.*, RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from on-road transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment, RFP, or maintenance, as applicable.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan and could also be established for an interim year or years. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, new transportation plans and transportation improvement programs (TIPs) must be evaluated to determine if they conform to the purpose of the area's SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or any required interim milestone. If a transportation plan or TIP does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find adequate and/or approve the MVEBs for use in determining transportation conformity before the MVEBs can be used. Once EPA affirmatively approves and/or finds the submitted MVEBs to be adequate for transportation conformity purposes, the

MVEBs must be used by state and Federal agencies in determining whether proposed transportation plans and TIPs conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve a motor vehicle emissions budget EPA must complete a thorough review of the SIP, in this case the $PM_{2.5}$ maintenance plans, and conclude that the SIP will achieve its overall purpose, in this case providing for maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ standards in the Detroit-Ann Arbor area.

The maintenance plans submitted by Michigan for the area contains new primary $PM_{2.5}$ and $NO_X$ MVEBs for the area for the year 2022. Michigan calculated the MVEBs using MOVES2010(a). After approval of the MVEBs becomes effective, the budgets will have to be used in future conformity determinations and regional emissions analyses prepared by the SEMCOG, and will have to be based on the use of MOVES2010a or the most recent version of MOVES required to be used in transportation conformity determinations.[13] The state has determined the 2022 MVEBs for the Detroit-Ann Arbor area to be 4,360 tpy for primary $PM_{2.5}$ and 119,194 tpy for $NO_X$. The budget for the Detroit-Ann Arbor area is equal to the mobile source emissions calculated for the attainment year of 2008. Michigan has decided to include "safety margins" as provided for in 40 CFR 93.124(a) (described below) of 3,049 tpy for primary $PM_{2.5}$ and 91,183 tpy for $NO_X$ in the 2022 MVEBs, respectively, to provide for on-road mobile source growth. Michigan did not provide emission budgets for $SO_2$, VOCs, and ammonia because it concluded, consistent with EPA's presumptions regarding these precursors, that emissions of these precursors from on-road motor vehicles are not significant contributors to the area's $PM_{2.5}$ air quality problem.

In the Detroit-Ann Arbor area, the motor vehicle budgets including the safety margins and motor vehicle emission projections for both $NO_X$ and $PM_{2.5}$ are equal to the levels in the attainment year.

EPA has reviewed the submitted budgets for 2022 including the added safety margins using the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4) and the conformity rule's requirements for safety margins found at 40 CFR 93.124(a). EPA has also completed a thorough review of the maintenance plan for the Detroit-Ann Arbor area. Based on the results of this review of the budgets and the maintenance plans, EPA is approving the 2022 direct $PM_{2.5}$ and $NO_X$ budgets, including the requested safety margins for the Detroit-Ann Arbor area. Additionally, EPA, through this rulemaking, has found the submitted budgets to be adequate for use to determine transportation conformity in the Detroit-Ann Arbor area, because EPA has determined that the area can maintain the 1997 annual $PM_{2.5}$ NAAQS for the relevant maintenance period with on-road mobile source emissions at the levels of the MVEBs including the requested safety margins. These budgets must be used in conformity determinations made on or after the effective date of the final rulemaking (40 CFR 93.118(f)(iii)). Additionally, transportation conformity determinations made after the effective date of this notice must be based on regional emissions analyses using MOVES2010a or a more recent version of MOVES that has been approved for use in conformity determinations.[14]

b. What is a safety margin?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As shown in Table 5, overall emissions in the Detroit-Ann Arbor area are projected to decline by 118,943.42 tpy and 3,709.72 tpy for $NO_X$ and $PM_{2.5}$ in 2022, respectively, which is greater than the MVEB safety margin of 91,183 tpy for $NO_X$ and 3,049 for primary $PM_{2.5}$.

The transportation conformity rule allows areas to allocate all or a portion of a "safety margin" to the area's motor vehicle emissions budgets (40 CFR 92.124(a)). The MVEBs requested by Michigan contain $NO_X$ and $PM_{2.5}$ safety margins for mobile sources in 2022, which are much smaller than the allowable safety margins reflected in the total emissions for the Detroit-Ann Arbor area. The state is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the state is requesting MVEBs that exceed the projected on-road mobile source emissions for 2022 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is within the safety margins of the overall $PM_{2.5}$ maintenance demonstration. As discussed above, EPA is proposing that if this approval is finalized in 2013, the area will continue to maintain the 1997 annual and 2006 24-hour NAAQS through at least 2023. Consistent with this proposal, EPA is proposing to approve the motor vehicle emissions budgets submitted by the state in its July 5, 2011, maintenance plan for the Detroit-Ann Arbor area. EPA is proposing that the submitted budgets are consistent with maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS through 2023, specifically because the area is using the attainment year emissions as the MVEB for the future, which would remain the same into 2023.

Therefore, EPA believes that the requested budgets, including the requested portion of the safety margins, provide for a quantity of mobile source emissions that would be expected to maintain the $PM_{2.5}$ standard. Once allocated to mobile sources, these portions of the safety margins will not be available for use by other sources.

c. What action is EPA taking on the submitted motor vehicle emissions budgets?

EPA, through this rulemaking, is proposing to find adequate and is approving the MVEBs for use to determine transportation conformity in the Detroit-Ann Arbor area, because EPA has determined that the area can maintain attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs including the requested safety margins. (40 CFR 93.118(f)(iii))

*6. 2005 Comprehensive Emissions Inventory*

As discussed above, section 172(c)(3) of the CAA requires areas to submit a comprehensive emissions inventory including direct PM and all four precursors ($SO_2$, $NO_X$, VOCs, and ammonia). EPA approved the Michigan 2005 base year emissions inventory on November 6, 2012 (77 FR 66547), fulfilling this requirement. Emissions contained in the submittals cover the general source categories of point sources, area sources, on-road mobile sources, and nonroad mobile sources.

[13] EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010, **Federal Register** notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

[14] EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010 **Federal Register** notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

Based upon EPA's previous action, the 2005 emissions inventory was complete and accurate, and met the requirement of CAA section 172(c)(3).

*7. Summary of Proposed Actions*

EPA is proposing to determine that the Detroit-Ann Arbor area is attaining and will continue to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. EPA is proposing to approve Michigan's $PM_{2.5}$ maintenance plan for the Detroit-Ann Arbor area as a revision to the Michigan SIP because the plan meets the requirements of section 175A of the CAA. EPA is further proposing that the Detroit-Ann Arbor area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to grant the request from Michigan to change the legal designation of the Detroit-Ann Arbor area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Finally, for transportation conformity purposes EPA is also proposing to approve Michigan's MVEBs for the Detroit-Ann Arbor area.

**VI. What are the effects of EPA's proposed actions?**

If finalized, approval of the redesignation request would change the official designation of the Michigan portion of the Detroit-Ann Arbor area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment. If finalized, EPA's proposal would approve as a revision to the Michigan SIP for the Detroit-Ann Arbor area, the maintenance plan for the 1997 annual and 2006 24-hour $PM_{2.5}$ standard.

**VII. Statutory and Executive Order Reviews**

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and, if finalized, will not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are 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);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);
- do 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);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are 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
- do 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**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 19, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2013–15887 Filed 7–1–13; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Docket No. CDC–2013–0012]**

**42 CFR Part 88**

**RIN 0920–AA54**

## World Trade Center Health Program; Addition of Prostate Cancer to the List of WTC-Related Health Conditions

**AGENCY:** Centers for Disease Control and Prevention, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On May 2, 2013, the Administrator of the World Trade Center (WTC) Health Program received a petition (Petition 002) requesting the addition of prostate cancer to the List of WTC-Related Health Conditions (List) covered in the WTC Health Program. The Administrator has determined to publish a proposed rule adding malignant neoplasm of the prostate (prostate cancer) to the List in the WTC Health Program regulations.

**DATES:** Comments must be received by August 1, 2013.

**ADDRESSES:** *Written Comments:* You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

*Instructions:* All submissions received must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2013–0012) or Regulation Identifier Number (0920–AA54) for this rulemaking. All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.* For detailed instructions on submitting public comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Paul Middendorf, Senior Health Scientist, 1600 Clifton Rd. NE., MS: E–20, Atlanta, GA 30329; telephone (404) 498–2500 (this is not a toll-free number); email *pmiddendorf@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

This notice is organized as follows:

I. Executive Summary
A. Purpose of Regulatory Action
B. Summary of Major Provisions
C. Costs and Benefits
II. Public Participation
III. Background
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B. Rulemaking History
C. Methods Used by the Administrator To Determine Whether To Add Cancer or Types of Cancer to the List of WTC-Related Health Conditions
D. Consideration of Prostate Cancer, 2011–2012
1. First Periodic Review of the Scientific and Medical Evidence Related to Cancer, July 2011
2. Rulemaking in Response to Petition 001
E. Petition 002
IV. Administrator's Determination on Petition 002 Requesting the Addition of Prostate Cancer to the List
V. Early Detection of Prostate Cancer
VI. Effects of Rulemaking on Federal Agencies
VII. Summary of Proposed Rule
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A. Executive Order 12866 and Executive Order 13563
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Small Business Regulatory Enforcement Fairness Act
E. Unfunded Mandates Reform Act of 1995
F. Executive Order 12988 (Civil Justice)
G. Executive Order 13132 (Federalism)
H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)
I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)
J. Plain Writing Act of 2010

## I. Executive Summary

### *A. Purpose of Regulatory Action*

This rulemaking is being conducted in response to a petition to the Administrator of the WTC Health Program by the Patrolmen's Benevolent Association, a union representing New York City police officers (Petition 002). The petition asks that the Administrator add prostate cancer to the List of WTC-Related Health Conditions.

### *B. Summary of Major Provisions*

The rule proposes the addition of prostate cancer to the cancers identified in 42 CFR 88.1, Table 1 as covered by the WTC Health Program for treatment and monitoring.

### *C. Costs and Benefits*

The proposed addition of prostate cancer by this rulemaking is estimated to cost the WTC Health Program between $3,462,675 and $6,995,817 per annum. All of the costs to the WTC Health Program will be transfers after the implementation of provisions of the Patient Protection and Affordable Care Act (Pub. L. 111–148) on January 1, 2014.

## II. Public Participation

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, opinions, recommendations, and/or data. Comments are invited on any topic related to this proposed rule.

Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Comments submitted electronically or by mail should be titled "Docket No. CDC–2013–0012" and should identify the author(s) and contact information in case clarification is needed. Electronic and written comments can be submitted to the addresses provided in the **ADDRESSES** section, above. All communications received on or before the closing date for comments will be fully considered by the Administrator of the WTC Health Program.

## III. Background

### *A. WTC Health Program Statutory Authority*

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347), amended the Public Health Service Act (PHS Act) to add Title XXXIII [1] establishing the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers (responders) who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania, and to eligible persons (survivors) who were present in the dust or dust cloud on September 11, 2001 or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area.

All references to the Administrator of the WTC Health Program (Administrator) in this notice mean the Director of the National Institute for Occupational Safety and Health (NIOSH) or his or her designee. Section 3312(a)(6) of the PHS Act requires the Administrator to conduct rulemaking to propose the addition of a health condition to the List of WTC-Related Health Conditions (List) codified in 42 CFR 88.1.

### *B. Rulemaking History*

On September 7, 2011, the Administrator received a written petition to add a health condition to the List in § 88.1 (Petition 001). Petition 001 requested that the Administrator "conduct an immediate review of new medical evidence showing increased cancer rates among firefighters who served at ground zero and that [the Administrator] consider adding coverage for cancer under the Zadroga Act." [2]

Pursuant to section 3312(a)(6)(B) of the PHS Act, interested parties may petition to add a health condition to the List. Within 60 calendar days after receipt of a petition to add a condition to the List, the Administrator must take one of the following four actions described in 42 CFR 88.17: (i) Request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee (STAC); (ii) publish a proposed rule in the **Federal Register** to add such health condition; (iii) publish in the **Federal Register** the Administrator's determination not to publish such a proposed rule and the basis for such determination; or (iv) publish in the **Federal Register** a determination that insufficient evidence exists to take action under (i) through (iii) above.

On October 5, 2011, the Administrator formally exercised his option to request a recommendation from the STAC regarding Petition 001.[3] In a letter to the STAC the Administrator requested "that the STAC review the available information on cancer outcomes associated with the exposures resulting

[1] Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm–61. Those portions of the Zadroga Act found in Titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

[2] Letter dated September 7, 2011 from U.S. Senators Charles E. Schumer and Kirsten E. Gillibrand, and U.S. Representatives Carolyn B. Maloney, Jerrold Nadler, Peter T. King, Charles B. Rangel, Nydia M. Velázquez, Michael C. Grimm and Yvette D. Clarke to John Howard, M.D.

[3] See PHS Act, sec. 3312(a)(6)(B)(i); 42 CFR 88.17(a)(2)(i).

from the September 11, 2001, terrorist attacks, and provide advice on whether to add cancer, or a certain type of cancer, to the List specified in the Zadroga Act."[4]

In response to the Administrator's request, the STAC submitted its recommendation on April 2, 2012. After considering the STAC's recommendation, the Administrator issued a notice of proposed rulemaking on June 13, 2012 (77 FR 35574). On September 12, 2012, the Administrator published a final rule in the **Federal Register** adding over 50 types of cancer to the List of WTC-Related Health Conditions in 42 CFR 88.1 (77 FR 56138).[5]

*C. Methods Used by the Administrator To Determine Whether To Add Cancer or Types of Cancer to the List of WTC-Related Health Conditions*

In the final rule published September 12, 2012, the Administrator established a four-part hierarchical methodology to apply in evaluating whether to propose adding certain types of cancer to the List of WTC-Related Health Conditions included in 42 CFR 88.1.[6] Method 1 is the preferred method for adding types of cancer to the List. When the analysis of epidemiologic studies in Method 1 does not support a causal association between 9/11 exposures and a type of cancer, the Administrator applies the criteria of Method 2.[7] If no causal association between a currently listed condition and the type of cancer is identified using Method 2, the Administrator applies the criteria of Method 3. If Method 3 does not indicate that a recognized 9/11 exposure is categorized by the National Toxicology Program (NTP) as a known or reasonably anticipated human carcinogen[8] or the International Agency for Research on Cancer (IARC) has not determined there is sufficient or limited evidence in humans that a 9/11 exposure is causally associated with a type of cancer,[9] then the criteria of Method 4 are applied. Under Method 4, the Administrator determines whether the STAC has provided a reasonable basis for adding the type of cancer, aside from Methods 1, 2, or 3. Only where the Administrator is satisfied that one of the four methods provides a reasonable basis to add the cancer will he propose that a type of cancer be added to the List. The four methods are presented in detail below:

Method 1. Epidemiologic Studies of September 11, 2001 Exposed Populations. A type of cancer may be added to the List if published, peer-reviewed epidemiologic evidence supports a causal association between 9/11 exposures and a type of cancer. The following criteria extrapolated from the Bradford Hill criteria will be used to evaluate the evidence of the exposure-cancer relationship:

*Strength* of the association between a 9/11 exposure and a health effect (including the magnitude of the effect and statistical significance);

☐ *Consistency* of the findings across multiple studies;

☐ *Biological gradient*, or dose (or exposure)-response relationships between 9/11 exposures and the cancer type; and

☐ *Plausibility* and *coherence* with known facts about the biology of the cancer type.

If only a single published epidemiologic study is available for review, the consistency of findings cannot be evaluated and strength of association will necessarily place greater emphasis on statistical significance than on the magnitude of the effect.

Method 2. Established Causal Associations. A type of cancer may be added to the List if there is well-established scientific support published in multiple epidemiologic studies for a causal association between that cancer and a condition already on the List of WTC-Related Health Conditions.

Method 3. Review of Evaluations of Carcinogenicity in Humans. A type of cancer may be added to the List only if both of the following criteria for Method 3 are satisfied:

☐ *3A. Published Exposure Assessment Information.* 9/11 exposures were reported in a published, peer-reviewed exposure assessment study of responders or survivors who were present in either the New York City disaster area as defined in 42 CFR 88.1, or at the Pentagon, or in Shanksville, Pennsylvania; and

☐ *3B. Evaluation of Carcinogenicity in Humans from Scientific Studies.* NTP has determined that any of the 9/11 exposures are known to be a human carcinogen or is reasonably anticipated to be a human carcinogen, and IARC has determined there is sufficient or limited evidence that the 9/11 exposure causes a type of cancer.

Method 4. Review of Information Provided by the WTC Health Program Scientific/Technical Advisory Committee. A type of cancer may be added to the List if the STAC has provided a reasonable basis, for adding a type of cancer, and the basis for inclusion does not meet the criteria for Methods 1, 2, or 3.

*D. Consideration of Prostate Cancer, 2011–2012*

Since 2011, the Administrator has twice evaluated whether to add health conditions to the List. In both instances, the Administrator considered adding certain types of cancer to the List, including prostate cancer.

1. First Periodic Review of the Scientific and Medical Evidence Related to Cancer, July 2011

The Administrator's first evaluation was published in the July 2011 *First Periodic Review of the Scientific and Medical Evidence Related to Cancer* (First Periodic Review) for the WTC Health Program. As required by Title XXXIII, section 3312(a)(5)(A) of the PHS Act, the Administrator reviewed "all available scientific and medical evidence, including findings and recommendations of Clinical Centers of Excellence, published in peer-reviewed journals to determine if, based on such evidence, cancer or a certain type of cancer should be added to the applicable list of WTC-related health conditions." The Administrator used a "weight of the evidence" approach to evaluate the available data. At that time, there were no significant epidemiologic studies available which evaluated the association of 9/11 exposures and health outcomes involving types of cancer. As a result, the Administrator determined that insufficient evidence existed at that time to propose the addition of cancer, or certain types of cancer, to the List, but cautioned that,

> the current absence of published scientific and medical findings demonstrating a causal association between exposures resulting from the September 11, 2001, terrorist attacks and the occurrence of cancer in responders and survivors does not indicate evidence of the absence of a causal association.[10]

2. Rulemaking in Response to Petition 001

The Administrator's second evaluation of whether to add cancer or certain types of cancer to the List followed receipt of Petition 001 and the subsequent recommendation on the

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[4] Letter dated October 5, 2011 from John Howard, M.D. to Elizabeth Ward, Ph.D., STAC Chair available at *http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH-248/0248-100511-letter.pdf.* Accessed June 1, 2013.

[5] On October 12, 2012, HHS published a **Federal Register** notice to correct errors in Table 1 of the final rule (the list of cancers covered by the Program) (77 FR 62167).

[6] 77 FR 56138, 56142.

[7] The results of epidemiologic studies are the primary and best evidence for making a determination of a causal association between an exposure and a health outcome, such as cancer. An analysis of the results of any epidemiologic study has three possible outcomes: (1) The analysis supports an association between exposures and a health outcome (yes); (2) the analysis supports that there is no association between exposures and a health outcome (no); or (3) the analysis is inconclusive about whether an association exists between exposures and a health outcome (inconclusive).

[8] National Toxicology Program (NTP), U.S. Department of Health and Human Services. Report on Carcinogens (RoC). *http://ntp.niehs.nih.gov/?objectid=72016262-BDB7-CEBA-FA60E922B18C2540.* Accessed May 15, 2013.

[9] World Health Organization International Agency for Research on Cancer (IARC). *http://monographs.iarc.fr/.* Accessed May 15, 2013.

[10] First Periodic Review of Scientific and Medical Evidence Related to Cancer for the World Trade Center Health Program, VI.C, p. 40.

Petition from the STAC. During meetings held November 9–10, 2011, February 15–16, 2012, and March 28, 2012, the STAC reviewed the available scientific evidence for adding cancer or certain types of cancer to the List and made its recommendation to the Administrator regarding Petition 001 on April 2, 2012.

In reviewing Petition 001, the STAC compiled and reviewed the available evidence for adding all types of cancer, including prostate cancer, to the List. Specifically, with regard to the analysis of prostate cancer, this evidence included (1) the results of a study by Zeig-Owens *et al.*, published in *The Lancet* in September 2011;[11] and (2) a determination by NTP that arsenic and cadmium, 9/11 exposures, are known to be human carcinogens[12] and a determination by IARC that limited evidence supports a causal association between prostate cancer and arsenic or cadmium exposure.[13]

At the March 28, 2012 meeting, STAC members noted that prostate cancer would qualify for inclusion in its recommendation of types of cancer that should be added to the List based on evidence from NTP and IARC.[14] However, other STAC members expressed concern that the increased rate of prostate cancer in both exposed and unexposed firefighters in the Zeig-Owens study was a result of surveillance bias associated with widespread screening for prostate cancer. The Zeig-Owens study involved a small population that was subject to substantial medical screening. STAC members expressed concern that the observed excess risk for prostate cancer seen in the Zeig-Owens study was the result of screening for prostate cancer by means of the prostate-specific antigen (PSA) test.[15]

During the meeting, the STAC considered a motion to "recommend adding prostate cancer to the list of covered conditions."[16] The motion failed in an 8 to 7 vote. In the April 2, 2012 recommendation, the STAC noted that "the WTC-exposed FDNY [Fire Department of New York] group did not show an increased risk over the unexposed, with estimated SIR [standardized incidence ratio] ratio [of] 0.90 (after correction for possible surveillance bias)," and concluded "therefore, despite the statistically significant SIR for prostate cancer in WTC-exposed firefighters compared to the general population, the overall results do not support an increased risk of prostate cancer associated with WTC exposures."[17] The STAC's discussion and subsequent vote indicated that the members found that the epidemiologic evidence of 9/11-exposed populations outweighed the NTP and IARC evidence of carcinogenicity of arsenic and cadmium.

In evaluating whether to add prostate cancer based on Method 1, the Administrator considered the STAC's concerns about the findings of the one epidemiologic study that was available to review at the time, the Zeig-Owens study, which involved a small, heavily medically screened population. The Administrator agreed that surveillance bias could have explained the excess prostate cancer risk found in the study. In addition, as the STAC noted—and the Administrator agreed—the SIR for prostate cancer fell to 0.90 after correction for surveillance bias. The Administrator determined that, based on the information then available, the prostate cancer risk was not significantly increased over an appropriate reference population (Method 1). Additionally, no evidence existed for a causal association between prostate cancer and a condition already on the List (Method 2).

As described above, the basis for adding a cancer according to the criteria in Method 3 is a determination by NTP that 9/11 exposures are known or reasonably anticipated to be human carcinogens, and a determination by IARC that sufficient or limited evidence in humans supports a causal association between a cancer and a 9/11 exposure. The STAC considered the determinations by NTP and IARC regarding the carcinogenicity of arsenic and cadmium and still voted not to recommend adding prostate cancer to the List. The Administrator was aware that two additional epidemiologic studies in 9/11-exposed populations were then in progress and might provide additional information about the association of prostate cancer and 9/11 exposures in the future. Given the STAC's decision not to recommend the addition of prostate cancer, which relied on the epidemiologic evidence available at that time, the Administrator determined that there was not a reasonable basis for adding prostate cancer to the List.

*E. Petition 002*

On May 2, 2013, the Administrator received Petition 002 from the Patrolmen's Benevolent Association, a union representing New York City police officers. Petition 002 references, and relies upon, a study of over 25,000 WTC responders enrolled in the WTC Health Program, authored by Solan *et al.* and published in the scientific journal *Environmental Health Perspectives*.[18] Petition 002 asserts that the Solan study:

> [A]ffirms what was reported in prior published studies, that those exposed to the Ground Zero toxins are at higher risk of developing cancer than the general population. Notably, the Study found a statistically significant incidence rate for prostate cancer, including a 17% greater than expected rate of prostate cancer among responders. According to the Study, these findings were "concordant" with the findings of the New York City Fire Department

[11] Zeig-Owens R, Webber MP, Hall CB, Schwartz T, Jaber N, Weakley J, Rohan TE, Cohen HW, Derman O, Aldrich TK, Kelly K, Prezant DJ [2011]. Early Assessment of Cancer Outcomes in New York City Firefighters After the 9/11 Attacks: An Observational Cohort Study. Lancet. 378(9794):898–905.

[12] NTP (National Toxicology Program) [2011]. 12th Report on Carcinogens. National Toxicology Program, Public Health Service, U.S. Department of Health and Human Services, Research Triangle Park, NC. *http://ntp.niehs.nih.gov/?objectid=03C9AF75-E1BF-FF40-DBA9EC0928DF8B15*. Accessed May 24, 2013.

[13] IARC (International Agency for Research on Cancer) [2012]. IARC Monographs on the Evaluation of the Carcinogenic Risks to Humans: Vol. 100C—Arsenic, Metals, Fibres, and Dusts. IARC, Lyon, France. *http://monographs.iarc.fr/ENG/Monographs/vol100C/index.php*. Accessed May 24, 2013.

[14] STAC (WTC Health Program Scientific/Technical Advisory Committee) [2012]. Transcript of the STAC meeting, March 28, 2012:97–105. *http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH-248/0248-032812-transcript3.pdf*. Accessed June 1, 2013.

[15] The PSA test was approved by the Food and Drug Administration in 1986 for the purpose of monitoring disease status in prostate cancer, and in 1994 for the detection of prostate cancer in men 50 years and older. The routine use of the PSA test for screening increased dramatically beginning in 1998, along with the prostate cancer incidence, but the incidence has since fallen. See Etzioni R, Penson DF, Legler JM, di Tommaso D, Boer R, Gann PH, Feuer EJ. (2002) Overdiagnosis due to prostate-specific antigen screening: lessons from U.S. prostate cancer incidence. JNCI 94(13):981–990; Potosky AL, Miller BA, Albertsen PC, Kramer BS. (1995) The role of increasing detection in the rising incidence of prostate cancer. JAMA 273:548–552; and Altekruse SF, Kosary C, Krapcho M et al. (2010) SEER cancer statistics review 1975–2007. Bethesda, MD: National Cancer Institute. *http://seer.cancer.gov/csr/1975_2007/*. Accessed June 2, 2013.

[16] See STAC (WTC Health Program Scientific/Technical Advisory Committee) [2012]. Transcript of the STAC meeting, March 28, 2012:98, lines 23–31. *http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH-248/0248-032812-transcript3.pdf*. Accessed June 1, 2013.

[17] STAC (WTC Health Program Scientific/Technical Advisory Committee) [2012]. Letter from Elizabeth Ward, Chair to John Howard, MD, Administrator at 24. This letter is included in the docket for this rulemaking.

[18] Solan S, Wallenstein S, Shapiro M, Teitelbaum SL, Stevenson L, Kochman A, Kaplan J, Dellenbaugh C, Kahn A, Biro FN, Crane M, Crowley L, Gabrilove J, Gonsalves L, Harrison D, Herbert R, Luft B, Markowitz SB, Moline J, Niu X, Sacks H, Shukla G, Udasin I, Lucchini RG, Boffetta P, Landrigan PJ. [2013] Cancer incidence in World Trade Center rescue and recovery workers, 2001–2008. Environ Health Perspect 121(6):699–704.

[FDNY] and the New York City Department of Health and Mental Hygiene World Trade Center Health City Registry.[19]

The "prior published studies" referenced in Petition 002 were authored by Zeig-Owens *et al.*, and by Li *et al.*, published in the *Journal of the American Medical Association* (JAMA) in December 2012.[20] The Zeig-Owens, Li, and Solan studies are reviewed and analyzed by the Administrator below. In reviewing Petition 002, the Administrator is mindful of what the STAC stated in its April 2, 2012 recommendation to the Administrator:

> The Committee recognizes that additional epidemiologic studies will soon become available, and recommends that as they do become available, their findings be reviewed and modifications made to the list as appropriate.

Accordingly, the Administrator reviewed the two new epidemiologic studies in 9/11 exposed populations published subsequent to the 2011 Zeig-Owens study. The Administrator's review focused on the information that the three epidemiologic studies, taken as a whole, provided on the question of the risk of prostate cancer in association with 9/11 exposures and the role of surveillance bias in explaining any observed excess risk. The Administrator's findings regarding the three studies are described below, under Method 1.

## IV. Administrator's Determination on Petition 002 Requesting the Addition of Prostate Cancer to the List

In response to Petition 002, the Administrator has reviewed the available evidence pertinent to the four-part hierarchical methodology detailed above. The Administrator's review of the relevant evidence is below.

### *Method 1*

Method 1 requires that the Administrator evaluate the available information in published, peer-reviewed epidemiologic studies for evidence of an adequate strength of the association between 9/11 exposure and a health effect (including the magnitude of the effect and its statistical significance), consistency of the findings across multiple studies, biological gradient, or dose (or exposure)-response relationships between 9/11 exposures and the cancer type, and plausibility and coherence with known facts about the biology of the cancer type.

*The Zeig-Owens study.* The first published study of cancer outcomes associated with the 9/11 attacks was authored by Zeig-Owens *et al.* and published in September 2011. The study involved examination of the potential association between exposure and cancer outcomes among 9,853 male Fire Department of the City of New York (FDNY) firefighters within 7 years of September 11, 2001.[21] The study evaluated cancer cases identified by self-reporting and through five state cancer registries. SIRs were used to determine if the number of observed cancer cases in the studied firefighters was greater or less than the number of cases expected to occur if the same disease rate in a large reference population occurred in the studied group.[22] The reference cancer incidence data was obtained from the U.S. National Cancer Institute Surveillance Epidemiology and End Results (SEER) database.

In the Zeig-Owens study, the SIRs for various types of cancer, including prostate cancer, were reported in two ways: (1) By comparing the exposed FDNY firefighters to the general population; and (2) by comparing the SIR for 9/11 exposed FDNY firefighters to the SIR for non-9/11 exposed FDNY firefighters (the ratio of standardized incidence ratios is referred to as the "SIR ratio"). When compared to the general population, the SIR for prostate cancer was increased, and that increase was statistically significant (SIR=1.49, 95% confidence interval (CI) 1.20–1.85). When compared to non-9/11 exposed FDNY firefighters, the SIR ratio was slightly greater than 1 (one),[23] but the increase was not statistically significant (SIR ratio=1.11, 95% CI 0.77–1.59). Zeig-Owens noted the potential for surveillance bias, that is, FDNY firefighters may be medically followed more closely or have more diagnostic tests performed than the general population, which could lead to finding more disease among this population.

A standard method to adjust for surveillance bias is not available, and the adequacy of any adjustment method is uncertain. In an attempt to correct for surveillance bias, Zeig-Owens adjusted the SIRs and SIR ratios by delaying the recorded date of diagnosis by 2 years for 25 cases of prostate and other cancers that potentially could be detected early by FDNY surveillance (*i.e.*, medical screening). When the estimates were adjusted in this way, the comparison to the general population produced a SIR for prostate cancer that was increased, but not statistically significant (SIR=1.21; 95% CI 0.96–1.52). When compared to non-exposed firefighters, the SIR ratio was not increased (SIR ratio=0.90, 95% CI 0.62–1.30). The authors noted that they had gone to "great lengths" to assess and correct for potential biases and provided arguments against the existence of considerable bias. However, the authors further noted that delaying the date of diagnosis may have over-corrected or under-corrected for surveillance bias, and the authors could not rule out the potential for surveillance bias in several types of cancer, including prostate cancer.

*The Li study.* Li *et al.* authored the second published epidemiologic study of cancer outcomes associated with the 9/11 attacks, published in December 2012. It involved examination of cancer health outcomes of 55,778 members of the WTC Health Registry, including rescue and recovery workers as well as people not involved in rescue and recovery (*e.g.*, area residents, workers, and passersby).[24] In comparison to the Zeig-Owens study, the Li study involves a much larger and more heterogeneous population that is likely subjected to much less medical screening and surveillance bias.

In the Li study, cancer cases were identified through 11 state cancer registries; New York State cancer rates were used as the reference. The authors accounted for cancer latency by assuming that any exposure-related cancers would be more likely to occur at least 5 years after the 9/11 exposures. The study population was divided into two groups: Early period (WTC Health Registry participants who were diagnosed with cancer between enrollment and 2006) and later period (WTC Health Registry participants who were diagnosed with cancer between 2007 and 2008). Among rescue and recovery workers, a statistically significant increase in the incidence of prostate cancer was reported for the

[19] The Petitioner incorrectly states that the Solan study reported a 17 percent increase in prostate cancer. Solan *et al.* report a 21 percent increase in prostate cancer when the timeframe for diagnosis is unrestricted, and 23 percent when the timeframe for diagnosis is restricted.

[20] Li J, Cone JE, Kahn AR, Brackbill RM, Farfel MR, Greene CM, Hadler JL, Stayner LT, Stellman SD [2012]. Association Between World Trade Center Exposure and Excess Cancer Risk. JAMA 308(23):2479–2488.

[21] Zeig-Owens *et al.* 2011.

[22] If the observed number of cancer cases equals the expected number of cases, the SIR equals 1 (one). If more cases are observed in the studied population than expected, the SIR is greater than 1 (one). If fewer cases are observed in the studied population than expected, the SIR is less than 1.

[23] If the SIR in the studied population equals the SIR in the reference population, the SIR ratio equals 1 (one). If the SIR in the studied population is greater than the SIR in the reference population, the SIR ratio is greater than 1 (one). If the SIR ratio in the studied population is less than the SIR in the reference population, the SIR ratio is less than 1 (one).

[24] Li *et al.*, 2012.

later period (SIR=1.43, 95% CI 1.11–1.82). In the early period, the SIR was slightly, but not statistically significantly, increased (SIR=1.12, 95% CI 0.83–1.40).

The potential for surveillance bias in the Li study was assessed by: (1) Comparing the number of Stage 1 cancers for selected cancer sites as a proportion of total cancer diagnoses in the study population to the corresponding proportion in the New York State reference population during the same period; and (2) comparing the proportion of participants who reported a routine physical checkup within the preceding 12 months to the number of follow-up participants with and without subsequent cancers. Importantly, the Li study noted that the proportions were similar in both cases and stated:

> These observations suggest that cancer cases in this study may not have received more thorough cancer screening than the NYS [New York State] population in general, although they do not eliminate the possible role of surveillance altogether. Also, our findings might be prone to type 1 error [25] given the large number of comparisons.[26]

*The Solan study.* The third epidemiologic study of cancer outcomes in 9/11 exposed populations was authored by Solan *et al.* First published online in April 2013 and then in print in June of 2013, this study addressed cancer health outcomes associated with the 9/11 attacks involving 20,984 WTC responders (including rescue and recovery workers) enrolled in the WTC Health Program.[27] Cancer cases diagnosed between 2001 and 2008 were identified through the New York, New Jersey, Connecticut, and Pennsylvania cancer registries, and SIRs were calculated using the general population of the state of residence as the reference population. No adjustments were made for potential surveillance bias. When all prostate cancers diagnosed after September 11, 2001 were included, a small statistically significant increase in the SIR for prostate cancer among WTC responders was observed (SIR = 1.21, 95% CI 1.01–1.44). The authors note that, "[e]vidence for occupational risk factors of prostate cancer is very weak, and heightened diagnosis due to increased medical surveillance is a possible explanation for greater than expected numbers of prostate cancer diagnoses." [28] The SIR was also calculated for those WTC responders who were diagnosed with prostate cancer 6 months after enrollment in the WTC Health Program. This adjustment reduces the potential for selection bias [29] in the results. After this adjustment, the SIR for prostate cancer remained increased, but was not statistically significant (SIR = 1.23, 95% CI 0.98–1.53).

When more than one epidemiologic study in 9/11 exposed populations has been published, Method 1 directs the Administrator to evaluate findings from the studies using the following criteria: (1) Strength of any association between a 9/11 exposure and a health effect (including the magnitude of the effect and statistical significance); (2) consistency of the findings across multiple studies; (3) biological gradient or dose-response relationships between 9/11 exposures and the cancer type; and (4) the plausibility and coherence with known facts about the biology of the cancer type. After review, the Administrator finds that the strength of the association between 9/11 exposures and prostate cancer across all three studies is weak (criteria 1), but that excess risk is consistently reported in each of the three studies (criteria 2). A dose (exposure)-response relationship between 9/11 exposures and prostate cancer is difficult to establish because of the substantial limitations of 9/11 exposure information (criteria 3). Finally, there is limited evidence of the potential plausibility of the development of prostate cancer with two of the documented 9/11 exposures—arsenic and cadmium (criteria 4). The Li study provides evidence that surveillance bias does not fully explain the observed excess risk for prostate cancer.

Because surveillance bias may not explain all of the observed excess risk in studies of 9/11-exposed populations and because the strength of the association between 9/11 exposures and prostate cancer across all three studies is weak, the Administrator has determined that the evidence to add prostate cancer based on Method 1 is inconclusive.

*Method 2*

Method 2 requires that the Administrator find that multiple epidemiologic studies show a causal association between a type of cancer and a health condition already on the List of WTC-Related Health Conditions. After review of the scientific literature, the Administrator finds that there is no evidence that any of the conditions on the List of WTC-Related Health Conditions increase the risk of prostate cancer and Method 3 should be reviewed.

*Method 3*

Method 1 provides insufficient evidence to add prostate cancer to the List and Method 2 provides no evidence to add prostate cancer. The Administrator next reviewed 9/11 exposures in relation to NTP and IARC information pertinent to prostate cancer (Method 3).

Arsenic and cadmium are 9/11 exposures that have been reported in several exposure assessment studies of responders or survivors of the September 11, 2001, terrorist attacks in New York City (Method 3A); [30] and NTP identified arsenic and cadmium as known to be human carcinogens [31] and IARC found limited [32] evidence in humans that arsenic and cadmium cause prostate cancer (Method 3B). Based on the evidence provided in Methods 3A and 3B, the Administrator has determined that prostate cancer should be added to the List.

*Method 4*

Because Method 3 supports the addition of prostate cancer, Method 4 is not analyzed.

*Administrator's Determination*

Following review of all relevant evidence, the Administrator has

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[25] A type 1 error is a "false positive." In this case, the authors are noting that they made a large number of comparisons in the study and, when making a large number of comparisons, it is likely that some statistically significant findings will occur by chance.

[26] Li *et al.*, at 2486.

[27] Solan *et al.*, 2013.

[28] Solan *et al.*, at 702.

[29] Selection bias might have occurred when individuals decided to enroll in the WTC Health Program after being diagnosed with prostate cancer. If this occurred, the number of prostate cancers among the exposed population would be increased and result in a higher SIR.

[30] Butt CM, Diamond ML, Truong J, Ikonomou MG, Helm PA, Stern GA [2004]. Semivolatile organic compounds in window films from lower Manhattan after the September 11th World Trade Center attacks. Environmental Science & Technology. 38(13):3514–3524.

Lorber M, Gibb H, Grant L, Pinto J, Pleil J, Cleverly D [2007]. Assessment of inhalation exposures and potential health risks to the general population that resulted from the collapse of the World Trade Center towers. Risk Anal 27(5):1203–21.

Lioy PJ, Gochfeld M [2002]. Lessons learned on environmental, occupational, and residential exposures from the attack on the World Trade Center. Am J Ind Med 42(6):560–565.

[31] NTP (National Toxicology Program) [2011]. 12th Report on Carcinogens. National Toxicology Program, Public Health Service, U.S. Department of Health and Human Services, Research Triangle Park, NC. *http://ntp.niehs.nih.gov/?objectid=03C9AF75-E1BF-FF40-DBA9EC0928DF8B15.* Accessed May 24, 2013.

[32] IARC (International Agency for Research on Cancer) [2012]. IARC Monographs on the Evaluation of the Carcinogenic Risks to Humans: Vol. 100C—Arsenic, Metals, Fibres, and Dusts. IARC, Lyon, France. *http://monographs.iarc.fr/ENG/Monographs/vol100C/index.php.* Accessed May 24, 2013.

determined that the decision to not add prostate cancer in the 2012 rulemaking is superseded by his new evaluation incorporating the Li and Solan study findings. The 2012 evaluation relied on the only epidemiologic study available at that time, Zeig-Owens, and the STAC's assessment of that study and vote to not include prostate cancer in their recommendation. The Li and Solan studies present epidemiologic findings from larger, more heterogeneous populations and present evidence that surveillance bias may not be occurring in the studied populations. Review of the two new studies leads the Administrator to believe that surveillance bias may not fully explain the increased incidence of prostate cancer and, accordingly, the Administrator can no longer attribute increased incidence of prostate cancer to surveillance bias with certainty. After comprehensive review of all three epidemiology studies of 9/11-exposed populations, the Administrator has determined that the epidemiologic evidence evaluated under Method 1 is inconclusive and therefore turns to evaluating the evidence of carcinogenicity provided by NTP and IARC under Method 3. The Administrator now finds that, based on the evidence provided in Methods 3A and 3B, prostate cancer may be added to the named cancer types in 42 CFR 88.1, Table 1.

## V. Early Detection of Prostate Cancer

Early detection of cancer in 9/11-exposed populations—either as part of medical monitoring of enrolled WTC responders and survivors or part of ongoing research—is an important adjunct to the WTC Health Program. The WTC Health Program adheres to the recommendations of the U.S. Preventive Services Task Force (USPSTF) with regard to coverage for preventive measures, including screening tests, counseling, immunizations, and preventive medications. The USPSTF recommends against PSA-based screening for prostate cancer.[33] Therefore, PSA-based screening for prostate cancer will not be covered by the WTC Health Program.

## VI. Effects of Rulemaking on Federal Agencies

Title II of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347) reactivated the September 11, 2001 Victim Compensation Fund (VCF). Administered by the U.S. Department of Justice (DOJ), the VCF provides compensation to any individual or representative of a deceased individual who was physically injured or killed as a result of the September 11, 2001, terrorist attacks or during the debris removal. Eligibility criteria for compensation by the VCF include a list of presumptively covered health conditions, which are physical injuries determined to be WTC-related health conditions by the WTC Health Program. Pursuant to DOJ regulations, the VCF Special Master is required to update the list of presumptively covered conditions when the List of WTC-Related Health Conditions in 42 CFR 88.1 is updated.

## VII. Summary of Proposed Rule

For the reasons discussed above, the Administrator proposes to amend 42 CFR 88.1, paragraph (4), Table 1, to add malignant neoplasm of the prostate (prostate cancer) and to add the corresponding medical diagnostic codes.[34]

## VIII. Regulatory Assessment Requirements

### *A. Executive Order 12866 and Executive Order 13563*

Executive Orders (E.O.) 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 notice of proposed rulemaking has been determined not to be a "significant regulatory action" under sec. 3(f) of E.O. 12866. The proposed addition of prostate cancer by this rulemaking is estimated to cost the WTC Health Program between $3,462,675[35] and $6,995,817[36] per annum. All of the costs to the WTC Health Program will be transfers after the implementation of provisions of the Patient Protection and Affordable Care Act (Pub. L. 111–148) on January 1, 2014. This notice of proposed rulemaking has been reviewed by the Office of Management and Budget (OMB). The rule would not interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Cost Estimates

The WTC Health Program has, to date, enrolled approximately 58,500 WTC responders and approximately 6,500 survivors, or approximately 65,000 individuals in total. Of that total population, approximately 60,000 individuals were participants in previous WTC medical programs and were 'grandfathered' into the WTC Health Program established by Title XXXIII.[37] In addition to those grandfathered WTC responders and survivors already enrolled, the PHS Act sets a numerical limitation on the number of eligible members who can enroll in the WTC Health Program beginning July 1, 2011 at 25,000 new WTC responders and 25,000 new WTC survivors (*i.e.*, the statute restricts new enrollment).[38] Since July 1, 2011, a total of approximately 3,000 new WTC responders and new WTC survivors (over 1,700 responders and 1,200 survivors) have enrolled in the WTC Health Program, resulting in only a minor impact on the statutory enrollment limits for new members. For the purpose of calculating a baseline estimate of cancer prevalence only, the Administrator assumed that this gradual rate of enrollment would continue, and that the currently enrolled population numbers would remain around 58,500 WTC responders and 6,500 WTC survivors. The estimate is further based on the average U.S. cancer prevalence rate and 7 percent discount rate.

As it is not possible to identify an upper bound estimate, HHS has modeled another possible point on the continuum. For the purpose of calculating the impact of an increased rate of cancer on the WTC Health Program, this analysis assumes that the entire statutory cap for new WTC responders (25,000) and WTC survivors (25,000) will be filled. Accordingly, this estimate is based on a population of 80,000 responders (55,000 grandfathered + 25,000 new) and 30,000 survivors (5,000 grandfathered + 25,000

[33] U.S. Preventive Services Task Force. Recommendation: Screening for Prostate Cancer (2012). *http://www.uspreventiveservicestaskforce.org/prostatecancerscreening.htm*. Accessed June 2, 2013.

[34] ICD–9 code 185 and ICD–10 code C61. See, respectively, WHO (World Health Organization) [1978]. International Classification of Diseases, Ninth Edition, and WHO [1997] International Classification of Diseases, Tenth Edition.

[35] Based on a population of 60,000 at the U.S. cancer rate and discounted at 7 percent.

[36] Based on a population of 110,000 at 21 percent above the U.S. cancer rate and discounted at 3 percent.

[37] These grandfathered members were enrolled without having to complete a new member application when the WTC Health Program started on July 1, 2011 and are referred to in the WTC Health Program regulations in 42 CFR Part 88 as "currently identified responders" and "currently identified survivors."

[38] PHS Act, secs. 3311(a)(4)(A) and 3321(a)(3)(A).

new). The upper cost estimate also assumes an overall increase in population cancer rates (for malignant neoplasm of the prostate [prostate cancer] of 21 percent due to 9/11 exposure),[39] and costs were discounted at 3 percent. The choice of a 21 percent increase in the risk of cancer of the rate found in the un-exposed population is based on findings presented in the first published epidemiologic study of September 11, 2001 exposed populations.[40] Given the challenges associated with interpreting the Zeig-Owens findings,[41] we simply characterize 21 percent as a possible outcome rather than asserting the probability that 21 percent is a "likely" outcome.

The Administrator acknowledges that some prostate cancer cases are not likely to have been caused by 9/11 exposures. The certification of individual cancer diagnoses will be conducted on a case-by-case basis. However, for the purpose of this analysis, the Administrator has estimated that all diagnosed cancers added to the List will be certified for treatment by the WTC Health Program. Finally, because there are no existing data on cancer rates related to 9/11 exposures at either the Pentagon or in Shanksville, Pennsylvania, the Administrator has used only data from studies of individuals who were responders or survivors in the New York City disaster area.

Costs of Cancer Treatment

The Administrator estimated the treatment costs associated with covering prostate cancer in this rulemaking using the methods described below. The WTC Health Program obtained data for the cost of providing medical treatment for prostate cancer.[42] The costs of treatment are described in Table A. The costs of treatment are divided into three phases: The costs for the first year following diagnosis, the costs of intervening years or continuing treatment after the first year, and the costs of treatment for the last year of life. The first year costs of cancer treatment are higher due to the initial need for aggressive medical (*e.g.*, radiation, chemotherapy) and surgical care. The costs during last year of life are often dominated by increased hospitalization costs.[43] Therefore, we used three different treatment phase costs to estimate the costs of treatment to be able to best estimate costs in conjunction with expected incidence and long-term survival rates for prostate cancer.

TABLE A—AVERAGE COSTS OF TREATMENT FOR PROSTATE CANCER (2011$)

| Initial (12 month) | Continuing (annual) | Last year of life (12 mos.) |
|---|---|---|
| $13,696 ..... | $2,754 | $43,481 |

These cost figures were based on a study of elderly cancer patients from the Surveillance, Epidemiology, and End Results (SEER) program maintained by the National Cancer Institute using Medicare files.[44] The average costs of treatment described above are given in 2011 prices adjusted using the Medical Consumer Price Index for all urban consumers.[45]

Incident Cases of Cancer

The Administrator estimated the expected number of cases of cancer that would be observed in a cohort of responders and survivors followed for cancer incidence after September 11, 2001 using U.S. population cancer rates for prostate cancer. Demographic characteristics of the cohort were assigned since the actual data are not available for individuals in the responder and survivor populations who have not yet enrolled in the WTC Health Program. Gender and age (at the time of exposure) distributions for responders and survivors were assumed to be the same as current members in the WTC Health Program. According to WTC Health Program data, males comprise 88 percent of the current responder members and 50 percent of survivor members. Because prostate cancer occurs only in males, all calculations only take into account male WTC Health Program members. The age distribution for current members by gender and responder/survivor status is presented in Table B.

TABLE B—PERCENTILES OF CURRENT AGE (ON APRIL 11, 2012) FOR CURRENT MEMBERS IN THE WTC HEALTH PROGRAM BY GENDER AND RESPONDER/SURVIVOR STATUS

| Group | Age percentile (years) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Min | 1 | 10 | 30 | 50 | 70 | 90 | 99 | Max |
| Male responders | 28 | 32 | 39 | 44 | 49 | 54 | 62 | 74 | 92 |
| Female responders | 28 | 30 | 38 | 44 | 49 | 54 | 62 | 76 | 92 |
| Male survivors | 12 | 23 | 35 | 46 | 52 | 58 | 67 | 81 | 99 |
| Female survivors | 12 | 21 | 38 | 49 | 54 | 60 | 68 | 84 | 95 |

The Administrator assumed race and ethnic origin distributions for responders and survivors according to distributions in the WTC Health Registry cohort:[46] 57 percent non-Hispanic white, 15 percent non-

[39] Zeig-Owens R, Webber MP, Hall CB, Schwartz T, Jaber N, Weakley J, Rohan TE, Cohen HW, Derman O, Aldrich TK, Kelly K, Prezant DJ [2011]. Early Assessment of Cancer Outcomes in New York City Firefighters After the 9/11 Attacks: An Observational Cohort Study. Lancet. 378(9794):898–905.

[40] Zeig-Owens R, Webber MP, Hall CB, Schwartz T, Jaber N, Weakley J, Rohan TE, Cohen HW, Derman O, Aldrich TK, Kelly K, Prezant DJ [2011]. Early Assessment of Cancer Outcomes in New York City Firefighters After the 9/11 Attacks: An Observational Cohort Study. Lancet. 378(9794):898–905.

[41] As Zeig-Owens et al point out, the time interval since 9/11 is short for cancer outcomes, the recorded excess of cancers is not limited to specific sites, and the biological plausibility of chronic inflammation as a possible mediator between WTC-exposure and cancer means that the outcomes remain speculative.

[42] Yabroff KR, Lamont EB, Mariotto A, Warren JL, Topor M, Meekins A, Brown ML [2008]. Cost of Care for Elderly Cancer Patients in the United States. Journal: J Natl Cancer Inst 100(9):630–41.

[43] Yabroff KR, Lamont EB, Mariotto A, Warren JL, Topor M, Meekins A, Brown ML [2008]. Cost of Care for Elderly Cancer Patients in the United States. Journal: J Natl Cancer Inst 100(9):630–41.

[44] Surveillance, Epidemiology, and End Results (SEER) Program (*www.seer.cancer.gov*) Research Data (1973–2006), National Cancer Institute, DCCPS, Surveillance Research Program, Surveillance Systems Branch, released April 2009, based on the November 2008 submission.

[45] Bureau of Labor Statistics. Consumer Price Index. Available at *https://research.stlouisfed.org/fred2/series/CPIMEDSL/downloaddata?cid=32419*. Accessed April 23, 2012.

[46] Jordan HT, Brackbill RM, Cone JE, Debchoudhury I, Farfel MR, Greene CM, Hadler JL, Kennedy J, Li J, Liff J, Stayner L, Stellman SD. Mortality Among Survivors of the Sept 11, 2001, Word Trade Center Disaster: Results from the World Trade Center Health Registry Cohort. Lancet 2011;378:879–887. Note: percentages may not sum to 100 percent due to rounding.

Hispanic black, 21 percent Hispanic, and 8 percent other race/ethnicity for responders and 50 percent non-Hispanic white, 17 percent non-Hispanic black, 15 percent Hispanic, and 18 percent other race/ethnicity for survivors. Follow-up for cancer morbidity for each person began on January 1, 2002 or age 15 years, whichever was later. Age 15 was considered because the cancer incidence rate file did not include rates for persons less than 15 years of age. Follow-up ended on December 31, 2016 or the estimated last year of life, whichever was earlier. The estimated last year of life was used since not all persons would be expected to remain alive at the end of 2016. The estimated last year of life was based on U.S. gender, race, age, and year-specific death rates from CDC Wonder (since rates are currently available through 2008, the rate from 2008 was applied to 2009 and later).[47] A life-table analysis program, LTAS.NET, was used to estimate the expected number of incident cancers for prostate cancer.[48] The Administrator calculated cancer incidence rates using data through 2006 from the Surveillance Epidemiology and End Results (SEER) Program and estimated rates for 2007–2016.[49] The Program applied the resulting gender, race, age, and year-specific cancer incidence rates to the estimated person-years at risk to estimate the expected number of cancer cases for prostate cancer starting from year 2002, the first full year following the September 11, 2001, terrorist attacks, to 2016, the last year for which this Program is currently funded.

Prevalence of Cancer

To determine the potential number of persons in the responder and survivor populations with cancer, the Administrator used the number of incident cases described above for each year starting with 2002 and estimated the prevalence of cancer using survival rate statistics for each incident cancer group through 2016.[50] Using the incident cases and survival rate statistics, HHS has estimated the prevalence (number of persons living with cancer) of cases during the 15 year period (2002–2016) since September 11, 2001. The resulting table provides for each year from 2002 through 2016, the number of new cases occurring in that year (incidence), the number of individuals who died from their cancer in that year, and the number of persons surviving up to 15 years beyond their first diagnosis (prevalence).[51] For example, in 2002 there are 34.22 projected new cases of prostate cancer, which would be listed as incident cases for that year. The survival rate for prostate cancer in the first year of diagnosis is 99.44 percent.[52] Therefore the number of deceased persons in 2002 would be $34.22 \times (1 - 0.9944) = 0.19$. For the prostate cancer prevalence table, in year 2003, the number of incident cases would be 38.55 cases. In addition to 38.55 newly diagnosed cases in 2003, there would be the one-year survivors from 2002 which would be $34.22 - 0.19 = 34.03$ cases. This computation process can be repeated for each year through year 2016. A portion of the prostate cancer prevalence tables are provided in Table C. Prevalence is summarized in Tables E and G. This analysis considers cancers diagnosed in 2002 through 2016.

TABLE C—PREVALENCE TABLE FOR PROSTATE CANCER

[Based on 80,000 responders]

| | Year | Years since 9/11 exposure | | | Years covered by WTC Health Program | |
|---|---|---|---|---|---|---|
| | New/Surv. | 2002 | 2003 | 2013 | 2014 | 2015 |
| 1 | 34.22 | 38.55 | 112.54 | 123.98 | 134.46 | 146.33 |
| 2 | | 34.03 | 100.76 | 111.92 | 123.29 | 133.72 |
| 3 | | | 88.67 | 99.55 | 110.57 | 121.81 |
| 4 | | | 79.02 | 87.58 | 98.33 | 109.22 |
| 5 | | | 71.15 | 78.61 | 87.13 | 97.82 |
| 6 | | | 63.27 | 70.41 | 77.80 | 86.23 |
| 7 | | | 55.71 | 62.74 | 69.83 | 77.15 |
| 8 | | | 48.22 | 55.06 | 62.01 | 69.01 |
| 9 | | | 42.10 | 47.91 | 54.71 | 61.61 |
| 10 | | | 39.77 | 41.51 | 47.24 | 53.95 |
| 11 | | | 35.02 | 39.38 | 41.11 | 46.77 |
| 12 | | | 30.91 | 34.83 | 39.17 | 40.88 |
| 13 | | | | 30.43 | 34.29 | 38.56 |
| 14 | | | | | 30.26 | 34.10 |
| 15 | | | | | | 30.06 |
| Live cases from previous years | 0.00 | 34.03 | 654.61 | 759.95 | 875.74 | 1000.89 |
| Prevalence | 34.22 | 72.58 | 767.15 | 883.93 | 1010.20 | 1147.22 |
| Last year of life | 0.19 | 0.62 | 7.20 | 8.19 | 9.31 | 10.65 |

Cost Computation

To compute the costs for prostate cancer, the Administrator assumes that all of the individuals who are diagnosed with prostate cancer will be certified by the WTC Health Program for treatment and monitoring services. The treatment costs for the first year of treatment (Table A, year adjusted) were applied to

[47] Centers for Disease Control and Prevention, National Center for Health Statistics. Compressed Mortality File 1999–2008. CDC WONDER Online Database, compiled from Compressed Mortality File 1999–2008 Series 20 No. 2N, 2011. *http://wonder.cdc.gov/cmf-icd10.html.* Accessed February 15, 2012.

[48] Schubauer-Berigan MK, Hein MJ, Raudabaugh WM, Ruder AM, Silver SR, Spaeth S, Steenland K, Petersen MR, and Waters KM [2011]. Update of the NIOSH Life Table Analysis System: A Person-Years Analysis program for the Windows Computing Environment. American Journal of Industrial Medicine 54:915–924.

[49] National Cancer Institute, Surveillance Epidemiology and End Results (SEER). *http://seer.cancer.gov/.* Accessed May 27, 2012.

[50] National Cancer Institute, Surveillance Epidemiology and End Results (SEER). *http://seer.cancer.gov/.* Accessed May 27, 2012.

[51] The 15-year survival limit is imposed based on the analytic time horizon.

[52] National Cancer Institute, Surveillance Epidemiology and End Results (SEER). *http://seer.cancer.gov/.* Accessed May 27, 2012.

the predicted newly incident (Year 1) cases for each year. Likewise, the costs of treatment for the last year of life were applied in each year to the number of people predicted to die from their cancer in that year. The costs of continuing treatment from Table A were applied to the number of prevalent cases who had survived their cancers beyond their year of diagnosis, for each year of survival (Year 2–15).

Using this procedure, a cost table was constructed for each year covered by the WTC Health Program and the results are presented in Table D. The row for Year 1 in each table is the cost of incident cases for that year. Rows for years 2–15 show the cost from continuing care for persons surviving n-years beyond the year of diagnosis. Finally, the cost of last year of life treatment is computed by multiplying the cost for last year of life from Table A by the number of persons dying in that year from prostate cancer from Table C.

TABLE D—COST PER 80,000 RESPONDERS FOR PROSTATE CANCER, 2011$

| Year | Years covered by the WTC Health Program | | |
|---|---|---|---|
| | 2014 | 2015 | 2016 |
| 1 | $1,688,586 | $1,831,435 | $1,993,026 |
| 2 | 308,251 | 339,563 | 368,289 |
| 3 | 274,159 | 304,530 | 335,464 |
| 4 | 241,216 | 270,809 | 300,809 |
| 5 | 216,509 | 239,972 | 269,413 |
| 6 | 193,930 | 214,266 | 237,486 |
| 7 | 172,786 | 192,305 | 212,470 |
| 8 | 151,653 | 170,779 | 190,071 |
| 9 | 131,942 | 150,680 | 169,685 |
| 10 | 114,331 | 130,098 | 148,574 |
| 11 | 108,466 | 113,209 | 128,822 |
| 12 | 95,925 | 107,868 | 112,586 |
| 13 | 83,816 | 94,438 | 106,196 |
| 14 | ..... | 83,345 | 93,906 |
| 15 | ..... | ..... | 82,779 |
| Prevalent care | 3,781,570 | 4,243,298 | 4,666,796 |
| Last year of life care | 356,227 | 404,804 | 463,183 |
| Total | 4,137,798 | 4,648,102 | 5,129,979 |

The sum of the annual costs in the table for the years 2014 through 2016 represents the estimated treatment costs to the WTC Health Program for coverage of prostate cancer for 80,000 responders. The same process described above was applied to the survivor cohort. Based on the incidence rate expected from the survivor cohort, prevalence tables were constructed. The estimated treatment costs for responders and survivors were re-computed under the following two assumptions: (1) The rate of cancer in the WTC Health Program is equal to the rate of cancer observed in the general population; and (2) the rate of cancer exceeds the general population rate by 21 percent due to their WTC exposures.[53]

A summary of the estimated prevalence at the U.S. population average for the assumed population of 58,500 responders and 6,500 survivors is provided in Table E. A summary of the estimated treatment costs to the WTC Health Program is provided in Table F. A summary of the estimated prevalence using cancer rates 21 percent over the U.S. population average for the increased rate of 80,000 responders and 30,000 survivors is given in Table G. A summary of the estimated treatment costs to the WTC Health Program is provided in Table H.

TABLE E—ESTIMATED PREVALENCE OF PROSTATE CANCER BY YEAR BASED ON 58,500 AND 6,500 RESPONDER AND SURVIVOR POPULATION, RESPECTIVELY AND ASSUMING CANCER RATES AT U.S. POPULATION AVERAGE

| Population | Prevalence (incident + live cases) | | |
|---|---|---|---|
| | 2014 | 2015 | 2016 |
| Based on 58,500 responders | 646.37 | 738.71 | 838.90 |
| Based on 6,500 survivors | 65.95 | 73.93 | 82.41 |

[53] Zeig-Owens R, Webber MP, Hall CB, Schwartz T, Jaber N, Weakley J, Rohan TE, Cohen HW, Derman O, Aldrich TK, Kelly K, Prezant DJ [2011]. Early Assessment of Cancer Outcomes in New York City Firefighters After the 9/11 Attacks: An Observational Cohort Study. Lancet. 378(9794):898–905. Limitations of the Zeig-Owens study include: limited information on specific exposures experienced by firefighters; short time for follow-up of cancer outcomes; speculation about the biological plausibility of chronic inflammation as a possible mediator between WTC-exposure and cancer outcomes; and potential unmeasured confounders.

TABLE F—ESTIMATED TREATMENT COSTS OF PROSTATE CANCER BY YEAR BASED ON 58,500 AND 6,500 RESPONDER AND SURVIVOR POPULATION, RESPECTIVELY AND ASSUMING CANCER RATES AT U.S. POPULATION AVERAGE (2011 $)

| Population | 2014 | 2015 | 2016 | 2014–2016 |
|---|---|---|---|---|
| Based on 58,500 responders | 3,025,765 | 3,398,924 | 3,751,298 | 10,175,987 |
| Based on 6,500 survivors | 296,297 | 326,642 | 352,170 | 975,109 |

TABLE G—ESTIMATED PREVALENCE OF PROSTATE CANCER BY YEAR BASED ON 80,000 AND 30,000 RESPONDER AND SURVIVOR POPULATION, RESPECTIVELY AND ASSUMING INCIDENCE OF CANCER IS 21% HIGHER THAN THE U.S. POPULATION DUE TO 9/11 EXPOSURE

| Population | Prevalence (incident + live cases) | | |
|---|---|---|---|
| | 2014 | 2015 | 2016 |
| Based on 80,000 responders | 1069.55 | 1222.34 | 1388.13 |
| Based on 30,000 survivors | 368.31 | 412.86 | 460.19 |

TABLE H—ESTIMATED TREATMENT COSTS OF PROSTATE CANCER BY YEAR BASED ON 80,000 AND 30,000 RESPONDER AND SURVIVOR POPULATION, RESPECTIVELY AND ASSUMING INCIDENCE OF CANCER IS 21% HIGHER THAN THE U.S. POPULATION DUE TO 9/11 EXPOSURE (2011 $)

| Population | 2014 | 2015 | 2016 | 2014–2016 |
|---|---|---|---|---|
| Based on 80,000 responders | $5,089,491 | $5,717,165 | $6,309,875 | $17,116,531 |
| Based on 30,000 survivors | 1,378,925 | 1,520,138 | 1,638,947 | 4,538,010 |

Summary of Costs

Because HHS lacks data to account for recoupment by workers' compensation insurance or reduction by either health insurance or Medicare/Medicaid payments, the estimates offered here are reflective of estimated WTC Health Program costs only. This analysis offers an assumption about the number of individuals who might enroll in the WTC Health Program and estimates the impact of both a low rate of cancer (U.S. population average rate) and an increased rate (21 percent greater than the U.S. population average) on the number of cases and the resulting estimated treatment costs to the WTC Health Program. This analysis does not include administrative costs associated with certifying additional diagnoses of cancers that are WTC-related health conditions that might result from this action. Those costs were addressed in the interim final rule that established regulations for the WTC Health Program (76 FR 38914, July 1, 2011).

After the implementation of provisions of the Affordable Care Act on January 1, 2014, all of the members and future members can be assumed to have or have access to medical insurance coverage other than through the WTC Health Program. Therefore, all treatment and screening costs to be paid by the WTC Health Program from 2014 through 2016 are considered transfers. Table I describes the allocation of WTC Health Program transfer payments based on 58,500 responders and 6,500 survivors and, alternatively, 80,000 responders and 30,000 survivors.

TABLE I—BREAKDOWN OF ESTIMATED ANNUAL WTC HEALTH PROGRAM TRANSFERS FOR PROSTATE CANCER BASED ON 80,000 AND 58,500 RESPONDERS AND 30,000 AND 6,500 SURVIVORS, 2014–2016, 2011$

| | Annualized transfers for 2014–2016, 2011 $ | |
|---|---|---|
| | Discounted at 7 percent | Discounted at 3 percent |
| | Cancer Rate | |
| | U.S. average | U.S. average + 21% |
| 58,500 Responders | $3,159,619 | ..... |
| 6,500 Survivors | 303,056 | ..... |
| 65,000 Total | $3,462,675 | ..... |
| 80,000 Responders | ..... | $5,529,266 |
| 30,000 Survivors | ..... | 1,466,551 |
| 110,000 Total | ..... | 6,995,817 |

Examination of Benefits (Health Impact)

This section describes qualitatively the potential benefits of the proposed rule in terms of the expected improvements in the health and health-related quality of life of potential prostate cancer patients treated through the WTC Health Program, compared to no Program. The assessment of the

health benefits for prostate cancer patients uses the number of expected cancer cases that was estimated in the cost analysis section.

The Administrator does not have information on the health of the population that may have experienced 9/11 exposures and is not currently enrolled in the WTC Health Program. In addition, the Administrator has only limited information about health insurance and health care services for prostate cancers potentially caused by 9/11 exposures and suffered by any population of responders and survivors, including responders and survivors currently enrolled in the WTC Health Program and responders and survivors not enrolled in the Program. For the purposes of this analysis, the Administrator assumes that broad trends on demographics and access to health insurance reported by the U.S. Census Bureau and health care services for cancer similar to those reported by Ward *et al.*[54] would apply to the population of general responders (those individuals who are not members of the FDNY and who meet the eligibility criteria in 42 CFR Part 88 for WTC responders) and survivors both within and outside the Program. For the purposes of this analysis, the Administrator assumes that access to health insurance and health care services for FDNY responders within and outside the Program would be equivalent because this population is overwhelmingly covered by employer-based health insurance.

Although the Administrator cannot quantify the benefits associated with the WTC Health Program, members with prostate cancer would have improved access to care and thereby the Program should produce better treatment outcomes than in its absence. Under other insurance plans, patients would have deductibles and copays, which impact access to care and particularly its timeliness.[55] WTC Health Program members would have first-dollar coverage and hence are likely to seek care sooner when indicated, resulting in improved treatment outcomes.

Limitations

The analysis presented here was limited by the dearth of verifiable data on the prostate cancer status of responders and survivors who have yet to apply for enrollment in the WTC Health Program. Because of the limited data, the Administrator was not able to estimate benefits in terms of averted healthcare costs. Nor was the Administrator able to estimate administrative costs, or indirect costs, such as averted absenteeism, short and long-term disability, and productivity losses averted due to premature mortality.

[54] Ward E, Halpern M, Schrag N, Cokkinides V, DeSantis C, Bandi P, Siegel R, Stewart A, Jemal A [2008]. Association of Insurance with Cancer Care Utilization and Outcomes. CA Cancer J Clin 58:9–31.

[55] Wharam JF, Galbraith AA, Kleinman KP, Soumerai SB, Ross-Degnan D, Landon BE. Cancer Screening before and after Switching to a High-Deductible Health Plan. Annals of Internal Medicine. 2008 May;148(9):647–655.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. The Administrator believes that this rule has "no significant economic impact upon a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*C. Paperwork Reduction Act*

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, requires an agency to invite public comment on, and to obtain OMB approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. Data collection and recordkeeping requirements for the WTC Health Program are approved by OMB under "World Trade Center Health Program Enrollment, Appeals & Reimbursement" (OMB Control No. 0920–0891, exp. December 31, 2014). The Administrator has determined that no changes are needed to the information collection request already approved by OMB.

*D. Small Business Regulatory Enforcement Fairness Act*

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), HHS will report the promulgation of this rule to Congress prior to its effective date.

*E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector "other than to the extent that such regulations incorporate requirements specifically set forth in law." For purposes of the Unfunded Mandates Reform Act, this proposed rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million in 1995 dollars by State, local or Tribal governments in the aggregate, or by the private sector. However, the rule may result in an increase in the contribution made by New York City for treatment and monitoring, as required by Title XXXIII, § 3331(d)(2). For 2013, the inflation adjusted threshold is $150 million.

*F. Executive Order 12988 (Civil Justice)*

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, "Civil Justice Reform," and will not unduly burden the Federal court system. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

*G. Executive Order 13132 (Federalism)*

The Administrator has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule 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."

*H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)*

In accordance with Executive Order 13045, the Administrator has evaluated the environmental health and safety effects of this proposed rule on children. The Administrator has determined that the rule would have no environmental health and safety effect on children.

*I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)*

In accordance with Executive Order 13211, the Administrator has evaluated the effects of this proposed rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect.

*J. Plain Writing Act of 2010*

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. The Administrator has attempted to use plain language in promulgating the proposed rule consistent with the Federal Plain Writing Act guidelines.

**Proposed Rule**

**List of Subjects in 42 CFR Part 88:**

Aerodigestive disorders, Appeal procedures, Cancer, Health care, Mental health conditions, Musculoskeletal disorders, Respiratory and pulmonary diseases.

For the reasons discussed in the preamble, the Department of Health and Human Services proposes to amend 42 CFR Part 88 as follows:

## PART 88—WORLD TRADE CENTER HEALTH PROGRAM

■ 1. The authority citation for Part 88 continues to read as follows:

**Authority:** 42 U.S.C. 300mm–300mm–61, Pub. L. 111–347, 124 Stat. 3623.

■ 2. In § 88.1, the under the definition "List of WTC-related health conditions", following paragraph (4), revise Table 1 to read as follows:

**§ 88.1 Definitions.**

* * * * *

List of WTC-related health conditions

* * *

(4) * * *

BILLING CODE 4150–28–P

**Table 1 -- List of types of cancer included in the List of WTC-Related Health Conditions**

| Region | Type of Cancer | ICD-10[1] | ICD-9[2] |
|---|---|---|---|
| **Head & Neck** | **Malignant neoplasm of lip** | **C00** | **140** |
| | • External upper lip | • C00.0 | • 140.0 |
| | • External lower lip | • C00.1 | • 140.1 |
| | • External lip, unspecified | • C00.2 | • 140.9 |
| | • Upper lip, inner aspect | • C00.3 | • 140.3 |
| | • Lower lip, inner aspect | • C00.4 | • 140.4 |
| | • Lip, unspecified, inner aspect | • C00.5 | • 140.5 |
| | • Commissure of lip | • C00.6 | • 140.6 |
| | • Overlapping lesion of lip | • C00.8 | • 140.8 |
| | • Lip, unspecified | • C00.9 | • 140.9 |
| | **Malignant neoplasm of base of tongue** | **C01** | **141.0** |
| | **Malignant neoplasm of other and unspecified parts of tongue** | **C02** | **141.1-141.9** |
| | • Dorsal surface of tongue | • C02.0 | • 141.1 |
| | • Border of tongue | • C02.1 | • 141.2 |
| | • Ventral surface of tongue | • C02.2 | • 141.3 |
| | • Anterior two-thirds of tongue, part unspecified | • C02.3 | • 141.4 |
| | • Lingual tonsil | • C02.4 | • 141.6 |
| | • Overlapping lesion of tongue | • C02.8 | • 141.5, 141.8 |
| | • Tongue, unspecified | • C02.9 | • 141.9 |
| | **Malignant neoplasm of parotid gland** | **C07** | **142.0** |
| | **Malignant neoplasm of other and unspecified major salivary glands** | **C08** | **142.1-142.9** |
| | • Submandibular gland | • C08.0 | • 142.1 |
| | • Sublingual gland | • C08.1 | • 142.2 |
| | • Overlapping lesion of major salivary glands | • C08.8 | • 142.8 |
| | • Major salivary gland, unspecified | • C08.9 | • 142.9 |
| | **Malignant neoplasm of floor of mouth** | **C04** | **144** |
| | • Anterior floor of mouth | • C04.0 | • 144.0 |
| | • Lateral floor of mouth | • C04.1 | • 144.1 |
| | • Overlapping lesion of floor of mouth | • C04.8 | • 144.8 |
| | • Floor of mouth, unspecified | • C04.9 | • 144.9 |
| | **Malignant neoplasm of gum** | **C03** | **143** |
| | • Upper gum | • C03.0 | • 143.0 |
| | • Lower gum | • C03.1 | • 143.1 |
| | • Gum, unspecified | • C03.9 | • 143.8-143.9 |
| | **Malignant neoplasm of palate** | **C05** | **145.2-145.5** |

| | | | |
|---|---|---|---|
| | • Hard palate | • C05.0 | • 145.2 |
| | • Soft palate | • C05.1 | • 145.3 |
| | • Uvula | • C05.2 | • 145.4 |
| | • Overlapping lesion of palate | • C05.8 | • 145.5 |
| | • Palate, unspecified | • C05.9 | • 145.5 |
| | **Malignant neoplasm of other and unspecified parts of mouth** | **C06** | **145.0-145.1 145.6, 145.8-145.9** |
| | • Cheek mucosa | • C06.0 | • 145.0 |
| | • Vestibule of mouth | • C06.1 | • 145.1 |
| | • Retromolar area | • C06.2 | • 145.6 |
| | • Overlapping lesion of other and unspecified parts of mouth | • C06.8 | • 145.8 |
| | • Mouth, unspecified | • C06.9 | • 145.9 |
| | **Malignant neoplasm of tonsil** | **C09** | **146.0-146.2** |
| | • Tonsillar fossa | • C09.0 | • 146.1 |
| | • Tonsillar pillar (anterior)(posterior) | • C09.1 | • 146.2 |
| | • Overlapping lesion of tonsil | • C09.8 | • 146.0 |
| | • Tonsil, unspecified | • C09.9 | • 146.0 |
| | **Malignant neoplasm of oropharynx** | **C10** | **146.3-146.9** |
| | • Vallecula | • C10.0 | • 146.3 |
| | • Anterior surface of epiglottis | • C10.1 | • 146.4 |
| | • Lateral wall of oropharynx | • C10.2 | • 146.6 |
| | • Posterior wall of oropharynx | • C10.3 | • 146.7 |
| | • Branchial cleft | • C10.4 | • 146.8 |
| | • Overlapping lesion of oropharynx | • C10.8 | • 146.5, 146.8 |
| | • Oropharynx, unspecified | • C10.9 | • 146.9 |
| | **Malignant neoplasm of nasopharynx** | **C11** | **147** |
| | • Superior wall of nasopharynx | • C11.0 | • 147.0 |
| | • Posterior wall of nasopharynx | • C11.1 | • 147.1 |
| | • Lateral wall of nasopharynx | • C11.2 | • 147.2 |
| | • Anterior wall of nasopharynx | • C11.3 | • 147.3 |
| | • Overlapping lesion of nasopharynx | • C11.8 | • 147.8 |
| | • Nasopharynx, unspecified | • C11.9 | • 147.9 |
| | **Malignant neoplasm of piriform sinus** | **C12** | **148.1** |
| | **Malignant neoplasm of hypopharynx** | **C13** | **148.0, 148.2-148.9** |
| | • Postcricoid region | • C13.0 | • 148.0 |
| | • Aryepiglottic fold, hypopharyngeal aspect | • C13.1 | • 148.2 |
| | • Posterior wall of hypopharynx | • C13.2 | • 148.3 |
| | • Overlapping lesion of hypopharynx | • C13.8 | • 148.8 |
| | • Hypopharynx, unspecified | • C13.9 | • 148.9 |

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|---|---|---|---|
| | **Malignant neoplasms of other and ill-defined conditions in the lip, oral cavity and pharynx** | **C14** | **149** |
| | • Pharynx, unspecified | • C14.0 | • 149.0 |
| | • Waldeyer's ring | • C14.2 | • 149.1 |
| | • Overlapping lesion of lip, oral cavity and pharynx | • C14.8 | • 149.8, 149.9 |
| | **Malignant neoplasm of nasal cavity** | **C30.0** | **160.0** |
| | **Malignant neoplasm of accessory sinuses** | **C31** | **160.2-160.9** |
| | • Maxillary sinus | • C31.0 | • 160.2 |
| | • Ethmoidal sinus | • C31.1 | • 160.3 |
| | • Frontal sinus | • C31.2 | • 160.4 |
| | • Sphenoidal sinus | • C31.3 | • 160.5 |
| | • Overlapping lesion of accessory sinuses | • C31.8 | • 160.8 |
| | • Accessory sinus, unspecified | • C31.9 | • 160.9 |
| | **Malignant neoplasm of larynx** | **C32** | **161** |
| | • Glottis | • C32.0 | • 161.0 |
| | • Supraglottis | • C32.1 | • 161.1 |
| | • Subglottis | • C32.2 | • 161.2 |
| | • Laryngeal cartilage | • C32.3 | • 161.3 |
| | • Overlapping lesion of larynx | • C32.8 | • 161.8 |
| | • Larynx, unspecified | • C32.9 | • 161.9 |
| **Digestive System** | **Malignant neoplasm of the esophagus** | **C15** | **150** |
| | • Cervical part of esophagus | • C15.0 | • 150.0 |
| | • Thoracic part of esophagus | • C15.1 | • 150.1 |
| | • Abdominal part of esophagus | • C15.2 | • 150.2 |
| | • Upper third of esophagus | • C15.3 | • 150.3 |
| | • Middle third of esophagus | • C15.4 | • 150.4 |
| | • Lower third of esophagus | • C15.5 | • 150.5 |
| | • Overlapping lesion of esophagus | • C15.8 | • 150.8 |
| | • Esophagus, unspecified | • C15.9 | • 150.9 |
| | **Malignant neoplasm of the stomach** | **C16** | **151** |
| | • Cardia | • C16.0 | • 151.0 |
| | • Fundus of stomach | • C16.1 | • 151.3 |
| | • Body of stomach | • C16.2 | • 151.4 |
| | • Pyloric antrum | • C16.3 | • 151.2 |
| | • Pylorus | • C16.4 | • 151.1 |
| | • Lesser curvature of stomach, unspecified | • C16.5 | • 151.5 |
| | • Greater curvature of stomach, unspecified | • C16.6 | • 151.6 |
| | • Overlapping lesion of stomach | • C16.8 | • 151.8 |
| | • Stomach, unspecified | • C16.9 | • 151.9 |
| | **Malignant neoplasm of colon** | **C18** | **153** |
| | • Caecum | • C18.0 | • 153.4 |
| | • Appendix | • C18.1 | • 153.5 |
| | • Ascending colon | • C18.2 | • 153.6 |
| | • Hepatic flexure | • C18,3 | • 153.0 |
| | • Transverse colon | • C18.4 | • 153.1 |
| | • Splenic flexure | • C18.5 | • 153.7 |
| | • Descending colon | • C18.6 | • 153.2 |
| | • Sigmoid colon | • C18.7 | • 153.3 |
| | • Overlapping lesion of colon | • C18.8 | • 153.8 |
| | • Colon, unspecified | • C18.9 | • 153.9 |

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| | **Malignant neoplasm of rectosigmoid junction** | **C19** | **154.0** |
| | **Malignant neoplasm of rectum** | **C20** | **154.1, 154.8** |
| | **Malignant neoplasm of other and ill-defined digestive organs** | **C26.0, C26.8-C26.9** | **159.0, 159.8, 159.9** |
| | • Intestinal tract, part unspecified | • C26.0 | • 159.0 |
| | • Overlapping lesion of digestive system | • C26.8 | • 159.8 |
| | • Ill-defined sites within the digestive system | • C26.9 | • 159.9 |
| | **Malignant neoplasm of liver and intrahepatic bile ducts** | **C22** | **155** |
| | • Liver cell carcinoma | • C22.0 | • 155.0 |
| | • Intrahepatic bile duct carcinoma | • C22.1 | • 155.1 |
| | • Hepatoblastoma | • C22.2 | • 155.0 |
| | • Angiosarcoma of liver | • C22.3 | • 155.0 |
| | • Other sarcomas of liver | • C22.4 | • 155.0 |
| | • Other specified carcinomas of liver | • C22.7 | • 155.0 |
| | • Liver, unspecified | • C22.9 | • 155.2 |
| | **Malignant neoplasm of retroperitoneum and peritoneum** | **C48** | **158** |
| | • Retroperitoneum | • C48.0 | • 158.0 |
| | • Specified parts of peritoneum | • C48.1 | • 158.8 |
| | • Peritoneum, unspecified | • C48.2 | • 158.9 |
| | • Overlapping lesion of retroperitoneum and peritoneum | • C48.8 | • 158.8 |
| **Respiratory System** | **Malignant neoplasm of trachea** | **C33** | **162.0** |
| | **Malignant neoplasm of bronchus and lung** | **C34** | **162.2-162.9** |
| | • Main bronchus | • C34.0 | • 162.2 |
| | • Upper lobe, bronchus or lung | • C34.1 | • 162.3 |
| | • Middle lobe, bronchus or lung | • C34.2 | • 162.4 |
| | • Lower lobe, bronchus or lung | • C34.3 | • 162.5 |
| | • Overlapping lesion of bronchus and lung | • C34.8 | • 162.8 |
| | • Bronchus or lung, unspecified | • C34.9 | • 162.9 |
| | **Malignant neoplasm of heart, mediastinum and pleura** | **C38** | **164.1-164.9, 163** |
| | • Heart | • C38.0 | • 164.1 |
| | • Anterior mediastinum | • C38.1 | • 164.2 |
| | • Posterior mediastinum | • C38.2 | • 164.3 |
| | • Mediastinum, part unspecified | • C38.3 | • 164.9 |
| | • Pleura | • C38.4 | • 163.0-163.9 |
| | • Overlapping lesion of heart, mediastinum and pleura | • C38.8 | • 164.8 |
| | **Malignant neoplasm of other and ill-defined sites in the respiratory system and intrathoracic organs** | **C39** | **165** |
| | • Upper respiratory tract, part unspecified | • C39.0 | • 165.0 |
| | • Overlapping lesion of respiratory and intrathoracic organs | • C39.8 | • 165.8 |
| | • Ill-defined sites within the respiratory system | • C39.9 | • 165.9 |
| **Mesothelium** | **Mesothelioma** | **C45** | **158.8, 163.9, 164.1** |

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|---|---|---|---|
| | • Mesothelioma of pleura | • C45.0 | • 163.9 |
| | • Mesothelioma of peritoneum | • C45.1 | • 158.8 |
| | • Mesothelioma of pericardium | • C45.2 | • 164.1 |
| | • Mesothelioma of other sites | • C45.7 | • No Code |
| | • Mesothelioma, unspecified | • C45.9 | No Code |
| Soft Tissue | **Malignant neoplasm of peripheral nerves and autonomic nervous system** | **C47** | **171** |
| | • Peripheral nerves of head, face and neck | • C47.0 | • 171.0 |
| | • Peripheral nerves of upper limb, including shoulder | • C47.1 | • 171.2 |
| | • Peripheral nerves of lower limb, including hip | • C47.2 | • 171.3 |
| | • Peripheral nerves of thorax | • C47.3 | • 171.4 |
| | • Peripheral nerves of abdomen | • C47.4 | • 171.5 |
| | • Peripheral nerves of pelvis | • C47.5 | • 171.6 |
| | • Peripheral nerves of trunk, unspecified | • C47.6 | • 171.7 |
| | • Overlapping lesion of peripheral nerves and autonomic nervous system | • C47.8 | • 171.8 |
| | • Peripheral nerves and autonomic nervous system, unspecified | • C47.9 | • 171.9 |
| | **Malignant neoplasm of other connective and soft tissue** | **C49** | **171** |
| | • Connective and soft tissue of head, face and neck | • C49.0 | • 171.0 |
| | • Connective and soft tissue of upper limb, including shoulder | • C49.1 | • 171.2 |
| | • Connective and soft tissue of lower limb, including hip | • C49.2 | • 171.3 |
| | • Connective and soft tissue of thorax | • C49.3 | • 171.4 |
| | • Connective and soft tissue of abdomen | • C49.4 | • 171.5 |
| | • Connective and soft tissue of pelvis | • C49.5 | • 171.6 |
| | • Connective and soft tissue of trunk, unspecified | • C49.6 | • 171.7 |
| | • Overlapping lesion of connective and soft tissue | • C49.8 | • 171.8 |
| | • Connective and soft tissue, unspecified | • C49.9 | • 171.9 |
| Skin (Non-Melanoma) | **Other malignant neoplasms of skin** | **C44** | **173** |
| | • Skin of lip | • C44.0 | • 173.0 |
| | • Skin of eyelid, including canthus | • C44.1 | • 173.1 |
| | • Skin of ear and external auricular canal | • C44.2 | • 173.2 |
| | • Skin of other and unspecified parts of face | • C44.3 | • 173.3 |
| | • Skin of scalp and neck | • C44.4 | • 173.4 |
| | • Skin of trunk | • C44.5 | • 173.5 |
| | • Skin of upper limb, including shoulder | • C44.6 | • 173.6 |
| | • Skin of lower limb, including hip | • C44.7 | • 173.7 |
| | • Overlapping lesion of skin | • C44.8 | • 173.8 |
| | • Malignant neoplasm of skin, unspecified | • C44.9 | • 173.9 |
| | **Scrotum** | **C63.2** | **187.7** |
| Melanoma | **Malignant melanoma of skin** | **C43** | **172** |
| | • Malignant melanoma of lip | • C43.0 | • 172.0 |
| | • Malignant melanoma of eyelid, including canthus | • C43.1 | • 172.1 |
| | • Malignant melanoma of ear and external auricular canal | • C43.2 | • 172.2 |
| | • Malignant melanoma of other and unspecified parts of face | • C43.3 | • 172.3 |
| | • Malignant melanoma of scalp and neck | • C43.4 | • 172.4 |

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| | • Malignant melanoma of trunk | • C43.5 | • 172.5 |
| | • Malignant melanoma of upper limb, including shoulder | • C43.6 | • 172.6 |
| | • Malignant melanoma of lower limb, including hip | • C43.7 | • 172.7 |
| | • Overlapping malignant melanoma of skin | • C43.8 | • 172.8 |
| | • Malignant melanoma of skin, unspecified | • C43.9 | • 172.9 |
| **Female Breast** | **Malignant neoplasm of breast** | **C50[+]** | **174** |
| | • Nipple and areola | • C50.0 | • 174.0 |
| | • Central portion of breast | • C50.1 | • 174.1 |
| | • Upper-inner quadrant of breast | • C50.2 | • 174.2 |
| | • Lower-inner quadrant of breast | • C50.3 | • 174.3 |
| | • Upper-outer quadrant of breast | • C50.4 | • 174.4 |
| | • Lower-outer quadrant of breast | • C50.5 | • 174.5 |
| | • Auxillary tail of breast | • C50.6 | • 174.6 |
| | • Overlapping lesion of breast | • C50.8 | • 174.8 |
| | • Breast, unspecified | • C50.9 | • 174.9 |
| **Female Reproductive Organs** | **Malignant neoplasm of ovary** | **C56** | **183.0** |
| **Urinary System** | **Malignant neoplasm of prostate** | **C61** | **185** |
| | **Malignant neoplasm of bladder** | **C67** | **188** |
| | • Trigone of bladder | • C67.0 | • 188.0 |
| | • Dome of bladder | • C67.1 | • 188.1 |
| | • Lateral wall of bladder | • C67.2 | • 188.2 |
| | • Anterior wall of bladder | • C67.3 | • 188.3 |
| | • Posterior wall of bladder | • C67.4d | • 188.4 |
| | • Bladder neck | • C67.5 | • 188.5 |
| | • Ureteric orifice | • C67.6 | • 188.6 |
| | • Urachus | • C67.7 | • 188.7 |
| | • Overlapping lesion of bladder | • C67.8 | • 188.8 |
| | • Bladder, unspecified | • C67.9 | • 188.9 |
| | **Malignant neoplasms of kidney except renal pelvis** | **C64** | **189.0** |
| | **Malignant neoplasm of renal pelvis** | **C65** | **189.1** |
| | **Malignant neoplasm of ureter** | **C66** | **189.2** |
| | **Malignant neoplasm of other and unspecified urinary organs** | **C68** | **189.3-189.9** |
| | • Urethra | • C68.0 | • 189.3 |
| | • Paraurethral gland | • C68.1 | • 189.4 |
| | • Overlapping lesion of urinary organs | • C68.8 | • 189.8 |
| | • Urinary organ, unspecified | • C68.9 | • 189.9 |
| **Eye & Orbit** | **Malignant neoplasm of eye and adnexa** | **C69** | **190** |
| | • Conjunctiva | • C69.0 | • 190.3 |
| | • Cornea | • C69.1 | • 190.4 |
| | • Retina | • C69.2 | • 190.5 |
| | • Choroid | • C69.3 | • 190.6 |
| | • Ciliary body | • C69.4 | • 190.0 |
| | • Lacrimal gland and duct | • C69.5 | • 190.2, 190.7 |
| | • Orbit | • C69.6 | • 190.1 |
| | • Overlapping lesion of eye and adnexa | • C69.8 | • 190.8 |
| | • Eye, unspecified | • C69.9 | • 190.9 |
| **Thyroid** | **Malignant neoplasm of thyroid gland** | **C73** | **193** |

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|---|---|---|---|
| **Blood & Lymphoid Tissue** | **Hodgkin's disease** | **C81** | * |
| | • Lymphocytic predominance | • C81.0 | • 201.4 |
| | • Nodular sclerosis | • C81.1 | • 201.5 |
| | • Mixed cellularity | • C81.2 | • 201.6 |
| | • Lymphocytic depletion | • C81.3 | • 201.7 |
| | • Other Hodgkin's disease | • C81.7 | • 201.0-201.2 |
| | • Hodgkin's disease, unspecified | • C81.9 | • 201.9 |
| | **Follicular [nodular] non-Hodgkin lymphoma** | **C82** | * |
| | • Small cleaved cell, follicular | • C82.0 | • 202.0 |
| | • Mixed small cleaved and large cell, follicular | • C82.1 | • 202.0 |
| | • Large cell, follicular | • C82.2 | • 202.0 |
| | • Other types of follicular non-Hodgkin lymphoma | • C82.7 | • 202.0 |
| | • Follicular non-Hodgkin lymphoma, unspecified | • C82.9 | • 202.0 |
| | **Diffuse non-Hodgkin lymphoma** | **C83** | * |
| | • Small cell (diffuse) | • C83.0 | • 200.8 |
| | • Small cleaved cell (diffuse) | • C83.1 | • 202.4 |
| | • Mixed small and large cell (diffuse) | • C83.2 | • 200.8 |
| | • Large cell (diffuse) | • C83.3 | • 200.0 |
| | • Immunoblastic (diffuse) | • C83.4 | • 200.8 |
| | • Lymphoblastic (diffuse) | • C83.5 | • 200.1 |
| | • Undifferentiated (diffuse) | • C83.6 | • 202.8 |
| | • Burkitt's tumor | • C83.7 | • 200.2 |
| | • Other types of diffuse non-Hodgkin lymphoma | • C83.8 | • 200.8 |
| | • Diffuse non-Hodgkin lymphoma, unspecified | • C83.9 | • 202.0 |
| | **Peripheral and cutaneous T-cell lymphomas** | **C84** | * |
| | • Mycosis fungoides | • C84.0 | • 202.1 |
| | • Sezary's disease | • C84.1 | • 202.2 |
| | • T-zone lymphoma | • C84.2 | • 202.8 |
| | • Lymphoepithelioid lymphoma | • C84.3 | • 202.8 |
| | • Peripheral T-cell lymphoma | • C84.4 | • 202.0 |
| | • Other and unspecified T-cell lymphomas | • C84.5 | • 202.0 |
| | **Other and unspecified types of non-Hodgkin lymphoma** | **C85** | * |
| | • Lymphosarcoma | • C85.0 | • 200.1 |
| | • B-cell lymphoma, unspecified | • C85.1 | • 202.8 |
| | • Other specified types of non-Hodgkin lymphoma | • C85.7 | • 202.8 |
| | • Non-Hodgkin lymphoma, unspecified type | • C85.9 | • 200.8 |
| | **Malignant immunoproliferative diseases** | **C88** | * |
| | • Waldenstrom's macroglobulinemia | • C88.0 | • 273.3 |
| | • Alpha heavy chain disease | • C88.1 | • 203.8 |
| | • Gamma heavy chain disease | • C88.2 | • 203.8 |
| | • Immunoproliferative small intestinal disease | • C88.3 | • 203.8 |
| | • Other malignant immunoproliferative diseases | • C88.7 | • 203.8 |
| | • Malignant immunoproliferative disease, unspecified | • C88.9 | • 203.8 |
| | **Multiple myeloma and malignant plasma cell neoplasms** | **C90** | * |
| | • Multiple myeloma | • C90.0 | • 203.0 |
| | • Plasma cell leukemia | • C90.1 | • 203.1 |
| | • Plasmacytoma, extramedullary | • C90.2 | • 203.8 |
| | **Lymphoid leukemia** | **C91** | * |
| | • Acute lymphoblastic leukemia | • C91.0 | • 204.0 |
| | • Chronic lymphocytic leukemia | • C91.1 | • 204.1 |
| | • Subacute lymphocytic leukemia | • C91.2 | • 204.2 |
| | • Prolymphocytic leukemia | • C91.3 | • 204.9 |

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| | • Hairy-cell leukemia | • C91.4 | • 202.4 |
| | • Adult T-cell leukemia | • C91.5 | • 204.8 |
| | • Other lymphoid leukemia | • C91.7 | • 204.8 |
| | • Lymphoid leukemia, unspecified | • C91.9 | • 204.9 |
| | **Myeloid leukemia** | **C92** | * |
| | • Acute myeloid leukemia | • C92.0 | • 205.0 |
| | • Chronic myeloid leukemia | • C92.1 | • 205.1 |
| | • Subacute myeloid leukemia | • C92.2 | • 205.2 |
| | • Myeloid sarcoma | • C92.3 | • 205.3 |
| | • Acute promyelocytic leukemia | • C92.4 | • 205.0 |
| | • Acute myelomonocytic leukemia | • C92.5 | • 205.0 |
| | • Other myeloid leukemia | • C92.7 | • 205.8 |
| | • Myeloid leukemia, unspecified | • C92.9 | • 205.9 |
| | **Monocytic leukemia** | **C93** | * |
| | • Acute monocytic leukemia | • C93.0 | • 206.0 |
| | • Chronic monocytic leukemia | • C93.1 | • 206.1 |
| | • Subacute monocytic leukemia | • C93.2 | • 206.2 |
| | • Other monocytic leukemia | • C93.7 | • 206.8 |
| | • Monocytic leukemia, unspecified | • C93.9 | • 206.9 |
| | **Other leukemias of specified cell type** | **C94** | * |
| | • Acute erythremia and erythroleukemia | • C94.0 | • 207.0 |
| | • Chronic erythremia | • C94.1 | • 207.1 |
| | • Acute megakaryoblastic leukemia | • C94.2 | • 207.2 |
| | • Mast cell leukemia | • C94.3 | • 207.8 |
| | • Acute pan myelosis | • C94.4 | • 238.7 |
| | • Acute myelofibrosis | • C94.5 | • 238.7 |
| | • Other specified leukemias | • C94.7 | • 207.8 |
| | **Leukemia of unspecified cell type** | **C95** | * |
| | • Acute leukemia of unspecified cell type | • C95.0 | • 208.0 |
| | • Chronic leukemia of unspecified cell type | • C95.1 | • 208.1 |
| | • Subacute leukemia of unspecified cell type | • C95.2 | • 208.2 |
| | • Other leukemia of unspecified cell type | • C95.7 | • 208.8 |
| | • Leukemia, unspecified | • C95.9 | • 208.9 |
| | **Other and unspecified malignant neoplasms of lymphoid, hematopoletic and related tissue** | **C96** | * |
| | • Letterer-Siwe disease | • C96.0 | • 202.5 |
| | • Malignant histiocytosis | • C96.1 | • 202.3 |
| | • Malignant mast cell tumor | • C96.2 | • 202.6 |
| | • True histiocytic lymphoma | • C96.3 | • 202.3 |
| | • Other specified malignant neoplasms of lymphoid, hematopoietic and related tissue | • C96.7 | • 202.8 |
| | • Malignant neoplasm of lymphoid, hematopoietic and related tissue, unspecified | • C96.9 | • 202.9 |
| **Childhood cancers** | Any type of cancer occurring in a person less than 20 years of age. | | |
| **Rare cancers** | Any type of cancer affecting the populations smaller than 200,000 individuals in the Unites States, *i.e.*, occurring at an incidence rate less than 0.08 percent of the U.S. population. Rare cancers will be determined on a case-by-case basis. | | |

* For ICD-10 C81-C96 the following ICD-9 codes correlate: 200-208, 238.7, 273.3.

† For the purposes of this rule, ICD-10 C50 is limited to cancer of the breast in females.

1. WHO (World Health Organization) [1978]. International Classification of Diseases, Ninth Revision. Geneva: World Health Organization.
2. WHO (World Health Organization) [1997]. International Classification of Diseases, Tenth Revision. Geneva: World Health Organization.

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Dated: June 26, 2013.

**John Howard,**

*Administrator, World Trade Center, Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.*

[FR Doc. 2013–15816 Filed 7–1–13; 8:45 am]

BILLING CODE 4150–28–C

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 79

**[MB Docket No. 11–154; FCC 13–84]**

## Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on the potential imposition of closed captioning synchronization requirements for covered apparatus, and on how DVD and Blu-ray players can fulfill the closed captioning requirements of the statute. These issues were raised by petitions for reconsideration of the *Report and Order*, which adopted rules governing the closed captioning requirements for the owners, providers, and distributors of IP-delivered video programming and rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming.

**DATES:** Comments are due on or before September 3, 2013; reply comments are due on or before September 30, 2013.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 11–154, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/*. Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

**FOR FURTHER INFORMATION CONTACT:** Diana Sokolow, *Diana.Sokolow@fcc.gov*, or Maria Mullarkey, *Maria.Mullarkey@fcc.gov*, of the Policy Division, Media Bureau, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Further Notice of Proposed Rulemaking*, FCC 13–84, adopted on June 13, 2013 and released on June 14, 2013. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/*. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

### Paperwork Reduction Act of 1995 Analysis

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

### Summary of the Further Notice of Proposed Rulemaking

#### I. Introduction

1. In the *FNPRM*, we seek further comment on the potential imposition of closed captioning synchronization requirements for covered apparatus, and on how DVD and Blu-ray players can fulfill the closed captioning requirements of the statute. These issues were raised by petitions for reconsideration of the *Report and Order*, which implemented portions of sections 202 and 203 of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA") by adopting rules governing the closed captioning requirements for the owners, providers, and distributors of video programming delivered via Internet protocol ("IP") and rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming. Specifically, in response to the Petition for Reconsideration of Consumer Groups, we issue an *FNPRM* to obtain further information necessary to determine whether the Commission should impose synchronization requirements on device manufacturers. Such synchronization requirements could provide that all apparatus that render closed captions must do so consistent with the timing data included with the video programming the apparatus receives. Separately, in response to issues raised by the Petition for Reconsideration of the Consumer Electronics Association, the *FNPRM* seeks comment on how DVD and Blu-ray players can fulfill the closed captioning requirements of the statute.

2. Our goal in this proceeding remains to implement Congress's intent to better enable individuals who are deaf or hard of hearing to view video programming. In considering the requests made in the three petitions for reconsideration received, we have evaluated the effect on consumers who are deaf or hard of hearing as well as the cost of compliance to affected entities.

#### II. Further Notice of Proposed Rulemaking

3. *Apparatus synchronization requirements.* We invite comment on whether the Commission should require apparatus manufacturers to ensure that their apparatus synchronize the appearance of closed captions with the display of the corresponding video. In the *Report and Order*, the Commission concluded that it would be inappropriate to impose synchronization requirements on apparatus. Rather, the Commission stated "that ensuring that timing data is properly encoded and maintained through the captioning interchange and delivery system is an obligation of [s]ection 202 [video programming distributors and providers], and not of device manufacturers." Consumer Groups argue that the Commission should impose timing obligations on device manufacturers pursuant to section 203 of the CVAA because apparatus may cause captions to become out of synch with the corresponding video. We need more information in the

record to address this issue because commenters disagree as to whether synchronization problems can be caused by apparatus.[1] Commenters also disagree as to whether existing standards would enable manufacturers to address caption synchronization.[2] Another issue is whether video programming owners, providers, and distributors are better suited than manufacturers to ensure captioning quality, including captioning synchronization. Based on the record information on synchronization in response to the Consumer Groups Petition, it now appears that apparatus may play a role in synchronization problems. We do not, however, currently possess sufficient information to determine the nature or extent to which apparatus are the cause of these problems, or whether there is a workable manner in which to impose synchronization requirements on apparatus. Accordingly, we invite comment on this issue.

4. Specifically, we seek information on whether apparatus may cause closed captioning synchronization problems, and if so, how. We encourage commenters to provide specific evidence on this issue, including for example a discussion of situations in which the same video programming is displayed in the same manner (*i.e.*, on the same Web site or via the same application) on different apparatus, where one apparatus displays the closed captioning with better synchronization than the other. Are video programming owners, providers, and distributors better suited than manufacturers to ensure caption quality, including synchronization? If so, why? What are the costs and benefits of imposing caption synchronization requirements on video programming owners, providers, and distributors in lieu of imposing such requirements on apparatus manufacturers?

5. To the extent that apparatus cause closed captioning synchronization problems, we seek comment on what requirements we should impose on apparatus to address this problem. Are there existing standards that would enable manufacturers to address closed caption synchronization, or is it possible for manufacturers to develop and implement such standards? If not, by what means could apparatus comply with a synchronization requirement? Do closed captioning standards provide the necessary timing data for compliance with and enforcement of a synchronization standard? If we impose a synchronization requirement on apparatus, should we require apparatus to render closed captions consistent with the data dictating the timing of captions that is included with the video programming the apparatus receives? What are the costs and benefits of imposing caption synchronization requirements on apparatus manufacturers? What compliance deadline should we impose on any apparatus synchronization requirements that we adopt? In an enforcement proceeding, how could the Commission determine whether synchronization problems are caused by the apparatus or by the video programming owner, provider, or distributor?

6. *Closed captioning requirements on DVD and Blu-ray players.* As explained in the *Order on Reconsideration*, adopted with the *FNPRM* and published elsewhere in this publication, we provide manufacturers of DVD players that do not render or pass through closed captions, and manufacturers of Blu-ray players, with a temporary extension of the compliance deadline, pending resolution of this *FNPRM*. The CVAA and our rules require that apparatus "be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming." Thus, we invite comment on the closed captioning requirements that we should impose on DVD players that do not render or pass through closed captions, and on Blu-ray players with regard to Blu-ray discs and DVDs.[3] Commenters should provide information on the costs and benefits of imposing such requirements, including the technical aspects of what would be required to make closed captioning accessible on such devices.

7. We seek comment on whether we should permit DVD players that do not currently render or pass through closed captions to include an analog output to pass through closed captions. As explained in the *Order on Reconsideration*, the record demonstrates that the DVD player market is declining. Accordingly, how would such a regulation on DVD players impact the market? In the context of low-cost DVD players, would there be sufficient consumer demand for manufacturers to continue manufacturing such players if faced with the costs of rendering or adding an analog output? Given that Blu-ray players are able to play both Blu-ray discs and DVDs, should we consider Blu-ray players that do not render closed captions but include an analog output to pass through closed captions on DVDs to comply with the closed captioning requirements of the CVAA? Is there a consumer expectation that captioned DVDs should be viewable on a backward compatible Blu-ray player? Should Blu-ray players that include an analog output that pass through captions be granted a waiver of the Commission's interconnection mechanism rule (as we have granted in the *Order on Reconsideration* in the DVD context)? Alternatively, should we require Blu-ray players to render captions from DVDs? We seek specific comment on the costs and benefits of the approaches considered herein as well as on the technical aspects of what would be required to effectuate these requirements. For example, would manufacturers be required to implement a software or hardware upgrade? Similarly, what are the costs and benefits of requiring all DVD and Blu-ray players to include an analog output, and what technical steps are necessary to achieve this? In addition, what would be an appropriate deadline for compliance with the closed captioning requirements for DVD players that do not render or pass through captions and for Blu-ray players?

8. With regard to Blu-ray players playing Blu-ray discs, as we noted above, there is not currently an industry-wide standard for closed captioning on Blu-ray discs. Thus, Blu-ray discs do not currently contain captions. Does this fact make it more important that Blu-ray player manufacturers take steps to ensure that captions from DVDs can be rendered or passed through? Should we require Blu-ray players to render or pass through captions from Blu-ray discs within a certain period of time with the expectation that doing so would spur the industry to prioritize developing a standard for discs and include captions on Blu-ray discs? Alternatively, given that Blu-ray discs as well as DVDs

[1] Consumer Groups argue that synchronization problems can be caused by apparatus, and thus failure to place synchronization obligations on apparatus may make timing requirements on video programming distributors ineffective. To the contrary, Mitsubishi Electric Visual Solutions America, Inc. ("MEVSA") argues that it is unaware of any caption display synchronization problems caused by receivers, and CEA argues that decoders do not cause synchronization problems.

[2] CEA and MEVSA argue that existing standards would not enable manufacturers to comply with a synchronization requirement. Consumer Groups disagree, arguing that mainstream captioning standards such as CEA–608, CEA–708, and the Society of Motion Picture and Television Engineers ("SMPTE") Timed Text Format ("SMPTE–TT") support synchronization.

[3] We understand that many, if not all, Blu-ray players are "backward compatible" with DVDs, that is, they are able to play both Blu-ray discs and DVDs. We seek comment on this understanding.

currently include subtitles,[4] we seek comment on whether, as a legal matter, rendering or passing through subtitles could satisfy section 303(u)'s requirement that the Blu-ray players and DVD players "be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming." Could the rendering or passing through subtitles be considered an "alternate means" of compliance with our rules?[5] Or, should subtitles or SDH only be considered an alternative means of compliance to the extent that they can be made compatible with the technical capabilities set forth in our apparatus closed captioning rules (for example, the ability to change text font and size)? We seek specific comment on what steps the industry, including content providers, must take to provide this type of "enhanced" subtitles or SDH. For example, what technical steps can manufacturers take in this regard?

## III. Procedural Matters

### *A. Initial Regulatory Flexibility Analysis*

9. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),[6] the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking ("*FNPRM*"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the item. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[7] In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[8]

[4] Subtitles for the deaf and hard of hearing ("SDH") do not provide all of the features available with closed captions.

[5] See Public Law 111–260, section 203(e) ("An entity may meet the requirements of sections 303(u), 303(z), and 330(b) of the Communications Act of 1934 through alternate means than those prescribed by regulations pursuant to subsection (d) if the requirements of those sections are met, as determined by the Commission."). In the *Report and Order*, the Commission recognized that SDH does not offer the same user control features as closed captioning.

[6] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601—612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[7] See 5 U.S.C. 603(a).

[8] See *id.*

#### 1. Need for, and Objectives of, the Proposed Rule Changes

10. In the *FNPRM*, we seek further comment on the potential imposition of closed captioning synchronization requirements for covered apparatus, and on how DVD and Blu-ray players can fulfill the closed captioning requirements of the statute. These issues were raised by petitions for reconsideration of the *Report and Order*, which implemented portions of sections 202 and 203 of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA") by adopting rules governing the closed captioning requirements for the owners, providers, and distributors of video programming delivered via Internet protocol ("IP") and rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming. Specifically, in response to the Petition for Reconsideration of Consumer Groups, we issue an *FNPRM* to obtain further information necessary to determine whether the Commission should impose synchronization requirements on device manufacturers. Such synchronization requirements could provide that all apparatus that render closed captions must do so consistent with the timing data included with the video programming the apparatus receives. Separately, in response to issues raised by the Petition for Reconsideration of the Consumer Electronics Association, the *FNPRM* seeks comment on how DVD and Blu-ray players can fulfill the closed captioning requirements of the statute.

11. Our goal in this proceeding remains to implement Congress's intent to better enable individuals who are deaf or hard of hearing to view video programming. In considering the requests made in the three petitions for reconsideration received, we have evaluated the effect on consumers who are deaf or hard of hearing as well as the cost of compliance to affected entities.

#### 2. Legal Basis

12. The proposed action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111–260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

#### 3. Description and Estimate of the Number of Small Entities to Which the Proposals Will Apply

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[10] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[11] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[12] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

14. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may

[9] 5 U.S.C. 603(b)(3).

[10] 5 U.S.C. 601(6).

[11] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[12] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

qualify as "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

15. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 1,906 firms that operated that year. Of those 1,906, 1,880 had fewer than 1000 employees, and 26 firms had more than 1000 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

16. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an additional 258 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

17. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

18. *Direct Broadcast Satellite ("DBS") Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, "Wired Telecommunications Carriers," which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation ("EchoStar") (marketed as the DISH Network). Each currently offers subscription services. DIRECTV and EchoStar each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

19. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

20. The category of "Satellite Telecommunications" "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year. Of this total, 533 establishments had annual receipts of under $10 million or less, and 74 establishments had receipts of $10 million or more. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

21. The second category, *i.e.,* "All Other Telecommunications," comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." For this category, Census Bureau data for 2007 shows that there were a total of 2,623 establishments that operated for the entire year. Of this total, 2,478 establishments had annual receipts of under $10 million and 145 establishments had annual receipts of $10 million or more. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

22. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,387. In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

23. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations

must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

24. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

25. *Open Video Systems.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

26. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers." The SBA has developed a small business size standard for this category, which is: all such firms having $15 million dollars or less in annual revenues. To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007 show that there were 659 establishments in this category that operated for the entire year. Of that number, 462 operated with annual revenues of $9,999,999 million dollars or less, and 197 operated with annual revenues of 10 million or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

27. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials." We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year. Of these, 8,995 had annual receipts of $24,999,999 or less, and 100 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

28. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors." We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year. Of these, 434 had annual receipts of $24,999,999 or less, and 16 had annual receipts ranging from not less than $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

29. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

30. *Incumbent Local Exchange Carriers ("LECs").* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category "Wired Telecommunications Carriers." Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178

operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

31. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category "Wired Telecommunications Carriers." Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

32. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for "Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing," which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were 919 establishments that operated for part or all of the entire year. Of those 919 establishments, 771 operated with 99 or fewer employees, and 148 operated with 100 or more employees. Thus, under that size standard, the majority of establishments can be considered small.

33. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees. Data contained in the 2007 Economic Census indicate that 491 establishments in this category operated for part or all of the entire year. Of those 491 establishments, 456 operated with 99 or fewer employees, and 35 operated with 100 or more employees. Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

34. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category to include ". . . establishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users."

35. In this category, the SBA has deemed an Internet publisher or Internet broadcaster or the provider of a web search portal on the Internet to be small if it has fewer than 500 employees. For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 2,705 such firms that operated that year. Of those 2,705 firms, 2,682 (approximately 99%) had fewer than 500 employees and, thus, would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard.

36. *Closed Captioning Services.* These entities would be indirectly affected by our proposed action. The SBA has developed two small business size standards that may be used for closed captioning services. The two size standards track the economic census categories, "Teleproduction and Other Postproduction Services" and "Court Reporting and Stenotype Services."

37. The first category of *Teleproduction and Other Postproduction Services* "comprises establishments primarily engaged in providing specialized motion picture or video postproduction services, such as editing, film/tape transfers, subtitling, credits, closed captioning, and animation and special effects." The relevant size standard for small businesses in these services is an annual revenue of less than $29.5 million. For this category, Census Bureau Data for 2007 indicate that there were 1,605 firms that operated in this category for the entire year. Of that number, 1,597 had receipts totaling less than $29,500,000. Consequently we estimate that the majority of Teleproduction and Other Postproduction Services firms are small entities that might be affected by our proposed actions.

38. The second category of *Court Reporting and Stenotype Services* "comprises establishments primarily engaged in providing verbatim reporting and stenotype recording of live legal proceedings and transcribing subsequent recorded materials." The size standard for small businesses in these services is an annual revenue of less than $7 million. For this category, Census Bureau data for 2007 show that there were 2,706 firms that operated for the entire year. Of this total, 2,590 had annual receipts of under $5 million, and 19 firms had receipts of $5 million to $9,999,999. Consequently, we estimate that the majority of Court Reporting and Stenotype Services firms are small entities that might be affected by our proposed action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

39. The *FNPRM* invites comment on whether the Commission should impose closed captioning synchronization requirements on apparatus. Such synchronization requirements could provide that all apparatus that render closed captions must do so consistent with the timing data included with the video programming the apparatus receives. The *FNPRM* invites comment on the extent to which apparatus are the cause of synchronization problems, and on the means by which manufacturers could address closed caption synchronization. The *FNPRM* also asks whether video programming owners, providers, and distributors are better suited than manufacturers to ensure caption quality, including synchronization, and it asks about the costs and benefits of imposing caption synchronization requirements on apparatus manufacturers. Separately, the *FNPRM* seeks comment on what closed captioning requirements we should impose on manufacturers of DVD players that do not render or pass through closed captions, and on manufacturers of Blu-ray players with

regard to Blu-ray players playing Blu-ray discs and playing DVDs, including specific questions about the rendering or pass through of closed captions. The *FNPRM* also seeks comment on the costs and benefits of imposing such requirements. Information received in response to the *FNPRM* will enable the Commission to consider the costs that would be incurred by affected entities, including smaller entities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

40. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[13]

41. We note that, pursuant to rules and policies previously adopted in the *Report and Order* in this proceeding, the Commission may grant exemptions to the IP closed captioning rules adopted pursuant to section 202 of the CVAA where a petitioner has shown that compliance would present an economic burden (*i.e.*, a significant difficulty or expense), and may grant exemptions to the apparatus rules adopted pursuant to section 203 of the CVAA where a petitioner has shown that compliance is not achievable (*i.e.*, cannot be accomplished with reasonable effort or expense) or is not technically feasible. This exemption process enables the Commission to address the impact of the rules on individual entities, including smaller entities, and to modify the application of the rules to accommodate individual circumstances. Further, a video programming provider's or owner's *de minimis* failure to comply with the IP closed captioning rules shall not be treated as a violation, and parties may use alternate means of compliance to the rules adopted pursuant to either section 202 or section 203 of the CVAA. Individual entities, including smaller entities, may benefit from these provisions.

42. Regarding the specific issue of synchronization requirements as discussed in the *FNPRM*, the Commission seeks comment on whether video programming owners, providers, and distributors are better suited than manufacturers to ensure caption quality, including synchronization. The Commission also seeks comment on what requirements it should impose on apparatus, to the extent that apparatus cause closed captioning synchronization problems. Accordingly, the Commission seeks to allocate responsibilities appropriately.

43. Regarding the specific issue of DVD players that do not render or pass through closed captions and Blu-ray players as discussed in the *FNPRM*, the Commission seeks comment on the costs and benefits of imposing closed captioning requirements, including the technical aspects of what would be required to make closed captioning accessible on such devices. Accordingly, the Commission seeks to balance the costs and benefits appropriately in crafting a final rule.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

44. None.

*B. Paperwork Reduction Act*

45. The *FNPRM* does not contain proposed information collection(s) subject to the PRA, Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

*C. Ex Parte Rules*

46. *Permit-But-Disclose.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*D. Filing Requirements*

47. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand

[13] 5 U.S.C. 603(c)(1)–(c)(4).

deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

48. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

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

*E. Additional Information*

50. For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov*, or Maria Mullarkey, *Maria.Mullarkey@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

**IV. Ordering Clauses**

51. Accordingly, *it is ordered* that pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, this *Further Notice of Proposed Rulemaking is adopted,* effective thirty (30) days after the date of publication in the **Federal Register**.

52. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Further Notice of Proposed Rulemaking* in MB Docket No. 11–154, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 79**

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 79 as follows:

## PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

■ 1. The authority citation for Part 79 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.103 to add paragraph (c)(12) to read as follows:

**§ 79.103 Closed caption decoder requirements for all apparatus.**

* * * * *

(c) * * *

(12) *Synchronization.* All apparatus that render closed captions must do so consistent with the timing data included with the video programming the apparatus receives.

* * * * *

[FR Doc. 2013–15722 Filed 7–1–13; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R1–ES–2013–0028; 4500030113]**

**RIN 1018–AZ38**

## Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Three Plant Species on Hawaii Island

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on our October 17, 2012, proposed designation of critical habitat for three plant species (*Bidens micrantha* ssp. *ctenophylla* (kookoolau), *Isodendrion pyrifolium* (wahine noho kua), and *Mezoneuron kavaiense* (uhiuhi)) on Hawaii Island under the Endangered Species Act of 1973, as amended (Act). In response to requests we received, we are reopening the comment period to allow all interested parties an opportunity to comment on the proposed designation of critical habitat and the draft economic analysis. Comments previously submitted on the proposed rule or draft economic analysis need not be resubmitted as they will be fully considered in our determinations on this rulemaking action. We also announce a public information meeting on our proposed rule and associated documents.

**DATES:** *Written Comments:* We will consider all comments received or postmarked on or before September 3, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

*Public Information Meeting:* We will hold a public information meeting in Kailua-Kona, Hawaii, on Wednesday, August 7, 2013, from 3 p.m. to 5 p.m. (see **ADDRESSES** section, below).

**ADDRESSES:** *Document availability:* You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2012–0070, or by mail from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

*Written Comments:* You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Search for Docket No. FWS–R1–ES–2013–0028.

(2) *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2013–0028; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

*Public Information Meeting:* The public information meeting will be held in the Council Chambers of the West Hawaii Civic Center located at 74–5044 Ane Keohokalole Highway, Kailua-Kona, HI 96740 (telephone 808–323–4444).

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Loyal Mehrhoff, Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850; by telephone 808–792–9400; or by facsimile 808–792–9581. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

We are proposing to designate critical habitat for *Bidens micrantha* ssp. *ctenophylla*, which we proposed to list as endangered on October 17, 2012 (77 FR 63928), and for two plant species that are already listed as endangered (*Isodendrion pyrifolium* and *Caesalpinia kavaiense* (we proposed a taxonomic revision for *Caesalpinia kavaiense* on October 17, 2012 (77 FR 63928), to change the name to *Mezoneuron kavaiense;* we will refer to this plant species as *Mezoneuron kavaiense* in this document)).

## Background

On October 17, 2012, the Service published a proposed rule in the **Federal Register** (77 FR 63928) to list 15 species (13 plants and 2 animals) found on Hawaii Island as endangered. We also proposed critical habitat for 1 of those 13 plant species (*Bidens micrantha* ssp. *ctenophylla*). In addition, we proposed critical habitat for two previously listed plant species (*Isodendrion pyrifolium* and *Mezoneuron kavaiense*) that do not have designated critical habitat and occur in the same ecosystem as *Bidens micrantha* ssp. *ctenophylla*. In all, the critical habitat proposed for these three species is an area totaling 18,766 acres (7,597 hectares), of which approximately 55 percent is already designated as critical habitat for endangered or threatened species. The October 17, 2012, proposal had a 60-day comment period, ending December 17, 2012.

On April 30, 2013, we announced the reopening of the comment period for the proposed listing of the 15 species and proposed critical habitat for 3 species on Hawaii Island, the availability of our draft economic analysis of the proposed critical habitat, and the public hearing and public information meeting scheduled for May 15, 2013 (78 FR 25243). The comment period was reopened for 30 days, ending on May 30, 2013. The Service held a public information meeting and public hearing on May 15, 2013, at the West Hawaii Civic Center, Kailua-Kona, Hawaii. Additional information may be found in the October 17, 2012, proposed rule (77 FR 63928) and the April 30, 2013, reopening of the comment period and availability of the draft economic analysis (78 FR 25243).

Pursuant to a court-ordered deadline, we must make a final determination on whether to list the 15 species by September 30, 2013. In order to allow additional opportunity for public comment on the critical habitat proposal, we plan to publish the final critical habitat determination subsequent to the listing determination.

## Public Comments

We are again seeking written comments and information during this reopened comment period on our proposed designation of critical habitat for three plant species that published in the **Federal Register** on October 17, 2012 (77 FR 63928), and on our draft economic analysis of the proposed critical habitat designation and the amended required determinations that were made available for review on April 30, 2013 (78 FR 25243). The October 17, 2012, proposed rule proposed to list 15 species on the island of Hawaii as endangered, as well as to designate critical habitat for 3 species. However, we will be publishing two final rules, one making a final determination on the listing proposal and another making a final determination on the critical habitat designation.

With regard to the proposed critical habitat determination, we are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of the species' habitat;

(b) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (77 FR 63928) during the initial comment period from October 17, 2012, to December 17, 2012, or the reopened comment period (78 FR 25243) from April 30, 2013, to May 30, 2013, please do not resubmit them. We have incorporated them into the public record as part of the original comment period, and we will fully consider them in our final determinations.

You may submit your comments and materials concerning the proposed rules by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0028 for the proposed critical habitat designation, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### *Public Information Meeting*

We are holding a public information meeting on the date listed in the **DATES** section at the address listed in the **ADDRESSES** section (above). We are

holding this second public information meeting to provide an additional opportunity for the public to ask questions or seek clarification on the proposed rule and the draft economic analysis. Since this is an informational meeting and not a public hearing, no oral testimony will be taken.

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 20, 2013.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2013–15746 Filed 7–1–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 130403321–3321–01]**

**RIN 0648–BD16**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Regulatory Amendment 19

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

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

**SUMMARY:** NMFS proposes regulations to implement Regulatory Amendment 19 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). If implemented, Regulatory Amendment 19 and this rule would revise the optimum yield (OY), the commercial and recreational annual catch limits (ACLs) and the recreational annual catch target (ACT) for black sea bass harvested in or from the South Atlantic exclusive economic zone (EEZ). This rule would also establish an annual prohibition on the use of black sea bass pots in the South Atlantic from November 1 through April 30. The intent of this rule is to provide socio-economic benefits to snapper-grouper fishermen and communities that utilize the snapper-grouper resource, while maintaining fishing mortality at sustainable levels according to the best scientific information available. The rule would also prevent interactions between black sea bass pot gear and whales listed under the Endangered Species Act (ESA) during periods of large whale migrations and during the northern right whale calving season off of the southeastern coast.

**DATES:** Written comments must be received on or before August 1, 2013.

**ADDRESSES:** You may submit comments on the amendment identified by "NOAA–NMFS–2013–0096" by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0096,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Regulatory Amendment 19, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/SGRegAmend19.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Rick DeVictor, Southeast Regional Office, telephone: 727–824–5305, or email: *rick.devictor@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic, which includes black sea bass, is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**Background**

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY for federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing of stocks while achieving OY from the fishery, and to minimize bycatch and bycatch mortality to the extent practicable. The black sea bass component of the snapper-grouper fishery in the South Atlantic is managed through a variety of measures to achieve OY. These measures include restrictions on the total harvest, recreational and commercial allocations, recreational and commercial ACLs, and accountability measures (AMs).

The black sea bass stock in the South Atlantic was assessed through the Southeast Data, Assessment, and Review (SEDAR) stock assessment process in 2003 (SEDAR 2). SEDAR 2 determined that the South Atlantic black sea bass stock was overfished and undergoing overfishing. In 2006, the Council implemented a 10-year rebuilding plan for black sea bass that included measures to end overfishing. The black sea bass stock was reassessed in 2011 (SEDAR 25) and determined to no longer be overfished or undergoing overfishing, but was not fully rebuilt. In 2013, the SEDAR 25 Update assessment determined that the black sea bass stock is now rebuilt. The SEDAR 25 Update assessment indicates that the black sea bass ACLs can be increased without jeopardizing the health of the population. The Council's Scientific and Statistical Committee (SSC) reviewed the SEDAR 25 Update assessment in April 2013, and determined that the assessment was based on the best scientific information available and recommended new acceptable biological catch (ABC) levels for 2013, 2014, and 2015. These ABCs, which decrease over time, are higher than the current ABC. The Council approved the new ABCs at its May 2013 Council meeting.

In Amendment 18A to the FMP (77 FR 32408, June 1, 2012), the Council established an OY formula of ABC = OY = ACL, using values from SEDAR 25 (2011) and the SSC's ABC recommendation at that time.

Regulatory Amendment 19 proposes to change the formula to ACL = OY. For 3 consecutive fishing years beginning in 2013–2014 (fishing years 2013–2014, 2014–2015, and 2015–2016), the Council decided to set the ACL value equal to the 2015–2016 fishing year ABC value, which is 1,814,000 lb (822,817 kg). Thus, the stock ACLs for the 2013–2014 and 2014–2015 fishing years would be set below their respective fishing year's ABC, and the stock ACL for the 2015–2016 fishing year would be equal to the ABC. The Council chose to include a buffer between the higher ABCs and ACL to account for management uncertainty and as a conservative management approach for a stock that was only recently rebuilt. Then, because no ABC recommendation was provided beyond 2015 and the black sea bass biomass is above OY at equilibrium, beginning with the 2016–2017 fishing year the formula would remain at ACL = OY, but the stock ACL and OY values would be lowered to the yield at 75 percent $F_{MSY}$, which equals 1,756,450 lb (796,712 kg), round weight.

The stock ACL would be allocated between the commercial and recreational sectors based on the sector allocations established in Amendment 13C to the FMP (43 percent for the commercial sector and 57 percent for the recreational sector) (71 FR 55096, September 21, 2006). Thus, the commercial ACL would increase from the current 309,000 lb (140,160 kg), gutted weight, 364,620 lb (165,389 kg), round weight, to: 661,034 lb (299,840 kg), gutted weight, 780,020 lb (353,811 kg), round weight for the 2013–2014, 2014–2015, and 2015–2016 fishing years; and 640,063 lb (290,328 kg), gutted weight, 755,274 lb (342,587 kg), round weight, for the 2016–2017 and subsequent fishing years. The recreational ACL would increase from the current 409,000 lb (185,519 kg), gutted weight; 482,620 lb (218,913 kg), round weight to 876,254 lb (397,462 kg), gutted weight, 1,033,980 lb (469,005 kg), round weight for the 2013–2014, 2014–2015, and 2015–2016 fishing years and 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), round weight for the 2016–2017 and subsequent fishing years.

The black sea bass recreational ACT was set at 357,548 lb (162,181 kg) gutted weight, 421,907 lb (191,374 kg), round weight, in Amendment 18A (75 FR 82280, December 30, 2010). Based upon the results of the SEDAR 25 Update assessment, Regulatory Amendment 19 would increase the recreational ACT to 766,021 lb (347,461 kg), gutted weight, 903,905 lb (410,004 kg), round weight for the 2013–2014, 2014–2015, and 2015–2016 fishing years and to 741,719 lb (336,438 kg), gutted weight, 875,228 (396,997 kg), round weight for the 2016–2017 and subsequent fishing years. Because the ACT would not be used to trigger AMs, it would not be codified in the regulatory text.

Regulatory Amendment 19 and this rule would also establish a prohibition on the use of black sea bass pots from November 1 through April 30, each year. The large whale migration period and the right whale calving season in the South Atlantic extend from approximately November 1 through April 30, each year. Since 2010, black sea bass harvest levels have reached the commercial ACL, triggering AMs to close the commercial sector. Because these in-season commercial AM closures have occurred prior to November 1, actions to prevent black sea bass pot gear from being in the water during the higher whale concentrations have been unnecessary. However, NMFS has determined that the increase in the commercial ACL proposed in this rule could extend the commercial black sea bass fishing season beyond November 1 and into a time period when a higher concentration of endangered whales are known to migrate through black sea bass fishing grounds.

According to the NMFS List of Fisheries, black sea bass pots are considered to pose an entanglement risk to marine mammals. The South Atlantic black sea bass pot sector is included in the Atlantic mixed species trap/pot fisheries grouping, which is classified as a Category II in the proposed rule for the 2013 List of Fisheries (78 FR 23708, April 22, 2013). Category II means that there is an occasional incidental mortality and serious injury of marine mammals associated with that specific fishing gear type. The seasonal sea bass pot prohibition would be a precautionary measure to prevent interactions between black sea bass pot gear and whales during large whale migrations and during the right whale calving season off the U.S. southeastern coast. During this closure, no person would be allowed to harvest or possess black sea bass in or from the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board. In addition, sea bass pots must be removed from the water in the South Atlantic EEZ before November 1, and may not be on board a vessel in the South Atlantic EEZ during this closure.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with Regulatory Amendment 19, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an IRFA for this rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained in the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule.

NMFS expects this proposed rule to directly affect commercial fishermen and for-hire vessel operators in the South Atlantic snapper-grouper fishery. The Small Business Administration has established small entity size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, all qualifiers apply except that the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

From 2007 through 2011, an annual average of 240 vessels with valid commercial South Atlantic snapper-grouper permits landed at least 1 lb (0.45 kg) of black sea bass. These vessels generated dockside revenues of approximately $4.0 million (2011 dollars) from all species caught on the same trips as black sea bass, of which about $1.0 million (2011 dollars) were attributable to black sea bass. Each vessel, therefore, generated an average of approximately $17,000 in gross revenues, of which $4,000 were from black sea bass. Based on revenue information, all commercial vessels

affected by the rule can be considered small entities.

From 2007 through 2012, an annual average of 1,855 vessels had a valid South Atlantic Charter/Headboat for Snapper-Grouper permit to operate in the for-hire component of the recreational sector in the snapper-grouper fishery. As of April 23, 2013, 1,485 vessels held South Atlantic Charter/Headboat for Snapper-Grouper permits and about 75 of those are estimated to have operated as headboats in 2013. The for-hire fleet consists of charter boats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Average annual revenues (2011 dollars) per charter boat are estimated to be $126,032 for Florida vessels, $53,443 for Georgia vessels, $100,823 for South Carolina vessels, and $101,959 for North Carolina vessels. For headboats, the corresponding estimates are $209,507 for Florida vessels and $153,848 for vessels in the other states. For state headboat estimates other than Florida, the headboat sample sizes were small and therefore providing more detailed revenue estimate information on a state-by-state basis would potentially disclose sensitive financial information and so aggregated economic information is provided. Based on these average revenue figures, all for-hire operations that would be affected by the rule can be considered small entities.

NMFS expects that the proposed rule would directly affect all federally-permitted commercial vessels harvesting black sea bass and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determined that the proposed action would affect a substantial number of small entities.

Because NMFS determined that all entities expected to be affected by the actions in this proposed rule are small entities, the issue of disproportional effects on small versus large entities does not arise in the present case.

The proposed rule would increase the black sea bass stock ACL from its current level of 847,000 lb (384,193 kg), round weight, to 1,814,000 lb (822,817 kg), round weight, for the 2013–2014, 2014–2015, and 2015–2016 fishing years and to 1,756,450 lb (796,713 kg), round weight, for the 2016–2017, and subsequent fishing years. In addition, the proposed rule would annually prohibit the retention, possession, and fishing for black sea bass using black sea bass pot gear, from November 1 through April 30, each year.

Increasing the black sea bass stock ACL would also increase the commercial and recreational sector ACLs based on the current allocation rate of 43 percent for the commercial sector and 57 percent for the recreational sector. Current NMFS modeling projections suggest that, even with relatively large increases in the commercial ACL, the commercial fishing season for black sea bass would likely close before the end of each fishing year. If the commercial ACL were fully harvested each year, the commercial sector would be expected to generate additional revenues (in 2011 dollars) of about $939,000 in each of the 2013–2014, 2014–2015, and 2015–2016 fishing years and approximately $883,000 in the 2016–2017 and subsequent fishing years. For the 2013–2014, 2014–2015, and 2015–2016 fishing years, the net present value of increased revenues to the commercial sector would be approximately $2.5 million. As a result of relatively large increases in commercial revenues, profits to commercial vessels would likely increase.

The November through April prohibition on the use of black sea bass pots for harvesting black sea bass is intended to prevent interactions between black sea bass pot gear and whales listed under the ESA during large whale migrations and during the right whale calving season off the southeastern coast. In theory, this prohibition would be expected to negatively affect the revenues and profits of 32 commercial vessels which currently possess black sea bass pot endorsements. Since the 2010–2011 fishing season, however, commercial fishing for black sea bass has closed before November 1 each year. Thus, the November through April prohibition on the use of black sea bass pots would mainly constrain the revenue increases associated with an increased commercial ACL of 32 commercial vessels which possess black sea bass pot endorsements.

However, the seasonal black sea bass pot prohibition would greatly benefit vessels using other gear types, such as vertical lines, because their fishing season would be extended if this rule was implemented. Despite the proposed ACL increases, closures to commercial (and recreational) harvest of black sea bass are still projected to occur as a result of the sectors reaching their respective ACLs during the fishing year. Therefore, revenues forgone by vessels using black sea bass pot would likely be gained by vessels using other gear types. Thus, the black sea bass pot prohibition would mainly have distributional effects within the commercial sector, with the overall industry revenues and likely profits expected to increase.

NMFS modeling projections suggest that even with large ACL increases, the recreational sector for black sea bass would experience fishing closures during the fishing year as a result of the sector reaching the recreational ACL. This closure would likely occur starting in December of each fishing year. Relative to the no action alternative, however, the ACL increases would extend the recreational fishing season each year, allowing for-hire vessels to take more fishing trips. These additional trips would increase total for-hire vessel profits (in 2011 dollars) by approximately $354,000 each year starting with the 2013–2014 fishing year, of which about $234,000 would be for headboats and $120,000 for charter boats. Over the 2013–2014, 2014–2015, and 2015–2016 fishing years, the net present value of these profit increases would be approximately $930,000, of which $614,000 would be for headboats and $316,000 for charter boats.

Additionally, Regulatory Amendment 19 would revise the recreational ACT. The formula for calculating the ACT from the ACL would not change, but the ACT level would increase with increases in the ACL. Up until now, the recreational ACT has been used by the Council and NMFS to monitor recreational harvest and not as a trigger for AMs. The proposed action would not change this, thus the revised ACT would be expected to have no effects on the revenues and profits of for-hire vessels. If, in the future, the ACT were to be used to trigger AMs, the ACT increase accompanying the proposed ACL increase would reduce the probability of triggering an AM associated with an in-season closure.

The following discussion analyzes the alternatives that were not selected as preferred by the Council.

Four alternatives, including the preferred alternative, were considered for revising the stock ACL for black sea bass. The first alternative, the no action alternative, would retain the current ACL of 847,000 lb (384,193 kg) round weight. In principle, this alternative would have no effects on the revenues and profits of commercial and for-hire vessels. With the developing derby conditions in the commercial and recreational sectors that harvest black sea bass, both the commercial and recreational fishing seasons would continue to shorten over time, eventually adversely affecting the revenues and profits of commercial and for-hire vessels. Moreover, this alternative would result in forgoing the

economic benefits expected of the preferred alternative to increase the stock ACL.

The second alternative to increase the stock ACL would increase the ACL from its current level of 847,000 lb (384,193 kg), round weight, to 2,133,000 lb (967,513 kg), round weight, in the 2013–2014 fishing year, 1,992,000 lb (903,557 kg), round weight, in the 2014–2015 fishing year, and 1,814,000 lb (822,817 kg), round weight, in the 2015–2016 fishing year and beyond. In addition, this alternative would prohibit the use of black sea bass pots for the same dates as the preferred alternative and increase the recreational ACT. This alternative would result in higher revenues and profits for commercial and for-hire vessels than the preferred alternative mainly because it would provide for higher ACLs in the 2013–2014 and 2014–2015 fishing years. Although the effects of this alternative on commercial vessels using black sea bass pots would be the same as those of the preferred alternative, the effects on commercial vessels using other gear types would be different. With the seasonal black sea bass pot prohibition in place, the 2013–2014 and 2014–2015 fishing seasons for users of other gear types would be longer, thus affording them higher revenues and profits than the preferred alternative. A negative consequence of this alternative is its higher likelihood (relative to the preferred alternative) of overfishing the stock over time. As has been experienced in the snapper-grouper fishery, overfishing requires more restrictive regulations with their attendant adverse consequences on the revenues and profits of commercial and for-hire vessels. The revised recreational ACT levels would have no direct effects on the revenues and profits of for-hire vessels.

The third alternative would increase the ACL from its current level of 847,000 lb (384,193 kg), round weight, to 1,756,450 lb (796,713 kg), round weight, in the 2013–2014 fishing year and beyond. In addition, this alternative would similarly prohibit the seasonal use of black sea bass pots as the preferred alternative and increase the recreational ACT. This alternative would maintain the same ACL starting in the 2013–2014 fishing season but at lower levels in the initial 3 years than the preferred alternative. Thus, this alternative would be expected to result in lower revenues and profits than the preferred alternative. The prohibition on the use of black sea bass pots would extend the overall commercial fishing season but at a shorter duration than what would be expected under the preferred alternative. Revenue and profit increases to vessels using other gear types would be less than those under the preferred alternative. As with the preferred alternative, the revised recreational ACT level would have no direct effects on the revenues and profits of for-hire vessels.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, South Atlantic, Black Sea Bass.

Dated: June 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.*

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

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

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

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

■ 2. In § 622.183, paragraph (b)(5) is added to read as follows:

**§ 622.183 Area and seasonal closures.**

* * * * *

(b) * * *

(5) *Seasonal closure of the commercial black sea bass pot component of the snapper-grouper fishery.* From November 1 through April 30, each year, the commercial black sea bass pot component of the snapper-grouper fishery is closed. During this closure, no person may harvest or possess black sea bass in or from the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board. In addition, sea bass pots must be removed from the water in the South Atlantic EEZ before November 1, and may not be on board a vessel in the South Atlantic EEZ during this closure.

■ 3. In § 622.190, paragraph (a)(5) is revised to read as follows:

**§ 622.190 Quotas.**

* * * * *

(a) * * *

(5) *Black sea bass.* (i) For the 2013–2014, 2014–2015, and 2015–2016 fishing years—661,034 lb (299,840 kg), gutted weight; 780,020 lb (353,811 kg), round weight.

(ii) For the 2016–2017 and subsequent fishing years—640,063 lb (290,328 kg), gutted weight; 755,274 lb (342,587 kg), round weight.

* * * * *

■ 4. In § 622.193, paragraph (e)(2) is revised to read as follows:

**§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

* * * * *

(e) * * *

(2) *Recreational sector.* (i) If recreational landings for black sea bass, as estimated by the SRD, are projected to reach the recreational ACL specified in paragraph (e)(2)(ii) of this section then the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) The recreational ACL for black sea bass is 876,254 lb (397,462 kg), gutted weight, 1,033,980 lb (469,005 kg), round weight for the 2013–2014, 2014–2015, and 2015–2016 fishing years and 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), round weight for the 2016–2017 and subsequent fishing years.

(iii) If recreational landings for black sea bass, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register, to reduce the recreational ACL the following fishing year by the amount of the overage in the prior fishing year, unless the SRD determines that no overage is necessary based on the best scientific information available.

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[FR Doc. 2013–15879 Filed 7–1–13; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 78, No. 127
Tuesday, July 2, 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

### Agricultural Research Service

### Notice of Intent To Grant Exclusive License

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the Citrus Research and Development Foundation, Inc. of Lake Alfred, Florida, an exclusive license to U.S. Patent Application Serial No. 13/745,509, "IDENTIFICATION AND SYNTHESIS OF A MALE–PRODUCED PHEROMONE FOR THE NEOTROPICAL ROOT WEEVIL DIAPREPES ABBREVIATUS (COLEOPTERA: CURCULIONIDAE)", filed on January 18, 2013.

**DATES:** Comments must be received on or before August 1, 2013.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as the Citrus Research and Development Foundation, Inc. of Lake Alfred, Florida has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Robert Griesbach,**

*Deputy Assistant Administrator.*

[FR Doc. 2013–15845 Filed 7–1–13; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Revision of Approved Information Collection; Comment Request—Supplemental Nutrition Assistance Program (SNAP): Federal Collection of State Plan of Operations, Operating Guidelines and Forms

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a revision of a currently approved collection for State agency Supplemental Nutrition Assistance Program (SNAP), administrative matters. FNS plans to develop and launch an electronic workflow system, SNAP Workflow Information Management (SWIM), to streamline FNS waiver processing, the current waiver request form will be transposed to an online waiver request form. The online version of the request form does not modify the currently approved burden hours in any way, but changes the method of collection for this information.

**DATES:** Written comments must be received on or before September 3, 2013.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments may be sent to: Michael Ribar, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 810, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Michael Ribar at 703–305–2454, or via email to *michael.ribar@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov*, and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday) at 3101 Park Center Drive, Room 810, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to Michael Ribar at 703–305–2449.

**SUPPLEMENTARY INFORMATION:**

*Title:* Operating Guidelines, Forms and Waivers.

*OMB Number:* 0584–0083.

Forms: FNS 366A—Program and Budget Summary Statement, FNS 366B—Program Activity Statement, SWIM SNAP Waiver Request Form and SF 425 Federal Financial Report

*Expiration Date:* December 31, 2013.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* Section 16(a) of the Food and Nutrition Act of 2008 (the Act) authorizes 50 percent Federal reimbursement for State agency costs to administer the program. 7 CFR 272.2(a) of SNAP regulations requires that State agencies plan and budget program operations and establish objectives for the next year. The basic components of the State Plan of Operation are the

Federal/State Agreement, the Budget Projection Statement and the Program Activity Statement (7 CFR 272.2(a)(2)). Under 7 CFR 272.2(c), the State agency shall submit to FNS for approval a Budget Projection Statement (which projects total Federal administrative costs for the upcoming fiscal year) and a Program Activity Statement (which provides program activity data for the preceding fiscal year). In addition, certain attachments to the plan as specified in subparagraphs (c) and (d) are to be submitted. As specified in subparagraph (f), State agencies only have to provide FNS with changes to these attachments as they occur. Consequently, these attachments are considered State plan updates. Under Section 11(o) of the Act each State agency is required to develop and submit plans for the use of automated data processing (ADP) and information retrieval systems to administer SNAP. Section 16(a) of the Act authorizes partial Federal reimbursement of State costs for State ADP systems that the Secretary determines will assist meeting the requirements of the Act, meets conditions prescribed by the Secretary, are likely to provide more efficient and effective administration of the program, and are compatible with certain other Federally-funded systems. Under 7 CFR 277.18(c)(1) of SNAP regulations, State agencies must obtain prior written approval from FNS when it plans to acquire ADP equipment with a total acquisition cost of $5 million or more in Federal and State funds. The State agency must submit an Advance Planning Document (APD) prior to acquiring planning services and an Implementation APD prior to acquiring ADP equipment or services.

*Budget Projection:* State agencies are required to submit to FNS for approval a Budget Projection Statement, Form FNS–366A, which includes projections of the total Federal costs for major areas of program operations. The budget projection allows FNS to estimate funding needs so we can fund the State administrative costs for the fiscal year.

*Program Activity Statement:* State agencies are required to submit to FNS a Program Activity Statement, Form FNS–366B, providing a summary of program activity for the State agency's operations during its preceding fiscal year. The activity report is required annually to substantiate the costs the State agency expects to incur during the next fiscal year. It provides data on the number of applications processed, number of fair hearings and fraud control activity. FNS uses the data to monitor State agency activity levels and performance.

*State Plan of Operation Updates:* State agencies submit the operations planning documents to the appropriate regional office for approval. This information explains how States are operating the program for monitoring purposes and allows FNS to know which States have implemented which activities and options for data and cost analysis purposes. State agencies administering SNAP may submit formal written requests, SNAP waiver requests, to obtain approval from FNS to deviate from a specific program rule or regulation. SNAP waiver requests fall into three broad categories based on statutory or regulatory authority.

*Demonstration Waivers:* Section 17(b) of the Act, 7 U.S.C. 2026(b), the Secretary may waive certain requirements of the Act to test program changes that might increase the efficiency of SNAP and improve the delivery of SNAP benefits to eligible households. Waivers of provisions of the Act are referred to as demonstration waivers.

*Administrative Waivers:* The FNS Administrator may authorize waivers to deviate from specific regulatory program requirements per 7 CFR 272.3(c) and 273.21(a). Waivers of the regulations are commonly called, "administrative waivers." Administrative waivers are the most common waiver requested by States and approved by FNS.

*Disaster Related Waivers/D–SNAP Waivers:* Disaster assistance through SNAP is authorized by sections 402 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and the temporary emergency provisions contained in section 5 of the Act, and in 7 CFR part 280 of the SNAP regulations.

Current procedures require that in order for FNS to approve a SNAP waiver request, the State agency must submit the SNAP Waiver Request Form. With the development of SWIM, an electronic workflow system to streamline FNS waiver processing, the current waiver request form will be converted to an online waiver request form. Waivers have always been included in the State Plan of Operations.

The online version of the SNAP Waiver Request Form does not modify the currently approved burden hours in any way but changes the method of collection for this information.

**Burden Estimates**

The burden consists of five major components. It covers the FNS–366A, the FNS–366B, the plan of operation updates submitted as attachments to the FNS–366B, SNAP Waiver Request other Advance Planning Documents (APD) and update submissions, and quarterly financial reporting. The estimated total annual burden for this collection is 3,071 (3,014 reporting hours and 57 recordkeeping hours). The calculation of the burden for each of these components is described below:

*Reporting Burden Estimates:*

*Affected Public:* State, Local and Tribal Government Agencies.

*Estimated Number of Respondents:* 53.

*Estimated Number of Responses per Respondent:* 14.345283.

*Estimated Total Annual Responses:* 760.3.

*Estimated Reporting Time per Response:* 3.9636722 hours.

*Estimated Annual Reporting Burden Hours:* 3,013.58.

**Reporting**

*FNS–366A.* Fifty-three (53) State agencies (SA) submits 1 response annually for a total of 53 annual responses. The annual burden for the FNS–366A is 689 hours. Form FNS–366A provides an estimate of the funding needed to operate the program. A copy is maintained for 3 years.

The reporting burden is estimated to be 13.00 hours annually per respondent.

*FNS–366B.* Fifty-three (53) SA submits 1 response annually for a total of 53 annual responses. The annual reporting burden for the FNS–366B report is 17.93 hours per respondent to complete the form. The reporting burden for the FNS–366B alone is 950.29 hours.

*State Plan of Operation Updates.* Fifty-three (53) SA submits 1 response annually for a total of 53 annual responses. The reporting burden for submission of updates to State Plans of Operation as attachments to the FNS–366B is 6.58 hours per respondent, resulting in estimated burden hours of 348.99 (53 × 6.5847 = 348.99). The SNAP Waiver Request Form is included as part of the total reporting burden for State Plan of Operation Updates. Approximately 45 SA will submit 3.94 SNAP Waiver Requests annually for a total of 177 responses (45 × 3.94 = 177.3). The estimated average number of burden hours per submission is 1 hour resulting in estimated total burden hours of 177.3. The total reporting burden for the State Plan of Operation updates is 526.29 hours (348.99 + 177.3 = 526.29).

*Other Plans and Submissions.* We now estimate that up to 53 State agencies may submit on an average of four (4) APD, plan, or update submission for a total of 212 annual responses at an average estimate of 2.5

hours per respondent. The reporting burden is 530 hours. The Final Rule will reduce the frequency of responses for submission of M&O IAPDs it is now estimated that the responses is reduced from five (5) to four (4) APD, Plan or Update submittals. For this activity, the burden represents a decrease of 132.5 hours due to that reduction in frequency.

*Financial Reporting.* FNS requires State agencies to report expenditures for administrative costs and cash-out benefit costs using SF–425 (OMB#: 0348–0061; Expiration date: 2/28/2015) in conjunction with the FNS 366–A which requests Federal funding. FNS estimates that 53 State agencies will submit 1 report quarterly, the total annual responses is 212 and the estimated burden per response is 1.50 hours for a total reporting burden of 318 hours annually.

| Affected public | Forms | Number of respondents | Frequency of response | Total annual responses | Time per response (hrs) | Annual reporting burden hours |
|---|---|---|---|---|---|---|
| State Agencies | FNS–366A | 53 | 1 | 53 | 13.00 | 689.00 |
| | FNS–366B | 53 | 1 | 53 | 17.93 | 950.29 |
| | Plan of Operation Updates (366B). | 53 | 1 | 53 | 6.58 | 348.99 |
| | Plan of Operation Updates (Waivers). | 45 | 3.94 | 177.3 | 1.00 | 177.30 |
| | Other APD Plan or Update | 53 | 4 | 212 | 2.50 | 530.00 |
| | SF–425 Financial Reporting | 53 | 4 | 212 | 1.50 | 318.00 |
| Reporting Total Burden Estimates. | | 53 | | 760 | | 3,013.58 |

*Recordkeeping Burden Estimates:*

*Affected Public:* State, Local and Tribal Government Agencies.

*Estimated Number of Recordkeepers:* 53.

*Estimated Number of Records per Recordkeepers:* 11.

*Estimated Total Annual Records:* 583.

*Estimated Recordkeeping time per Recordkeepers:* 0.0979588.

*Estimated Annual Recordkeeping Burden Hours:* 57.10998 or 57.11.

**Recordkeeping**

*FNS–366A.* There is a total number of 53 recordkeepers for each activity. Each State agency submits 1 response annually for a total of 53 annual responses. A copy is maintained for 3 years. It takes approximately 0.05 minutes to maintain each record. Total annual recordkeeping burden for FNS–366A is estimated at 2.65 hours annually per recordkeeper.

*FNS–366B.* Each State agency submits 1 response annually for a total of 53 annual responses; each record takes approximately 0.05 minutes to maintain. The annual recordkeeping burden for FNS–366B is estimated annually at 2.65 hours per recordkeeper.

*State Plan of Operation Updates.* Each State agency submits 1 response annually for a total of 53 annual responses; each record takes approximately 0.07 minutes to maintain. The annual recordkeeping burden for updates to State Plans of Operation as attachments to the FNS–366B is 3.71 hours per recordkeeper. There is no recordkeeping burden for the use of the SNAP Waiver Request Form.

*Other Plans and Submissions.* FNS estimated that up to 53 State agencies may submit an average of 4 APD, Plan, or Update submissions and approximately 212 records at an average estimate of 0.11 minutes per record keeper for an estimated total of 23.32 recordkeeping burden for this activity hours. This represents a decrease of 5.83 burden hours due to a reduction in the average number of APD submissions annually from five (5) to four (4).

*Financial Reporting.* Fifty-three State agencies submits one SF–425 quarterly for a total of 212 responses. We estimate that it takes approximately (0.1169 minutes) to maintain these records annually. The annual burden for this recordkeeping activity is estimated at 24.78. A copy is maintained for 3 years.

Recordkeeping burden estimates used for the SF–425 in this collection are accounted for below; however, the burden hours estimates are approved and maintained in the *Uniform Grant Application for Non-Entitlement Discretionary Grants,* OMB Control No.: 0584–0512; Expiration date: 1/31/2016.

| Affected public | (b) Form number or activity | (c) Number recordkeepers | (d) Number records per respondent | (e) Est. total annual records (cxd) | (f) Hours per recordkeeper | (g) Total burden (exf) |
|---|---|---|---|---|---|---|
| State Agencies | RECORDKEEPING | | | | | |
| | FNS–366A | 53 | 1 | 53 | 0.05 | 2.65 |
| | FNS–366B | 53 | 1 | 53 | 0.05 | 2.65 |
| | Plan of Operations | 53 | 1 | 53 | 0.07 | 3.71 |
| | Other APD Plan or Update | 53 | 4 | 212 | 0.11 | 23.32 |
| | SF–425 Financial Reporting | 53 | 4 | 212 | 0.1169 | 24.78 |
| Recordkeeping Total Burden Estimates. | | 53 | | 583 | | 57.11 |

| Summary of burden | Total respondents | | Est. total annual responses | | Est. total annual burden |
|---|---|---|---|---|---|
| Grand Total Reporting and recordkeeping ..... | 53 | ..... | 1,343.3 | ..... | 3,070.69 |

Dated: June 25, 2013.

**Jeffrey J. Tribiano,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2013–15787 Filed 7–1–13; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–67–2013]**

### Foreign-Trade Zone (FTZ) Zone 44—Mt. Olive, New Jersey; Notification of Proposed Production Activity; Givaudan Fragrances Corporation (Fragrance and Flavor Products); Mt. Olive, New Jersey

Givaudan Fragrances Corporation (Givaudan) submitted a notification of proposed production activity for its facility in Mt. Olive, New Jersey. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 11, 2013.

Givaudan currently has authority to produce fragrance and flavor compounds within Site 1 of FTZ 44. The current request would add four foreign status components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Givaudan from customs duty payments on the foreign status components used in export production. On its domestic sales, Givaudan would be able to choose the duty rate during customs entry procedures that applies to fragrance and flavor compounds (duty-free) for the foreign status inputs noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: cocoa beans extract (duty rate—free to 1%); aloe vera gel spray dried powder (duty rate—free to 1%); actiphyte of wild cherry (duty rate—free to 1%); fructose (krystar 300) (duty rate—9.6%); maltrin 100 (maltodextrin) DQ (duty rate—0.35¢/liter); maltodextrin (corn) DE 10 (duty rate—0.35¢/liter); and, sodium carbonate, anhydrous (duty rate—1.2%)

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 12, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via www.trade.gov/ftz.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: June 26, 2013.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2013–15884 Filed 7–1–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–64–2013]**

### Foreign-Trade Zone (FTZ) 277—Western Maricopa County, Arizona; Notification of Proposed Production Activity; Schoeller Arca Systems, Inc.; (Plastic Containers) Goodyear, Arizona

The Greater Maricopa Foreign Trade Zone, Inc. (GMFTZ), grantee of FTZ 277, submitted a notification of proposed production activity to the FTZ Board on behalf of Schoeller Arca Systems, Inc. (Schoeller Arca), located in Goodyear, Arizona. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 13, 2013.

An application is currently pending to expand FTZ 277 and include the Schoeller Arca facility as a usage-driven site (B–89–2012, 77 FR 75144, 12/19/2012). The facility is used for the production of customized plastic containers for industrial/commercial materials handling applications. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products listed in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Schoeller Arca from customs duty payments on the foreign status components used in export production. On its domestic sales, Schoeller Arca would be able to choose the duty rate during customs entry procedures that applies to the plastic containers (duty rate, 3%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include carbon black pigments/preparations and polypropylene pellets (duty rates—free and 6.5%, respectively).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is August 12, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* (202) 482–1367.

Dated: June 24, 2013.

**Elizabeth Whiteman,**

*Acting Executive Secretary*

[FR Doc. 2013–15760 Filed 7–1–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–68–2013]**

### Foreign-Trade Zone (FTZ) 32—Miami, Florida; Notification of Proposed Production Activity; Brightstar Corporation; (Cell Phone Kitting); Miami, Florida

The Greater Miami Chamber of Commerce, grantee of FTZ 32,

submitted a notification of proposed production activity to the FTZ Board on behalf of Brightstar Corporation (Brightstar), located in Miami, Florida. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 26, 2013.

The Brightstar facility is located within Site 6 of FTZ 32. The facility is used for the kitting of cell phones and cell phone accessories. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Brightstar from customs duty payments on the foreign status components used in export production. On its domestic sales, Brightstar would be able to choose the duty rates during customs entry procedures that apply to cell phones (duty rate 0%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: decals; plastic holsters; leather carrying cases; leather pouches; plastic carrying cases; leather straps; wrist straps; power supplies; lithium batteries; nicad batteries; line telephone sets; video phones; bases stations; voice reception, conversion, regeneration and transmission machinery; microphones and stands; external speaker sets; headsets with microphones; hands-free speaker kits; telephone answering machines and associated parts and accessories; video recorders and associated parts and accessories; transceivers and associated parts and accessories; monitors and projectors and associated parts and accessories; connectors and plugs; key pads with connectors; thermionic, cold cathode and photocathode tubes; and, cables (duty rate ranges from 0 to 17.6%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 12, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz*.

**FOR FURTHER INFORMATION CONTACT:** Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: June 26, 2013.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2013–15891 Filed 7–1–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–801]**

### Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011–2012

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On January 30, 2013, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of four new shipper reviews of the antidumping duty order on certain frozen fish fillets ("frozen fish fillets") from the Socialist Republic of Vietnam ("Vietnam").[1] The period of review ("POR") is August 1, 2011, through January 31, 2012. We provided interested parties an opportunity to comment on the *Preliminary Results* and, based upon our analysis of the comments and information received, we made changes to the margin calculation for the final results of these new shipper reviews. The final weighted-average margins are listed below in the "Final Results of Review" section of this notice.

**DATES:** *Effective Date:* July 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jerry Huang, Seth Isenberg or Toni Dach, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4047, (202) 482–0588, and (202) 482–1655, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On January 30, 2013, the Department published the *Preliminary Results* of these new shipper reviews.[2] We invited interested parties to comment on the *Preliminary Results*.[3] As a result of our analysis, we have made changes to the *Preliminary Results*.

#### *Scope of the Order*

The merchandise subject to the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. The products are currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.[4]

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in these reviews are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Room 7046 of the main Department of Commerce building, as well as electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the CRU. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

#### Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results*, we have made certain revisions to the margin calculations for all respondents. For the reasons explained in the Issues and Decision

[1] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Reviews; 2011–2012*, 78 FR 6297 (January 30, 2013) ("*Preliminary Results*").

[2] *See id.*

[3] *See id.* at 6297.

[4] *See* "Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for Antidumping Duty New Shipper Reviews; 2010–2011," dated concurrently with this notice ("Issues and Decision Memorandum") and incorporated herein by reference, for a complete description of the Scope of the Order.

Memorandum at Comment I, we have now selected Indonesia as the primary surrogate country. We have also made other changes to the margin calculations of certain respondents.[5] Finally, the surrogate values memorandum contains the further explanation of our changes to the surrogate values.[6]

**Final Results of Review**

The weighted-average dumping margins for the new shipper reviews are as follows:

| Exporter | Producer | Weighted-average margin (dollars per kilogram) |
|---|---|---|
| Quang Minh Seafood Co., Ltd. | Quang Minh Seafood Co., Ltd | 2.96 |
| Dai Thanh Seafoods Company Limited | Dai Thanh Seafoods Company Limited | 1.20 |
| Fatifish Company Limited | Fatifish Company Limited | 0.59 |
| Hoang Long Seafood Processing Co., Ltd | Hoang Long Seafood Processing Co., Ltd | 0.70 |

**Assessment**

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review. The Department announced a refinement to its assessment practice in non-market economy ("NME") cases.[7] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the NME-wide rate.[8]

For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. We will continue to direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. Specifically, we calculated importer-specific duty assessment rates on a per-unit rate basis by dividing the total dumping margins (calculated as the difference between normal value and export price, or constructed export price) for each importer by the total sales quantity of subject merchandise sold to that importer during the POR. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any 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*, 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.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by respondents listed above, the cash deposit rate will be the rates established in the final results of these new shipper reviews. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for the specific producer-exporter combination listed above; (2) for subject merchandise exported by respondents, but not manufactured by respondents, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, $2.11/Kilogram); and (3) for subject merchandise manufactured by respondents, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. The cash deposit requirement, when imposed, shall remain in effect until further notice.

**Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Order**

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under the APO, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

We are issuing and publishing these new shipper reviews and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 24, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

**Appendix I—Issues & Decision Memorandum**

*GENERAL ISSUES:*

COMMENT I: Selection of the Surrogate Country

A. Economic Comparability

B. Significant Producer of the Comparable Merchandise

[5] *See* accompanying Issues and Decision Memorandum at Comments VIII and XVII and the company-specific analysis memoranda, dated concurrently with this notice.

[6] *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Seth Isenberg, Case Analyst, "Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Final Results," dated concurrently with this notice.

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

[8] *See id.*

C. Data Considerations
COMMENT II: Surrogate Financial Ratios
COMMENT III: Surrogate Value for Labor
COMMENT IV: Surrogate Value for Rice Husk
COMMENT V: Surrogate Value for Inland Freight
COMMENT VI: Surrogate Value for By-products
COMMENT VII: Zeroing
*COMPANY–SPECIFIC ISSUES:*
COMMENT VIII: Valuation of Dathaco and Fatifish's River Water
COMMENT IX: Valuation of Hoang Long's Other By-Products

[FR Doc. 2013–15882 Filed 7–1–13; 8:45 am]
BILLING CODE 3510–DS–P

## 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 July 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 July 2013,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July 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** | |
| FINLAND: Carboxymethylcellulose A–405–803 | 7/1/12–6/30/13 |
| INDIA: Polyethylene Terephthalate (PET) Film A–533–824 | 7/1/12–6/30/13 |
| IRAN: In-Shell Pistachios A–507–502 | 7/1/12–6/30/13 |
| ITALY: Certain Pasta A–475–818 | 7/1/12–6/30/13 |
| JAPAN: Clad Steel Plate A–588–838 | 7/1/12–6/30/13 |
| JAPAN: Polyvinyl Alcohol A–588–861 | 7/1/12–6/30/13 |
| JAPAN: Stainless Steel Sheet and Strip in Coils A–588–845 | 7/1/12–6/30/13 |
| NETHERLANDS: Carboxymethylcellulose A–421–811 | 7/1/12–6/30/13 |
| REPUBLIC OF KOREA: Stainless Steel Sheet and Strip in Coils A–580–834 | 7/1/12–6/30/13 |
| RUSSIA: Solid Urea A–821–801 | 7/1/12–6/30/13 |
| TAIWAN: Polyethylene Terephthalate (PET) Film A–583–837 | 7/1/12–6/30/13 |
| TAIWAN: Stainless Steel Sheet and Strip in Coils A–583–831 | 7/1/12–6/30/13 |
| THAILAND: Carbon Steel Butt-Weld Pipe Fittings A–549–807 | 7/1/12–6/30/13 |
| THE PEOPLE'S REPUBLIC OF CHINA: Carbon Steel Butt-Weld Pipe Fittings A–570–814 | 7/1/12–6/30/13 |
| THE PEOPLE'S REPUBLIC OF CHINA: Certain Potassium Phosphate Salts A–570–962 | 7/1/12–6/30/13 |
| THE PEOPLE'S REPUBLIC OF CHINA: Certain Steel Grating A–570–947 | 7/1/12–6/30/13 |
| THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Carbon Quality Steel Pipe A–570–910 | 7/1/12–6/30/13 |
| THE PEOPLE'S REPUBLIC OF CHINA: Persulfates A–570–847 | 7/1/12–6/30/13 |
| THE PEOPLE'S REPUBLIC OF CHINA: Saccharin A–570–878 | 7/1/12–6/30/13 |
| TURKEY: Certain Pasta A–489–805 | 7/1/12–6/30/13 |
| UKRAINE: Solid Urea A–823–801 | 7/1/12–6/30/13 |
| **Countervailing Duty Proceedings** | |
| INDIA: Polyethylene Terephthalate (PET) Film C–533–825 | 1/1/12–12/31/12 |
| ITALY: Certain Pasta C–475–819 | 1/1/12–12/31/12 |
| THE PEOPLE'S REPUBLIC OF CHINA: Certain Potassium Phosphate Salts C–570–963 | 1/1/12–12/31/12 |
| THE PEOPLE'S REPUBLIC OF CHINA: Certain Steel Grating C–570–948 | 1/1/12–12/31/12 |
| THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Carbon Quality Steel Pipe C–570–911 | 1/1/12–12/31/12 |
| THE PEOPLE'S REPUBLIC OF CHINA: Prestressed Concrete Steel Wire Strand C–570–946 | 1/1/12–12/31/12 |
| TURKEY: Certain Pasta C–489–806 | 1/1/12–12/31/12 |
| **Suspension Agreements** | |
| RUSSIA: Certain Hot-Rolled Carbon Steel Flat Products A–821–809 | 7/1/12–6/30/13 |

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 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 July 2013. If the Department does not receive, by the last day of July 2013, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified

[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.

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: June 14, 2013.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2013–15761 Filed 7–1–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of Illinois, et al.; Notice of Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave, NW., Washington, DC.

Docket Number: 13–007. Applicant: University of Illinois, Urbana, IL 61801. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 78 FR 20614–20615, April 5, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. Reasons: The instrument will be used to seek the measurement and potentially direct-tailoring of materials properties, through the study of the relation of structure to catalytic activity, strain and composition within nanostructures, the effects of impurities on the strength of materials, and other properties of catalytic materials such as Pt, Ru, and Mo, semiconductor nanostructures (Si, Ge, InAs), metal alloys such as Ni/Al, and other materials.

Docket Number: 13–010. Applicant: University of Pittsburgh, Pittsburgh, PA 15261. Instrument: Electron Microscope. Manufacturer: FEI Czech Republic. Intended Use: See notice at 78 FR 20614–20615, April 5, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. Reasons: The instrument will be used to gain a better understanding of the relationship between microstructure and the performance of materials, through the analysis of crystallographic texture, the identification of crystallographic orientation relationships between precipitates and the matrix, precipitate size distributions and the analysis of chemical compositions of electronic materials, advanced ceramics for medical applications, advanced Ni-based Superalloys, stainless steels (for energy applications), advanced high-strength steels, and many other materials.

Docket Number: 13–011. Applicant: National Institutes of Health, Bethesda, MD 20892. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 78 FR 20614–20615, April 5, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order. Reasons: The instrument will be used to help understand how the human body functions normally, such as in learning, memory or hearing, and to understand the pathologies of human diseases. In order to understand these functions, this instrument will be used in experiments such as identifying the molecular components of a structure in an adult and in development, as well as looking for changes in the structure brought on by disease or by normal functional changes in cells of living organisms such as nerve cells or neurons of the brain, as well as inner ear cells.

Dated: June 26, 2013.

**Gregory W. Campbell,**

*Director, Subsidies Enforcement Office, Import Administration.*

[FR Doc. 2013–15883 Filed 7–1–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Critical Infrastructure Protection and Cyber Security Trade Mission to Saudi Arabia and Kuwait Clarification and Amendment

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is publishing this supplement to the Notice of the Renewable Energy and Energy Efficiency Executive Business Development Mission, 78 FR 6807, January 31, 2013, to clarify eligibility and amend the Notice to revise the dates and provide for selection of applicants on a rolling basis.

**SUPPLEMENTARY INFORMATION:**

### Amendments To Revise the Dates and Provide for Selection of Applicants on a Rolling Basis

*Background*

Recruitment for this Mission began at the end of January, and some pending applicants have indicated a need to finalize their schedules and travel arrangements for the July/summer holidays. We would like to extend the recruitment deadline until mid-July to allow them time to apply and to more easily vet all applicants and make selection decisions, CS is amending the Notice to allow for vetting and selection decisions on a rolling basis until July 15, 2013, until the maximum of 20 participants is selected, all interested U.S. IT and cyber-security firms and trade organizations which have not already submitted an application are encouraged to do so as soon as possible.

*Amendments*

1. For the reasons stated above, the Selection Timeline section of the Notice of the Renewable Energy and Energy Efficiency Executive Business Development Mission, 78 FR 6807, January 31, 2013, is amended to read as follows:

**Selection Timeline**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and

trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The U.S. Department of Commerce will begin reviewing applications and making selection decisions on a rolling basis beginning on January 28, 2013 until the maximum of 20 participants is selected. Applications received after July 15, 2013 will be considered only if space and scheduling constraints permit.

**FOR FURTHER INFORMATION CONTACT:** Jessica Dulkadir, Project Officer, Phone: 202–482–2026, Email: *saudimission2013@trade.gov*.

**Elnora Moye,**

*Trade Program Assistant.*

[FR Doc. 2013–15786 Filed 7–1–13; 8:45 am]

**BILLING CODE 3510–FP–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC580**

### Marine Mammals; File No. 17751

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that a permit has been issued to Yoko Mitani, Ph.D., Hokkaido University, 3–1–1 Minato-cho, Hakodate, Hokkaido 041–8611, Japan, to conduct research on gray (*Eschrichtius robustus*) and killer (*Orcinus orca*) whales.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

**FOR FURTHER INFORMATION CONTACT:** Carrie Hubard or Kristy Beard, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** On March 26, 2013, notice was published in the **Federal Register** (78 FR 18322) that a request for a permit to conduct research on the species identified above had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 17751 authorizes Dr. Mitani to study gray and killer whales in Alaskan waters, including the Pacific Ocean, Bering Sea, Chukchi Sea, and Arctic Ocean. The objectives of the research are to examine the distribution and movement patterns of gray and killer whales in the area. Research methods consist of vessel surveys, photo-identification, behavioral observations, passive acoustics, thermal imaging, collection of sloughed skin and prey items, and dart tagging. Annually, up to ten killer whales and ten gray whales may have a LIMPET satellite dart tag attached. An additional 1000 animals of each species may be approached for non-invasive research activities or incidentally harassed annually. The permit is valid through June 30, 2018.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: June 26, 2013.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–15750 Filed 7–1–13; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA–DR Agreement")

**AGENCY:** The Committee for the Implementation of Textile Agreements.

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

**DATES:** *Effective Date:* July 2, 2013.

**SUMMARY:** The Committee for the Implementation of Textile Agreements ("CITA") has determined that certain warp stretch woven nylon/rayon/spandex fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

**FOR FURTHER INFORMATION ONLINE:** *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf* under "Approved Requests," Reference number: 179.2013.05.23.Fabric.GDLSKforPCATextiles.

**SUPPLEMENTARY INFORMATION:**

**Authority:** The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("CAFTA–DR Implementation Act"), Pub. Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

### Background

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)–(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to not be commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement*, 73 FR 53200) ("CITA's procedures").

On May 23, 2013, the Chairman of CITA received a request for a Commercial Availability determination ("Request") from Grunfeld, Desidario, Lebowitz, Silverman & Klestadt, LLP, on behalf of PCA Textiles, for certain warp stretch woven nylon/rayon/spandex fabric, as specified below. On May 28, 2013, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply ("Response") must be submitted by June 7, 2013, and any Rebuttal Comments to a Response must be submitted by June 13, 2013, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response to object to the Request with an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

**Specifications: Certain Warp Stretch Woven Nylon/Rayon/Spandex Fabric**

HTS: 5516.22.0040 or 5516.23.0040.

Fiber Content: Rayon (67–80%), Nylon (15–35%), Spandex (2–6%).

Yarn Configuration:

Warp: Nylon filament combined with spandex filament.

Filling: Rayon staple.

Yarn Denier: Nylon and Spandex of various deniers.

Width: 56–60" (142–153 cm).

Weight: 220–315 grams per square meter.

Thread Count (Density): 76–110 ends per inch (Warp) X 70–90 picks per inch (Filling); (30–44 ends per cm (Warp) X 27–36 picks per cm (Filling)).

Weave Type: Twill Weave.

Finishing Processes: Airjet Dyed.

**Kim Glas,**

*Chairman Committee for the Implementation of Textile Agreements.*

[FR Doc. 2013–15716 Filed 7–1–13; 8:45 am]

BILLING CODE 3510–DS–P

## BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No CFPB–2013–0019]**

### Agency Information Collection Activities: Submission for OMB Review; 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, "Program Evaluation of Financial Empowerment Training Programs."

**DATES:** Written comments are encouraged and must be received on or before August 1, 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.reginfo.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 email box.*

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Program Evaluation of Financial Empowerment Training Programs.

*OMB Control Number:* 3170–XXXX.

*Type of Review:* New collection (Request for a new OMB control number).

*Affected Public:* 55 pilot trainers and 880 case managers (financial empowerment professionals who participate in Bureau-sponsored training workshops).

*Estimated Number of Respondents:* 935.

*Estimated Total Annual Burden Hours:* 703.

*Abstract:* The Bureau's Office of Financial Empowerment (Empowerment) is responsible for developing strategies to improve the financial capability of low income and economically vulnerable consumers. The proposed collections will focus on evaluating (1) training practices and programs that are designed to enhance the ability of caseworkers to inform and educate low income consumers about managing their finances and strategies for making choices among available financial products and services available to them; (2) the evaluation tool that the trainers will use to determine the effectiveness of the training; and (3) the scope of workshop participants' use of the training. The Bureau expects to collect qualitative data through paper-based surveys and focus groups. The information collected through qualitative evaluation methods will increase the Bureau's understanding of what elements of training programs and practices can improve caseworker interaction with and assistance to their clients in ways that can improve outcomes for consumers, particularly those who have low incomes.

*Request For Comments:* The Bureau issued a 60-day **Federal Register** notice on January 29, 2013, (78 FR 6074). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information shall 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: June 26, 2013.

**Matthew Burton,**

*Acting Chief Information Officer, Bureau of Consumer Financial Protection.*

[FR Doc. 2013–15853 Filed 7–1–13; 8:45 am]

**BILLING CODE 4810–AM–P**

## DELAWARE RIVER BASIN COMMISSION

### Notice of Public Hearing and Business Meeting

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, July 9, 2013. A business meeting will be held the following day on Wednesday, July 10, 2013. Both the hearing and business meeting are open to the public and will be held at the Carvel State Building, 820 North French Street, 2nd Floor Auditorium, Wilmington, Delaware.

*Public Hearing.* The public hearing on July 9, 2013 will begin at 1:30 p.m. Hearing items will include draft dockets for projects subject to the Commission's review, and resolutions to: (a) Reauthorize the Toxics Advisory Committee; (b) authorize the Executive Director to enter into a contract for water quality sampling and analysis to characterize the nature and extent of chronic toxicity in the Delaware River; and (c) authorize the Executive Director to enter into an agreement with the University of Maryland for the analysis of estuary water samples for productivity and nutrient parameters in connection with the Commission's nutrient management strategy. The list of projects scheduled for hearing, including project descriptions, is currently available in a long form of this notice posted on the Commission's Web site, *www.drbc.net.* Draft dockets and resolutions for hearing items will be posted on the Web site approximately ten days prior to the hearing date. Written comments on draft dockets and resolutions scheduled for hearing on July 9 will be accepted through the close of the hearing that day. Time permitting, after the hearing on all scheduled matters has been completed, there will be an opportunity for public dialogue. Because hearings on particular projects may be postponed to allow additional time for the commission's review, interested parties are advised to check the Web site periodically prior to the hearing date. Postponements, if any, will be duly noted there.

*Public Meeting.* The business meeting on July 10, 2013 will begin at 12:15 p.m. and will include the following items: Adoption of the Minutes of the Commission's May 8, 2013 business meeting, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, consideration of items for which a hearing has been completed, and a public dialogue session. The Commissioners also may consider action on matters not subject to a public hearing.

There will be no opportunity for additional public comments at the July 10 business meeting on items for which a hearing was completed on July 9 or a previous date. Commission consideration on July 10 of items for which the public hearing is closed may result in either approval of the docket or resolution as proposed, approval with changes, denial, or deferral. When the commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the commission on a future date.

*Advance Sign-Up for Oral Comment.* Individuals who wish to comment for the record at the public hearing on July 9 or to address the Commissioners informally during the public dialogue portion of the meeting on July 10 are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.state.nj.us* or by phoning Ms. Schmitt at 609–883–9500 ext. 224.

*Addresses for Written Comment.* Written comment on items scheduled for hearing may be delivered by hand at the public hearing or submitted in advance of the hearing date to: Commission Secretary, P.O. Box 7360, 25 State Police Drive, West Trenton, NJ 08628; by fax to Commission Secretary, DRBC at 609–883–9522 or by email to *paula.schmitt@drbc.state.nj.us.* Written comment on dockets should also be furnished directly to the Project Review Section at the above address or fax number or by email to *william.muszynski@drbc.state.nj.us.*

*Accommodations for Special Needs.* Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

*Updates.* Items scheduled for hearing are occasionally postponed to allow more time for the Commission to consider them. Other meeting items also are subject to change. Please check the Commission's Web site, *www.drbc.net,* closer to the meeting date for changes that may be made after the deadline for filing this notice.

*Additional Information, Contacts.* The list of projects scheduled for hearing, with descriptions, is currently available in a long form of this notice posted on the Commission's Web site, *www.drbc.net.* Draft dockets and resolutions for hearing items will be posted as hyperlinks from the notice at the same location approximately ten days prior to the hearing date. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Ms. Carol Adamovic, 609–883–9500, ext. 249. For other questions concerning hearing items, please contact Project Review Section Assistant Ms. Victoria Lawson at 609–883–9500, ext. 216.

Dated: June 26, 2013.

**Pamela M. Bush,**

*Commission Secretary and Assistant General Counsel.*

[FR Doc. 2013–15821 Filed 7–1–13; 8:45 am]

**BILLING CODE 6360–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2013–ICCD–0058]**

### Agency Information Collection Activities; Comment Request; Carl D. Perkins Career and Technical Education Improvement Act of 2006 (P.L. 109–270) State Plan Guide

**AGENCY:** Office of Vocational and Adult Education (OVAE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before August 1, 2013.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0058 or via postal mail, commercial delivery, or hand delivery. *Please note that*

*comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Carl D. Perkins Career and Technical Education Improvement Act of 2006 (P.L. 109–270) State Plan Guide

*OMB Control Number:* 1830–0029

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local, or Tribal Governments

*Total Estimated Number of Annual Responses:* 56

*Total Estimated Number of Annual Burden Hours:* 2,240

*Abstract:* The Carl D. Perkins Career and Technical Education Improvement Act of 2006 (P.L. 109–270) State Plan Guide requires eligible State agencies to submit a 6-year plan, with annual revisions as the eligible agency deems necessary in order to receive Federal funds. The Office of Vocational and Adult Education/Division of Academic and Technical Education program staff review the submitted state plans for compliance and quality.

Dated: June 26, 2013.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2013–15785 Filed 7–1–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2013–ICCD–0059]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation and Accountability Report for Title II, Part D (Ed Tech) of ESEA

**AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before August 1, 2013.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0059 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Evaluation and Accountability Report for Title II, Part D (Ed Tech) of ESEA.

*OMB Control Number:* 1810–0702.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local, or Tribal Governments.

*Total Estimated Number of Annual Responses:* 28.

*Total Estimated Number of Annual Burden Hours:* 840.

*Abstract:*

Sections 2402(a)(7) and 2413(b)(4) of ESEA require States and local educational agencies (LEAs) that receive Title II, Part D grant funds to conduct rigorous evaluation of the effectiveness of Title II, Part D formula and competitive grant-funded projects, activities and strategies in integrating technology into curricula and instruction and improving student achievement. The purpose of this reporting requirement is to identify from the results of those evaluations innovative projects, activities and strategies that effectively infuse technology with curriculum and instruction, show evidence of positive impacts for student learning, and can be widely replicated by other State educational agencies and LEAs.

Dated: June 26, 2013.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2013–15784 Filed 7–1–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Reopening; Applications for New Awards; Training and Information for Parents of Children With Disabilities—Parent Training and Information Centers

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.328M]

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

**SUMMARY:** This notice reopens the FY 2013 Parent Training and Information Centers competition, authorized by the Individuals with Disabilities Education Act (IDEA), as amended. We published a notice inviting applications (NIA) for this competition on April 25, 2013, in the **Federal Register**. The notice provided a deadline date of June 10, 2013, as well as other information, for the transmittal of applications.

**SUPPLEMENTARY INFORMATION:** We are reopening the Parent Training and Information Centers competition that was announced in the NIA published on April 25, 2013, in the **Federal Register** (78 FR 24395–24401) because there have been significant problems with the interface between the System for Award Management (SAM), the Government's primary registrant database, and the Grants.gov Apply site (Grants.gov) that may have prevented applicants from meeting the June 10, 2013, deadline. We want to provide any applicant in this competition that was affected by these problems with additional time to submit an application.

Any applicant that has already submitted an application under the FY 2013 Parent Training and Information Centers competition does not need to resubmit its application.

**DATES:**

Deadline for Transmittal of Applications: July 9, 2013. **Note to Applicants:** The notice published on April 25, 2013, provides other information that applies to this competition. Specifically, the priority in that notice, entitled "Parent Training and Information Centers," identifies the requirements for applications submitted in response to this notice, including the eligible entities, the States from which we are accepting applications, and the instructions for submitting applications.

Deadline for Intergovernmental Review: September 9, 2013.

**FOR FURTHER INFORMATION CONTACT:** Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4057, Potomac Center Plaza (PCP), Washington, DC 20202–2600. Telephone: (202) 245–6595.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 27, 2013.

**Michael K. Yudin,**

*Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2013–15878 Filed 7–1–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[ Docket No. CP13–502–000]**

### Iroquois Gas Transmission System, LP; Notice of Application

Take notice that on June 13, 2013, Iroquois Gas Transmission System, LP, (Iroquois), filed in Docket No. CP13–502–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to construct, install, own, operate, and maintain certain new compression facilities to be located in Wright, New York, and to modify certain existing facilities at that same location, and to lease the incremental capacity associated with these new and modified facilities to Constitution Pipeline Company, LLC (Constitution), a proposed new interstate gas pipeline company for which Commission authorization is being sought concurrently with this application (Docket No. CP13–499–000). Iroquois' proposed project will allow Iroquois to establish a new receipt interconnection with Constitution and create an incremental 650,000 dekatherms per day (Dth/d) of primary firm transmission capacity from that new point of interconnection with Constitution to interconnections with Iroquois' mainline system as well as Tennessee Gas Pipeline Company, LLC. The new capacity will be leased to Constitution under a long-term capacity lease, to be operated as part of Constitution's FERC-jurisdictional natural gas pipeline system and subject to the service terms of Constitution's FERC gas tariff. Iroquois also requests the Commission's approval of its proposed Capacity Lease Agreement with Constitution, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Helen M. Gallagher, Director of Legal Services and Secretary, Iroquois Pipeline Operating Company, One Corporate Drive, Suite 600, Shelton, Connecticut, 06484, or by calling (203) 925–7201 (telephone) *Helen_gallagher@iroquois.com*.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* July 17, 2013.

Dated: June 26, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–15860 Filed 7–1–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[ Docket No. CP13–505–000]**

### Trunkline Gas Company, LLC; Notice of Application

Take notice that on June 19, 2013, Trunkline Gas Company, LLC. (Trunkline) filed with the Federal Energy Regulatory Commission an application under section 7(c) of the Natural Gas Act (NGA) requesting authorization to modify its existing point of receipt, referred to as the Creole Trail Interconnect located in Beauregard Parish, Louisiana, by the addition of electronic gas measurement equipment, two 24-inch tees, overpressure protection equipment, check valves, insulating kits and associated piping. The proposed modifications will allow for the delivery of gas to Cheniere Creole Trail Pipeline, LP (Cheniere), through the Creole Trail Interconnect to provide backhaul transportation capacity on Trunkline's system as requested by Sabine Pass Liquefaction, LLC. in order to provide feed gas to its export facilities approved by the Commission in CP11–72–000.[1] The proposed modifications will not affect Trunkline's peak day or annual deliveries. Trunkline also requests a waiver of sections 154.1(d) and 154.207 of the Commission's regulations regarding the non-conforming nature of the Firm Transportation Service Agreement that will be executed between Trunkline and Sabine Pass Liquefaction for the requested backhaul transportation service.

Trunkline's application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the application should be directed to Michael T. Langston, Vice President, Chief Regulatory Officer, Trunkline Gas Company, LLC, 1300 Main Street, Houston, TX 77002, by phone at (713) 989–7610 or by email at *michael.langston@energytransfer.com* or to James F. Moriarty, Esq., Locke Lord, LLP, 701 8th Street NW., Suite 700, Washington, DC 20001, by phone at (202) 220–6915 or by email at *jmoriarty@lockelord.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of

[1] Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P., 139 FERC ¶ 61,039 (2012).

the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

*Comment Date:* July 17, 2013.

Dated: June 26, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–15862 Filed 7–1–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[ Docket No. CP13–498–000]**

### Eastern Shore Natural Gas Company; Notice of Application

Take notice that on June 13, 2013, Eastern Shore Natural Gas Company (Eastern Shore) filed with the Federal Energy Regulatory Commission an application under section 7(c) of the Natural Gas Act to construct, and operate its White Oak Lateral Project (Project) located in Kent County, Delaware. The project consists of installing approximately 5.5 miles of 16-inch diameter pipeline, metering facilities and miscellaneous appurtenances extending from Eastern Shore's mainline system near its North Dover City Gate Station and extends to the Garrison Oak Technical Park, all located in Dover, Delaware. This project is designed to provide 55,200 dekatherms per day of delivery lateral firm transportation service for Calpine Energy Services, L.P. The total cost of the project is estimated to be approximately $11,200,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the application should be directed to William Rice, King & Spalding LLP, 1700 Pennsylvania Avenue NW., Suite 200, Washington, DC 20006, by phone 202–626–9602, by fax 202–626–3737, or by email *wrice@kslaw.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project

provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

*Comment Date:* July 17, 2013.

Dated: June 26, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–15858 Filed 7–1–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP13–503–000]**

### Atmos Pipeline and Storage, LLC; Notice of Application

Take notice that on June 14, 2013, Atmos Pipeline and Storage, LLC. (Atmos), filed with the Federal Energy Regulatory Commission an application under section 7(b) of the Natural Gas Act (NGA) to abandon: (1) Its certificate of public convenience and necessity authorizing the construction and operation of the Fort Necessity Gas Storage Project (Project) and associated facilities originally issued in CP09–22–000 [1]; (2) the blanket certificates issued to it under Parts 157 and 284, of the Commission's regulations; and (3) the exemption orders authorizing temporary acts and operations issued to it in CP08–34–000 and CP08–34–001 pursuant to 7(c)(l)(B) of the NGA (exemption orders) [2].

Atmos has determined that its Project is no longer economically viable and does not plan to construct any of the facilities previously approved. The Project would have consisted of three 8.25 Bcf natural gas storage caverns, 7.4 miles of interconnecting pipeline and other appurtenant facilities located in Fort Necessity, Franklin Parish, Louisiana. With the exception of one test well approved in the exemption orders, no facilities associated with this project have been constructed. Atmos's application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the application should be directed to Kevin C. Frank, Esq., Atmos Energy Corporation, P.O. Box 650205, Dallas, TX, 75265–0205, by phone at (972) 855–3198 or by email at *kevin.frank@atmosenergy.com*; or to James H. Jeffries IV, Moore & Van Allen, PLLC, Bank of America Corporate Center, 100 North Tryon Street, Suite 4700, Charlotte, NC, 28202–4003, by phone at (704) 331–1079 or by email at *jimjeffries@mvalaw.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the

[1] Atmos Pipeline and Storage, LLC, 127 FERC ¶ 61,260 (2009).

[2] Atmos Pipeline and Storage, LLC, 122 FERC ¶ 61, 100 (2008) and 125 FERC ¶ 61, 148 (2008)

Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

*Comment Date:* July 17, 2013

Dated: June 26, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–15861 Filed 7–1–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP13–499–000; PF12–9–000]**

### Constitution Pipeline Company, LLC; Notice of Application

Take notice that on June 13, 2013, Constitution Pipeline Company, LLC (Constitution), having its principal place of business at 2800 Post Oak Boulevard, Houston, Texas 77056–6106, filed an application in Docket No. CP13–499–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to construct and operate approximately 122 miles of 30-inch diameter pipeline and related facilities. The proposed project extends from Susquehanna County, Pennsylvania, through Broome, Chenango, Delaware, and Schoharie Counties, New York.[1] Constitution further requests that the Commission grant Constitution a blanket certificate authorizing Constitution to construct, operate, and abandon certain facilities under Part 157, Subpart F, of the Commission's regulations and a blanket certificate authorizing Constitution to provide transportation services on an open access and self-implementing basis under Part 284, Subpart G, of the Commission's regulations, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to William H. Hammons, Staff Regulatory Analyst, Rates and Regulatory, Constitution Pipeline Company, LLC, P.O. Box 1396, Houston, Texas 77251, or by calling (713) 215–2130 (telephone) or (713)·215–3483 (fax) *william.h.hammons@williams.com*.

On April 16, 2012, the Commission staff granted Constitution's request to use the pre-filing process and assigned Docket No. PF12–9–000 to staff activities involving the project. Now, as of the filing of this application on June 13, 2013, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP13–499–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's regulations, 18 CFR 157.9, within 90 days of this Notice, the Commission's staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission's staff issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to reach a final decision on a request for federal authorization within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* July 17, 2013.

[1] Iroquois Gas Transmission System, LP, has filed, in Docket No. CP13–502–000, a concurrent application requesting authorization to construct, install, own, operate, and maintain certain new compression facilities to be located in Wright, New York, and to modify certain existing facilities at that same location, and to lease the incremental capacity associated with these new and modified facilities to Constitution as part of this proposed project.

Dated: June 26, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–15859 Filed 7–1–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–4380–003; ER12–2677–001; ER10–2431–004; ER11–2363–003; ER10–2434–004; ER10–2467–004; ER11–3731–005; ER10–2488–008; ER12–1931–004; ER10–2504–005; ER12–610–005; ER13–338–003; ER12–2037–003; ER12–2314–002; ER10–2436–004; ER11–4381–003.

*Applicants:* Bellevue Solar, LLC, Catalina Solar, LLC, Chanarambie Power Partners, LLC, Chestnut Flats Wind, LLC, Fenton Power Partners I, LLC, Hoosier Wind Project, LLC, LWP Lessee, LLC, Oasis Power Partners, LLC, Pacific Wind Lessee, LLC, Shiloh Wind Project 2, LLC, Shiloh III Lessee, LLC, Shiloh IV Lessee, LLC, Spearville 3, LLC, Spinning Spur Wind LLC, Wapsipinicon Wind Project, LLC, Yamhill Solar, LLC.

*Description:* Notice of Change in Status of the EDF–RE MBR Companies.

*Filed Date:* 6/21/13.

*Accession Number:* 20130621–5149.

*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER12–1653–004.

*Applicants:* New York Independent System Operator, Inc.

*Description:* NYISO compliance errata to order 755.frequency regulation 1/22/13 filing to be effective 6/26/2013.

*Filed Date:* 6/21/13.

*Accession Number:* 20130621–5081.

*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1180–001.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp Energy Carbon Decom Construction Agrmnt Compliance Filing to be effective 3/29/2013.

*Filed Date:* 6/21/13.

*Accession Number:* 20130621–5102.

*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1402–001.

*Applicants:* Arizona Public Service Company.

*Description:* Modify Effective Date of Requested Rate Treatment and Cancellation of RS 38 to be effective 12/31/9998.

*Filed Date:* 6/21/13.

*Accession Number:* 20130621–5101.

*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1571–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* 2551 Substitute Original Kansas Municipal Energy Agency NITSA NOA to be effective 5/1/2013.

*Filed Date:* 6/21/13.

*Accession Number:* 20130621–5130.

*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1747–000.

*Applicants:* eBay Inc.

*Description:* eBay Inc. MBR Application and Initial MBR Tariff to be effective 8/26/2013.

*Filed Date:* 6/21/13.

*Accession Number:* 20130621–5118.

*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1748–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Order No. 755 Compliance to be effective 3/1/2015.

*Filed Date:* 6/21/13.

*Accession Number:* 20130621–5131.

*Comments Due:* 5 p.m. ET 7/12/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 24, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–15798 Filed 7–1–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP13–212–000.

*Applicants:* Boardwalk Storage Company, LLC.

*Description:* Operational Purchases and Sales Report 2012.

*Filed Date:* 6/13/13.

*Accession Number:* 20130613–5033.

*Comments Due:* 5 p.m. ET 6/25/13.

*Docket Numbers:* RP13–977–000.

*Applicants:* Bobcat Gas Storage.

*Description:* Non-conforming Agreement and Updates to be effective 7/15/2013.

*Filed Date:* 6/14/13.

*Accession Number:* 20130614–5088.

*Comments Due:* 5 p.m. ET 6/26/13.

*Docket Numbers:* RP13–978–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* 06/14/13 Negotiated Rates—Cargill Incorporated (RTS) 3085–13 & 14 to be effective 6/15/2013.

*Filed Date:* 6/14/13.

*Accession Number:* 20130614–5109.

*Comments Due:* 5 p.m. ET 6/26/13.

*Docket Numbers:* RP13–979–000.

*Applicants:* Rockies Express Pipeline LLC.

*Description:* Neg Rate NC 2013–06–14 Encana to be effective 6/15/2013.

*Filed Date:* 6/14/13.

*Accession Number:* 20130614–5110.

*Comments Due:* 5 p.m. ET 6/26/13.

*Docket Numbers:* RP13–980–000.

*Applicants:* Northern Natural Gas Company.

*Description:* 20130614 Macquarie Energy Non-Conforming to be effective 7/1/2013.

*Filed Date:* 6/14/13.

*Accession Number:* 20130614–5149.

*Comments Due:* 5 p.m. ET 6/26/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 17, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–15801 Filed 7–1–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP13–991–000.
*Applicants:* El Paso Natural Gas Company, L.L.C.
*Description:* Tariff Merger and Housekeeping Filing to be effective 7/22/2013.
*Filed Date:* 6/20/13.
*Accession Number:* 20130620–5131.
*Comments Due:* 5 p.m. ET 7/2/13.

*Docket Numbers:* RP13–992–000.
*Applicants:* El Paso Natural Gas Company, L.L.C.
*Description:* SoCalGas Non-Conforming Agreements Filing to be effective 11/1/2013.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5056.
*Comments Due:* 5 p.m. ET 7/3/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP01–382–023.
*Applicants:* Northern Natural Gas Company.
*Description:* Northern Natural Gas Company submits its annual report setting forth the Carlton Resolution buyout, surcharge and penalty dollars reimbursed to the Carlton Sourcers on their May reservation invoices for the 2012–2013 heating season.
*Filed Date:* 6/3/13.
*Accession Number:* 20130603–5034.
*Comments Due:* 5 p.m. ET 7/3/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated June 24, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–15803 Filed 7–1–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP13–993–000.
*Applicants:* Granite State Gas Transmission, Inc.
*Description:* Section 4 Rate Change Filing to be effective 8/1/2013.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5063.
*Comments Due:* 5 p.m. ET 7/8/13.

*Docket Numbers:* RP13–994–000.
*Applicants:* North Baja Pipeline, LLC.
*Description:* Gas Quality_Measurement Provisions to be effective 7/25/2013.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5084.
*Comments Due:* 5 p.m. ET 7/8/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated June 25, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–15804 Filed 7–1–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP13–981–000.
*Applicants:* East Tennessee Natural Gas, LLC.
*Description:* Update GTC Section 45 to be effective 7/19/2013.
*Filed Date:* 6/18/13.
*Accession Number:* 20130618–5041.
*Comments Due:* 5 p.m. ET 7/1/13.

*Docket Numbers:* RP13–982–000.
*Applicants:* Ozark Gas Transmission, L.L.C.
*Description:* Cleanup Items and Miscellaneous Modifications to be effective 8/1/2013.
*Filed Date:* 6/18/13.
*Accession Number:* 20130618–5056.
*Comments Due:* 5 p.m. ET 7/1/13.

*Docket Numbers:* RP13–983–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Tenaska Gas Negotiated Rate to be effective 6/18/2013.
*Filed Date:* 6/18/13.
*Accession Number:* 20130618–5068.
*Comments Due:* 5 p.m. ET 7/1/13.

*Docket Numbers:* RP13–984–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* NJR Energy Negotiated Rate to be effective 6/18/2013.
*Filed Date:* 6/18/13.
*Accession Number:* 20130618–5077.
*Comments Due:* 5 p.m. ET 7/1/13.

*Docket Numbers:* RP13–985–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Macquarie Energy Negotiated Rate to be effective 6/18/2013.
*Filed Date:* 6/18/13.
*Accession Number:* 20130618–5105.
*Comments Due:* 5 p.m. ET 7/1/13.

*Docket Numbers:* RP13–986–000.
*Applicants:* Bobcat Gas Storage.
*Description:* note to Hub Services Exhibit B to be effective 8/1/2013.
*Filed Date:* 6/18/13.
*Accession Number:* 20130618–5117.
*Comments Due:* 5 p.m. ET 7/1/13.

*Docket Numbers:* RP13–987–000.
*Applicants:* Egan Hub Storage, LLC.
*Description:* note to Hub Services Exhibit B to be effective 8/1/2013.
*Filed Date:* 6/18/13.
*Accession Number:* 20130618–5118.
*Comments Due:* 5 p.m. ET 7/1/13.

*Docket Numbers:* RP13–988–000.
*Applicants:* Steckman Ridge, LP.
*Description:* note to Hub Services Exhibit B to be effective 8/1/2013.
*Filed Date:* 6/18/13.
*Accession Number:* 20130618–5119.
*Comments Due:* 5 p.m. ET 7/1/13.
*Docket Numbers:* RP13–989–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Renaissance Trading Negotiated Rate to be effective 6/18/2013.
*Filed Date:* 6/18/13.
*Accession Number:* 20130618–5125.
*Comments Due:* 5 p.m. ET 7/1/13.
*Docket Numbers:* RP13–990–000.
*Applicants:* ProLiance Energy, LLC.
*Description:* Petition of ProLiance Energy, LLC for Temporary Waivers of Capacity Release Regulation and Related Pipeline Tariff Provisions.
*Filed Date:* 6/18/13.
*Accession Number:* 20130618–5158.
*Comments Due:* 5 p.m. ET 7/1/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP13–874–001.
*Applicants:* Portland Natural Gas Transmission System.
*Description:* Compliance to RP13–874–000 to be effective 6/1/2013.
*Filed Date:* 6/17/13.
*Accession Number:* 20130617–5119.
*Comments Due:* 5 p.m. ET 7/1/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 19, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–15802 Filed 7–1–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers: ER10–2394–001; ER10–2395–001; ER10–2422–001.*
*Applicants:* BIV Generation Company, L.L.C., Colorado Power Partners, Rocky Mountain Power, LLC.
*Description:* Notice of Non-Material Change in Status of BIV Generation Company, L.L.C., et al.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5071.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers: ER10–2794–013; ER10–2849–012; ER11–2028–013 ER12–1825–011; ER11–3642–011.*
*Applicants:* EDF Trading North America, LLC, EDF Industrial Power Services (NY), LLC, EDF Industrial Power Services (IL), LLC, EDF Industrial Power Services (CA), LLC, Tanner Street Generation, LLC.
*Description: Notice of Non-Material Change in Status of EDF Trading North America, LLC, et al.*
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5112.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers: ER10–2848–001; ER11–1939–003; ER11–2754–003; ER12–999–001; ER12–1002–001; ER12–1005–001; ER12–1006–001; ER12–1007–002.*
*Applicants:* AP Holdings, LLC, AP Gas & Electric (PA), LLC, AP Gas & Electric (TX), LLC, AP Gas & Electric (MD), LLC,AP Gas & Electric (NJ), LLC,AP Gas & Electric (IL), LLC, AP Gas & Electric (OH), LLC, AP Gas & Electric (NY), LLC.
*Description: Notification of Non-Material Change in Status of AP Holdings Subsidiaries.*
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5045.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers: ER10–2985–012; ER10–3049–013; ER10–3051–013.*
*Applicants:* Champion Energy Marketing LLC, Champion Energy Services, LLC, Champion Energy, LLC.
*Description: Notice of change in status of Champion Energy Marketing LLC, et al.*
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5110.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers: ER10–3226–001; ER10–3227–001.*
*Applicants:* Great Bay Hydro Corporation, Great Bay Power Marketing, Inc.
*Description:* Notice of Non-Material Change in Status of Great Bay Hydro Corporation, et. al.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5061.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers:* ER11–3962–001.
*Applicants:* City of Banning, California.
*Description:* Compliance Report to be effective N/A.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5099.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers:* ER13–1749–000.
*Applicants:* AP Holdings, LLC.
*Description:* AP Holdings—Seller Category Filing to be effective 8/23/2013.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5018.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers:* ER13–1750–000.
*Applicants:* AP Gas & Electric (PA), LLC.
*Description:* AP–PA—Seller Category Filing to be effective 8/23/2013.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5020.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers:* ER13–1751–000.
*Applicants:* AP Gas & Electric (TX), LLC.
*Description:* AP–TX—Seller Category Filing to be effective 8/23/2013.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5021.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers:* ER13–1752–000.
*Applicants;* AP Gas & Electric (MD), LLC.
*Description:* AP–MD—Seller Category Filing to be effective 8/23/2013.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5022.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers:* ER13–1753–000.
*Applicants:* AP Gas & Electric (NJ), LLC.
*Description:* AP–NJ—Seller Category Filing to be effective 8/23/2013.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5024.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers:* ER13–1754–000.
*Applicants:* AP Gas & Electric (IL), LLC.
*Description:* AP–IL—Seller Category Filing to be effective 8/23/2013.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5025.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers:* ER13–1755–000.
*Applicants:* AP Gas & Electric (OH), LLC.
*Description:* AP–OH—Seller Category Filing to be effective 8/23/2013.

*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5026.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers:* ER13–1756–000.
*Applicants:* AP Gas & Electric (NY), LLC.
*Description:* AP–NY—Seller Category Filing to be effective 8/23/2013.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5027.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers:* ER13–1757–000.
*Applicants:* Duke Energy Carolinas, LLC.
*Description:* WCU PPA—RS 338 (2013) to be effective 7/2/2012.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5059.
*Comments Due:* 5 p.m. ET 7/15/13.
*Docket Numbers:* ER13–1758–000.
*Applicants:* San Joaquin Cogen, LLC.
*Description:* Triennial & Tariff Revision to be effective 6/25/2013.
*Filed Date:* 6/24/13.
*Accession Number:* 20130624–5067.
*Comments Due:* 5 p.m. ET 7/15/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 24, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–15799 Filed 7–1–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP13–975–000.
*Applicants:* Millennium Pipeline Company, LLC.
*Description:* System Map Update to be effective 7/12/2013.
*Filed Date:* 6/11/13.
*Accession Number:* 20130611–5101.
*Comments Due:* 5 p.m. ET 6/24/13.
*Docket Numbers:* RP13–976–000.
*Applicants:* Gulf Crossing Pipeline Company LLC.
*Description:* Amendment to Neg Rate Agmt (Devon 10–9, 10) to be effective 6/13/2013.
*Filed Date:* 6/12/13.
*Accession Number:* 20130612–5059.
*Comments Due:* 5 p.m. ET 6/24/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP12–1006–000.
*Applicants:* Colorado Interstate Gas Company LLC.
*Description:* Compliance Report of Colorado Interstate Gas Company, L.L.C.
*Filed Date:* 6/11/13.
*Accession Number:* 20130611–5151.
*Comments Due:* 5 p.m. ET 6/24/13.
*Docket Numbers:* RP12–1100–000.
*Applicants:* Wyoming Interstate Company, L.L.C.
*Description:* Compliance Report of Wyoming Interstate Company, L.L.C.
*Filed Date:* 6/11/13.
*Accession Number:* 20130611–5152.
*Comments Due:* 5 p.m. ET 6/24/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 13, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–15800 Filed 7–1–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[FFP Missouri 2, LLC; Project No. 13702–001—Mississippi]**

### Grenada Lake Hydroelectric Project; Notice Of Proposed Restricted Service List for a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure [1] provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Mississippi Department of Archives and History (Mississippi SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR Part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 70f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places that could be affected by issuance of a license for the proposed Grenada Lake Hydroelectric Project No. 13702.

The Programmatic Agreement, when executed by the Commission and the Mississippi SHPO, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any Order issuing a license.

FFP Missouri 2, LLC, as applicant for the proposed Grenada Lake Hydroelectric Project, the U.S. Army Corps of Engineers, the Choctaw Nation of Oklahoma, the Jena Band of Choctaw Indians, the Chickasaw Nation, the Mississippi Band of Choctaw Indians,

[1] 18 CFR 385.2010.

the Quapaw Tribe of Oklahoma, the Tunica-Biloxi Tribe of Louisiana, and the Muscogee (Creek) Nation have expressed an interest in this proceeding and are invited to participate in consultations to develop the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 13702 as follows:

John Eddins, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.
Greg Williamson, Mississippi Department of Archives and History, 100 South State Street, Jackson, MS 39201.
Andrew Tomlinson, U.S. Army Corps of Engineers, Vicksburg District, 4155 Clay Street, Vicksburg, MS 39183.
Thomas M. Feldman or Representative, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114.
Dr. Ian Thompson, THPO, Choctaw Nation of Oklahoma, P.O. Box 1210, Durant, OK 74702.
Johnnie Jacobs, Choctaw Nation of Oklahoma, P.O. Box 1210, Durant, OK 74702.
Dana Masters, THPO, Jena Band of Choctaw Indians, P.O. Box 14, Jena, LA 71342.
LaDonna Brown, Chickasaw Nation, P.O. Box 1548, Ada, OK 74821.
Kenneth H. Carlton, THPO, Mississippi Band of Choctaw Indians, P.O. Box 6257, Choctaw, MS 39350.
Jean Ann Lambert, THPOM, Quapaw Tribe of Oklahoma, 5681 South 630 Road, Quapaw, OK 74363.
Earl Barbry, Jr., Tunica-Biloxi Tribe of Louisiana, 151 Melacon Drive, Marksville, LA 71351.
Emman Spain, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447.
Sarah Koeppel, U.S. Army Corps of Engineers, Vicksburg District, 4155 Clay Street, Vicksburg, MS 39183.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also, please identify any concerns about historic properties, including traditional cultural properties. If historic properties might be identified within the motion, please use a separate page and label it Non-Public information.

Any such motion may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*). For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please put the project number (P–13702–001) on the first page of the filing.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions within the 15-day period.

Dated: June 26, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–15856 Filed 7–1–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13704–001—Mississippi Arkabutla Lake Hydroelectric Project]**

### FFP Missouri 2, LLC; Notice of Proposed Restricted Service List for a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure [1] provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Mississippi Department of Archives and History (Mississippi SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR Part 800, implementing section 106 of the National Historic Preservation Act, *as amended*, (16 U.S.C. section 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places that could be affected by issuance of a license for the proposed Arkabutla Lake Hydroelectric Project No. 13704.

The Programmatic Agreement, when executed by the Commission and the Mississippi SHPO, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any Order issuing a license.

FFP Missouri 2, LLC, as applicant for the proposed Arkabutla Lake Hydroelectric Project, the U.S. Army Corps of Engineers, the Choctaw Nation of Oklahoma, the Jena Band of Choctaw Indians, the Chickasaw Nation, the Mississippi Band of Choctaw Indians, the Quapaw Tribe of Oklahoma, the Tunica-Biloxi Tribe of Louisiana, and the Muscogee (Creek) Nation have expressed an interest in this proceeding and are invited to participate in consultations to develop the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 13704 as follows:

[1] 18 CFR 385.2010.

John Eddins, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.
Greg Williamson, Mississippi Department of Archives and History, 100 South State Street, Jackson, MS 39201.
Andrew Tomlinson, U.S. Army Corps of Engineers, Vicksburg District, 4155 Clay Street, Room 230, Vicksburg, MS 39183.
Thomas M. Feldman or Representative, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114.
Dr. Ian Thompson, THPO, Choctaw Nation of Oklahoma, P.O. Box 1210, Durant, OK 74702.
Johnnie Jacobs, Choctaw Nation of Oklahoma, P.O. Box 1210, Durant, OK 74702.
Dana Masters, THPO, Jena Band of Choctaw Indians, P.O. Box 14, Jena, LA 71342.
LaDonna Brown, Chickasaw Nation, P.O. Box 1548, Ada, OK 74821.
Kenneth H. Carlton, THPO, Mississippi Band of Choctaw Indians, P.O. Box 6257, Choctaw, MS 39350.
Jean Ann Lambert, THPO, Quapaw Tribe of Oklahoma, 5681 South 630 Road, Quapaw, OK 74363.
Earl Barbry, Jr., Tunica-Biloxi Tribe of Louisiana, 151 Melacon Drive, Marksville, LA 71351.
Emman Spain, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447.
Sarah Koeppel, U.S. Army Corps of Engineers, Vicksburg District, 4155 Clay Street, Vicksburg, MS 39183.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also, please identify any concerns about historic properties, including traditional cultural properties. If historic properties might be identified within the motion, please use a separate page and label it Non-Public information.

Any such motion may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*). For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please put the project number (P–13704–001) on the first page of the filing.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions within the 15-day period.

Dated: June 26, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–15854 Filed 7–1–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[ Project No. 13701–001—Mississippi; Sardis Lake Hydroelectric Project]**

### FFP Missouri 2, LLC; Notice of Proposed Restricted Service List for a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure [1] provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Mississippi Department of Archives and History (Mississippi SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended*, (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places that could be affected by issuance of a license for the proposed Sardis Lake Hydroelectric Project No. 13701.

The Programmatic Agreement, when executed by the Commission and the Mississippi SHPO, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any Order issuing a license.

FFP Missouri 2, LLC, as applicant for the proposed Sardis Lake Hydroelectric Project, the U.S. Army Corps of Engineers, the Choctaw Nation of Oklahoma, the Jena Band of Choctaw Indians, the Chickasaw Nation, the Mississippi Band of Choctaw Indians, the Quapaw Tribe of Oklahoma, the Tunica-Biloxi Tribe of Louisiana, and the Muscogee (Creek) Nation have expressed an interest in this proceeding and are invited to participate in consultations to develop the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 13701 as follows:

John Eddins, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.
Greg Williamson, Mississippi Department of Archives and History, 100 South State Street, Jackson, MS 39201.
LaDonna Brown, Chickasaw Nation, P.O. Box 1548, Ada, OK 74821.
Kenneth H. Carlton, THPO, Mississippi Band of Choctaw Indians, P.O. Box 6257, Choctaw, MS 39350.

[1] 18 CFR 385.2010.

| | |
|---|---|
| Andrew Tomlinson, U.S. Army Corps of Engineers, Vicksburg District, 4155 Clay Street, Vicksburg, MS 39183. | Jean Ann Lambert, THPO, Quapaw Tribe of Oklahoma, 5681 South 630 Road, Quapaw, OK 74363. |
| Thomas M. Feldman or Representative, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114. | Earl Barbry, Jr., Tunica-Biloxi Tribe of Louisiana, 151 Melacon Drive, Marksville, LA 71351. |
| Dr. Ian Thompson, THPO, Choctaw Nation of Oklahoma, P.O. Box 1210, Durant, OK 74702. | Emman Spain, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447. |
| Johnnie Jacobs, Choctaw Nation of Oklahoma, P.O. Box 1210, Durant, OK 74702. | Sarah Koeppel, U.S. Army Corps of Engineers, Vicksburg District, 4155 Clay Street, Vicksburg, MS 39183. |
| Dana Masters, THPO, Jena Band of Choctaw Indians, P.O. Box 14, Jena, LA 71342. | |

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also, please identify any concerns about historic properties, including traditional cultural properties. If historic properties might be identified within the motion, please use a separate page and label it Non-Public information.

Any such motion may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*). For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please put the project number (P–13701–001) on the first page of the filing.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions within the 15-day period.

Dated: June 26, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–15855 Filed 7–1–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following joint stakeholder meeting related to the transmission planning activities of PJM Interconnection, L.L.C., ISO New England, Inc., and New York Independent System Operator, Inc.:

**Joint Inter-Regional Planning Task Force/Electric System Planning Working Group**

July 1, 2013, 10:00 a.m.–4:00 p.m., Local Time

The above-referenced meeting will be held at: NYISO's offices, Rensselaer, NY.

The above-referenced meeting is open to stakeholders.

Further information may be found at *www.nyiso.com*.

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER08–1281, *New York Independent System Operator, Inc.*
Docket No. EL05–121, *PJM Interconnection, L.L.C.*
Docket No. EL10–52, *Central Transmission, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. ER10–253 and EL10–14, *Primary Power, L.L.C.*
Docket No. EL12–69, *Primary Power LLC* v. *PJM Interconnection, L.L.C.*
Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1178, *PJM Interconnection, L.L.C.*
Docket No. ER13–90, *Public Service Electric and Gas Company and PJM Interconnection, L.L.C.*
Docket No. ER13–102, *New York Independent System Operator, Inc.*
Docket No. ER13–193, *ISO New England Inc.*
Docket No. ER13–195, *Indicated PJM Transmission Owners*
Docket No. ER13–196, *ISO New England Inc.*
Docket No. ER13–198, *PJM Interconnection, L.L.C.*
Docket No. ER13–397, *PJM Interconnection, L.L.C.*
Docket No. ER13–673, *PJM Interconnection, L.L.C.*
Docket No. ER13–703, *PJM Interconnection, L.L.C.*
Docket No. ER13–887, *PJM Interconnection, L.L.C.*
Docket No. ER13–1052, *PJM Interconnection, L.L.C. and the Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–1054, *PJM Interconnection, L.L.C. and the Midwest Independent Transmission System Operator, Inc.*

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov*.

Dated: June 25, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–15863 Filed 7–1–13; 8:45 am]

BILLING CODE 6717–01–P

## EXPORT-IMPORT BANK

### Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a $675 million direct loan to support the export of approximately $525 million in U.S. licenses and packaged refinery equipment to an oil refinery in Turkey. The U.S. exports will enable the facility to produce approximately: 4,600 metric tons of naphtha per day; 1,200 metric tons of xylene per day; 2,500 metric tons of petroleum coke (pet coke) per day; and 450 metric tons of sulfur per day. Available information indicates that the sulfur and pet coke will be sold into the

global market, and the remaining foreign output will be sold in Turkey.

Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue NW., Room 445, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

**James Cruse,**

*Senior Vice President, Policy and Planning.*

[FR Doc. 2013–15830 Filed 7–1–13; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS13–16]**

### Appraisal Subcommittee Notice of Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of Meeting.

*Description:* In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

*Location:* OCC—400 7th Street SW., Washington, DC 20024.

*Date:* July 10, 2013.

*Time:* 10:30 a.m.

*Status:* Open

*Matters to be Considered:*

*Summary Agenda:* June 12, 2013 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

*Discussion Agenda:*

Idaho Compliance Review.

Utah Compliance Review.

Kentucky and Virginia Compliance Review Acknowledgment.

Update on the Implementation of the Policy Statements.

*How to Attend and Observe an ASC meeting:* Email your name, organization and contact information to *meetings@asc.gov*. You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: June 27, 2013.

**James R. Park,**

*Executive Director.*

[FR Doc. 2013–15850 Filed 7–1–13; 8:45 am]

**BILLING CODE P**

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS13–17]**

### Appraisal Subcommittee Notice of Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of Meeting.

*Description:* In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

*Location:* OCC—400 7th Street SW., Washington, DC 20024.

*Date:* July 10, 2013.

*Time:* Immediately following the ASC open session.

*Status:* Closed.

*Matters to be Considered:* June 12, 2013 minutes—Closed Session. Preliminary discussion of State Compliance Reviews.

Dated: June 27, 2013.

**James R. Park,**

*Executive Director.*

[FR Doc. 2013–15868 Filed 7–1–13; 8:45 am]

**BILLING CODE 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 July 17, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Carla A. Blumberg,* St. Paul, Minnesota; to retain voting shares of Park Bank Corporation of Duluth, and thereby indirectly retain voting shares of Park State Bank, both in Duluth, Minnesota.

Board of Governors of the Federal Reserve System, June 27, 2013.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2013–15807 Filed 7–1–13; 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 July 26, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *STC Bancshares Corp.*, St. Charles, Illinois; to acquire 100 percent of the voting shares of Bank of Palatine, Palatine, Illinois.

Board of Governors of the Federal Reserve System, June 27, 2013.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2013–15806 Filed 7–1–13; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1459–CN]**

### Medicare Program; Notification of Closure of Teaching Hospitals and Opportunity To Apply for Available Slots; Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction notice.

**SUMMARY:** This document corrects a typographical error that appeared in the notice published in the **Federal Register** on May 31, 2013 entitled "Notification of Closure of Teaching Hospitals and Opportunity to Apply for Available Slots."

**FOR FURTHER INFORMATION CONTACT:** Miechal Lefkowitz, (212)-616–2517.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In FR Doc. 2013–12952 of May 31, 2013 (78 FR 32663), there was a typographical error that is identified and corrected in the Correction of Errors section below.

#### II. Summary of Errors

On pages 32663 and 32664 in the May 31, 2013 **Federal Register** notice, we inadvertently made a typographical error when we misspelled the name of the city in which one of the closed teaching hospitals was located. Specifically, we stated that Montgomery Hospital was located in "Morristown, PA," instead of "Norristown, PA."

#### III. Correction of Errors

In FR Doc. 2013–12952 of May 31, 2013 (78 FR 32663), make the following corrections:

1. On page 32663, third column, first full paragraph, line 4, the location "Morristown, PA" is corrected to read, "Norristown, PA".

2. On pages 32663 and 32664, in the table titled "Teaching Hospitals Closure," the third column (City and State), line 2, the location "Morris-town, PA" is corrected to read "Norristown, PA."

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 25, 2013.

**Jennifer M. Cannistra,**

*Executive Secretary to the Department, Department of Health and Human Services.*

[FR Doc. 2013–15756 Filed 7–1–13; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### Privacy Act of 1974; CMS Computer Match No. 2013–11; HHS Computer Match No. 1302

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Notice of Computer Matching Program (CMP).

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the establishment of a CMP that CMS intends to conduct with State-based Administering Entities (AEs). Under this CMP CMS will disclose certain information to the State-based AEs within the Health Insurance Exchanges Program.

Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. See "Effective Dates" section below for comment period.

**DATES:** *Effective Dates:* Public comments are due 30 days after publication. The matching program shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, whichever is later.

**ADDRESSES:** The public should send comments to: CMS Privacy Officer, Division of Privacy Policy, Privacy Policy and Compliance Group, Office of E-Health Standards & Services, Office of Enterprise Management, CMS, Room S2–24–25, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.–3:00 p.m., Eastern Time zone.

**FOR FURTHER INFORMATION CONTACT:** Aaron Wesolowski, Director, Verifications Policy & Operations Branch, Division of Eligibility and Enrollment Policy and Operations, Center for Consumer Information and Insurance Oversight, CMS, 200 Independence Ave. SW.—Mailstop 733H.02, Washington, DC 20201.

**SUPPLEMENTARY INFORMATION:** The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 101–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits.

Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records (SOR) are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Board approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: June 25, 2013.

**Michelle Snyder,**

*Deputy Chief Operating Officer, Centers for Medicare & Medicaid Services.*

**CMS Computer Match No. 2013–11; HHS Computer Match No. 1302**

*Name:* "Computer Matching Agreement between the Centers for Medicare & Medicaid Services and State-based Administering Entities for the Disclosure of Health Insurance Affordability Programs Information under the Patient Protection and Affordable Care Act."

*Security Classification:* Unclassified.

*Participating Agencies:* Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), and State-based Administering Entities (AEs).

*Authority For Conducting Matching Program:* This Computer Matching Program (CMP) is executed to comply with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, the Office of Management and Budget (OMB) Circular A–130 entitled, Management of Federal Information Resources, at 61 FR 6428–6435 (February 20, 1996), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989) and 56 FR 18599 (April 23, 1991); and the computer matching portions of Appendix I to OMB Circular No. A–130 as amended at 61 FR 6428 (February 20, 1996).

*Purpose(s) of the Matching Program:* This Computer Matching Agreement (CMA) establishes the terms, conditions, safeguards, and procedures under which CMS will share certain information with the AEs in accordance with the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which are referred to collectively as the Affordable Care Act (ACA), as well as the implementing regulations. Under this CMA the State-based AEs will use the data, accessed through the CMS Data Services Hub, to make Eligibility Determinations for Insurance Affordability Programs and certificates of exemption. State-based AEs are state entities administering Insurance Affordability Programs and may include a State agency, a State Children's Health Insurance Program, a State basic health program or a Marketplace (Exchange).

*Description of Records to be Used In the Matching Program:*

**System of Records Maintained by CMS**

The matching program will be conducted with data maintained by CMS in the "Health Insurance Exchanges (HIX) Program," System No. 09–70–0560 established at 78 FR 8538 on February 6, 2013, and amended at 78 FR 32256 on May 29, 2013.

*Inclusive Dates of the Match:* The CMP shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2013–15819 Filed 7–1–13; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0134]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Mammography Quality Standards Act Requirements

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by August 1, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0309. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Mammography Quality Standards Act Requirements—(OMB Control Number 0910–0309)—Extension**

The Mammography Quality Standards Act (Pub. L. 102–539) requires the establishment of a Federal certification and inspection program for mammography facilities; regulations and standards for accreditation and certification bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. The intent of these regulations is to assure safe, reliable, and accurate mammography on a nationwide level. Under the regulations, as a first step in becoming certified, mammography facilities must become accredited by an FDA-approved accreditation body (AB). This requires undergoing a review of their clinical images and providing the AB with information showing that they meet the equipment, personnel, quality assurance, and quality control standards, and have a medical reporting and recordkeeping program, a medical outcomes audit program, and a consumer complaint mechanism. On the basis of this accreditation, facilities are then certified by FDA or an FDA-approved State certification agency and must prominently display their certificate. These actions are taken to ensure safe, accurate, and reliable mammography on a nationwide basis.

The following sections of Title 21 of the Code of Federal Regulations (CFR) are not included in the burden tables because they are considered usual and customary practice and were part of the standard of care prior to the implementation of the regulations. Therefore, they resulted in no additional burden: 21 CFR 900.12(c)(1) and (c)(3) and 21 CFR 900.3(f)(1). Section 900.24(c) was also not included in the burden tables because if a certifying State had its approval withdrawn, FDA would take over certifying authority for the affected facilities. Because FDA already has all the certifying State's electronic records, there wouldn't be an additional reporting burden.

We have rounded numbers in the "Total Hours" column in all three burden tables. (Where the number was a portion of 1 hour, it has been rounded to 1 hour. All other "Total Hours" have been rounded to the nearest whole number.)

We do not expect any respondents for § 900.3(c) because all four ABs are approved until April 2020.

In the **Federal Register** of February 28, 2013 (78 FR 13681), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

| Activity/21 CFR section/form FDA No. | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours [1] | Total capital costs | Total operating & maintenance costs |
|---|---|---|---|---|---|---|---|
| Notification of intent to become an AB—900.3(b)(1) | 0.33 | 1 | 0.33 | 1 | 1 | | |
| Application for approval as an AB; full [2]—900.3(b)(3) | 0.33 | 1 | 0.33 | 320 | 106 | $10,000 | |
| Application for approval as an AB; limited [3]—900.3(b)(3) | 5 | 1 | 5 | 30 | 150 | | |
| AB renewal of approval—900.3(c) | 0 | 1 | 0 | 15 | 1 | | |
| AB application deficiencies—900.3(d)(2) | 0.1 | 1 | 0.1 | 30 | 3 | | |
| AB resubmission of denied applications—900.3(d)(5) | 0.1 | 1 | 0.1 | 30 | 3 | | |
| Letter of intent to relinquish accreditation authority—900.3(e) | 0.1 | 1 | 0.1 | 1 | 1 | | |
| Summary report describing all facility assessments—900.4(f) | 330 | 1 | 330 | 7 | 2,310 | | $77,600 |
| AB reporting to FDA; facility [4]—900.4(h) | 8,654 | 1 | 8,654 | 1 | 8,654 | | 4,327 |
| AB reporting to FDA; AB [5]—900.4(h) | 5 | 1 | 5 | 10 | 50 | | |
| AB financial records—900.4(i)(2) | 1 | 1 | 1 | 16 | 16 | | |
| Former AB new application—900.6(c)(1) | 0.1 | 1 | 0.1 | 60 | 6 | | |
| Reconsideration of accreditation following appeal—900.15(d)(3)(ii) | 1 | 1 | 1 | 2 | 2 | | |
| Application for alternative standard—900.18(c) | 2 | 1 | 2 | 2 | 4 | | |
| Alternative standard amendment—900.18(e) | 10 | 1 | 10 | 1 | 10 | | |
| Certification agency application—900.21(b) | 0.33 | 1 | 0.33 | 320 | 106 | | 208 |
| Certification agency application deficiencies—900.21(c)(2) | 0.1 | 1 | 0.1 | 30 | 3 | | |
| Certification electronic data transmission—900.22(h) | 5 | 200 | 1000 | 0.083 | 83 | 30,000 | |
| Changes to standards—900.22(i) | 2 | 1 | 2 | 30 | 60 | | 20 |
| Certification agency minor deficiencies—900.24(b) | 1 | 1 | 1 | 30 | 30 | | |
| Appeal of adverse action taken by FDA—900.25(a) | 0.2 | 1 | 0.2 | 16 | 3 | | |
| Inspection fee exemption—Form FDA 3422 | 700 | 1 | 700 | 0.25 | 175 | | |
| Total | | | | | 11,777 | 40,000 | 82,155 |

[1] Total hours have been rounded.
[2] One time burden.
[3] Refers to accreditation bodies applying to accredit specific full-field digital mammography units.
[4] Refers to the facility component of the burden for this requirement.
[5] Refers to the AB component of the burden for this requirement.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

| Activity/21 CFR section | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours [1] | Total capital costs | Total operating & maintenance costs |
|---|---|---|---|---|---|---|---|
| AB transfer of facility records—900.3(f)(1) | 0.1 | 1 | 0.1 | 0 | 1 | | |
| Consumer complaints system; AB—900.4(g) | 5 | 1 | 5 | 1 | 5 | | |
| Documentation of interpreting physician initial requirements—900.12(a)(1)(i)(B)(*2*) | 87 | 1 | 87 | 8 | 696 | | |
| Documentation of interpreting physician personnel requirements—900.12(a)(4) | 8,654 | 4 | 34,616 | 1 | 34,616 | | |

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN—Continued

| Activity/21 CFR section | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours [1] | Total capital costs | Total operating & maintenance costs |
|---|---|---|---|---|---|---|---|
| Permanent medical record—900.12(c)(4) | 8,654 | 1 | 8,654 | 1 | 8,654 | $28,000 | ..... |
| Procedures for cleaning equipment—900.12(e)(13) | 8,654 | 52 | 450,008 | 0.083 | 37,351 | ..... | ..... |
| Audit program—900.12(f) | 8,654 | 1 | 8,654 | 16 | 138,464 | ..... | ..... |
| Consumer complaints system; facility—900.12(h)(2) | 8,654 | 2 | 17,308 | 1 | 17,308 | ..... | ..... |
| Certification agency conflict of interest—900.22(a) | 5 | 1 | 5 | 1 | 5 | ..... | ..... |
| Processes for suspension and revocation of certificates—900.22(d) | 5 | 1 | 5 | 1 | 5 | ..... | ..... |
| Processes for appeals—900.22(e) | 5 | 1 | 5 | 1 | 5 | ..... | ..... |
| Processes for additional mammography review—900.22(f) | 5 | 1 | 5 | 1 | 5 | ..... | ..... |
| Processes for patient notifications—900.22(g) | 3 | 1 | 3 | 1 | 3 | ..... | $30 |
| Evaluation of certification agency—900.23 | 5 | 1 | 5 | 20 | 100 | ..... | ..... |
| Appeals—900.25(b) | 5 | 1 | 5 | 1 | 5 | ..... | ..... |
| Total | ..... | ..... | ..... | ..... | 237,223 | 28,000 | 30 |

[1] Total hours have been rounded.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURES [1]

| Activity/21 CFR section | Number of respondents | Number of disclosures per respondent | Total annual disclosures | Average burden per disclosure | Total hours [2] | Total operating & maintenance costs |
|---|---|---|---|---|---|---|
| Notification of facilities that AB relinquishes its accreditation—900.3(f)(2) | 0.1 | 1 | 0.1 | 200 | 20 | $50 |
| Clinical images; facility [3]—900.4(c), 900.11(b)(1), and 900.11(b)(2) | 2,885 | 1 | 2,885 | 1.44 | 4,154 | ..... |
| Clinical images; AB [4]—900.4(c) | 5 | 1 | 5 | 416 | 2,080 | 230,773 |
| Phantom images; facility [3]—900.4(d), 900.11(b)(1), and 900.11(b)(2) | 2,885 | 1 | 2,885 | 0.72 | 2,077 | ..... |
| Phantom images; AB [4]—900.4(d) | 5 | 1 | 5 | 208 | 1,040 | ..... |
| Annual equipment evaluation and survey; facility [3]—900.4(e), 900.11(b)(1), and 900.11(b)(2) | 8,654 | 1 | 8,654 | 1 | 8,654 | 8,654 |
| Annual equipment evaluation and survey; AB [4]—900.4(e) | 5 | 1 | 5 | 1,730 | 8,650 | ..... |
| Provisional mammography facility certificate extension application—900.11(b)(3) | 0 | 1 | 0 | 0.5 | 1 | ..... |
| Mammography facility certificate reinstatement application—900.11(c) | 312 | 1 | 312 | 5 | 1,560 | 24,000,000 |
| Lay summary of examination—900.12(c)(2) | 8,654 | 5,085 | 44,055,590 | 0.083 | 3,652,464 | ..... |
| Lay summary of examination; patient refusal [5]—900.12(c)(2) | 87 | 1 | 87 | 0.5 | 44 | ..... |
| Report of unresolved serious complaints—900.12(h)(4) | 20 | 1 | 20 | 1 | 20 | ..... |
| Information regarding compromised quality; facility [3]—900.12(j)(1) | 20 | 1 | 20 | 200 | 4,000 | 300 |
| Information regarding compromised quality; AB [4]—900.12(j)(1) | 20 | 1 | 20 | 320 | 6,400 | 600 |
| Patient notification of serious risk—900.12(j)(2) | 5 | 1 | 5 | 100 | 500 | 19,375 |
| Reconsideration of accreditation—900.15(c) | 5 | 1 | 5 | 2 | 10 | ..... |
| Notification of requirement to correct major deficiencies—900.24(a) | 0.4 | 1 | 0.4 | 200 | 80 | 68 |
| Notification of loss of approval; major deficiencies—900.24(a)(2) | 0.15 | 1 | 0.15 | 100 | 15 | 25.50 |
| Notification of probationary status—900.24(b)(1) | 0.3 | 1 | 0.3 | 200 | 60 | 51 |
| Notification of loss of approval; minor deficiencies—900.24(b)(3) | 0.15 | 1 | 0.15 | 100 | 15 | 25.50 |

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURES [1]—Continued

| Activity/21 CFR section | Number of respondents | Number of disclosures per respondent | Total annual disclosures | Average burden per disclosure | Total hours [2] | Total operating & maintenance costs |
|---|---|---|---|---|---|---|
| Total | | | | | 3,691,842 | 24,259,921 |

[1] There are no capital costs associated with this collection of information.
[2] Total hours have been rounded.
[3] Refers to the facility component of the burden for this requirement.
[4] Refers to the AB component of the burden for this requirement.
[5] Refers to the situation where a patient specifically does not want to receive the lay summary of her exam.

Dated: June 25, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–15790 Filed 7–1–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–1108]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Interstate Shellfish Dealer's Certificate

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Interstate Shellfish Dealer's Certificate" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5733, *domini.bean@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** On March 25, 2013, the Agency submitted a proposed collection of information entitled, "Interstate Shellfish Dealer's Certificate" to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0021. The approval expires on May 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 26, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–15795 Filed 7–1–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0033]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5733, *domini.bean@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** On March 26, 2013, the Agency submitted a proposed collection of information entitled "Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water" to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0658. The approval expires on May 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 26, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–15793 Filed 7–1–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0716]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Designated New Animal Drugs for Minor Use and Minor Species

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the paperwork associated with designation under the Minor Use and Minor Species (MUMS) Act.

**DATES:** Submit either electronic or written comments on the collection of information by September 3, 2013.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug

Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, 301–796–5733, *domini.bean@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Designated New Animal Drugs for Minor Use and Minor Species—21 CFR Part 516 (OMB Control Number 0910–0605)—Extension**

*Description:* The Minor Use and Minor Species (MUMS) Animal Health Act of 2004 amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to authorize FDA to establish new regulatory procedures intended to make more medications legally available to veterinarians and animal owners for the treatment of minor animal species as well as uncommon diseases in major animal species. This legislation provides incentives designed to help pharmaceutical companies overcome the financial burdens they face in providing limited-demand animal drugs. These incentives are only available to sponsors whose drugs are "MUMS-designated" by FDA. Minor use drugs are drugs for use in major species (cattle, horses, swine, chickens, turkeys, dogs, and cats) that are needed for diseases that occur in only a small number of animals either because they occur infrequently or in limited geographic areas. Minor species are all animals other than the major species; for example, zoo animals, ornamental fish, parrots, ferrets, and guinea pigs. Some animals of agricultural importance are also minor species. These include animals such as sheep, goats, catfish, and honeybees. Participation in the MUMS program is completely optional for drug sponsors so the associated paperwork only applies to those sponsors who request and are subsequently granted "MUMS designation." The rule specifies the criteria and procedures for requesting MUMS designation as well as the annual reporting requirements for MUMS designees.

Section 516.20 (21 CFR 516.20) provides requirements on the content and format of a request for MUMS-drug designation; § 516.26 (21 CFR 516.26) provides requirements for amending MUMS-drug designation; provisions for change in sponsorship of MUMS-drug designation can be found under § 516.27 (21 CFR 516.27); under § 516.29 (21 CFR 516.29) are provisions for termination of MUMS-drug designation; under § 516.30 (21 CFR 516.30) are requirements for annual reports from sponsor(s) of MUMS-designated drugs; and under § 516.36 (21 CFR 516.36) are provisions for insufficient quantities of MUMS-designated drugs.

*Description of Respondents:* Pharmaceutical companies that sponsor new animal drugs.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 516.20; content and format of MUMS request | 15 | 5 | 75 | 16 | 1200 |
| 516.26; requirements for amending MUMS designation | 3 | 1 | 3 | 2 | 6 |
| 516.27; change in sponsorship | 1 | 1 | 1 | 1 | 1 |
| 516.29; termination of MUMS designation | 2 | 1 | 2 | 1 | 2 |
| 516.30; requirements for annual reports | 15 | 5 | 75 | 2 | 150 |
| 516.36; insufficient quantities | 1 | 1 | 1 | 3 | 3 |
| Total | | | | | 1,362 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this reporting requirement was derived in our Office of Minor Use and Minor Species Animal Drug Development by extrapolating the current investigational new animal drug/new animal drug application reporting requirements for similar actions by this same segment of the regulated industry and from previous interactions with the minor use/minor species community.

Dated: June 25, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–15792 Filed 7–1–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0032]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food Labeling; Notification Procedures for Statements on Dietary Supplements

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Labeling; Notification Procedures for Statements on Dietary Supplements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5733, *domini.bean@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** On March 27, 2013, the Agency submitted a proposed collection of information entitled "Food Labeling; Notification Procedures for Statements on Dietary Supplements" to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0331. The approval expires on May 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 26, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–15794 Filed 7–1–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–1106]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5733, *domini.bean@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** On March 25, 2013, the Agency submitted a proposed collection of information entitled, "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile" to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0509. The approval expires on May 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 26, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–15796 Filed 7–1–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–D–0576]**

### Draft Guidance for Industry: Considerations for the Design of Early-Phase Clinical Trials of Cellular and Gene Therapy Products; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Considerations for the Design of Early-Phase Clinical Trials of Cellular and Gene Therapy Products" dated July 2013. The draft guidance document provides sponsors of Investigational New Drug Applications (INDs) for cellular therapy (CT) and gene therapy (GT) products (referred to collectively as CGT products) with recommendations to assist in designing early-phase clinical trials of CGT products.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 22, 2013.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Melissa Reisman, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of a draft guidance document entitled "Guidance for Industry: Considerations for the Design of Early-Phase Clinical Trials of Cellular and Gene Therapy Products," dated July 2013. The draft guidance document provides sponsors of INDs for CGT products with recommendations to assist in designing early-phase clinical trials of CGT products. The scope of this guidance is limited to products for which the Office of Cellular, Tissue and Gene Therapies/FDA has regulatory authority. CGT products within the scope of this guidance meet the definition of "biological product" in section 351(i) of the Public Health Service (PHS) Act (42 U.S.C. 262(i)). The guidance does not apply to those human cells, tissues, and cellular-and tissue-based products (HCT/Ps) regulated solely under section 361 of the PHS Act (42 U.S.C. 264), to products regulated as medical devices under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), or to the therapeutic biological products for which the Center for Drug Evaluation and Research (CDER) has regulatory responsibility.

The design of early-phase clinical trials of CGT products often differs from the design of clinical trials for other types of pharmaceutical products. Differences in trial design are necessitated by the distinctive features of these products, and also may reflect previous clinical experience. The draft guidance document describes features of CGT products that influence clinical trial design, including product characteristics, manufacturing considerations and preclinical considerations, and suggests other documents for additional information. Consequently, the draft guidance document provides recommendations with respect to these products as to clinical trial design, including early-phase trial objectives, choosing a study population, using a control group and blinding, dose selection, treatment plans, monitoring and follow-up. Finally, the draft guidance encourages prospective sponsors to meet with FDA review staff regarding their IND submission and offers references for additional guidance on submitting an IND.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

**II. Paperwork Reduction Act of 1995**

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

**III. Comments**

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

**IV. Electronic Access**

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: June 25, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–15797 Filed 7–1–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–D–0744]**

### Draft Guidance for Industry on Antibacterial Therapies for Patients With Unmet Medical Need for the Treatment of Serious Bacterial Diseases; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Antibacterial Therapies for Patients With Unmet Medical Need for the Treatment of Serious Bacterial Diseases." The purpose of the draft guidance is to assist sponsors in the development of new antibacterial drugs to treat serious bacterial diseases, particularly in areas of unmet need, and new antibacterial drugs that are pathogen-focused (i.e., drugs that have a narrow spectrum of activity or are only active against a single genus or species of bacteria).

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 30, 2013.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Joseph G. Toerner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 22, Rm. 6244, Silver Spring, MD 20993–0002, 301–796–1300.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of a draft guidance for industry entitled "Antibacterial Therapies for Patients With Unmet Medical Need for the Treatment of Serious Bacterial Diseases." The purpose of this draft guidance is to assist sponsors in the development of new antibacterial drugs for the treatment of serious bacterial diseases in patients with unmet medical needs and new antibacterial drugs that are pathogen-focused (i.e., drugs that

have a narrow spectrum of activity or are only active against a single genus or species of bacteria).

Efforts to develop new antibacterial drugs have diminished in the past few decades. Because bacteria continue to develop resistance to available antibacterial drugs, an increasing number of patients are suffering from bacterial diseases that do not respond to currently available antibacterial drugs and therefore have unmet medical needs for antibacterial therapy. To foster new antibacterial drug development that will have the potential to keep pace with continued pressures leading to antibacterial resistance, FDA is exploring approaches to help streamline development programs for new antibacterial drugs. This effort is intended not only to spur development of new drugs for populations with infections caused by resistant organisms, but also to facilitate development of drugs for broad indications that are associated with other unmet medical needs. In addition, the draft guidance outlines development approaches for pathogen-focused antibacterial drugs (i.e., drugs that have a narrow spectrum of activity or are only active against a single genus and species of bacteria).

This draft guidance describes some examples of approaches that may be used by sponsors as part of streamlined development programs. Some of these approaches are not novel, but are included to provide examples of various ways of collecting the evidence needed to demonstrate safety and efficacy to address unmet medical needs. FDA is inviting proposals for other innovative approaches that should be considered, particularly for infections caused by resistant organisms. FDA is interested in approaches such as using information from other sites of infection; pooling data from various sites; additional endpoints; an increased emphasis on the use of animal data to complement clinical data; or any other approaches that may be used to generate reliable evidence of efficacy.

As part of FDA's efforts to facilitate the development of antibacterial drugs for serious or life-threatening bacterial infections, particularly in areas of unmet need, this draft guidance specifies how nonclinical and clinical data can be used to inform an efficient and streamlined pathogen-focused antibacterial drug development program and provides advice on approaches for the development of antibacterial drugs that target a more limited spectrum of pathogens. As such, it is intended to fulfill the requirement in section 806(a), Title VIII (entitled "Generating Antibiotic Incentives Now"), of the Food and Drug Administration Safety and Innovation Act of 2012 (FDASIA) (Pub. L. 112–144), to publish a draft guidance on pathogen-focused antibacterial drug development. After consideration of comments submitted in response to this draft guidance, FDA intends to begin work on finalizing the guidance, as required by section 806(b) of FDASIA.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

### II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 and 21 part CFR 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

### III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

### IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm or http://www.regulations.gov*.

Dated: June 26, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–15783 Filed 7–1–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

*Name:* National Advisory Council on the National Health Service Corps (NHSC)

*Date and Time:* July 18, 2013—2:00pm–3:30pm ET

*Place:* The meeting will be via audio conference call.

*Status:* The meeting will be open to the public.

*Agenda:* The Council is holding a meeting via conference call to discuss the Affordable Care Act, NHSC retention resources, and partnerships. The public can join the meeting via audio conference call on the date and time specified above using the following information: Dial-in number: 1–800–857–5081; Passcode: 1060359. There will be an opportunity for the public to comment towards the end of the call.

**FOR FURTHER INFORMATION CONTACT:** Njeri Jones, Bureau of Clinician Recruitment and Service, Health Resources and Services Administration, Parklawn Building, Room 13–64, 5600 Fishers Lane, Rockville, MD 20857; email: *NJones@hrsa.gov;* telephone: 301–443–2541.

Dated: June 25, 2013.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2013–15713 Filed 7–1–13; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Council on Nurse Education and Practice; Notice for Request for Nominations

**SUMMARY:** The Health Resources and Services Administration (HRSA) is requesting nominations to fill seven vacancies on the National Advisory Council on Nurse Education and Practice (NACNEP).

**Authority:** The National Advisory Council on Nurse Education and Practice is in accordance with the provisions of 42 United

States Code (U.S.C.) 297t; Section 845 of the Public Health Service Act, as amended. The Council is governed by provisions of Public Law 92–463, which sets forth standards for the formation and use of advisory committees.

**DATES:** The Agency must receive nominations on or before September 5, 2013.

**ADDRESSES:** All nominations are to be submitted either by mail or email to CDR Serina A. Hunter-Thomas, Designated Federal Official, NACNEP, Division of Nursing, Bureau of Health Professions (BHPr), Health Resources and Administration (HRSA), Parklawn Building, Room 9–61, 5600 Fishers Lane, Rockville, MD 20857. CDR Hunter-Thomas' email address is: *SHunter-Thomas@Hrsa.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information, please contact CDR Hunter-Thomas by email or telephone at (301) 443–4499. A copy of the current committee membership, charter, and reports can be obtained by accessing the NACNEP Web site at *http://bhpr.hrsa.gov/nursing/nacnep.htm.*

**SUPPLEMENTARY INFORMATION:** Under the authorities that established the NACNEP and the Federal Advisory Committee Act, HRSA is requesting nominations for seven new committee members. The NACNEP advises and makes recommendations to the Secretary and Congress on policy matters arising in the administration of Title VIII including the range of issues relating to the nurse workforce, nursing education, and nursing practice improvement. The Advisory Committee may make specific recommendations to the Secretary and Congress regarding programs administered by the Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, particularly within the context of the enabling legislation and the Division's mission and strategic directions, as a means of enhancing the health of the public through the development of the nursing workforce. The Advisory Committee provides advice to the Secretary and Congress in preparation of general regulations and with respect to policy matters in the administration of this Title including the range of issues relating to the nurse supply, education, and practice improvement. The Advisory Council shall annually prepare and submit to the Secretary; the Committee on Health, Education, Labor, and Pensions of the Senate; and the Committee on Energy and Commerce of the House of Representatives, a report describing the activities of the Advisory Council including its findings and recommendations.

The Department of Health and Human Services is requesting a total of seven nominations for members of the NACNEP who are full-time students representing various levels of education in schools of nursing (i.e. both undergraduate and graduate); from the general public; from practicing professional nurses; from among the leading authorities in the various fields of nursing, higher secondary education, and associate degree schools of nursing; and from representatives of advanced education nursing groups (such as nurse practitioners, nurse midwives, and nurse anesthetists), hospitals, and other institutions and organizations which provide nursing services. The majority of members shall be nurses.

HRSA has special interest in the legislative requirements of having a fair balance between the nursing profession, including a broad geographic representation of members from urban and rural communities, and minorities. HRSA encourages nominations from qualified candidates from these groups, as well as individuals with disabilities and veterans. Interested persons may nominate one or more qualified persons for membership. Self-nominations are also accepted. Nominations must be typewritten. The following information should be included in the package of materials submitted for each individual being nominated: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes that qualify the nominee for services in this capacity as described above), a statement that the nominee is willing to serve as a member of NACNEP and appears to have no conflict of interest that would preclude this Committee membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, research grants, and/or contracts to permit an evaluation of possible sources of conflicts of interest; and (2) the nominator's name, address, and daytime telephone number; the home/or work address, and telephone number; and email address of the individual being nominated. HRSA requests inclusion of a current copy of the nominee's curriculum vitae and a statement of interest from the nominee to support experience working with Title VIII nursing programs; expertise in the field; and a personal desire in participating on a National Advisory Committee.

Committee members are classified as Special Government Employees (SGE). All SGEs on committees must submit an annual Form OGE 450 Confidential Financial Disclosure Report to the HRSA Ethics Program for analysis using the Ethics statutes, regulations, and policies to which all SGEs must adhere. Members will receive a stipend for each official meeting day of the Committee, as well as per diem and travel expenses as authorized by section 5 U.S.C. 5703 for persons employed intermittently in Government service.

Appointments shall be made without discrimination on the basis of age, ethnicity, gender, sexual orientation, and cultural, religious, or socioeconomic status. Qualified candidates will be invited to serve a 4-year term.

Dated: June 25, 2013.

**Bahar Niakan,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 2013–15711 Filed 7–1–13; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Environmental Health Sciences Review Committee.

*Date:* July 24–26, 2013.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* DoubleTree by Hilton, Ballroom, 4810 Page Creek Lane, Durham, NC 27703.

*Contact Person:* Linda K Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk

Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: *June 26, 2013.*

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–15770 Filed 7–1–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; 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.

*Nome of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel.

*Date:* July 25, 2013.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agendo:* To review and evaluate grant applications.

*Ploce:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremor@nidcr.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 26, 2013.

**David Clary,**

*Program Anolyst, Office of Federol Advisory Committee Policy.*

[FR Doc. 2013–15769 Filed 7–1–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Nome of Committee:* National Advisory Council for Biomedical Imaging and Bioengineering.

*Date:* September 12, 2013.

*Open:* 9:00 a.m. to 1:00 p.m.

*Agenda:* Report from the Institute Director, other Institute Staff and scientific presentation.

*Ploce:* The William F. Bolger Center, Franklin Building, Conference Room 1, 9600 Newbridge Drive, Potomac, MD 20854.

*Closed:* 1:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* The William F. Bolger Center, Franklin Building, Conference Room 1, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Anthony Demsey, Ph.D., Director, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 241, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm*, where an agenda and any additional information for the meeting will be posted when available.

Dated: June 26, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–15772 Filed 7–1–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Kidney Pathobiology.

*Dote:* July 18, 2013.

*Time:* 11:30 a.m. to 3:00 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:* Mushtaq A Khan, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khonm@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.

*Nome of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

*Dote:* July 22, 2013.

*Time:* 12:00 p.m. to 5:00 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:* Jose H Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: HIV/AIDS Innovative Research Applications.

*Date:* July 24, 2013.

*Time:* 11:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

(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: June 26, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–15768 Filed 7–1–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; SCORE Grant Applications.

*Date:* July 23, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn Washington DC/Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

*Contact Person:* Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12C, Bethesda, MD 20892–4874, 301–594–2763, *seetharams@nigms.nih.gov.*

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel Complex Phenotypes.

*Date:* July 24–25, 2013.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.12, Bethesda, MD 20892–4874, (Virtual Meeting).

*Contact Person:* Lisa A. Dunbar, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12, Bethesda, MD 20892–4874, 301–594–2849, *dunbarl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 26, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–15771 Filed 7–1–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Announcement of Agency Decision: Recommendations on the Use of Chimpanzees in NIH-Supported Research

**SUMMARY:** This notice announces the responses to public comments and decisions of the National Institutes of Health (NIH) regarding the use of chimpanzees in research. In February 2012, the NIH charged a working group of the Council of Councils, a federal advisory committee, to provide advice on implementing recommendations made by the Institute of Medicine (IOM) Committee on the Use of Chimpanzees in Biomedical and Behavioral Research in its 2011 report, *Chimpanzees in Biomedical and Behavioral Research: Assessing the Necessity.* On January 22, 2013, the NIH Council of Councils (Council) accepted recommendations presented by the Working Group on the Use of Chimpanzees in NIH-Supported Research and provided these recommendations to the NIH. The NIH subsequently issued a request for comments to obtain broad public input on the 28 Council recommendations that the NIH is considering as it determines how to implement the IOM Committee's recommendations. This notice summarizes the comments received in response to the request for comments and announces the agency's decisions with respect to the Council recommendations. The NIH plans to prepare subsequent procedural guidance and technical assistance, as appropriate, to implement some of these decisions. Investigators should continue to follow existing guidance (see NOT–OD–12–025 at *http://grants.nih.gov/grants/guide/notice-files/NOT-OD-12-025.html*) regarding the submission of applications, proposals, or protocols for research involving chimpanzees until the NIH announces the procedural guidance.

**FOR FURTHER INFORMATION CONTACT:** The Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, National Institutes of Health at *dpcpsi@od.nih.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The use of animals in biomedical and behavioral research has enabled scientists to identify new ways to treat illness, extend life, and improve health and well-being. Chimpanzees are our closest relatives in the animal kingdom, providing exceptional insights into human biology and requiring special consideration and respect. Although used very selectively and in limited numbers for biomedical research, chimpanzees have served an important role in advancing human health. However, new methods and technologies developed by the biomedical research community have provided alternatives to the use of chimpanzees in several areas of research.

In December 2010, the National Institutes of Health (NIH) commissioned a study by the Institute of Medicine (IOM) to assess whether chimpanzees are or will be necessary for NIH-funded biomedical and behavioral research. On December 15, 2011, the IOM Committee on the Use of Chimpanzees in Biomedical and Behavioral Research (IOM Committee) issued its findings along with a primary recommendation that a set of principles and criteria guide

the use of chimpanzees in biomedical and behavioral research in its report, *Chimpanzees in Biomedical and Behavioral Research: Assessing the Necessity* (*http://iom.edu/Reports/2011/Chimpanzees-in-Biomedical-and-Behavioral-Research-Assessing-the-Necessity.aspx*). The three principles that the IOM Committee proposed to assess the use of chimpanzees in current and potential future biomedical and behavioral research supported by the NIH were:

1. The knowledge gained must be necessary to advance the public's health;

2. There must be no other research model by which the knowledge could be obtained, and the research cannot be ethically performed on human subjects; and

3. The animals used in the proposed research must be maintained either in ethologically appropriate physical and social environments or in natural habitats.

The IOM Committee also developed two separate sets of criteria for assessing the necessity of using chimpanzees for biomedical research and for comparative genomics and behavioral research. Based on its deliberations, the IOM Committee concluded that, "While the chimpanzee has been a valuable animal model in past research, most current use of chimpanzees for biomedical research is unnecessary . . ."

The IOM Committee considered case studies of current chimpanzee use in research to provide examples of its vision for applying its criteria. Based on these case studies, the IOM Committee concluded that the use of chimpanzees might continue to be required for some ongoing research on monoclonal antibody therapies; comparative genomics; and social and behavioral factors that affect the development, prevention, or treatment of disease. The IOM Committee was unable to reach consensus on the necessity of using chimpanzees to develop a prophylactic hepatitis C virus vaccine. It also acknowledged that new, emerging, or reemerging diseases could present challenges that might require the use of chimpanzees.

In December 2011, the NIH accepted the recommendations in the IOM Committee's report (*http://www.nih.gov/news/health/dec2011/od-15.htm*) and issued an interim agency policy in notice NOT–OD–12–025 (*http://grants.nih.gov/grants/guide/notice-files/NOT-OD-12-025.html*). This notice indicated that the NIH would not fund any new or other competing projects (renewal and revisions) for research involving chimpanzees and would not allow any new projects to go forward with NIH-owned (i.e., chimpanzees directly owned by the agency) or -supported research chimpanzees (i.e., chimpanzees not owned by the NIH but supported through NIH awards, such as grants and contracts). However, the NIH permitted currently funded research involving chimpanzees to continue. The policy remains in effect until the NIH issues a future notice in the NIH Guide for Grants and Contracts regarding research applications, proposals, and protocols requesting to use chimpanzees in accordance with the IOM Committee's recommendations.

The NIH established the Working Group on the Use of Chimpanzees in NIH-Supported Research (Council Working Group) within the Council of Councils, a federal advisory committee, on February 1, 2012, to provide advice on implementing the IOM Committee's recommendations and to consider the size and placement of the active and inactive populations of NIH-owned or -supported research chimpanzees. Research-active chimpanzees are currently used for research, whereas research-inactive chimpanzees are not currently used in research protocols but might be used for new projects that meet the IOM principles and criteria. The NIH charged the Council Working Group with: (1) Developing a plan for implementation of the IOM's guiding principles and criteria, (2) analyzing currently active NIH-supported research using chimpanzees to advise on which studies currently meet the principles and criteria defined by the IOM report and advising on the process for closing studies if any do not comply with the IOM recommendations, (3) advising on the size and placement of active and inactive populations of NIH-owned or -supported chimpanzees that may need to be considered as a result of implementing the IOM recommendations, and (4) developing a review process for considering whether potential future use of the chimpanzee in NIH-supported research is scientifically necessary and consistent with the IOM principles.

In developing its recommendations, the Council Working Group considered the scientific use of chimpanzees in research currently supported by the NIH and public comments received in response to a previous request for information (*see summary at http://dpcpsi.nih.gov/council/working_group.aspx#Summary*) in *NOT–OD–12–052* (*http://grants.nih.gov/grants/guide/notice-files/not-od-12-052.html*) *dated February 10, 2012, and a* ***Federal Register*** *notice dated February 23, 2012 (http://www.gpo.gov/fdsys/pkg/FR-2012-02-23/pdf/2012-4269.pdf);* obtained advice from external experts; and visited several facilities that house and care for chimpanzees. The Council Working Group's efforts culminated in a report containing 28 recommendations, available at *http://dpcpsi.nih.gov/council/pdf/FNL_Report_WG_Chimpanzees.pdf*, which the group submitted to the NIH Council of Councils on January 22, 2013. The NIH Council of Councils accepted these recommendations and provided them as advice to the NIH on January 22, 2013. The NIH subsequently issued a request for comments in the **Federal Register**, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-02-05/html/2013-02507.html*, and the NIH Guide for Grants and Contracts, available at *http://grants.nih.gov/grants/guide/notice-files/NOT-OD-13-026.html*, to obtain broad public input on the 28 Council recommendations.

**Public Comments, NIH Responses to These Comments, and NIH Decisions Regarding the Council Recommendations**

This section lists the recommendations made by the Council of Councils, summarizes the public comments that the NIH received, and provides the agency's responses and decisions with respect to the recommendations. More than 12,500 individuals submitted comments in response to the request for comments issued in the NIH Guide for Grants and Contracts and the **Federal Register**. The discussion of comments below provides an overview of responses received during the public comment period and is not intended to capture the details of every comment. Responses received during the public comment period are available for public inspection at the NIH On-site FOIA Library, Building 31, Room 5B35, 9000 Rockville Pike, Bethesda, MD 20892, which is open 10:00 a.m. to 4:00 p.m. Monday through Friday and is closed on federal holidays. Those who plan to view the records must contact the NIH Freedom of Information Office at *nihfoia@mail.nih.gov* in advance.

*A. Ethologically Appropriate Physical and Social Environments*

Throughout its report, the IOM Committee used the term "ethologically appropriate physical and social environments" as a central principle for housing research-active and research-inactive chimpanzees. Because the IOM did not define this term, the Council defined "ethologically appropriate physical and social environments" as

"captive environments that do not simply allow but also, importantly, promote a full range of behaviors that are natural for chimpanzees." The Council offered 10 recommendations on ethologically appropriate physical and social environments. This section provides these 10 recommendations, a summary of public comments on these recommendations, and the NIH responses to the comments and decisions regarding the Council recommendations.

The NIH believes that it is important to describe the guidance currently used for the housing and care of NIH-owned or -supported research chimpanzees. Facilities housing chimpanzees owned by the NIH or used in NIH-supported research must comply with the recommendations in the *Guide for the Care and Use of Laboratory Animals, Eighth Edition* (*http://grants.nih.gov/grants/olaw/Guide-for-the-Care-and-Use-of-Laboratory-Animals.pdf*), an internationally accepted primary reference on animal care and use whose contents form the foundation for the development of comprehensive animal care and use programs. The *Guide* provides: (1) A framework for institutional policies, management, and oversight of institutional animal care and use programs; (2) recommendations for housing, environmental enrichment, and animal well-being; (3) recommendations on space and social housing for nonhuman primates and the physical characteristics of animal facilities, including special facilities for behavioral studies and imaging; and (4) guidance on veterinary care and maintaining the health and well-being of laboratory animals. The *Guide* also addresses the regulatory requirements that govern animal research activities in the United States, including the federal Animal Welfare Act and regulations and the Public Health Service Policy on Humane Care and Use of Laboratory Animals.

Any Council recommendations accepted by the NIH will not replace the body of laws, regulations, and policies that already govern the care and housing of the NIH research chimpanzees but, instead, will supplement existing policies.

1. Size of Social Groupings (Recommendation EA1)

Recommendation EA1 states: "Chimpanzees must have the opportunity to live in sufficiently large, complex, multi-male, multi-female social groupings, ideally consisting of at least 7 individuals. Unless dictated by clearly documented medical or social circumstances, no chimpanzee should be required to live alone for extended periods of time. Pairs, trios, and even small groups of 4 to 6 individuals do not provide the social complexity required to meet the social needs of this cognitively advanced species. When chimpanzees need to be housed in groupings that are smaller than ideal for longer than necessary, for example, during routine veterinary examinations or when they are introduced to a new social group, this need should be regularly reviewed and documented by a veterinarian* and a primate behaviorist.

"*In this context, the Working Group defines a "veterinarian" as a licensed, graduate veterinarian with demonstrated expertise in the clinical care and welfare of nonhuman primates (preferably chimpanzees) and who is directly responsible for the routine clinical care of the animal(s) in question."

*Comments:* A large number of commenters supported Recommendation EA1. Many believed that implementing this recommendation would enable facilities to replicate the social environments of chimpanzees in the wild or in sanctuaries. Others noted that ethologically appropriate housing conditions could make chimpanzees a more valuable research model and enhance the validity of results derived from research using them by enabling chimpanzees to express more fully species-appropriate behaviors.

Other commenters expressed concern that the Council recommended arbitrary standards instead of recommending housing conditions that target such outcomes as chimpanzee physical and mental well-being. For example, a number of commenters noted that elderly or infirm chimpanzees might benefit from long-term housing in smaller groups to accommodate their individual medical or social needs.

A large number of commenters favored social groups of at least 7 chimpanzees, with rare exceptions for single or pair housing. Some stated that 7 chimpanzees might be too few for a social group and recommended that group sizes be similar to those in the wild, which, according to commenters, include more than 7 chimpanzees. Other commenters supported the recommendation to house chimpanzees in groups of at least 7 members in theory but indicated that captive chimpanzees might not have the complete set of social skills needed to function safely in larger groups.

A few commenters questioned the scientific basis for the recommended group size of at least 7 animals. Some stated that the average party size of wild chimpanzee groups is more than 7 members. Others pointed to studies that document group sizes as small as 3 or 4 members and recommended that the NIH determine group size based on individual chimpanzee behavioral characteristics, existing social group composition and compatibility, and the professional judgment of chimpanzee behaviorists or veterinarians familiar with the animals. These commenters agreed on the importance of achieving a balance between the needs of social groupings and individual chimpanzees. Some commenters did not support the recommendation to house chimpanzees in social groups that have fewer than 7 animals under certain circumstances, even with proper documentation of the need for such conditions by a veterinarian and primate behaviorist. These commenters wanted more details concerning the "clearly documented medical or social circumstances" and "extended periods of time" that would warrant smaller group sizes. Others stated that research chimpanzees should never be housed singly or in pairs or should never be housed in such conditions for more than a week. It was also suggested that veterinarians are not sufficiently sensitive to chimpanzees' psychological needs to assess their suitability for group versus individual housing. A few commenters recommended requiring consultation with a behavioral primatologist to determine whether a plan to house chimpanzees singly or in pairs is appropriate. Others wondered why the Council defined "veterinarian" but not "primate behaviorist" and suggested that the NIH define this term.

*Response:* The NIH accepts Recommendation EA1. We agree that chimpanzees should have the opportunity to live in sufficiently large and complex groups of 7 chimpanzees or more. Unless compelling factors prevent social housing, the chimpanzees owned or supported by the NIH already live in compatible social groups of varying sizes depending on the individual chimpanzee characteristics, the facility, and the nature of the research conducted, if any. We also believe that housing chimpanzees in larger groups has the potential to offer greater social complexity and more environmental stimuli than housing them in smaller groups. At the same time, the agency believes that chimpanzee facilities should evaluate individual chimpanzees to determine their suitability for successful integration into larger social groups. We agree with the Council recommendation that facility staff knowledgeable about

chimpanzee well-being (i.e., veterinarians and primate behaviorists) are well-positioned to determine a chimpanzee's suitability for group versus single housing based on that chimpanzee's best interests. The agency disagrees with the comment that veterinarians are not sufficiently sensitive to chimpanzees' psychological needs to make such determinations.

The NIH believes that the recommendation is sufficiently flexible and permits facilities to adjust the sizes of research chimpanzee social groups as necessary, as long as these facilities support any downward adjustments with proper documentation and regular reviews by a veterinarian and a primate behaviorist. Experts in chimpanzee well-being, such as primate behaviorists and veterinarians, currently use their professional judgment to balance the needs of individual chimpanzees with those of chimpanzee social groups. The agency expects that facilities will continue to do so.

In the context of this recommendation, the NIH defines a "primate behaviorist" to include a behavioral scientist knowledgeable in primate behavior and socialization requirements.

2. Primary Living Space and Climbing Height (Recommendations EA2 and EA4)

Recommendation EA2 states: "The density of the primary living space of chimpanzees should be at least 1,000 $ft^2$ (93 $m^2$) per individual. Therefore, the minimum outdoor enclosure size for a group of 7 animals should be 7,000 $ft^2$ (651 $m^2$)."

*Comments:* A large number of commenters who discussed Recommendation EA2 supported this recommendation. Some commenters emphasized that the amount of space recommended is the minimum area needed, and larger enclosures that more closely replicate the amount of space available to chimpanzees in the wild (suggestions ranged from 2,000 $ft^2$ to several acres) are preferable. Other commenters encouraged the NIH to identify data in the scientific literature on the appropriate area for chimpanzee housing.

In contrast, several commenters argued that the recommended 1,000 $ft^2$ area is arbitrary and unnecessary, is not based on or is contrary to the published literature, and does not accurately reflect the opinions of some of the experts consulted by the Council Working Group. Several commenters pointed out that certain publications cited by the Council Working Group pertain to gorillas or to spaces smaller than 1,000 $ft^2$. In the absence of sufficient supporting scientific evidence, these commenters did not believe that larger housing environments would improve chimpanzee well-being. Others suggested that rather than establishing minimum space requirements, the NIH should consider the complexity and quality of the environment, including the opportunity for chimpanzees to take temporary refuge from other members of their group.

Commenters also expressed concerns about whether any facility could meet the proposed space recommendation; some asserted that the federal sanctuary system does not provide this amount of space to all of its chimpanzees. In general, these commenters were concerned that the recommendation would set a bar that is too high for research facilities to meet as a way to ban the use of chimpanzees in NIH-supported research. A suggestion was that research facilities might satisfy this recommendation by rotating chimpanzees between smaller and larger enclosures every few weeks.

Several commenters, including some who supported the recommendations on ethologically appropriate environments and some who did not, were concerned about the construction costs for facilities to comply with the recommendation and the recommendation's inflexible specifications. A few commenters suggested tactics to minimize the costs of upgrading primate research facilities, including adapting current facilities so that they could be used as sanctuaries at a later time. Others suggested expanding the existing federal sanctuary system, arranging with other existing sanctuaries to house NIH-owned chimpanzees, or moving all NIH-owned chimpanzees to privately owned locations rather than NIH-supported institutions.

*Response:* The NIH does not accept Recommendation EA2. Although the NIH agrees that sufficient square footage is needed for chimpanzees to travel, patrol, coexist in social groups of 7 or more members, and sometimes separate from others, the agency is concerned about the lack of scientific consensus on the recommended square footage and is especially concerned about whether the published literature supports 1,000 $ft^2$ per chimpanzee. We agree that the scientific literature on ethologically appropriate physical and social environments for captive chimpanzees appears to be scant. However, determining the appropriate housing space density is important because, according to this recommendation, the amount of space should increase linearly with the number of chimpanzees housed in the area (see Recommendation EA2) and because spaces of this size might be costly to construct. We also note that the Association of Zoos and Aquariums (AZA) and the Global Federation of Animal Sanctuaries recommend space densities that differ from each other and from the one in Recommendation EA2. In addition, the area recommended by these other groups does not scale linearly with the number of chimpanzees.

We agree with commenters that constructing spaces offering 1,000 $ft^2$ per chimpanzee might be difficult and costly and would likely require substantial government funding. We appreciate the examples given of alternative ways to provide the recommended square footage, such as rotating chimpanzees into larger enclosures on a regular basis, and other suggestions to conserve costs.

We recognize the diligence of the Council Working Group in defining and recommending parameters for the new concept of "ethologically appropriate." However, because of concerns about the scientific basis for this recommendation and the expected costs of implementing it, the agency will review the space density requirements with respect to the promotion of species-appropriate behavior.

Recommendation EA4 states: "Chimpanzees should have the opportunity to climb at least 20 ft. (6.1 m) vertically. Moreover, their environment must provide enough climbing opportunities and space to allow all members of larger groups to travel, feed, and rest in elevated spaces."

*Comments:* A large number of commenters who responded to this topic agreed with Recommendation EA4. A few commenters indicated that the NIH should provide natural climbing structures (e.g., trees) that allow more than 1 chimpanzee to climb or descend at the same time and to rest on multiple tiers of the structures. Others suggested that the NIH specify the types of climbing structures that facilities must provide (e.g., trees, playground equipment, ropes, and vines) and require facilities to place climbing structures far enough from walls to prevent chimpanzees from jumping out of open-air housing areas.

Other commenters expressed concern that this recommendation was too specific, research supporting the 20 ft. climbing height is lacking, and the published literature cited by the Council Working Group supports structures that are closer to 10 ft. than 20 ft. high.

Others noted that the ideal climbing height should depend on the habitat, which varies among chimpanzees in the wild (i.e., forest-dwelling chimpanzees spend more time off the ground than those living in savanna or woodland environments). These commenters and others encouraged the NIH to require facilities to provide climbing opportunities that promote species-specific behavior and accommodate the needs of individual chimpanzees, including physically challenged chimpanzees that require lower structures, rather than attempting to replicate specific aspects of forested environments.

*Response:* The NIH accepts Recommendation EA4. The recommended structures offer environmental complexity and encourage species-appropriate behaviors, including foraging, nesting, ranging, interacting, exercising, and separating from social groups. The NIH disagrees with commenters' suggestion to reduce or remove the recommended climbing height or not to require facilities to provide climbing opportunities. Although some chimpanzees in savanna or woodland environments might not have access to natural structures that are 20 ft. high, implementing this recommendation will provide opportunities for species-appropriate behavior, environmental complexity, and interacting with or separating from group members. The agency notes that some facilities already offer apparatus that is at least 20 ft. high for certain populations of captive chimpanzees.

3. Environmental Complexity, Nutrition, and Enrichment (Recommendations EA3, EA5–7)

Recommendation EA3 states: "Chimpanzees must be housed in environments that provide outdoor access year round. They should have access to natural substrates, such as grass, dirt, and mulch, to enhance environmental complexity."

*Comments:* A large number of commenters on Recommendation EA3 agreed with it or stated that its provisions serve as minimum requirements. Many indicated that natural substrates mimic wild conditions. A suggestion was to conduct research on the optimal composition of the natural substrates. Others indicated that using more durable synthetic materials instead of natural substrates could enhance environmental complexity.

Some commenters believed that the recommendation does not adequately address key elements of chimpanzees' natural environment, including trees, rocks, fresh water, and structures for exercise. Others argued that the NIH should also require facilities to provide shelter from the outdoors, access to sleeping dens, and the freedom to move to and from an indoor enclosure. Some noted that chimpanzees accustomed to artificial substrates, such as concrete floors, might not be comfortable with natural substrates and might need an acclimation period to become accustomed to the new environment. A few commenters wondered why the Council Working Group did not recommend dome-type structures, noting that the IOM Committee had described these structures as ethologically appropriate. Others expressed concern that this recommendation prohibits the use of synthetic structures and material.

*Response:* The NIH accepts Recommendation EA3 and believes that research chimpanzees need year-round access to natural substrates and the outdoors to enhance their environmental complexity. We believe that the recommendation does not need to list all possible natural substrates because such a list could not be exhaustive and would be unnecessarily prescriptive. We do not interpret the recommendation as precluding the use of synthetic materials (e.g., non-natural flooring) and structures (e.g., geodesic domes) but, instead, as ensuring that chimpanzees have access to various natural substrates intended to enhance their environment. The agency believes that Recommendation EA3 does not prevent facilities from accommodating the needs of chimpanzees that are accustomed to concrete flooring and have had limited prior exposure to natural substrates.

The NIH interprets this recommendation as calling for outdoor access without excluding the provision of indoor space. The NIH already requires facilities housing NIH research chimpanzees to comply with the *Guide for the Care and Use of Laboratory Animals, Eighth Edition* (*http://grants.nih.gov/grants/olaw/Guide-for-the-Care-and-Use-of-Laboratory-Animals.pdf*) and the federal Animal Welfare Act and regulations. These standards require that facilities provide appropriate sheltered housing facilities necessary to protect the animals from extreme weather and to provide for their health and well-being.

Recommendation EA5 states: "Progressive and ethologically appropriate management of chimpanzees must include provision of foraging opportunities and of diets that are varied, nutritious, and challenging to obtain and process."

*Comments:* Commenters generally supported Recommendation EA5. However, some commenters believed that the NIH should specify the frequency of feeding and types of food that facilities must provide, require facilities to feed chimpanzees a diet that is natural or tailored to their health needs, and make all necessary nutrients available. Others recommended specific strategies for ensuring that chimpanzees are challenged when they collect food.

*Response:* The NIH accepts Recommendation EA5 and disagrees with the requested changes to this recommendation. We believe that dictating types of food, nutrients, feeding modalities, and feeding frequency for research chimpanzees would be overly prescriptive. Facilities that house research chimpanzees are in the best position to understand the specific health and dietary needs and preferences of the chimpanzees they house.

Recommendation EA6 states: "Chimpanzees must be provided with materials to construct new nests on a daily basis."

*Comments:* A large number of commenters who responded to this topic agreed with this recommendation. Some believed that the NIH should specify the types of materials that facilities should make available and the need to refresh these materials daily. Some identified the types of nesting materials, both natural and synthetic (e.g., blankets, newspaper, and other nondurable, nontoxic substances), that facilities should provide. A suggestion was that the NIH implement this recommendation only for chimpanzees that live primarily indoors because providing new, daily nesting materials would be unnecessary for chimpanzees with unlimited outdoor access. Others were concerned that the costs of materials and staff time required to provide new nesting materials daily would be prohibitive for facilities. Some commenters argued that some of the references cited to support this recommendation focused on other nonhuman primates (not chimpanzees) or did not mention nesting and that one reference was to a study in which a facility provided nesting materials daily for only a few days and not on a long-term basis. Others recommended that the types of nesting materials that are appropriate for captive chimpanzees be determined by research.

*Response:* The NIH accepts Recommendation EA6. We disagree with commenters' suggestion to specify the types of materials that facilities must

provide for nest construction or to require the daily provision of fresh materials. Research chimpanzee facilities are in the best position to gauge the kinds of nesting materials preferred by their chimpanzees and when these materials need to be refreshed or supplemented. Facilities that offer unlimited access to an outdoor environment that makes nest-building materials (e.g., trees, foliage, and grasses) readily available might already satisfy this recommendation. The NIH does not believe that research to determine the appropriate types of nesting materials for captive chimpanzees needs to be conducted and published before the NIH accepts this recommendation; doing so would unnecessarily delay the recommendation's implementation.

Recommendation EA7 states: "The environmental enrichment program developed for chimpanzees must provide relevant opportunities for choice and self-determination."

*Comments:* A large number of commenters who responded to this topic strongly supported this recommendation as a way to ensure both the complexity of the captive environment and chimpanzees' ability to exercise volition with respect to activity, social groupings, and other opportunities. A suggestion was to revise the wording of Recommendation EA7 to remove "self-determination" and provide more specifics on the choices that chimpanzees should be able to exercise, such as to select their social groups. It was noted that chimpanzee experts could help refine this recommendation to include, for example, a list of possible enrichment activities, such as puzzles, games, devices for retrieving foods, and perhaps touch-screen technologies, which might also be useful for certain types of noninvasive behavioral research. Another suggestion was for the NIH to implement this recommendation to the fullest extent possible without compromising human safety.

*Response:* The NIH accepts Recommendation EA7. We do not believe that the recommendation requires additional specificity because this could have the unintended consequence of omitting important activities or opportunities that would otherwise satisfy this recommendation.

4. Management (Recommendations EA8–EA10)

Recommendation EA8 states: "Chimpanzee management staff must include experienced and trained behaviorists, animal trainers, and enrichment specialists to foster positive human–animal relationships and provide cognitive stimulation. Given the importance of trainer/animal ratios in maintaining trained behaviors, a chimpanzee population of 50 should have at least 2 dedicated staff members with this type of expertise. Positive reinforcement training is the only acceptable method of modifying behaviors to facilitate animal care and fulfillment of management needs. Training plans should be developed for each animal, and progress toward achieving established benchmarks should be documented."

*Comments:* A large number of commenters agreed with Recommendation EA8. Agreement was almost uniform concerning the use of positive reinforcement for the stated purposes. However, a few commenters disagreed that positive reinforcement training alone would be sufficient for the stated purposes and suggested permitting the use of operant conditioning training and the use of timeouts, for example, to help modify behaviors that cannot be modified through positive reinforcement.

Others raised several additional concerns. Some suggested that the NIH specify the qualifications of the behaviorists mentioned in the recommendation, including an advanced degree (e.g., a Ph.D.) with several years of experience and/or experience with chimpanzees in both the wild and captivity. Suggestions for staff recruitment and retention included creating a chimpanzee husbandry internship, developing retention incentives for trained staff to minimize turnover, and having senior staff members mentor new employees. Another recommendation was that facilities conduct background checks to ensure that applicants for jobs at chimpanzee facilities have not violated laws, such as the federal Animal Welfare Act and regulations or NIH policies. Other commenters believed that 2 staff members would not be sufficient to care for 50 research chimpanzees and that the ratio should be increased (e.g., to 4 or 5 trained staff members for 50 research chimpanzees) to prevent excessive staff workloads. Another suggestion, based on the commenters' experience or opinion that the published literature does not support a specific staff-to-chimpanzee ratio, was that the NIH determine its staffing requirements for research chimpanzee facilities based on a performance outcome. Others expressed concern about the availability of funding to implement this recommendation.

*Response:* The NIH accepts Recommendation EA8. We believe that personnel working with NIH-owned and -supported research chimpanzees must include experienced and trained behaviorists and enrichment specialists to foster positive human–animal relationships and provide cognitive stimulation. Facilities that house and care for NIH-owned and -supported chimpanzees currently offer a level of staffing and expertise that is similar to the recommended level. Likewise, research facilities commonly use positive reinforcement training to habituate chimpanzees to husbandry and experimental procedures. The *Guide for the Care and Use of Laboratory Animals, Eighth Edition* (*http://grants.nih.gov/grants/olaw/Guide-for-the-Care-and-Use-of-Laboratory-Animals.pdf*) and the federal Animal Welfare Act and regulations allow facilities to set performance standards to address the psychological well-being of chimpanzees.

Recommendation EA9 states: "All personnel working with chimpanzees must receive training in core institutional values promoting psychological and behavioral well-being of chimpanzees in their care. These institutional core values should be publicly accessible."

*Comments:* A large number of commenters agreed that all personnel working with chimpanzees must be trained in values promoting chimpanzee well-being. Some suggested that individuals working with chimpanzees have both training and experience in working with chimpanzees. Others expressed the concern that the recommendation does not address the need to monitor compliance with these values, such as through the use of cameras and NIH audits. Some commenters suggested credentials that trainers should have and noted the importance of ensuring that all staff members have received all required human vaccinations.

*Response:* The NIH accepts Recommendation EA9. We believe that personnel working with NIH-owned and -supported research chimpanzees must receive training in institutional values that promote the psychological and behavioral well-being of chimpanzees. Facilities that house and care for NIH-owned and -supported research chimpanzees provide such training, and the agency expects this practice to continue. We disagree with those who suggested that the recommendation specify the credentials that trainers must have. Individual institutions are sufficiently knowledgeable about and capable of designing staff training

programs that promote their core values. The NIH also notes that the *Guide for the Care and Use of Laboratory Animals, Eighth Edition* has established training and vaccination requirements for personnel working with chimpanzees (*http://grants.nih.gov/grants/olaw/Guide-for-the-Care-and-Use-of-Laboratory-Animals.pdf*). The agency believes that each facility should have the discretion to decide whether to use cameras or other compliance-monitoring methods. We discuss the NIH's role in enforcing the accepted recommendations in the "Other Comments" section at the end of this document.

Recommendation EA10 states: "Chimpanzee records must document detailed individual animal social, physical, behavioral, and psychological requirements and these requirements should be used to design appropriate individualized chimpanzee management in the captive research environment."

*Comments:* A large number of commenters strongly agreed with Recommendation EA10. Several gave examples of the types of information that facilities should collect or suggested expanding the recommendation to specify the frequency of documentation and record reviews, the types of observations to be recorded, and the qualifications of individuals who conduct these reviews. Public access to these records was also requested. In addition, a few argued that because humans cannot know the psychological requirements of individual chimpanzees, the recommendation should not mention these requirements.

*Response:* The NIH accepts Recommendation EA10. Facilities that house and care for NIH-owned or -supported research chimpanzees keep and use documentation on the chimpanzees' needs and welfare to satisfy accreditation and existing federal requirements. The NIH expects these facilities to continue this practice. We disagree with the suggestion to remove the mention of chimpanzees' psychological requirements from this recommendation. As discussed in the agency's response to Recommendation EA9, the training for personnel working with research chimpanzees should include an emphasis on chimpanzees' psychological well-being to prepare staff to keep proper records. Similarly, the agency disagrees with the suggestion to specify the types of documentation that facilities must retain, the information they must capture, and the qualifications of staff who review the records. Facilities that house and care for NIH-owned and -supported research chimpanzees are required to keep records on the chimpanzee colonies pursuant to existing laws, regulations, and policies. The *Guide for the Care and Use of Laboratory Animals, Eighth Edition* (*http://grants.nih.gov/grants/olaw/Guide-for-the-Care-and-Use-of-Laboratory-Animals.pdf*) and the federal Animal Welfare Act and regulations require facilities to keep records on the behavioral management of their chimpanzees. Restating these existing requirements in this recommendation would be unnecessarily duplicative.

5. Other Issues Related to Ethologically Appropriate Physical and Social Environments

*Comments:* Several commenters expressed concern that the recommendations apply only to research-active and research-inactive chimpanzees and not to other categories of NIH-owned chimpanzees (e.g., retired chimpanzees). Several recommended that the NIH require facilities housing NIH-supported chimpanzees to comply with the housing condition, enrichment, and training practices described in the AZA *Chimpanzee Care Manual* (*http://www.aza.org/uploadedFiles/Animal_Care_and_Management/Husbandry,_Health,_and_Welfare/Husbandry_and_Animal_Care/ChimpanzeeCareManual2010.pdf*) or in scientific or other journals. Some commenters believed that the NIH should specify minimum veterinary care requirements to maximize chimpanzee welfare.

*Response:* The NIH clarifies that any implemented Council recommendations will apply to research-active and -inactive populations of chimpanzees owned or supported by the NIH and any research using them, irrespective of who funds it. The implemented recommendations will also apply to NIH-supported research using chimpanzees, regardless of whether the agency owns or supports these animals. The Council recommendations do not apply to chimpanzees that are retired or permanently ineligible for biomedical research.

The NIH appreciates the suggested references to aid in the care and behavioral management of NIH-owned or -supported chimpanzees. We believe that facilities that house research chimpanzees are sufficiently knowledgeable about the current literature, including the AZA *Chimpanzee Care Manual* used by zoos that house chimpanzees. The NIH also notes that the *Guide for the Care and Use of Laboratory Animals, Eighth Edition* (*http://grants.nih.gov/grants/olaw/Guide-for-the-Care-and-Use-of-Laboratory-Animals.pdf*) and the federal Animal Welfare Act and regulations have requirements regarding veterinary care for nonhuman primates, including chimpanzees.

*B. Size and Placement of Research-Active and Research-Inactive Populations of NIH-Owned and NIH-Supported Chimpanzees*

The Council provided 9 recommendations on the size and placement of research-active and research-inactive populations of NIH-owned and -supported research chimpanzees in the context of the IOM Committee's recommendations. The Council based these recommendations, in part, on the number of chimpanzees used in NIH-supported projects. Below are the recommendations on this topic, a summary of public comments on these recommendations, and the agency's response to these comments and decisions regarding the Council recommendations.

1. Chimpanzee Retirement (Recommendation SP1)

Recommendation SP1 states: "The majority of NIH-owned chimpanzees should be designated for retirement and transferred to the federal sanctuary system. Planning should start immediately to expand current facilities to accommodate these chimpanzees. The federal sanctuary system is the most species-appropriate environment currently available and thus is the preferred environment for long-term housing of chimpanzees no longer required for research."

*Comments:* Many commenters agreed with this recommendation, although most endorsed the retirement of all chimpanzees and not just a majority. Furthermore, a large number of commenters agreed that the federal sanctuary system is the most species-appropriate environment and should be expanded to accommodate the chimpanzees currently used in research. Another suggestion was that the federal sanctuary be subject to regulations to ensure the well-being of the research chimpanzees.

Others questioned the quality of care provided by sanctuaries or found the recommendation vague. In addition, a concern was that sanctuaries do not provide an appropriate level of care for research chimpanzees that have health conditions. Other commenters suggested that the NIH consider moving chimpanzees to sanctuaries, including sanctuaries that are not part of the federal sanctuary system, as long as they satisfy applicable standard of care

requirements, such as those followed by members of the North American Primate Sanctuary Alliance or required for accreditation by the Global Federation of Animal Sanctuaries.

A few commenters did not agree with the recommendation, partly because the Council Working Group presented no evidence that the federal sanctuary system is the "most species-appropriate environment" for research chimpanzees.

The need to fund chimpanzee retirement was a common theme in many comments on Recommendation SP1. Several commenters suggested asking Congress and other entities to allocate the funds necessary to construct additional sanctuary space for research chimpanzees. Others stated that cost should not be a factor in deciding whether to retire additional chimpanzees. It was also noted that the funding limits of the Chimpanzee Health Improvement Maintenance and Protection (CHIMP) Act of 2000—the law that authorizes the NIH to establish and maintain a system of sanctuaries for the lifetime care of chimpanzees no longer needed for research—could affect the agency's decisions about retiring chimpanzees no longer needed for research.

*Response:* The NIH partially accepts SP1 and intends to implement the following: "Subject to the availability of additional sanctuary space and the elimination of funding restrictions on the federal sanctuary system imposed by the CHIMP Act, the majority of NIH-owned chimpanzees will be designated for retirement and transferred to the federal sanctuary system. Planning to expand current facilities to accommodate the additional chimpanzees will continue once the funding restrictions have been eliminated."

We agree that the majority of chimpanzees that the NIH owns could be eligible for retirement, but the federal sanctuary system needs additional capacity. Although the federal sanctuary system plans to use private funding to construct additional space to house chimpanzees from the New Iberia Research Center, these new areas will not be sufficient to accommodate the majority of NIH-owned chimpanzees that the Council recommended retiring. The NIH is currently unable to fund expansion of the sanctuary due to funding limitations in the CHIMP Act.

The NIH believes that adding standards to Recommendation SP1 or specifying the nature of the veterinary care that sanctuaries provide would be unnecessarily duplicative. The standards of care for chimpanzees held in the federally supported sanctuary system (42 CFR Part 9), which have been in effect since October 2008, govern the facilities that have contracts or subcontracts with the federal government to operate the federally supported chimpanzee sanctuary system. In addition, these regulations and the standards in the *Guide for the Care and Use of Laboratory Animals, Eighth Edition* (*http://grants.nih.gov/grants/olaw/Guide-for-the-Care-and-Use-of-Laboratory-Animals.pdf*) govern the veterinary care of chimpanzees in the federal sanctuary system.

Because of funding limitations and the lack of available space in the federal sanctuary system to house additional chimpanzees, the NIH is not in a position to implement Recommendation SP1. Instead, the agency agrees with the recommendation subject to the availability of additional sanctuary space and the elimination of funding restrictions so that the agency can provide additional funding to the federal sanctuary system.

2. Maintaining 50 Chimpanzees for Research (Recommendations SP2 and SP3)

Recommendation SP2 states: "A small population of chimpanzees should be maintained for future potential research that meets the IOM principles and criteria. Based on an assessment of current research protocols and interviews with content experts and current research facility administrators, this colony is estimated to require approximately 50 chimpanzees. The size and placement of this colony should be reassessed on a frequent basis (approximately every 5 years) to ensure that such a colony is still actually needed and that the animals are not overused."

*Comments:* A large number of commenters strongly disagreed with Recommendation SP2, asserting that no chimpanzees should be retained for future research that meets the IOM principles and criteria and/or that chimpanzees might be needed for noninvasive research only. Among other things, they argued that the genetic and physiologic differences between humans and chimpanzees render the chimpanzee a poor scientific model for studying human diseases. Several commenters cited HIV studies that ultimately showed that the chimpanzee model had limited utility for studying this virus. Those who disagreed with this recommendation believed that no scientific basis or public health need exists for keeping a reserve population for research and/or that using chimpanzees in research is unethical. Some noted that discontinuing chimpanzee research would align U.S. policies with those of other nations that prohibit chimpanzee use in research. Others added that stopping chimpanzee use in research would conserve funds. In general, these and other commenters asserted that all research involving chimpanzees should end and that the NIH should not keep 50 chimpanzees for research.

In contrast, several commenters strongly supported keeping 50 chimpanzees available for research, although a suggestion was that 25 chimpanzees would suffice because 50 is too many. Those supporting Recommendation SP2 argued that due to the similarities between chimpanzees and humans, the chimpanzee model has been key to scientific advancements, including the development of interventions to treat or prevent certain diseases. These commenters noted that this model could continue to serve as a useful, and in some cases the only, animal model for studying certain human diseases, such as emerging diseases or other public health threats, the hepatitis C virus, and human behavior.

Some commenters were concerned about the potential loss of the chimpanzee model for studying hepatitis C. They indicated that neither cell culture systems nor other animal models can replace chimpanzees in studies of the hepatitis C virus. Commenters noted that although cell cultures are useful for studying the hepatitis C virus life cycle and evaluating therapeutic drug candidates, they cannot be used for vaccine development. Commenters also noted that two mouse models for hepatitis C virus infection are currently in use but have limitations. The commenters noted that vaccine safety and efficacy must be tested in models with a working immune system, but the existing mouse models lack an intact immune system or are immune deficient and, therefore, cannot be used to test hepatitis C virus vaccines. A few commenters recommended that the NIH establish a new committee to consider the need for chimpanzees in hepatitis C research.

Several commenters expressed concern that 50 chimpanzees would be insufficient to meet possible demands resulting from the need to address known and emerging biomedical and other public health threats. These commenters urged the NIH to reconsider the population size needed for future research on the hepatitis C virus and other conditions because chimpanzees used in research will age, will develop age-related illnesses, or could be exposed to viruses that would make

them unsuitable for biomedical research. It was, instead, recommended that the NIH maintain a population of 200 chimpanzees that are available for research, in part due to concerns that the NIH would be prohibited from replacing chimpanzees in the group of 50 reserved for research.

Several commenters believed that 5-year reassessments are too infrequent and, instead, recommended conducting assessments more frequently. In addition, several commenters wondered how the NIH would select the research animals, how many projects these animals would be involved in, and/or whether the healthiest chimpanzees would be prevented from retiring. Others expressed concern that the 50 chimpanzees selected would experience negative emotional and/or social effects if they were separated from their social groups.

*Response:* The NIH accepts Recommendation SP2. In accepting the IOM Committee's recommendations, the NIH agreed that although most current uses of chimpanzees for biomedical research are unnecessary, some ongoing research might be necessary but any such research must be consistent with the IOM principles and criteria. The NIH recognizes that one matter left unsettled by the IOM Committee was the use of chimpanzees to develop a prophylactic vaccine for the hepatitis C virus. The agency believes that the hepatitis C virus is an example of research that warrants the further use of chimpanzees as long as this research is consistent with the IOM Committee's principles and criteria.

The agency disagrees that the number of chimpanzees for future research needs to be reconsidered at this time. Those who suggested fewer chimpanzees (e.g., 25) did not provide a rationale for this number other than to say that 50 chimpanzees seemed to be too many. Although the NIH appreciates the argument to keep up to 200 chimpanzees available for research and understands the concern that the NIH might not be able to replenish the proposed population of approximately 50 chimpanzees, the NIH finds the Council Working Group's rationale for this recommendation to be compelling.

The NIH would like to clarify its strategy for selecting the approximately 50 chimpanzees to maintain for research. Our intent is to consult with scientists, veterinarians, and primate facility directors who oversee the research-active and -inactive chimpanzees owned or supported by the NIH. These individuals are familiar with these particular chimpanzees, their social groupings, their health status, and other characteristics that could determine their suitability for research. We understand and share concerns about separating chimpanzees from their social groups. Social groups will be among the many important factors that the NIH will consider to select NIH-owned or -supported chimpanzees that will be maintained for future research. The NIH intends to review its decision to retain approximately 50 chimpanzees for research at least every 5 years.

In addition, the Council advised continuing several comparative genomics or behavioral research projects involving 290 chimpanzees, many of which are not owned or supported by the NIH; meaning that a currently active project may continue until the end of the current project period but is not eligible for a no-cost extension or other means to extend the original project term (see Council Working Group report, at *http://dpcpsi.nih.gov/council/working_group_message.aspx*, for further clarification of this concept). However, the Council Working Group concluded that the NIH should not maintain a large reserve colony of chimpanzees for minimally invasive research because many of these research needs could be met in nontraditional research settings, such as accredited sanctuaries or zoos. The NIH would like to clarify that researchers may request NIH funding for minimally invasive research using chimpanzees that are not part of the research colony of approximately 50 NIH-owned or -supported chimpanzees, but the NIH will review these applications, proposals, and protocols for consistency with the IOM principles and criteria. See the discussion of the Council recommendations regarding this review process below under "Review Process for Future Requests to Use Chimpanzees in NIH-Supported Research." In addition, the environments in which NIH-supported research involving chimpanzees is conducted must be consistent with the NIH accepted recommendations for ethologically appropriate environments.

Recommendation SP3 states: "This small chimpanzee colony should be maintained at a facility that has the characteristics of ethologically appropriate physical and social environments described in this report. Thus, plans should be made now to ensure that ethologically appropriate physical and social housing conditions will be available within 3 to 5 years. Maintaining the chimpanzee colony at a single facility could be advantageous to minimize costs and maximize management flexibility."

*Comments:* Although a few commenters believed that creating a separate colony of chimpanzees for research would be fiscally irresponsible, many commenters on Recommendation SP3 agreed with this recommendation. In addition, several suggested that the NIH require changes to chimpanzee housing conditions immediately and not within 3 to 5 years as recommended. In contrast, others stated that 3 to 5 years might not be enough time to construct or renovate chimpanzee facilities.

Several commenters voiced concern that housing all 50 chimpanzees in a single facility could put the animals at risk of contracting contagious diseases, such as tuberculosis. Others strongly opposed the use of any chimpanzees in research and suggested retiring all NIH-owned and -supported chimpanzees to a sanctuary. Another suggestion was to house any colony of chimpanzees retained for research in accredited sanctuaries or sanctuary-like settings in which only noninvasive or minimally invasive behavioral research is permitted.

*Response:* The NIH partially accepts Recommendation SP3, subject to further consideration of the data supporting the recommended space density (see previous discussion on Recommendation EA2). We believe that the 3-to-5-year timeframe recommended by the Council should be sufficient for planning, designing, obtaining permits for, and constructing facilities that are consistent with the recommendation.

In determining whether to keep the research chimpanzee colony in one facility or several facilities, the NIH will carefully consider such factors as the cost and management benefits of both options and safeguards to protect the chimpanzees from colony-wide infections. The agency acknowledges the suggestion that the NIH house the chimpanzees available for research in sanctuary settings that permit limited types of behavioral research. Although the agency agrees that observational research can occur in the federal sanctuary system, this type of research will not satisfy all of the needs noted in the reports of the IOM Committee or Council. Thus, we do not believe that the approximately 50 research chimpanzees could be housed in the federal sanctuary system.

3. Demographic Constitution of Colony and Breeding (Recommendations SP4 and SP7)

Recommendation SP4 states: "The demographic constitution of this small chimpanzee colony is important to maximize its utility for research. Ideally, the colony should be age and sex

stratified, have an approximately 50:50 sex ratio, and be composed primarily of animals that are healthy and younger than 30 years. At least half of this population should be physiologically naïve to infection (e.g., hepatitis or HIV). When this colony is formed, best practices should be used for maintaining current social groupings, whenever possible, to minimize adverse stress."

*Comments:* Many of the commenters who addressed this recommendation agreed with the proposed colony composition. Others supported the recommendation as long as the recommended demographic constitution is best for the animals and the colony or stated that the group cannot be age stratified if all of the animals are under age 30. In addition, some commenters were concerned that if some of the chimpanzees are naïve to infection and others become or are infected, the colony would be further subdivided and might therefore not comply with the other Council recommendations, including the recommendation pertaining to group size (see Recommendation EA1). Some expressed concern that housing equal numbers of animals of both sexes in groups could lead to injuries and deaths. It was also suggested that chimpanzees younger than 3 years or those with compromised health be retired and not be available for research. The remaining commenters generally disagreed with the recommendation, stating that no colony of chimpanzees should be kept for research.

*Response:* The NIH accepts Recommendation SP4. The NIH intends to use the Council recommendation and the best available data to guide its selection of the most appropriate animals to maintain for current and anticipated future research. Consideration of social group requirements, stratification concerns, and possible unintended consequences (e.g., aggression or compromised health of naïve chimpanzees) will be among the many important factors that the agency will use to select the chimpanzees to maintain for future research. The agency also intends to select only healthy chimpanzees for this colony, as the Council suggests. The NIH does not own or support any research-active or research-inactive chimpanzees younger than 3 years.

Recommendation SP7 states: "The NIH should not, on its own, revitalize breeding strategies to derive a population of chimpanzees for any research, including for new, emerging, or reemerging disease research."

*Comments:* Nearly all commenters on Recommendation SP7 agreed that the NIH should not revitalize breeding strategies. Several commenters suggested the use of contraception to prevent accidental breeding within the research chimpanzee colony, and others suggested that no new chimpanzees be added to the NIH-owned population and be used for research. A few added that revitalizing breeding would incur additional costs and exacerbate existing space concerns.

In contrast, a few commenters who supported the availability of chimpanzees for research believed that a limited breeding program should be reestablished to repopulate the colony after research chimpanzees currently owned or supported by the NIH age, expire, or become otherwise unsuitable for research.

*Response:* The NIH accepts Recommendation SP7. We do not agree with some commenters that a chimpanzee-breeding program needs to be reestablished at this time. The cost of caring for a chimpanzee over its lifetime can range from $300,000 to $500,000. This cost alone is a considerable deterrent to revitalizing the breeding of NIH-owned or -supported research chimpanzees. Furthermore, as the IOM Committee observed, alternatives to the use of chimpanzees in some areas of research are now available, and the NIH expects that additional alternative research models will continue to be developed.

4. Funding Priorities for Behavioral and Comparative Genomics Research (Recommendation SP5)

Recommendation SP5 states: "The NIH should review its funding priorities for comparative behavioral, cognitive, and genomics studies using chimpanzees. The NIH should consider targeting funding for low-burden projects that can be conducted in nontraditional research settings that can maintain ethologically appropriate environments or projects that use materials collected during routine veterinary examinations."

*Comments:* Many commenters stated that chimpanzees should not be used in any research (even noninvasive or minimally invasive research) and, as a result, disagreed with this recommendation. However, some of these commenters agreed that materials collected from chimpanzees during routine veterinary exams could be used for research. Others stated that the recommendation was unclear but disagreed with it in general because they believe that all chimpanzee and/or other animal research should stop. For the most part, however, commenters on this recommendation favored a review by the NIH of its funding priorities for comparative genomics and behavioral research using chimpanzees.

Several commenters wondered why this recommendation addresses behavioral research partly because the tasks associated with behavioral research can be enriching for captive chimpanzees. These commenters emphasized the scientific value of chimpanzees for behavioral and neuroscience research due to their cognitive skills, including basic language, self-recognition, and empathy, as well as similarities between chimpanzee and human brain structure and function.

Commenters familiar with behavioral research stated that nontraditional settings, such as sanctuaries, might allow only noninvasive behavioral research and would not be conducive to or would not allow some other types of cognitive and behavioral research. It was also suggested that sanctuaries would not make behavioral research a priority. Another suggestion was that if the NIH relocates most of its chimpanzees to a sanctuary where some behavioral research could occur, a research advocate should be appointed to the sanctuary's board of directors to promote the creative use of chimpanzees in ways that do not disturb the animals' retirement.

*Response:* The NIH accepts Recommendation SP5. We acknowledge that many commenters disagreed with this recommendation because of their belief that the use of chimpanzees in research is unnecessary. However, the agency does not share this view.

In response to questions about why the Council addressed behavioral research in its recommendations, the NIH has funded behavioral research using chimpanzees, so this type of research was within the group's purview. During its review, the Council Working Group found that most of the chimpanzees used in NIH-supported research are enrolled in behavioral research protocols. In its report, the Council Working Group concluded that the need for chimpanzees in behavioral research is not negligible but that the NIH should reexamine its programmatic priorities in this area. We appreciate the detailed information that some commenters supplied about behavioral, neuroscience, and related research for the agency's consideration.

The NIH agrees with those commenters who noted that the regulations governing the federal sanctuary system permit only noninvasive behavioral studies in these

facilities, so some invasive types of behavioral research would not be permitted in the federal sanctuary system. Non-observational, NIH-funded behavioral research might be permissible in other settings, such as zoos; however, the extent to which these entities could satisfy the ethologically appropriate conditions that the NIH plans to implement is unknown. As the agency considers its priorities in behavioral and comparative genomics research, it will take into account both the types of behavioral, neuroscience, and related research that might be conducted using chimpanzees and the relevant regulations that could limit this kind of research in nontraditional settings.

5. New, Emerging, and/or Reemerging Diseases and the Use of Alternative Animal Models (Recommendations SP6, SP8, and SP9)

Recommendation SP6 states: "The NIH should not support any long-term maintenance of chimpanzees intended for research on new, emerging, or reemerging diseases in animal biosafety level 2 or greater biocontainment-level facilities."

*Comments:* A large number of commenters agreed that the NIH should not support any long-term maintenance of chimpanzees intended for research on new, emerging, or reemerging diseases. Many did not support any research on chimpanzees. Others agreed that biomedical research using chimpanzees should stop but found the wording of this recommendation confusing, especially the reference to "level 2 or greater biocontainment-level facilities." Some commenters believed that implementing Recommendation SP6 would threaten national security in the event of an outbreak, while others wondered what would constitute a "national security risk." A few commenters stated that future research on the hepatitis C virus would necessitate biosafety level 2 (BSL–2) facilities and disagreed with Recommendation SP6 because it would prevent hepatitis C virus research. Another concern was that chimpanzees, which are typically held in BSL–2 facilities because they are very susceptible to human respiratory viruses and bacterial infections, could no longer be held at this biosafety level if the NIH accepted this recommendation.

*Response:* The NIH accepts Recommendation SP6 and will not support the long-term maintenance of chimpanzees for the stated research purposes. Information about biosafety and BSLs is available at *http://www.cdc.gov/training/QuickLearns/biosafety/*.

The NIH strongly disagrees with the view that this recommendation would prohibit facilities from continuing to practice BSL–2 precautions and possibly other safeguards that are already in place to protect the health of the chimpanzees and facility personnel. The agency reiterates that the Council recommendations do not alter existing safety regulations, requirements, and policies that dictate the precautions that must be taken for the safe handling of, care of, interaction with, and other exposures of NIH-owned and -supported research chimpanzees to protect the health and safety of both the chimpanzees and the individuals in charge of their care. The agency expects facilities housing NIH-owned and -supported research chimpanzees to continue taking the applicable safety and health precautions.

The NIH also does not interpret this recommendation as prohibiting research on the hepatitis C virus using chimpanzees, which is conducted in BSL–2 facilities due to the nature of the virus and because facilities use BSL–2 precautions as a best practice in chimpanzee colonies. Furthermore, the chimpanzee is a longstanding and informative model for this research. The agency interprets Recommendation SP6 as discouraging long-term plans to use chimpanzees for research in higher containment conditions on new, emerging, or reemerging diseases.

The NIH does not agree with commenters who stated that implementing this recommendation would threaten national security. Chimpanzees are not used for research conducted in high-biocontainment conditions (BSL–3 or BSL–4). Only other nonhuman primates, other animal models, or non-animal-based technologies have been used for research to address public health threats requiring high-biocontainment conditions.

Recommendation SP8 states: "The NIH should collaborate with other federal agencies (i.e., Centers for Disease Control and Prevention and Food and Drug Administration) and departments (i.e., Department of Defense and Department of Homeland Security) when considering any future plan for placement, maintenance, and use of chimpanzees in research in response to a new, emerging, or reemerging disease that could represent a national security risk to the United States."

*Comments:* Of the commenters who responded to Recommendation SP8, many disagreed with the recommendation, mainly due to the opinion that all chimpanzee and/or other animal research should end. However, other commenters agreed with Recommendation SP8. Some of these commenters desired more restrictions on such future use. Others desired fewer restrictions.

*Response:* The NIH accepts Recommendation SP8. We do not believe that adding restrictions on the use of chimpanzees for new, emerging, or reemerging diseases would be helpful in achieving our public health mission.

Recommendation SP9 states: "In light of evidence suggesting that research involving chimpanzees has rarely accelerated new discoveries or the advancement of human health for infectious diseases, with a few notable exceptions such as the hepatitis viruses, the NIH should emphasize the development and refinement of other approaches, especially alternative animal models (e.g., genetically altered mice), for research on new, emerging, and reemerging diseases."

*Comments:* Many commenters supported Recommendation SP9, agreeing that the development of alternative animal models is a step toward eliminating the use of chimpanzees in research. These commenters, however, emphasized that the NIH should only select an alternate animal model after considering whether the human health benefits of the research justify this model's use. In contrast, many commenters disagreed with Recommendation SP9 because they believed that no animals should be used in research. Others stated that the recommendation marginalizes the contributions of chimpanzees to scientific research.

*Response:* The NIH accepts Recommendation SP9 and plans to continue to support research to develop and validate non-animal-based models to help further reduce the use of other animal models in research. Research using chimpanzees has prevented hundreds of thousands of human deaths and illnesses due to hepatitis A and B and has resulted in advances in the development of the hepatitis C and polio vaccines and treatments for leukemia, other cancers, and other devastating diseases. Our position is that the chimpanzee has been a valuable research model for improving human health.

*C. Review Process for Future Requests To Use Chimpanzees in NIH-Supported Research*

The final element of the Council Working Group's charge was to develop a process for considering whether the potential future use of chimpanzees in

NIH-supported research is scientifically necessary and consistent with the IOM principles and criteria. The Council offered 9 recommendations in this area. Below are these recommendations, summaries of comments on these recommendations, the agency's response to these comments, and its decisions regarding this set of recommendations.

In some of these recommendations, the Council called for the NIH to create an "independent Oversight Committee for Proposals Using Chimpanzees in NIH-supported Research (Oversight Committee)" to advise the NIH on whether the proposed use of chimpanzees in research is consistent with the IOM principles and criteria. In its January 22, 2013, deliberations, the Council of Councils encouraged the agency to consider various options for placing the Panel's consideration of research involving chimpanzees. The NIH notes that the recommended Oversight Committee must abide by applicable federal laws, regulations, and policies and, thus, must play an advisory role only and cannot have decision-making authority. Decisions about funding for NIH-supported research are made solely by the NIH and not its advisory bodies. For these reasons, the NIH is not able to accept portions of some recommendations on the review process for future requests to use chimpanzees in NIH-supported research. Instead, the NIH partially accepts some of these recommendations and provides language for implementing the portions of the recommendations that satisfy applicable laws, regulations, and policies. For example, to be consistent with certain laws and regulations, the NIH refers to the "Oversight Committee" as the "Chimpanzee Research Use Panel" (the Panel). In addition, the NIH has decided to use a single process to assess the consistency with the IOM principles and criteria of grant applications, contract proposals, intramural research protocols, and third-party research requests involving chimpanzees.

The NIH proposes to establish the Panel as a working group of the Council of Councils, a federal advisory committee. The Panel will consider whether requests to the NIH to use chimpanzees in research are consistent with the IOM principles and criteria. Panel members will convene before the NIH makes funding decisions but after the NIH peer review or technical evaluation processes are completed for grant applications, contract proposals, and intramural research protocols. In accordance with laws governing the federal advisory committee process, the Panel will present its recommendations to the Council of Councils, which, in turn, will make recommendations to the appropriate NIH Institute or Center director(s).

1. Oversight Committee Composition (Recommendations RP1 and RP3)

Recommendation RP1 states: "The NIH should replace the Interagency Animal Models Committee with an independent Oversight Committee for Proposals Using Chimpanzees in NIH-supported Research (Oversight Committee) to advise on the proposed use of chimpanzees in research. The current Interagency Animal Models Committee is not considered independent from other individuals and bodies that review and approve grant applications to the NIH, contains no members of the public, and thus does not fully meet the spirit of the IOM principles and criteria."

*Comments:* Many of those who commented on this topic agreed with the recommendation. Among those who disagreed with this recommendation, some were concerned that the proposed Oversight Committee could stifle behavioral research. One suggestion was that the NIH not charge this new committee with reviewing behavioral research but, instead, consider the institutional animal care and use committee's approval to be sufficient. In addition, a few asked why research with chimpanzees would be subject to more scrutiny than research with other animals and noted that this type of oversight committee duplicates the activities of the existing NIH peer review system used to evaluate grant applications. Some commenters raised the concern that animal rights advocacy groups would seek a separate type of review for proposed research using other species if the NIH implements Recommendation RP1. Others stated that all chimpanzees used in research should be moved to the federal sanctuary system or were not sufficiently familiar with the Interagency Animal Models Committee to provide an opinion on this recommendation.

*Response:* The NIH partially accepts Recommendation RP1 and intends to implement the following: "The NIH will replace the Interagency Animal Models Committee with the independent Chimpanzee Research Use Panel to advise on the proposed use of chimpanzees in research."

The Interagency Animal Models Committee was a federal group chartered to oversee all federally supported biomedical research involving chimpanzees. The agency plans to replace this committee with the Panel, which will function independently of review processes currently used to assess grant applications, contract proposals, and intramural research protocols. The Panel will include members of the public and will consider whether requests to the NIH to use chimpanzees in research are consistent with the IOM principles and criteria.

The NIH disagrees with some commenters' suggestions to exclude behavioral research involving chimpanzees from the Panel's consideration of whether proposed research is consistent with the IOM Committee's principles and criteria. Verifying whether proposed research meets the IOM Committee's criteria for behavioral research will help the NIH determine whether that research is consistent with the IOM Committee's recommendations. The agency disagrees with commenters that using the Panel to consider whether proposed behavioral research meets the IOM principles and criteria will stifle research in this field.

Recommendation RP3 states: "The Oversight Committee should be comprised of individuals with the specific scientific, biomedical, and behavioral expertise needed to properly evaluate whether a grant, intramural program, contract, or other award mechanism supporting research using chimpanzees complies with the IOM principles and criteria."

*Comments:* Many commenters who responded to this recommendation strongly agreed with it. Among those who agreed, several suggested that the NIH not compensate Oversight Committee members for their reviews and that this committee include at least one animal welfare representative, members of animal protection groups (such as Jane Goodall), experts in chimpanzee conservation, and/or scientists with disease-specific expertise. Some also wanted the NIH to expand the number of public representatives on the committee. Several voiced concern that including only scientific members on the committee would not be in the best interests of the chimpanzees. For those who disagreed with the recommendation, the main concerns were the composition of this committee and the belief that all research chimpanzees should be retired.

*Response:* The NIH partially accepts Recommendation RP3 and intends to implement the following: "The Chimpanzee Research Use Panel will be comprised of individuals with the specific scientific, biomedical, and behavioral expertise needed to properly

evaluate whether requests to use chimpanzees in research that is supported by a grant, intramural program, contract, or other award mechanism are consistent with the IOM principles and criteria."

In addition, the NIH agrees with the Council recommendation regarding the Panel membership, namely, that it should consist of 1 or more scientists, veterinarians, primatologists, bioethicists, and statisticians; and 2 or more public representatives. NIH officials will advise on process issues and provide information but will not be members of the Panel.

2. Review Process (Recommendations RP4–RP6)

Recommendation RP4 states: "Investigators seeking NIH funding to conduct research using chimpanzees must explain in their application how their proposed research complies with the IOM principles and criteria. This supplemental information must address all of the questions posed in the decision-making algorithm in this report and provide sufficient detail for consideration by the Oversight Committee. This information is in addition to the vertebrate animal section and/or applicable animal study protocol. The NIH might wish to develop a form or other suggested template for investigators to use for this purpose."

*Comments:* Many commenters on this topic supported Recommendation RP4 and requested that the template have, and that researchers adhere to, strict guidelines. Commenters suggested that investigators be required to justify the need to use chimpanzees by explaining how the proposed research would contribute substantially to human health and by specifying which other animal models or alternatives have been tested or considered.

Several commenters stated that the proposed decision-making process is ambiguous and needs clear-cut criteria. Some of the wording in the Council Working Group's decision-making algorithm was also of concern because it could be interpreted to mean that research cannot be conducted in chimpanzees if it can be conducted in humans. More specifically, a concern was that research to compare the chimpanzee's genome to a human's genome would not be permitted.

In general, those who disagreed with Recommendation RP4 did so because they believed that all chimpanzees should be retired from research. Others argued that because of the IOM Committee's finding that using chimpanzees in research is largely unnecessary, the process described in Recommendation RP4 is not needed.

*Response:* The NIH partially accepts Recommendation RP4 and intends to implement the following: "Investigators proposing to the NIH to conduct research using chimpanzees must demonstrate that their proposed research is consistent with the IOM principles and criteria. The supplemental information that these investigators provide must address all of the questions posed in the decision-making algorithm in the Council Working Group report and provide sufficient details for consideration by the Chimpanzee Research Use Panel. This information is in addition to the vertebrate animal section and/or applicable animal study protocol."

The NIH plans to develop a form or other suggested template for investigators to use for this purpose. In addition, the agency will determine the timing and most appropriate format for collecting the supplemental information that investigators proposing to use chimpanzees in research will need to submit. The existing technical and/or peer review processes applicable to grant applications, contract proposals, or intramural research protocols will continue without modification. The Panel will function separately from these existing processes.

The NIH does not interpret the recommendations of the IOM Committee or the Council or the Council Working Group's decision-making algorithm as prohibiting comparative genomics research or other research that compares biology or behavior in humans and chimpanzees to answer a scientifically meritorious question. The IOM Committee provided explicit criteria to guide comparative genomics and behavioral research that proposes to use chimpanzees for those purposes.

Recommendation RP5 states: "To ensure that the scientific use of chimpanzees is justified, the animal numbers and group sizes must be statistically justified before the NIH approves any proposed research project involving the use of chimpanzees."

*Comments:* Many commenters on this topic agreed that researchers must statistically justify the requested sample size of chimpanzees for the proposed research. However, some commenters wondered what the term "statistically justified" means. Others were concerned about who would decide when the use of chimpanzees is or is not statistically justified.

Those who disagreed with Recommendation RP5 generally believed that the NIH should not fund any chimpanzee research and that the scientific use of chimpanzees is never justified. Others stated that not all experimental designs involving chimpanzees require statistical analyses of animal numbers and group sizes. A suggestion was that a chimpanzee might concurrently serve as its own control in, for example, studies to determine the dose of a drug that maximally binds to a target or the half-life of a test compound.

*Response:* The NIH partially accepts Recommendation RP5 and intends to implement the following: "To ensure that the scientific use of chimpanzees is justified, the proposed animal numbers and group sizes must be statistically or scientifically justified before the NIH approves any proposed research project involving the use of chimpanzees."

We believe that the intent of this recommendation is to ensure that the number of chimpanzees proposed for a study is sufficient to yield meaningful results. Mathematical calculations, often described as statistical power analyses, are commonly used to ensure that studies include enough test subjects to provide confidence that the observed results would not have occurred by chance.

The NIH appreciates the view that researchers must statistically justify the numbers of chimpanzees that they propose to study. At the same time, the NIH wishes to prevent the use of more chimpanzees than are needed for a study. The NIH is willing to consider applications, proposals, and protocols for research that request to use fewer chimpanzees than the statistically justified number if doing so can appropriately meet the scientific need.

Recommendation RP6 states: "Investigators need not include supplemental information on chimpanzee use for proposals involving the following, and these proposals will be exempt from Oversight Committee review:

- The use of any biomaterials, including pathological specimens, collected and/or stored prior to submission of the research proposal, or as part of a research grant or contract that has undergone Oversight Committee review and approval, or as part of regular veterinary (health) examinations;
- Other observational or non-interventional studies, such as behavioral observations in the wild that do not result in contact or otherwise interfere with the chimpanzees being observed; or
- Noninvasive collection of samples from the wild in a manner that does not result in contact or otherwise interfere

with the chimpanzees during the collection."

*Comments:* Many commenters agreed with Recommendation RP6. Several also supported the use of chimpanzee specimens collected and stored post mortem as well as development of a chimpanzee tissue-sharing network among researchers to facilitate comparative genomics and other research. A few commenters found the wording of this recommendation unclear. As with the other review process recommendations, those who disagreed generally did so because they did not believe that chimpanzees should be used in any research.

*Response:* The NIH partially accepts Recommendation RP6 but will use the Chimpanzee Research Use Panel described above instead of an Oversight Committee. In addition, NIH understands "proposals" to include research applications, proposals, or protocols. Thus, NIH intends to implement the following: "Investigators need not include supplemental information on chimpanzee use for research applications, proposals, or protocols involving the following because they will be exempt from Chimpanzee Research Use Panel consideration:

- The use of any biomaterials, including pathological specimens, collected and/or stored prior to submission of the research application, proposal, or protocol, as part of a research project that has undergone Chimpanzee Research Use Panel consideration and subsequent NIH approval, or as part of regular veterinary (health) examinations;
- Other observational or non-interventional studies, such as behavioral observations in the wild that do not result in contact or otherwise interfere with the chimpanzees being observed; or
- Noninvasive collection of samples from the wild in a manner that does not result in contact or otherwise interfere with the chimpanzees during the collection."

The agency plans to issue a future notice in the *NIH Guide for Grants and Contracts* with procedural guidance for implementing these decisions.

3. Placement of the "Oversight Committee" Review (Recommendations RP2 and RP7–RP9)

Recommendation RP2 states: "The Oversight Committee should be separate from extramural initial review groups, intramural scientific program personnel, and Institute or Center directors. In addition, the Oversight Committee's reviews should take place after the standard reviews and approvals by these entities. The Oversight Committee's reviews will focus on whether the proposed research is consistent with the IOM principles and criteria for the use of chimpanzees in research."

*Comments:* Many commenters on this topic agreed with Recommendation RP2. A prevailing sentiment was that the Oversight Committee members should have no vested interest in or potential financial gain from using chimpanzees for research. Several repeated that public members with no ties to research should be part of this committee. Others held the opinion that this separate committee would be better positioned than an existing NIH committee to give priority to the animals' well-being during these reviews.

Those who disagreed that the NIH should establish an additional committee for this purpose were concerned that members would oppose research for nonscientific reasons. These commenters raised concerns about the potential that the Oversight Committee would duplicate scientific reviews at the NIH and delay approvals of grants, contracts, and intramural projects. Several disagreed with the recommendation because they believed that chimpanzees should not be used in research and, therefore, that the NIH does not need a committee of this sort. Some commenters wondered how members of this committee would be selected.

*Response:* The NIH partially accepts Recommendation RP2 and intends to implement the following: "The Chimpanzee Research Use Panel will be separate from extramural peer review groups, contract evaluation panels, and intramural scientific review procedures. In addition, the Chimpanzee Research Use Panel's considerations will take place after the standard reviews (e.g., after the reviews by peer review panels, technical evaluation panels, and NIH Institute and Center advisory councils) and will focus on whether the proposed research is consistent with the IOM principles and criteria for the use of chimpanzees in research."

Recommendation RP7 states: "The Oversight Committee review should take place after the Center or Institute director approves a proposal so that the key elements of the review are publicly accessible to the extent allowable by federal regulations. The Oversight Committee should review all requests for grants, contracts, intramural projects, and third-party projects rather than establishing a separate review process for each mechanism. Funding of an award for research involving the use of chimpanzees that has received an Institute or Center director's approval will be conditional and subject to the subsequent evaluation by the Oversight Committee."

*Comments:* Many commenters agreed with Recommendation RP7 and emphasized the need for full disclosure and transparency of the Oversight Committee's activities. Some commenters suggested that the Oversight Committee proceedings be open to the public. Another suggestion was that the Oversight Committee's reviews occur before the NIH peer review or after the peer review but before the NIH approves the project for funding. Those who disagreed with Recommendation RP7 believed that all research chimpanzees should be sent to a sanctuary and that the NIH should not fund any chimpanzee and/or other animal research.

*Response:* The NIH partially accepts Recommendation RP7 and intends to implement the following: "The NIH will convene the Chimpanzee Research Use Panel after completing the standard review processes for grant applications, contract proposals, and intramural research protocols. The NIH will charge the Chimpanzee Research Use Panel with considering grant applications, contract proposals, intramural research protocols, and third-party research requests rather than establishing a separate review process for each mechanism."

The agency acknowledges commenters' requests that the Panel's activities be open to the public or otherwise transparent. However, to protect the confidentiality of research applications and proposals, proprietary interests, and researcher privacy, discussions and recommendations about specific applications or proposals are not available to the public. Standard information about funded research will continue to be available at *http://projectreporter.nih.gov/reporter.cfm*. The NIH intends to provide the public with details about general processes that the Panel will follow, the criteria for selecting its members, and the decision-making algorithm that the Panel will use in applying the IOM principles and criteria.

Recommendation RP8 states: "The Oversight Committee will base its reviews on the supplemental information provided by investigators on how the proposed research complies with the IOM principles and criteria and all relevant documents (including animal study protocols and grant applications) required to make informed determinations for all funding requests (grants, contracts, and intramural

projects) and other requests to use chimpanzees (e.g., third-party projects)."

*Comments:* Many commenters strongly agreed with Recommendation RP8. A suggestion was to allow the Oversight Committee to hold onsite inspections although, ideally, the use of chimpanzees in research would be banned entirely. Those who disagreed with Recommendation RP8 disapproved of using chimpanzees for research and believed that the animals should be sent to a sanctuary.

*Response:* The NIH partially accepts Recommendation RP8 and intends to implement the following: "The Chimpanzee Research Use Panel will base its assessments on the supplemental information provided by investigators that explains how the proposed research is consistent with the IOM principles and criteria and all relevant documents (including animal study protocols and grant applications) necessary to provide informed recommendations about requests to NIH to use chimpanzees in research (i.e., NIH-sponsored grants, contracts, intramural projects, and third-party projects)."

Recommendation RP9 states: "The Oversight Committee will determine whether each application meets or does not meet the IOM principles and criteria based on the votes of a majority of all voting members. At its members' discretion, the Oversight Committee may vote on whether different components or parts of an application meet or do not meet the IOM principles and criteria."

*Comments:* Many commenters who responded agreed with Recommendation RP9. One suggestion was to require a favorable three-fourths majority vote before the Oversight Committee determines that the research meets the IOM principles and criteria. Others disagreed with the recommendation because they believed that chimpanzees should not be used for research or because the composition of the Oversight Committee is unknown.

*Response:* The NIH partially accepts Recommendation RP9. The agency intends to implement the following: "The Chimpanzee Research Use Panel will advise on whether each application, proposal, and protocol meets or does not meet the IOM principles and criteria based on the votes of a majority of all voting members. At its members' discretion, the Chimpanzee Research Use Panel may vote on whether different components or parts of an application, proposal, or protocol meet or do not meet the IOM principles and criteria."

*D. Review of NIH-Supported Research Projects Using Chimpanzees*

The NIH requested public comments on a summary in the Council Working Group's report of the group's reviews of 30 research projects involving the use of NIH-owned or -supported chimpanzees. The Council recommended ending 6 of 9 biomedical research projects, 5 of 13 comparative genomic and behavioral research projects, 1 colony housing and care project, and the research components of 3 of the remaining 7 colony housing and care projects. The report did not identify the 30 projects. The NIH asked for input on the outcomes of the project reviews summarized in the report.

*Comments:* Of the commenters who addressed this topic, a small subset favored the Council recommendations regarding research projects using chimpanzees. Most commenters opposed the continuation of any research involving chimpanzees, stating that all experimentation on chimpanzees should end and all research chimpanzees should be relocated to a sanctuary. Others opposed only the recommendations to continue biomedical research and believed that the behavioral research studies should continue. Several commenters noted their difficulty providing input on the Council Working Group's reviews of research projects because the report did not include project details; these respondents requested that the NIH make the details on these projects public.

In an effort to preserve the scientific integrity of chimpanzee-based research projects that the Council's recommended ending, a suggestion was to encourage the researchers to use another research model to achieve the scientific objectives of their original projects. A concern was that it would be unfair to change the rules and interrupt current research; it was argued that ongoing projects should be allowed to continue and to maintain their original level of funding and timeframe. A few commenters questioned whether the Council Working Group had the requisite expertise to review some of the research.

*Response:* The NIH accepts the recommendations on the research projects reviewed by the Council Working Group. The NIH intends to phase out the projects that the Council recommended ending in such a way as to avoid causing unacceptable losses to research programs or an impact on the animals, as the IOM Committee suggested. The agency appreciates the comments received on the summary-level information provided and those suggesting that certain projects not end as a result of the Council recommendations. The NIH's acceptance of the IOM Committee's report and any Council recommendations reflects a shift in the agency's scientific priorities away from chimpanzee research that does not critically need this model. This announcement does not prohibit researchers affected by the Council recommendation from disclosing the details of their research.

The NIH does not agree with those who suggested that the Council Working Group lacked the expertise required to review research involving chimpanzees. The Council Working Group members and consultants included experts in behavioral sciences; infectious diseases, including hepatitis; use of alternative models; neuroscience and cognition; colony management; and veterinary medicine.

*E. Other Comments*

This section summarizes comments that were not directed at a specific Council recommendation or address topics not discussed previously. Commenters discussed ending animal-based research, the recommendations' applicability to other animal models, funding for alternatives to chimpanzees, funding for and enforcement of any implemented recommendations, and the composition of the Council Working Group. A number of commenters commended the NIH for accepting public input and convening the Council Working Group. Many applauded the Council recommendations and the group members for their work and careful consideration of the issues.

1. Ending All Animal-Based Research and Testing

*Comments:* Many commenters asked the NIH to end all chimpanzee and/or animal-based research and to use alternative approaches instead. Some commenters based this opinion on the perceived inefficiencies of animal-based research for solving human health problems, but, in most cases, these commenters argued that the use of animals in research is inhumane, unfair, and unethical. For example, some stated that the laboratory environment cannot meet the complex intellectual, social, psychological, and emotional needs of chimpanzees. Others believed that chimpanzees, because of their genetic similarity to humans, experience the world in a similar manner to humans and, therefore, should be treated more like humans (e.g., should provide consent before participating in research

and have the opportunity to pursue happiness). Many argued that currently available non-animal alternatives, such as computer simulations, should facilitate the phasing out of animal-based research. Other commenters suggested that rather than fund animal-based studies, the NIH should allocate more funds toward developing and expanding these non-animal alternatives, which, in their opinion, might be more cost effective than animal-based experiments. Many commenters did not want their tax dollars used for chimpanzee and/or other animal-based experiments.

*Response:* The NIH emphasizes that the use of animals in research continues to be central to understanding, treating, and preventing many diseases and conditions that cause human suffering and death. Although we believe that ceasing all animal research at this time would be imprudent, the NIH maintains high standards for the use of animals in research. In addition, the agency is a major proponent of the U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training (Principles), which provide an ethical framework for the use of live animals in research. Scientists must adhere to the Principles in their conduct of research, testing, and training that is funded by the NIH. The Principles require that procedures involving animals be designed and performed with due consideration of their relevance to human or animal health, the advancement of knowledge, or the good of society. Researchers must select animal models for procedures that are of an appropriate species and quality and must use the minimum number of animals required to obtain valid results. Furthermore, researchers must consider the use of alternative methods to animal models, such as mathematical models, computer simulations, and in vitro biological systems.

The agency also funds efforts to develop alternative ways to conduct research without using animal models. These technologies include improved molecular analysis techniques to study various diseases and three-dimensional chips with living cells and tissues that might accurately model the structure and function of human organs.

2. Applying the Recommendations beyond the NIH and to Other Animal Models

*Comments:* Several commenters suggested that the recommendations apply beyond the NIH to other agencies of the federal government, private industry, and private laboratories. A concern was that the use of privately owned chimpanzees might increase if the NIH-owned chimpanzees were no longer available for research; expanding the reach of the recommendations would help mitigate some of these concerns. Others wished the NIH to apply the recommendations to other animal models.

*Response:* Any Council recommendations implemented by the NIH will apply to research-active and -inactive populations of chimpanzees owned or supported by the NIH and any research using them, irrespective of who funds it. The implemented recommendations will also apply to NIH-supported research using chimpanzees, regardless of whether the agency owns or supports these animals. However, the NIH lacks authority to apply the Council recommendations to other agencies of the federal government, private industry, or private laboratories.

3. Enforcing the Accepted Recommendations

*Comments:* One suggestion was for the NIH to create a new entity, separate from the Oversight Committee that the Council Working Group recommended, to enforce the other recommendations, especially those regarding ethologically appropriate housing, that the NIH accepts. Some believed that this entity should conduct frequent inspections (i.e., more than once yearly) of facilities that house research chimpanzees and have the legal authority to terminate unacceptable practices.

*Response:* The NIH believes that the Council recommendations provide the NIH with sufficient guidance without the need for additional external oversight. NIH-funded institutions must comply with the federal Animal Welfare Act and regulations, the Public Health Service Policy, and the *Guide for the Care and Use of Laboratory Animals, Eighth Edition* (*http://grants.nih.gov/grants/olaw/Guide-for-the-Care-and-Use-of-Laboratory-Animals.pdf*). Any recommendations regarding the use of chimpanzees in research that the NIH implements will supplement these existing statutes and policies. The NIH Office of Laboratory Animal Welfare (OLAW) oversees all NIH-supported research activities that involve animals. OLAW monitors NIH-funded institutions to ensure their compliance with animal welfare laws and policies. OLAW also investigates allegations of animal welfare abuses and inappropriate animal care in NIH-funded studies.

4. Funding for Chimpanzee Retirement and Facility Construction

*Comments:* Several commenters expressed concern about funding to implement the Council recommendations. They stated that the current national fiscal climate will probably limit the amount of money made available to fund new construction or other facets of the Council recommendations.

Several commenters suggested ways that the NIH could financially support the implementation of the recommendations. One suggestion from numerous commenters was for the NIH to transfer the funds currently used to support chimpanzees in laboratories to sanctuaries. Others recommended fundraising to pay for construction and other costs. Some asserted that caring for chimpanzees in sanctuaries rather than research facilities might save money or suggested supporting chimpanzees through for-profit entities or by retiring the chimpanzees in place.

Another concern was that funding would be diverted from important research to pay for the recommendations' implementation and for additional chimpanzee housing when the size of the population is decreasing. Some stated that existing facilities offer high-quality conditions and care and have trained staff to provide enrichment and health care, and keeping chimpanzees in these facilities would save transportation costs.

*Response:* The agency understands commenters' concerns about the prospect of future expenditures to implement the Council recommendations. As the NIH gains a better understanding of the resources needed to implement the recommendations, it will explore options for funding their implementation.

5. Composition and Impartiality of the Council Working Group

*Comments:* Certain commenters expressed concern about the composition of the Council Working Group. A few stated that the Council Working Group seemed to be biased in favor of scientific research. However, many commenters on this topic stated that certain Council Working Group members were biased against research and the group lacked the necessary scientific diversity to reach the stated conclusions about behavioral and neuroscience research. Several commenters were also concerned that 1 or more Council Working Group members had conflicts of interest that

prevented them from being impartial and that these members might have swayed the group to recommend the retirement of most chimpanzees. Others who expressed knowledge of the Council Working Group's activities commented that the members failed to seek diverse input on a range of matters, including certain scientific issues and U.S. laboratory facilities. These commenters stated that the group should have included NIH-funded experts in chimpanzee behavior and chimpanzee research in general. Some commenters believed that the NIH should appoint a new committee to consider the use of chimpanzees in research.

*Response:* The agency believes that the composition of the Council Working Group and consultants was appropriately balanced to provide advice to the Council on NIH-supported research involving chimpanzees and implementing the IOM Committee's recommendations. Members and consultants included experts in behavioral sciences; infectious diseases, including hepatitis; use of alternative models; neuroscience; cognition; colony management; and veterinary medicine. The Council Working Group was charged with providing recommendations on how to implement the IOM Committee's recommendations. The NIH had already accepted the IOM recommendation that most current use of chimpanzees in research is unnecessary.

6. Additional Comments

*Comments:* A few commenters expressed confusion about the number of chimpanzees currently used in NIH-supported and other research. Some had difficulty aligning the number of chimpanzees in NIH-supported research with the census data on NIH-owned or -supported research chimpanzees. Others commented on captive chimpanzee conservation and captive chimpanzees' status as a threatened species. A number of commenters disliked the length of the request for comments form and would have preferred a different format, such as checkboxes to indicate agreement or disagreement with the Council recommendations.

*Response:* The census of chimpanzees on page 32 of the Council Working Group report includes only the chimpanzees that the NIH owns or supports. This table is not a census of all chimpanzees available for research in the United States. According to the IOM Committee's report (*http://iom.edu/Reports/2011/Chimpanzees-in-Biomedical-and-Behavioral-Research-Assessing-the-Necessity.aspx*), approximately 300 additional chimpanzees available for research are privately owned and housed in research facilities not supported by the NIH. The research projects that the Council Working Group reviewed involved chimpanzees owned or supported by the NIH and chimpanzees that are privately owned and not supported by the agency.

The NIH recognizes that on June 12, 2013 the U.S. Fish and Wildlife Service proposed a rule that would list captive chimpanzees as endangered rather than threatened (*http://www.fws.gov/policy/library/2013/2013-14007.pdf*). The NIH will prepare for a potential final rule that lists captive chimpanzees as endangered and intends to adapt its policies on research projects using chimpanzees to comply with the guidelines that the U.S. Fish & Wildlife Service will establish in its final rule. In addition, we acknowledge concerns about the length of the request for comments form and appreciate the suggestions for easing comment entry in the future.

**Conclusion**

The NIH expresses its appreciation for the comments it received on the Council recommendations on the use of chimpanzees in NIH-supported research. The agency used these comments to inform its decisions about these recommendations and explained its rationale in its responses to the comments in this notice. The NIH recognizes the Council Working Group for its diligence in responding to its charge to advise the NIH on implementing the IOM Committee's recommendations. The NIH intends to prepare procedural guidance and technical assistance for researchers, facility staff, and agency staff to ensure proper implementation of these decisions. Investigators should continue to follow existing guidance (see NOT–OD–12–025 at *http://grants.nih.gov/grants/guide/notice-files/NOT-OD-12-025.html*) regarding the submission of applications, proposals, or protocols for research involving chimpanzees until the NIH announces the procedural guidance.

Dated: June 26, 2013.

**Francis S. Collins,**

*Director, National Institutes of Health.*

[FR Doc. 2013–15791 Filed 7–1–13; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

**SUPPLEMENTARY INFORMATION:** The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The "Mandatory Guidelines for Federal Workplace Drug Testing Programs", as amended in the revisions listed above, requires strict standards that Laboratories and Instrumented Initial Testing Facilities

(IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

**Instrumented Initial Testing Facilities (IITF)**

None

**Laboratories**

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264,

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917,

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281,

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890,

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609,

Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023,

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.,)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555

Quest Diagnostics Clinical Laboratories d/b/a Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150, (Formerly: Advanced Toxicology Network)

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories)

Redwood Toxicology Laboratory, 3650 Westwind Blvd., Santa Rosa, CA 95403, 707–570–4434

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited

Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

**Janine Denis Cook,**

*Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.*

[FR Doc. 2013–15735 Filed 7–1–13; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5630–N–05]**

### Rental Assistance Demonstration: Final Program Notice

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing and Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** On July 26, 2012, HUD announced through notice in the **Federal Register** the final implementation of the statutorily authorized Rental Assistance Demonstration (RAD), which has two conversion components. RAD provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access by public housing agencies (PHAs) and owners to private debt and equity to address immediate and long-term capital needs. RAD is also designed to test the extent to which residents have increased housing choices after the conversion, and the overall impact on the subject properties. The July 26, 2012 notice provided for full implementation of RAD, and the posting of the Final Program Notice (Final Program Notice, PIH–2012–32) on HUD's RAD Web site on. This **Federal Register** notice published today announces revisions to the Demonstration and solicits public comment on eligibility and selection criteria. It also announces the posting of the Revised Final Program Notice (Revised Final program Notice, PIH–2012–32, REV–1). As provided by the RAD statute, this notice addresses the requirement that the demonstration may proceed after publication of notice of its terms in the **Federal Register**. This Notice summarizes the key changes made to the Program Notice (PIH 2012–32) issued on July 26, 2012. This notice also meets the RAD statutory requirement to publish waivers and alternative requirements authorized by the statute at least 10 days before they may take effect, which does not prevent the demonstration from proceeding immediately.

**DATES:** *Comment Due Date:* August 1, 2013. Interested persons are invited to submit comments electronically to *rad@hud.gov* no later than the comment due date.

*Effective Dates:* Sections I–IV of this notice, and section II of the appendix to this notice, are effective July 2, 2013, for the exception of those items listed as subject to Notice and Comment, which shall be subject to a 30-day comment period that commences upon publication of this notice. Unless HUD receives comment that would lead to the reconsideration of any of the indicated changes in eligibility and selection criteria, those changes subject to notice and comment shall become immediately effective upon August 1, 2013. If HUD receives adverse comment that leads to reconsideration, HUD shall notify the public in a new revision immediately upon the expiration of the comment period.

The Final Program Notice, PIH–2012–32, REV–1, except for new statutory and regulatory waivers specified in section I of the appendix to this notice, is effective July 2, 2013.

The new statutory and regulatory waivers in section I of the appendix to this notice are effective July 12, 2013.

The conversion of Rent Supp and RAP properties under Section III of the Program Notice, which is updated by PIH–2012–32, REV–1, was effective on March 8, 2012.

**FOR FURTHER INFORMATION CONTACT:** To assure a timely response, please electronically direct requests for further information to this email address: *rad@hud.gov*. Written requests may also be directed to the following address: Office of Public and Indian Housing—RAD Program, Department of Housing and Urban Development, 451 7th Street SW., Room 2000; Washington, DC 20410.

**SUPPLEMENTARY INFORMATION:**

### I. Background

RAD, authorized by the Consolidated and Further Continuing Appropriations Act, 2012, (Pub. L. 112–55, signed November 18, 2011) (2012 Appropriations Act) allows for the conversion of assistance under the public housing, Rent Supplement (Rent Supp), Rental Assistance (RAP), and Moderate Rehabilitation (Mod Rehab) programs (collectively, "covered programs") to long-term, renewable assistance under Section 8. As provided in the **Federal Register** notice that HUD published on March 8, 2012, at 77 FR 14029, RAD has two separate components:

*First Component.* The first or competitive component of RAD allows projects funded under the public housing and Mod Rehab programs to convert to long-term Section 8 rental assistance contracts. Under this component of RAD, which is covered under Sections I and II of the Final Program Notice, PHAs and Mod Rehab owners may apply to HUD to convert to one of two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No additional or incremental funds were authorized for this component of RAD. Therefore, PHAs and Mod Rehab owners will be required to convert assistance for projects at current subsidy levels. The 2012 Appropriations Act authorizes up to 60,000 units to convert assistance under this component, to be selected competitively. The 2012 Appropriations Act further specifies that HUD shall provide an opportunity for public comment on draft eligibility and selection criteria and on the procedures that will apply to the selection of properties that will participate in this component of the demonstration. This opportunity for comment was provided by the March 8, 2012, notice.

The First Component became effective July 26, 2012. The initial application period for this component opened on September 24, 2012. The ongoing application period for this component opened on October 24, 2012 and is currently open.

*Second Component.* The second component of RAD, which is covered under Sections II and III of the Final Program Notice, allows owners of projects funded under the Rent Supp, RAP and Mod Rehab programs with a contract expiration or termination due to prepayment occurring after October 1, 2006, and no later than September 30, 2013, to convert tenant protection vouchers (TPVs) to PBVs. There is no cap on the number of units that may be converted under this component of RAD and no requirement for competitive selection. While these conversions are not necessarily subject to current funding levels for each project or a unit cap similar to public housing conversions, the rents will be subject to rent reasonableness under the PBV program and are subject to the availability of overall appropriated amounts for TPVs.

The Second Component was effective on March 8, 2012, in Program Notice PIH 2012–18 published on the RAD Web site (*www.hud.gov/rad*), and is amended in part by the Revised Final Program Notice, PIH–2012–32, REV–1, also published on the RAD Web site. Applications for conversion of assistance may be submitted immediately.

*Waivers and Alternative Requirements.* The RAD statute provides that waivers and alternative requirements authorized under the first component shall be published by notice in the **Federal Register** no later than 10 days before the effective date of such notice. This notice carries out that statutory requirement. Under the second component of RAD, HUD is authorized to waive or alter the provisions of subparagraphs (C) and (D) of section 8(o)(13) of the United States Housing Act of 1937. Although waivers under the second component are not subject to a **Federal Register** publication requirement, the second component waivers are included in this notice as a matter of convenience. This list of these waivers and alternative requirements are in the appendix of this notice.

## II. Key Changes Made to HUD's Proposed RAD Demonstration

The following highlights key changes made to the Program Notice, PIH 2012–32, issued on July 26, 2012:

*First Component*

1. Providing RAD awards for projects requiring multi-phased development to facilitate the assembly of financing (see Section 1.9.E). [Subject to 30-day Notice & Comment]

2. Allowing a PHA to apply for a Portfolio Award for a set of projects, wherein HUD will reserve RAD conversion authority for all projects contained in the portfolio, provided the PHA submits individual completed RAD Applications for at least 50% of the projects. The PHA then has 365 days to submit a completed application for each of the remaining projects (see Section 1.9.F, Attachment 1C). [Subject to 30-day Notice & Comment]

3. Providing contract rents at FY 2012 rent levels (as posted in the RAD Application) for all applications submitted prior to the end of CY 2013. This provision facilitates conversion of a public housing project, a multi-phase project, or a PHA-defined portfolio of projects by providing assurances to lenders and PHAs about contract rents to be established at the time of conversion (see Section 1.6.B.5; Section 1.7.A.5, Attachment 1C).

4. Allowing PHAs to adjust subsidy (and initial contract rents) across multiple projects to facilitate financing. The combined subsidy for these "bundled" projects may not exceed the aggregate funding for all of the projects the PHA is proposing to bundle (see Section 1.6.B.5; Section 1.7.A.5, and Section 1.9.D).

5. Allowing Moving to Work (MTW) agencies who are applying for two or more projects to use their MTW block grant flexibility to set initial contract rents, subject to RAD rent caps and continued service requirements (see Section 1.6.B.5, Section 1.7.A.5, and Section 1.9.D).

6. Expanding eligibility of HOPE VI projects (see Section 1.11.C.2.c). [Subject to 30-day Notice & Comment]

7. Eliminating the caps on awards to PHAs and to Mixed-Finance projects (see Section 1.11.C.2.c).

8. Exempting awarded public housing projects from scoring under the Public Housing Assessment System (PHAS) to support redevelopment planning and need for temporary relocation during construction (see Section 1.5.I).

9. Allowing PHAs to use the Choice Neighborhoods Implementation (CNI) Notice of Funding Availability (NOFA) to apply for Joint RAD/CNI Awards (see Section 1.11.C.2.c). [Subject to 30-day Notice & Comment]

10. Opening the Mod Rehab Ongoing Application Period under the First Component and removing the cap on Mod Rehab Projects applying under the First Component (see Section 2.2.10). [Subject to 30-day Notice & Comment]

11. Allowing a Mod Rehab owner to request a Portfolio Award for a grouping of projects, wherein HUD will reserve RAD conversion authority for all projects contained in the grouping, provided the owner submits a completed application for at least 50% of the projects. The owner then has 365 days to submit a completed application for the remaining projects (see Section 2.2.8.C). [Subject to 30-day Notice & Comment]

12. Providing RAD awards for projects requiring multi-phased development to facilitate the assembly of financing (see Section 2.2.8.D). [Subject to 30-day Notice & Comment]

## III. The Final Program Notice and Reponses to Public Comments

The Revised Final Program Notice for RAD, PIH–2012–32, REV–1, can be found at *www.hud.gov/rad*. Also posted on HUD's RAD Web site is a summary of the public comments received in response to the March 8, 2012 notice and HUD's responses to the comments. The RAD Web site will also post a summary of the public comments received in response to the publication of the revised Final Program Notice following the expiration of the 30 day comment period commencing on effective July 2, 2013.

## IV. Environmental Review

A Finding of No Significant Impact with respect to the environment was made in connection with the Program Notice issued on March 8, 2012, and in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding remains applicable to the Final Program Notice and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Dated: June 26, 2013.

**Sandra B. Henriquez,**

*Assistant Secretary for Public and Indian Housing.*

## Appendix—RAD Waivers and Alternative Requirements

The RAD statute provides that waivers and alternative requirements authorized under the first component shall be published by notice in the **Federal Register** no later than

10 days before the effective date of such notice. This appendix carries out that statutory requirement. Under the second component of RAD, HUD is authorized to waive or alter the provisions of subparagraphs (C) and (D) of section 8(o)(13) of the United States Housing Act of 1937. Although waivers under the second component are not subject to a Federal Register publication requirement, the second component waivers are included in this appendix as a matter of convenience.

Additionally, the RAD statute imposes certain requirements that must be followed under the demonstration, such as requiring long-term renewable use and affordability restrictions for assisted units in properties that convert from assistance under section 9. The RAD statute also authorizes HUD to establish requirements for converted assistance under the demonstration. HUD has used this authority, for example, by establishing in the Final Notice the requirements of 24 CFR part 880, with modifications appropriate for the converted assistance under the demonstration. These types of requirements are not subject to the publication requirement applicable to the waiver and alternative requirements listed in this appendix.

On July 26, 2012, HUD published by notice a list of RAD waivers and alternative requirements. That list, which became effective August 6, 2012, is still in effect and will not be reproduced here. Provided below, will be a list of new waivers and alternative requirements that shall come into effect on July 12, 2013.

The list of waivers and alternative requirements, as described above, follows:

**I. Public Housing Conversions**

*A. Changes to Requirements for Public Housing*

*Use of Public Housing Funds. Provision affected:* Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g). *Alternative requirements:* PHAs are required under the Demonstration to use available public housing funding, including remaining Operating Funds and remaining Capital Funds to fund the Housing Assistance Payments Contracts during the initial calendar year of conversion, including the provision of RAD Rehab Assistance Payments.

*Section 33 Required Conversion Assessment. Provisions affected:* Section 33 of the United States Housing Act of 1937 (42 USC 1437z–5); 24 CFR part 972, subpart A. *Alternative requirements:* PHAs will not be required to assess projects that have been issued a CHAP or are covered by a Portfolio or Multi-phase Award because HUD considers the RAD conversion process to fulfill the requirements of Section 33 of the Act. Accordingly, HUD is waiving 24 CFR part 972, subpart A for projects covered by a CHAP, a Portfolio Award, or a Multi-phase Award.

*Public Housing Assessment System. Provisions affected:* 24 CFR part 902, subpart A. *Alternative Requirements:* Upon issuance of a CHAP, all public housing units covered by the CHAP shall not be issued scores for the fiscal year in which the CHAP was issued, nor any subsequent fiscal year until such time as conversion, at which point the units shall be subject to applicable Section 8 program requirements. If HUD revokes the CHAP, HUD reserves the right to reassess and rescore all PHAS indicators and issue a new PHAS score and designation for all fiscal years concerning these units covered by the CHAP.

*Resident Opportunities and Self Sufficiency Service Coordinators (ROSS–SC) and Public Housing Family Self-Sufficiency. Provisions affected:* Section 23 of the United States Housing Act of 1937 (42 USC 1437u); Section 34 of the United States Housing Act of 1937 (42 USC 1437z–6); 24 CFR 984.303(b)(5)(iii). *Alternative requirement:* None, The provisions are waived.

*B. Changes to PBV Requirements for Public Housing Conversions*

*Maximum Amount of PBV Assistance. Provisions affected:* Section 3(a)(1) of the United States Housing Act of 1937 (42 USC 1437a(a)(1)); 24 CFR 983.3. *Alternative Requirements:* If a tenant's monthly rent increases by more than the greater of 10 percent or $25 purely as a result of conversion, the rent increase will be phased in over 3 or 5 years. To implement this provision, HUD is waiving section 3(a)(1) of the Act, as well as 24 CFR 983.3 (definition of "total tenant payment" (TTP)) only to the extent necessary to allow for the phase-in of tenant rent increases. A PHA must create a policy setting the length of the phase in period at three years, five years or a combination depending on circumstances (For example, a PHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion).

The below method explains the set percentage-based phase-in an owner must follow according to the phase-in period established. For purposes of this section "standard TTP" refers to the TTP calculated in accordance with regulations at 24 CFR 5.628 and the "most recently paid TTP" refers to the TTP recorded on line 9j of the family's most recent HUD Form 50058 Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion—33% of difference between most recently paid TTP and the standard TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR—66% of difference between most recently paid TTP and the standard TTP
- Year 3: Year 3 AR and all subsequent recertifications—Full standard TTP Five Year Phase in:
- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion—20% of difference between most recently paid TTP and the standard TTP
- Year 2: Year 2 AR and any IR prior to Year 3 AR—40% of difference between most recently paid TTP and the standard TTP
- Year 3: Year 3 AR and any IR prior to Year 4 AR—60% of difference between most recently paid TTP and the standard TTP
- Year 4: Year 4 AR and any IR prior to Year 5 AR—80% of difference between most recently paid TTP and the standard TTP
- Year 5 AR and all subsequent recertifications—Full standard TTP.

*Please Note:* In either the three year phase-in or the five-year phase-in, once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward.

*Housing Choice Voucher Earned Income Disregard. Provisions affected:* 24 CFR 5.617(b). *Alternative Requirements:* Under the Housing Choice Voucher program, the EID exclusion is limited to only persons with disabilities (24 CFR 5.617(b)). In order to allow all tenants (including non-disabled persons) who are currently within the 48 month EID eligibility period at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in 24 CFR 5.617(b) limiting EID to only disabled persons is waived. The waiver and resulting alternative requirement only applies to tenants who are currently within the 48 month EID eligibility period at the time of conversion. No other tenant (e.g., tenants that move into the property following conversion, etc.) is covered by this waiver.

*Administrative Fees for Public Housing Conversions. Provisions affected:* Section 8(q) of the United States Housing Act of 1937 (42 U.S.C. 1437f(q)) and related appropriations act provisions in effect immediately before the Quality Housing and Responsibility Act of 1998; 24 CFR 982.152(b). *Alternative Requirements:* For the initial Calendar Year in which a project's assistance has been converted, RAD PBV projects will be funded with public housing money. Since the public housing funding will not have been transferred to the TBRA account and since this funding is not section 8 assistance the annual contributions contract (ACC) between the PHA and HUD will cover the project units, but be for zero dollars. For this transition period, the ACC will primarily serve as the basis for covering the units and requiring PHA compliance with HUD requirements, but it will not be (as it is in the regular PBV program) the funding vehicle for the PBV RAD vouchers. Given this, and given the fact that PHAs will be receiving full public housing funding for the PBV units during this transition period, PHAs will not receive ongoing section 8 administrative fee funding during this time.

Generally, PHAs receive ongoing administrative fees for units under a HAP contract, consistent with recent appropriation act references to "section 8(q) of the [United States Housing Act of 1937] and related appropriations act provisions in effect immediately before the Quality Housing and Responsibility Act of 1998" and 24 CFR 982.152(b). During the transition period mentioned in the preceding paragraph, these provisions are waived, and PHAs will not receive section 8 ongoing administrative fees for PBV RAD units.

After this transition period, the ACC will be amended to include section 8 funding that corresponds to the units covered by the ACC.

At that time, the regular section 8 administrative fee funding provisions will apply.

*C. Changes to Project-Based Rental Assistance (PBRA) Requirements for Public Housing Conversions*

*Classification of Converting Projects as Pre-1981 Act Projects. Provision affected:* Section 16(c)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437(n)(c)(2)); 24 CFR 5.653(d)(2). *Alternative Requirements:* For purposes of ensuring maximum flexibility in converting to PBRA, all such projects converting to PBRA shall be treated as Pre-1981 Act Projects under Section 16(c) of the United States Housing Act of 1937. Section 16(c)(1) of the U.S. Housing Act of 1937, which applies to pre-1981 Act projects, restricts occupancy by families that are other than very low-income to 25% of overall occupancy. Thus, owners of projects converting to PBRA may admit applicants with incomes up to the low-income limit. HUD Headquarters tracks the 25% restriction on a nationwide basis. Owners of projects converting to PBRA do not need to request an exception to admit low-income families. In order to implement this provision, HUD is waiving section 16(c)(2) of the United States Housing Act of 1937 and 24 CFR 5.653(d)(2) and is instituting an alternative requirement that owners of projects converting to PBRA adhere to the requirements of section 16(c)(1) of the United States Housing Act of 1937 and 24 CFR 5.653(d)(1).

*Phase-in of Tenant Rent Increases. Provision affected:* Section 3(a)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)(1)); 24 CFR 880.201. *Alternative Requirements:* If a resident's monthly rent increases by more than the greater of 10 percent or $25 purely as a result of conversion, the rent increase will be phased in over 3 years, which a PHA may extend to 5 years. To implement this provision, HUD is waiving section 3(a)(1) of the Act, as well as 24 CFR 880.201 (definition of "total tenant payment"), to the limited extent necessary to allow for the phase-in of tenant rent increases. A PHA must set the length of the phase-in period to be three years, five years or a combination depending on circumstances. (For example, a PHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.)

The below method explains the set percentage-based phase-in an owner must follow according to the phase-in period established. For purposes of this section "Calculated Multifamily TTP" refers to the TTP calculated in accordance with regulations at 24 CFR 5.628 and the "most recently paid TTP" refers to the TTP recorded on the family's most recent HUD Form 50059.

Three Year Phase-In

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion—33% of difference between most recently paid Total Tenant Payments (TTP) and the calculated Multifamily housing TTP.
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) in prior to Year 3 AR—66% of difference between most recently paid TTP and calculated Multifamily housing TTP.
- Year 3: Year 3 AR and all subsequent recertifications—Year 3 AR and any IR in Year 3: Full Multifamily housing TTP.

Five Year Phase-In

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion—20% of difference between most recently paid TTP and the calculated Multifamily housing TTP.
- Year 2: Year 2 AR and any IR prior to Year 3 AR—40% of difference between most recently paid TTP and calculated Multifamily housing TTP.
- Year 3: Year 3 AR and any IR prior to Year 4 AR—60% of difference between most recently paid TTP and calculated Multifamily housing TTP.
- Year 4: Year 4 AR and any IR prior to Year 5 AR—80% of difference between most recently paid TTP and calculated Multifamily housing TTP.
- Year 5 AR and all subsequent recertifications—Full Multifamily housing TTP.

*Please Note:* In either the three year phase-in or the five-year phase-in, once Multifamily housing TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full multifamily housing TTP from that point forward.

*Calculation of Tenant Rent. Provision affected:* 24 CFR 5.628. *Alternative Requirements:* Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID exclusion after conversion, in accordance with regulations at 24 CFR 960.255. After conversion, no other tenants will be eligible to receive the EID. If a tenant receiving the EID exclusion undergoes a break in employment, ceases to use the EID exclusion, or the EID exclusion expires in accordance with 24 CFR 960.255, the tenant will no longer receive the EID exclusion and the Owner will no longer be subject to the provisions of 24 CFR 960.255. Furthermore, tenants whose EID ceases or expires after conversion shall not be subject to the rent phase-in provision, as described in Section 1.7.B.3; instead, the rent will automatically be adjusted to the appropriate rent level based upon tenant income at that time.

*RAD Rehab Assistance Payments. Provision affected:* 24 CFR 880.504(a). *Alternative Requirement:* Units that are not occupied and will be undergoing rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment will be eligible for assistance equal to the Public Housing Operating Fund and the Capital Fund amounts that formed the basis for the calculation of initial contract rents (see Attachment 1C). During the period of rehabilitation or construction as identified in the approved Financing Plan and RCC, the maximum RAD Rehab Assistance a PHA may receive (i.e. for occupied units, units eligible for vacancy payments, or units eligible for Rehab Assistance Payments) is limited to the number of units eligible for Operating Fund subsidy prior to conversion. As a result, not all units included in the converting property will be eligible for rehab assistance payments. As necessary to implement this provision, HUD is waiving the applicability of additional provisions in section 8 of the Act and 24 CFR part 983 and instituting an alternative requirement.

Following the earlier of (1) the end of the construction period determined within the HUD-approved Financing Plan or (2) the end of actual construction, the PHA will no longer be eligible to receive RAD Rehab Assistance Payments and all units under contract will be eligible for payment only for occupied units or for vacancy payments, as applicable.

**II. Changes to PBV Requirements for Mod Rehab Conversions (Noncompetitive)**

*Under-occupied Units. Provision affected:* HUD is waiving 24 CFR 983.259(b)(1); 24 CFR 983.259(b)(2) and 24 CFR 983.259(c). *Alternative Requirements:* For households of more than two individuals (or single-person households, where that individual is elderly or disabled), occupying a unit determined by HUD regulations to be under-occupied, shall upon conversion to PBV, be allowed to remain in those units until such time as an appropriate-size unit becomes available. When an appropriate size unit becomes available in the project, the family living in the oversized unit must move to the appropriate size unit within a reasonable time, as determined by the PHA. If the unit size required by the family does not physically exist at the project, the family shall remain in its current unit unless and until a more appropriate size unit is available. If or when a smaller size unit becomes available, the family must move to the smaller size unit.

For households consisting of single individuals who are not elderly or disabled, the unit shall not be included in the PBV HAP contract. The PHA shall provide an enhanced voucher to such individuals who have the statutory right to remain in the project (see PIH Notice 2001–41 for enhanced voucher requirements and PIH Notice 2008–12 for guidance on enhanced voucher requirements for overhoused households). If the tenant moves with tenant-based voucher assistance, the unit is not eligible for conversion under RAD since the funding to support the converted unit is no longer available.

*Rent Determination. Provisions affected:* 24 CFR 983.301(e); 24 CFR 983.302(c); and 24 CFR 983.303(a). *Alternative Requirements:* Initial and re-determined rents for PBV contracts are determined by the PHA. Such rents cannot exceed the lowest of: (i) An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance; (ii) the reasonable rent; or (iii) the rent requested by the owner. (See 24 CFR part 983, subpart G, for program requirements on establishing PBV rents). Re-determined rents may result in a downward adjustment in certain circumstances (e.g. rent is no longer reasonable). For purposes of

RAD, PHAs may elect, in the HAP contract, to establish the initial contract rent as the rent floor. PHAs should consider their individual markets, number of families served, annual budget authority and factors that may influence funding amounts and any other local concerns prior to electing to establish the initial contract rent as the rent floor. If the PHA has elected within the HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial PBV HAP contract, except:

- To correct errors in calculations in accordance with HUD requirements;
- If additional housing assistance has been combined with PBV assistance after the execution of the initial PBV HAP contract and a rent decrease is required pursuant to 24 CFR 983.55; or
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

**III. Rent Supplement and Rental Assistance Payment Project Conversions**

*Under-occupied Units. Provision affected:* HUD is waiving 24 CFR 983.259(b)(1); 24 CFR 983.259(b)(2) and 24 CFR 983.259(c). *Alternative Requirements:* Under-occupied Units Converting to PBV. For households of more than two individuals (or single-person households, where that individual is elderly or disabled,) occupying a unit determined by HUD regulations to be under-occupied, shall upon conversion to PBV, be allowed to remain in those units until such time as an appropriate-sized unit becomes available. When an appropriate size unit becomes available in the project, the family living in the oversized unit must move to the appropriate size unit within a reasonable time, as determined by the PHA. If the unit size required by the family does not physically exist at the project, the family shall remain in its current unit unless and until a more appropriate size unit is available. If or when a smaller size unit becomes available, the family must move to the smaller size unit. To effectuate this new alternative requirement, HUD is waiving 24 CFR 983.259(b)(1)(2) and (c).

For households consisting of single individuals who are not elderly or disabled, the unit shall not be included in the PBV HAP contract. The household member shall be provided a tenant protection voucher and may choose to move with such voucher or enter into a tenant-based tenancy with the owner provided the unit is eligible under the tenant-based voucher program; or if a qualifying mortgage pre-payment would trigger the provision of enhanced vouchers, the tenant has the statutory right to remain in the project (see PIH Notice 2001–41 for enhanced voucher requirements and PIH Notice 2008–12 for guidance on enhanced voucher requirements for overhoused households). In either case, if the tenant moves with tenant-based voucher assistance, the unit is not eligible for conversion under RAD since the funding to support the converted unit is no longer available under RAD since the funding to support the converted unit is no longer available.

*Rent Determination. Provisions affected:* 24 CFR 983.301(e); 24 CFR 983.302(c); and 24 CFR 983.303(a). *Alternative Requirements:* Initial and Re-Determined Rents. Initial and re-determined rents for PBV contracts are determined by the PHA. Such rents generally cannot exceed the lowest of: (i) An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance; (ii) the reasonable rent; or (iii) the rent requested by the owner. (See 24 CFR part 983, subpart G, for program requirements on establishing PBV rents). Re-determined rents may result in a downward adjustment in certain circumstances (e.g. rent is no longer reasonable). For purposes of RAD, PHAs may elect, in the HAP contract, to establish the initial contract rent as the rent floor. PHAs should consider their individual markets, number of families served, annual budget authority and factors that may influence funding amounts, and any other local concerns prior to electing to establish the initial contract rent as the rent floor. If the PHA has elected within the HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial PBV HAP contract, except:

- To correct errors in calculations in accordance with HUD requirements;
- If additional housing assistance has been combined with PBV assistance after the execution of the initial PBV HAP contract and a rent decrease is required pursuant to 24 CFR 983.55; or
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

[FR Doc. 2013–15900 Filed 7–1–13; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R2–ES–2012–N128; FXES11130200000C2–112–FF02ENEH00]**

### Recovery Plan Addendum; Thick-Billed Parrot

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce the availability of our final recovery plan addendum for the Thick-billed Parrot, which is listed as endangered under the Endangered Species Act of 1973, as amended (Act). We have developed this final recovery plan addendum to comply with a December 14, 2010, Stipulated Settlement Agreement between WildEarth Guardians and the Secretary of the Interior. This species is currently found in Mexico but has not been detected in the United States (U.S.) since 1938; however, historically the northern edge of its range also included southern Arizona and possibly southwestern New Mexico. The recovery plan addendum includes specific recovery objectives and criteria to be met in order to enable us to remove this species from the list of endangered and threatened wildlife and plants.

**ADDRESSES:** If you wish to review the recovery plan addendum, you may obtain a copy by any one of the following methods:

*Internet: http://www.fws.gov/southwest/es/arizona/T-B_Parrot.htm* or *http://www.fws.gov/southwest/es/ElectronicLibrary_ListDocs.cfm Find Thick-billed_Parrot_Final_Recovery_Plan_Addendum_June_2013.pdf.*

*U.S. mail:* Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Phoenix, AZ 85021–4951; or

*Telephone:* 602–242–0210.

**FOR FURTHER INFORMATION CONTACT:** Susan Sferra, Fish and Wildlife Biologist, at Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 201 N Bonita Ave., Suite 141, Tucson AZ 85745; or Telephone: (520) 670–6150 ext 230, or by email at *Susan_Sferra@fws.gov.*

**SUPPLEMENTARY INFORMATION:** We announce the availability of our final recovery plan addendum for the thick-billed parrot (*Rhynchopsitta pachyrhyncha*). The recovery plan addendum was prepared by biologists from the United States with participation by experts in Mexico. We made the draft recovery plan addendum available via a **Federal Register** notice published on June 19, 2012 (77 FR 36569); this notice opened a comment period that ran through August 20, 2012, and requested comments from local, State, and Federal agencies; Tribes; and the public. We considered information we received from these entities, as well as that obtained from fourteen independent peer reviewers, in finalizing this revised recovery plan.

#### Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Act (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. The Act requires the

development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

**Species' History**

Historically the thick-billed parrot's range extended from Mexico into southern Arizona and possibly southwestern New Mexico in the United States. There are no formal historical nesting records for the United States; however, thick-billed parrots visited southeastern Arizona, and in some years large flocks were observed (Snyder et al. 1999). The last confirmed report of a thick-billed parrot flock in United States was from the Chiricahua Mountains of southeastern Arizona in 1938 (Monson and Phillips 1981 in Snyder et al. 1999). Loss of thick-billed parrots in the U.S. was likely caused by excessive, unregulated shooting (Snyder et al. 1999). In Mexico, this species occurs in the States of Chihuahua, Sonora, Durango, Jalisco, Colima, and Michoacán, spanning the Sierra Madre Occidental.

The thick-billed parrot (*Rhynchopsitta pachyrhyncha*) was listed as an endangered species on June 2, 1970 (35 FR 8491), pursuant to the Endangered Species Conservation Act (ESCA), the precursor of the Endangered Species Act. Based on the different listing procedures for foreign and domestic species under the ESCA, the thick-billed parrot was listed as a "foreign" species. When the Endangered Species Act replaced the ESCA, the thick-billed parrot was not carried forward onto the Federal List of Endangered and Threatened Wildlife and Plants (List) for the United States due to an oversight, although the thick-billed parrot remained listed in Mexico. Subsequently, the parrot was proposed to be listed in the United States on July 25, 1980, wherein the proposed listing rule acknowledged that it was always the intention of the Service to list the thick-billed parrot as endangered in the United States (see 45 FR 49844, page 49845). In 2009, the U.S. Department of the Interior's Assistant Solicitor for Fish and Wildlife provided an explanation stating that the species has always been listed as endangered throughout its entire range (see 74 FR 33957). Today, the thick-billed parrot is listed throughout its range, including Mexico and the United States. Critical habitat has not been proposed for the thick-billed parrot.

Although thick-billed parrots no longer occur in the United States, the Service has developed this recovery plan addendum to comply with the December 14, 2010, Stipulated Settlement Agreement between WildEarth Guardians and the Secretary of the Interior. The Thick-billed Parrot Recovery Plan Addendum was created by adopting the 2009 thick-billed parrot recovery plan for Mexico, "Programa de Acción para la Conservación de las Especies: Cotorras Serranas (PACE)," and adding contents required by the Act (such as Recovery Criteria, Management Actions in the United States, and an Implementation Table) as an Addendum. In addition to statutory requirements of the Act, this addendum to the PACE addresses the species' historical occurrence in the United States, summarizes information from scientific literature and U.S. and Mexican biologists regarding the status and threats to the thick-billed parrot, and presents additional information required by U.S. recovery planning policy. We support the strategy for recovering the thick-billed parrot set forth in the PACE (2009) and note that this is the first time the U.S. Fish and Wildlife Service (Service) is adopting a Mexican recovery plan for a species to serve as the best available science to inform a U.S. recovery plan.

The PACE was initiated by the Mexican National Commission of Protected Natural Areas (Comisión Nacional de Áreas Protegidas, CONANP) under the 2007 Federal "Commitment to Conservation" programs in Mexico. Experts and public officials were brought together to prevent the deterioration of Mexican ecosystems and biodiversity. Thirty-five priority and endangered species were selected, including the thick-billed parrot, with the objective of creating the framework for, coordinating, and promoting the Federal government's efforts to recover these species within the Conservation Program for Species at Risk (PROCER). The focus of the PACE (2009) is on extant populations of the thick-billed parrot; it does not address extirpated thick-billed parrots or their historical range in the United States. As a result, our recovery actions are focused primarily on conservation within the current range of this species in Mexico and, to a lesser degree, on the potential for expansion into the historical range in the United States. Recommended actions for addressing current threats to the species and evaluating recovery may be applied or refined in the future.

The parrot's current range is limited to high elevations of the Sierra Madre Occidental of Mexico, extending from northwestern Chihuahua and northeastern Sonora into Durango and continuing in a southeasterly direction to Jalisco, Colima, and Michoacán. Thick-billed parrots migrate seasonally from their primary breeding (summering) grounds in Chihuahua to wintering areas farther south, possibly migrating 1,000 kilometers (km) (621 miles (mi)) or more between their summering and wintering areas (Snyder et al. 1999, PACE 2009). The northernmost breeding area is Mesa de Guacamayas, located within 80 km (50 mi) of the U.S.-Mexico border (Snyder et al. 1999).

Thick-billed parrots live in gregarious flocks in old-growth mixed-conifer forests and require a diversity of food resources and the availability of size-specific cavities for nesting. The thick-billed parrot primarily feeds on seeds of several pine species, and to a lesser extent on acorns and terminal buds of pine trees (Snyder et al. 1999). As an obligate cavity nester, the thick-billed parrot needs cavities typically found in large-diameter pines and snags. Because of their specialized habitat needs, thick-billed parrot populations have experienced significant historical declines, corresponding to a drastic loss of high-elevation mixed-conifer forests, mainly from a legacy of logging. Only 1 percent of the old-growth forests is estimated to remain, supporting small populations of thick-billed parrots concentrated in a handful of sites.

Threats to the thick-billed parrot include loss of habitat, primarily driven by extensive logging of large mature pines, removal of nesting snags (Snyder et al. 1999), and, to a lesser degree, catastrophic forest fires (PACE 2009); low numbers of individuals and small remaining populations, leaving them vulnerable to stochastic events; removal of birds from the wild in Mexico for the illegal pet trade; and climate change, based on projections for the Southwestern United States and northern Mexico predicting warmer, drier, and more drought-like conditions (Hoerling and Eischeid 2007; Seager et al. 2007). Loss of the thick-billed parrot in the United States was likely caused by excessive, unregulated shooting (Snyder et al. 1999). The recovery plan addendum recommends protection of currently occupied habitat; additional research to understand relationships between habitat, migration patterns, and population dynamics; development of a standardized monitoring protocol; development of replacement nesting habitat; verification of occupied wintering habitat; development of forest management plans; and the enforcement of existing environmental and species collection laws. The plan recognizes the need to manage these forest landscapes in both the United States and Mexico to maximize resources for the species.

### Recovery Plan Goals

The objective of an agency recovery plan is to provide a framework for the recovery of a species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria and actions necessary for us to be able to reclassify the species to threatened status or remove it from the Federal List of Endangered and Threatened Wildlife and Plants (List). Recovery plans help guide our recovery efforts by describing actions we consider necessary for the species' conservation and by estimating time and costs for implementing needed recovery measures. To achieve its goals, this recovery plan addendum identifies the following objectives:

- Support the thick-billed parrot throughout its range in perpetuity.
- Maintain habitat conditions necessary to provide feeding, nesting, and wintering habitat for the thick-billed parrot through time.
- Assess the potential for the United States to support naturally dispersing or actively relocated thick-billed parrots, including a review of U.S. historical habitat, current habitat management, and habitat connectivity with Mexico.

The recovery plan addendum contains recovery criteria based on maintaining and increasing population numbers and habitat quality and quantity. The recovery plan addendum focuses on protecting populations, managing threats, maintaining habitat, monitoring progress, and building partnerships to facilitate recovery.

As the thick-billed parrot meets recovery criteria, we will review the subspecies' status and consider downlisting, and, ultimately, removal from the List.

### References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Branch of Recovery (see **FOR FURTHER INFORMATION CONTACT** section).

### Authority

We developed our final recovery plan addendum under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: June 20, 2013.

**Joy E. Nicholopoulos,**

*Acting Regional Director, Southwest Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2013–15945 Filed 7–1–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCO923000.L14300000.FR0000]**

### Notice of Proposed Classification of Public Lands/Minerals for State Indemnity Selection, Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Classification.

**SUMMARY:** The Colorado State Board of Land Commissioners (State) has filed a petition for classification and application to obtain public lands and mineral estate in lieu of lands to which the State was entitled but did not receive under its Statehood Act. The State did not receive title because the lands had previously been appropriated in an Indian Reservation or National Forests. Under Section 7 of the Taylor Grazing Act of 1934, the Bureau of Land Management (BLM) is proposing to classify sufficient public lands/minerals in Colorado for title transfer to the State to satisfy this obligation to the State.

**DATES:** Comments must be received by September 3, 2013.

The BLM will not consider or include comments received after the close of the comment period or comments delivered to an address other than that listed below.

Persons asserting a claim to or interest in the lands or mineral estate described in this notice will find the requirements for filing such claims in the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** The public may submit comments by mail or hand delivery to: State Director, Colorado State Office, Bureau of Land Management, U.S. Department of the Interior, 2850 Youngfield Street, Lakewood, CO 80215–7093.

**FOR FURTHER INFORMATION CONTACT:** John D. Beck, Chief, Branch of Lands and Realty, at (303) 239–3882. 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. FIRS is available 24 hours a day, seven days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851 and 852), provide authority for Colorado to receive title to public lands in lieu of lands to which it was entitled under Section 7 of its statehood act of March 3, 1875, where it did not receive title because the land had previously been appropriated for an Indian reservation or National Forests.

Section 7 of the Taylor Grazing Act of June 8, 1934 requires that such public lands/minerals identified for proposed transfers out of Federal ownership must first be classified. The BLM is proposing to classify these lands/minerals pursuant to 43 CFR Part 2400 and Section 7 of the Act of June 8, 1934 (48 Stat. 1272, as amended), 43 U.S.C. 315(f). For a period until September 3, 2013, all persons who wish to submit comments, suggestions, or objections in connection with this proposed classification may present their views by any means shown under the **ADDRESSES** section above.

Any adverse comments will be evaluated by the BLM Colorado State Director, who will issue a notice of determination to proceed with, modify, or cancel the proposed action. In the absence of any action by the BLM State Director, this proposed classification action will become the final determination of the Department of the Interior.

Comments, including names and street addresses of respondents and records relating to this proposed classification will be available for public review at the BLM Colorado State Office at the address cited in the **ADDRESSES** section above during regular business hours. Individual respondents may request confidentiality. 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 in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

As provided by 43 CFR 2450.4(c), a public hearing may be scheduled by the BLM Colorado State Director if it is determined that sufficient public interest exists to warrant a hearing.

The lands/minerals included within this proposed classification are in Chaffee, Custer, Dolores, Eagle, El Paso, Garfield, Grand, Huerfano, Jackson, Kiowa, La Plata, Moffat, Montezuma, Ouray, Park, Pueblo, Routt and San Miguel counties, Colorado, and are described as follows:

**New Mexico Principal Meridian, Colorado**

T. 44 N., R. 8 W.,
Sec. 11, lots 12, thru 14;
Sec. 13, lots 17, 28, 30 and 31;

Sec. 14, E½SE¼.
T. 42 N., R. 13 W.,
Sec. 30, NE¼NE¼.
T. 40 N., R. 14 W.,
Sec. 6, lot 13 and NE¼SW¼.
T. 41 N., R. 14 W.,
Sec. 28, S½SW¼;
Sec. 29, SW¼, NE¼SE¼ and S½SE¼;
Sec. 30, N½SE¼;
Sec. 31, N½SE¼;
Sec. 32, N½NW¼ and SW¼NW¼.
T. 43 N., R. 14 W.,
Sec. 2, lots 1 and 2 and S½NE¼.
T. 40 N., R. 15 W.,
Sec. 1, lots 1 thru 4;
Sec. 3, lots 3 and 4;
Sec. 4, lots 1 thru 4;
Sec. 10, N½NE¼ and E½NW¼;
Sec.11, N½, N½SW¼ and SW¼SW¼.
T. 50 N., R. 8 E.,
Sec.7, NE¼NE¼.

**Sixth Principal Meridian, Colorado**

T. 19 S., R. 45 W.,
Sec. 10, S½NE¼;
Sec. 11, SW¼;
Sec. 14, N½ and SE¼;
Sec. 15, NE¼.
T. 20 S., R. 47 W.,
Sec. 4, S½NW¼, SW¼ and W½SE¼;
Sec. 5, lots 1 thru 4, S½NE¼, S½NW¼, SW¼, and SE¼;
Sec. 8, NE¼NE¼, W½NE¼, SE¼NE¼, NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 9, NE¼, NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 10, SW¼ and SW¼SE¼;
Sec. 15, NW¼NE¼;
Sec. 22, SE¼NE¼ and E½SE¼;
Sec. 23, S½NW¼ and SW¼;
Sec. 26, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Sec. 27, NE¼NE¼.
T. 20 S., R. 48 W.,
Sec. 10, W½SW¼;
Sec. 13, S½NW¼, SW¼, and W½SE¼;
Sec. 14, SE¼SW¼ and SE¼;
Sec. 15, W½NW¼ and NW¼SW¼;
Sec. 22, E½SE¼;
Sec. 23;
Sec. 24, NW¼NE¼, NW¼, N½SW¼, and SW¼SW¼;
Sec. 26, NE¼, NW¼, and W½SW¼;
Sec. 27, E½NE¼.
T. 18 S., R. 61 W.,
Sec. 8, SE¼SE¼;
Sec. 19, lots 3 and 4, E½SW¼, and SE¼;
Sec. 30, lots 2, 3, and 4, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 32.
T. 19 S., R. 61 W.,
Sec. 6, lots 1 thru 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, E½NE¼ and E½SE¼;
Sec. 8, W½NW¼ and W½SW¼;
Sec. 18, lots 1 thru 4, NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 19, lots 1 thru 4, NE¼, E½NW¼, and E½SW¼;
Sec. 20;
Sec. 28, E½;
Sec. 29, W½;
Sec. 32, E½;
Sec. 33.
T. 20 S., R. 61 W.,
Sec. 4, lots 1 thru 4, S½NE¼, S½NW¼, SW¼, and SE¼;
Sec. 5, lots 1 and 2, S½NE¼, and SE¼;
Sec.7, lots 2 and 3, and SE¼SW¼;
Sec. 9, E½;
Sec. 18, SW¼SE¼.
T. 16 S., R. 62 W.,
Sec. 24, NW¼NW¼.
T. 17 S., R. 62 W.,
Sec. 1, lot 1 and SE¼NE¼;
Sec. 9, SE¼SE¼.
T. 29 S., R. 69 W.,
Sec. 31, lots 3 and 4, NE¼NE¼, NE¼NW¼, E½SW¼, and SE¼;
Sec. 32, SW¼NW¼, W½SW¼, SE¼SW¼, and SE¼SE¼.
T. 29 S., R. 70 W.,
Sec. 35, lot 1.
T. 22 S., R. 71 W.,
Sec. 5, lots 20, 21, 22, and 23;
Sec. 6, lot 13;
Sec. 8, NW¼NW¼;
Sec. 17, lot 24;
T. 22 S., R. 72 W.,
Sec. 4, lots 41, 42, and 47, and NE¼SE¼;
Sec. 4, Remaining public lands in SW¼NW¼, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 5, Remaining public lands in S½NE¼, SE¼NW¼, E½SW¼, and SE¼, NW¼SW¼;
Sec. 8, Remaining public lands in SE¼SE¼;
Sec. 9, Remaining public lands in W½;
Sec. 12, lot 3 and SE¼SE¼;
Sec. 16, lots 20, 23 thru 36, and lot 38;
Sec. 17, Remaining public lands in NW¼NE¼;
Sec. 22, N½NE¼;
Sec. 26, SE¼SW¼;
Sec. 28, N½SW¼, SE¼SW¼, W½SE¼, and SE¼SE¼.
T. 11 S., R. 74 W.,
Sec. 20, NE¼;
Sec. 21, W½.
T. 12 S., R. 75 W.
Sec. 17, SW¼;
Sec. 18, lots 1 thru 4, E½NW¼, E½SW¼, and SE¼;
Sec. 19, lots 1 and 2, N½NE¼, SW¼NE¼, and E½NW¼.
T. 12 S., R. 76 W.,
Sec. 13, E½SE¼;
Sec. 24, NE¼.
T. 13 S., R. 76 W.,
Sec. 4, lots 2 thru 4, SW¼NW¼, and NW¼SW¼;
Sec. 5, lots 1 thru 4, S½NE¼, S½NW¼, SW¼, and SE¼;
Sec. 6, lots 6 and 7, and E½SW¼.
T. 12 S., R. 77 W.,
Sec. 23, N½SW¼ and N½SE¼;
Sec. 25, S½SE¼;
Sec. 34, NW¼SW¼.
T. 15 S., R. 78 W.,
Sec. 17, SW¼NW¼ (geothermal steam);
Sec. 18, N½SE¼ and SW¼SE¼ (geothermal steam).
T. 4 S., R. 83 W.,
Sec. 17, lots 2 and 5, NE¼SW¼, NW¼SE¼;
Sec. 22, SE¼SE¼;
Sec. 23, lots 6 and 7, and W½SW¼.
T. 7 S., R. 88 W.,
Sec. 7, lots 12 and 13;
Sec. 8, lot 7, SW¼NE¼ and SE¼NW¼;
Sec. 17, lots 3 and 4.
T. 7 S., R. 89 W.,
Sec. 3, lot 1, SE¼NE¼, E½NW¼SE¼, E½W½NW¼SE¼, and E½SE¼;
Sec. 12, lot 22 and W½SW¼;
Sec. 13, NW¼.
T. 5 S., R. 92 W.,
Sec. 30, W½SE¼.
T. 5 S., R. 93 W.,
Sec. 36, NW¼NE¼, N½NW¼, and NE¼SW¼.
T. 1 N., R. 76½ W.,
Sec. 1, lots 15 and 16;
Sec. 12, lots 1 thru 6, and lots 11 and 12.
T. 1 N., R. 77 W.,
Sec. 12, E½NE¼ and NE¼SE¼.
T. 3 N., R. 77 W.,
Sec. 25, S½SW¼ and SW¼SE¼.
T. 4 N., R. 81 W.,
Sec. 34, W½NW¼ and NW¼SW¼.
T. 6 N., R. 81 W.,
Sec. 18, lot 5.
T. 3 N., R. 82 W.,
Sec. 26, lot 1.
T. 6 N., R. 82 W.,
Sec. 13, SE¼SE¼;
Sec. 23, N½NE¼ and SE¼NE¼.
T. 6 N., R. 84 W.,
Sec. 27, SE¼SE¼.
T. 7 N., R. 85 W.,
Sec. 17, W½NE¼.
T. 8 N, R. 85 W.,
Sec. 16, lots 4 and 5.
T. 6 N., R. 86 W.,
Sec. 33, SW¼SW¼.
T. 7 N., R. 88 W.,
Sec. 2, SE¼NW¼.
T. 8 N., R. 88 W.,
Sec. 34, lots 12 thru 15.
T. 7 N., R. 93 W.,
Sec. 36.

The areas described total approximately 23,074 acres.

The State's application requests conveyance of title to Federal mineral estate under surface owned by the State, described as follows:

**Sixth Principal Meridian, Colorado**

T. 9 N., R. 56 W.,
Sec. 24, SW¼.
T. 12 N., R. 56 W.,
Sec. 28, E½.
T. 11 N., R. 59 W.,
Sec. 15, NE¼.
T. 5 N., R. 61 W.,
Sec. 33, SW¼.
T. 3 N., R. 62 W.,
Sec. 1, SE¼.
T. 17 S., R. 48 W.,
Sec. 18, NW¼NE¼.
T. 21 S., R. 51 W.,
Sec. 35, NE¼SW¼ (oil & gas only).
T. 22 S., R. 52 W.,
Sec. 15, SW¼NE¼, NW¼SW¼, and NW¼SE¼ (oil and gas only).
T. 28 S., R. 69 W.,
Sec. 17, SE¼SE¼;
Sec. 20, NE¼ and NE¼NW¼;
Sec. 21, NE¼, W½NW¼, SE¼NW¼, and NE¼SE¼;
Sec. 22, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 27, NW¼NE¼ and NE¼NW¼.
T. 6 N., R. 79 W.,
Sec. 3, SW¼SW¼;
Sec. 4, lots 3 and 4, SW¼NE¼, S½NW¼, SW¼, and SE¼;

Sec. 5, lots 1 and 2, S½NE¼, and SE¼;
Sec. 8, N½NE¼, SE¼NE¼, and E½SE¼;
Sec. 9;
Sec.10, W½NW¼ and W½SW¼.
T. 7 N., R. 79 W.,
Sec. 32, SE¼;
Sec. 33, W½SW¼.
T. 5 N., R. 88 W.,
Sec. 12, NW¼ and SW¼.
T. 7 N, R. 88 W.,
Sec. 1, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 1, Those portions of SE¼NW¼, NE¼SW¼, NW¼SE¼, and SW¼SE¼ that lie west of Routt County Road 80A;
Sec. 2, S½NE¼ and SE¼;
Sec. 10, NE¼ and NW¼;
Sec. 11, N½ and SE¼;
Sec. 12, Those portions of NW¼ and SW¼ that lie west of Routt County Road 80.

The areas described total approximately 6,354 acres.

Rights-of-way granted by the BLM will either transfer with any of the above described land if transferred to the State or may be reserved by the United States. Oil and gas, geothermal, or other leases issued under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) will remain in effect under the terms and conditions of the leases.

Colorado state law and the State's procedures provide for the offering to holders of BLM grazing permits, licenses, or leases the first right to lease lands that may be transferred to the State. This notice of proposed classification constitutes the required two-year official notice to present holders of grazing use authorizations from the BLM that such authorizations will be terminated upon transfer of any of the land described above to the State of Colorado (43 CFR 4110.4–2(b)).

For a period until August 16, 2013, persons asserting a claim to, or interest in, the above-described lands or mineral estate, other than holders of leases, permits, or rights-of-way, may file such claim with the BLM Colorado State Director at the address cited in the **ADDRESSES** section above. You must also provide evidence that a copy thereof has been served on the Board of Land Commissioners, State of Colorado, 1127 Sherman Street, Suite 300, Denver, CO 80203–2206.

Pursuant to 43 CFR 2462.1, publication of this notice of proposed classification in the **Federal Register** segregates the above described lands from all forms of disposal under the public land laws, including the mining laws, except for the form of land disposal specified in this notice of proposed classification. However, this publication does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources, other than under the mining laws.

The segregative effect of this proposed classification will terminate in one of the following ways:

(1) Classification of the lands within two years of publication of this notice of proposed classification in the **Federal Register**;

(2) Publication of a notice of termination of the proposed classification in the **Federal Register**;

(3) An Act of Congress;

(4) Expiration of a two-year period from the date of publication of this notice of proposed classification, or expiration of an additional period, not exceeding two years, if the required notice of an extension for the proposed classification is given.

**Authority:** 43 CFR part 2400.

**Helen M. Hankins,**

*BLM Colorado State Director.*

[FR Doc. 2013–15844 Filed 7–1–13; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLIDT03000.L57000000.EU0000; IDI–35249]**

### Notice of Realty Action: Direct Sale of Public Land in Blaine County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management (BLM), Shoshone Field Office, proposes to sell a parcel of public land totaling 3.39 acres in Blaine County, Idaho, to the Point of Rocks Ranch, LLC (PORR), at not less than the appraised fair market value of $3,220.

**DATES:** Comments regarding the proposed sale must be received by the BLM before August 16, 2013.

**ADDRESSES:** Written comments concerning the proposed sale should be sent to BLM Shoshone Field Manager, 400 West F Street, Shoshone, Idaho 83352.

**FOR FURTHER INFORMATION CONTACT:** Kasey Prestwich, Realty Specialist, BLM Shoshone Field Office, 400 West F Street, Shoshone, Idaho 83352 or 208–732–7204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 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 following described public land is being proposed for direct sale to PORR in accordance with Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1713 and 1719):

**Boise Meridian**

T. 1 S., R. 20 E.,
Sec. 15, lot 6.

The area described contains 3.39 acres, more or less.

The public land is identified as suitable for disposal in the BLM Sun Valley Management Framework Plan, as amended.

The PORR owns approximately 523 acres of private land adjoining the subject parcel on three sides. The subject parcel is difficult and uneconomical to manage because it is physically separated from other public lands by a fence and a county road. The disposal would allow for the road to become an identifiable boundary between public and private lands and improve efficiencies in the management of both the public and private land. It has been determined that the lands are not needed for Federal purposes and that conveyance is consistent with current BLM land use planning and would be in the public interest. Disposal of this parcel would allow PORR to cultivate the property in conjunction with its adjoining ranch and include the parcel within an existing conservation easement held by The Nature Conservancy that encompasses the adjoining PORR fee. Such use of the subject parcel could be achieved prudently and feasibly in conjunction with the PORR's fee and therefore outweigh other public values, including recreation and scenic values, which may be served by retaining the subject parcel.

Current BLM policy and regulations for land sales [43 CFR 2710.0–6(c)(1–5)] require the use of competitive sale procedures unless the authorized officer determines the public interest would best be served by modified competitive bidding or direct (non-competitive) sale. In this instance, PORR owns about 523 acres of abutting property. In fact, for several decades prior to the discovery of the unauthorized development in 2005, the parcel was mapped as private land. In recognition of PORR's adjoining ownership, as well as to resolve an inadvertent trespass, PORR meets regulatory requirements for a direct sale.

The BLM has completed a mineral potential report which concluded there

are no known mineral values in the lands proposed for sale. The BLM proposes that conveyance of the Federal mineral interests would occur simultaneously with the sale of the lands. The PORR will be required to pay a $50 nonrefundable filing fee for the conveyance of the mineral interests and associated administrative costs.

On October 26, 2010, the above described land was segregated from appropriation under the public land laws, including the mining laws. The original segregation terminated 2 years from the date of segregation. Publication of this Notice in the **Federal Register** segregates the subject lands from all forms of appropriation under the public land laws, including the general mining laws, except sale under the Federal Land Policy and Management Act. The segregation will terminate (i) Upon issuance of a patent or other document of conveyance to such lands, (ii) upon publication in the **Federal Register** of a termination of the segregation, or (iii) at the end of 2 years from the date of this publication in the **Federal Register**, whichever occurs first.

The land will not be sold before September 3, 2013. Any patent issued will contain the following terms, conditions, and reservations:

1. A reservation to the United States for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

2. A condition that the conveyance be subject to all valid existing rights of record;

3. To the extent required by law, the sale will be subject to the requirements of Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(h));

4. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy or operations on the leased/patented lands; and

5. Additional terms and conditions that the authorized officer deems appropriate. Detailed information concerning the proposed land sale, including the appraisal, planning and environmental documents, and a mineral report are available for review at the BLM Shoshone Field Office at the location identified in the **ADDRESSES** section above. Normal business hours are 7:45 a.m. to 4:30 p.m., Monday through Friday, except for Federal holidays.

*Public Comments:* Public comments regarding the proposed sale may be submitted in writing to the BLM Shoshone Field Manager (see **ADDRESSES** section) on or before August 16, 2013. Any adverse comments regarding the proposed sale will be reviewed by the BLM Idaho State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

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.

**Authority:** 43 CFR 2711.1–2

**Elizabeth Maclean,**

*Field Manager, Shoshone Field Office.*

[FR Doc. 2013–15871 Filed 7–1–13; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWO260000 L10600000 XQ0000]**

### Notice of Call for Nominations for the Wild Horse and Burro Advisory Board

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to solicit public nominations for three positions on the Wild Horse and Burro Advisory Board (Board). The Board provides advice concerning the management, protection, and control of wild free-roaming horses and burros on the public lands administered by the Department of the Interior, through the Bureau of Land Management (BLM), and the Department of Agriculture, through the U.S. Forest Service.

**DATES:** Nominations must be post marked or submitted to the address listed below no later than August 16, 2013.

**ADDRESSES:** All mail sent via the U.S. Postal Service should be sent as follows: National Wild Horse and Burro Program, U. S. Department of Interior, Bureau of Land Management, 1849 C Street NW., Room 2134 LM, Attn: Sharon Kipping, WO 260, Washington, DC 20240. All mail and packages that are sent via FedEx or UPS should be addressed as follows: National Wild Horse and Program, U. S. Department of Interior, Bureau of Land Management, 20 M Street SE., Room 2134 LM, Attn: Sharon Kipping, Washington, DC 20003. You may also send a fax to Sharon Kipping at 202–912–7182, or email her at *skipping@blm.gov*.

**FOR FURTHER INFORMATION CONTACT:** Sharon Kipping, Wild Horse and Burro Program Specialist, 202–912–7263. 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. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** Members of the Board serve without compensation. However, while away from their homes or regular places of business, Board and subcommittee members engaged in Board or subcommittee business, approved by the Designated Federal Official (DFO), may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service under Section 5703 of Title 5 of the United States Code. Nominations for a term of 3-years are needed to represent the following categories of interest:
Wild Horse and Burro Research
Natural Resource Management
Public Interest (Equine Behavior)
The Board will meet no less than two times annually. The DFO may call additional meetings in connection with special needs for advice. Individuals may nominate themselves or others. Any individual or organization may nominate one or more persons to serve on the Board. Nominations will not be accepted without a complete resume. The following information must accompany all nominations for the individual to be considered for a position:

1. The position(s) for which the nominee wishes to be considered;

2. The nominee's first, middle, and last name;

3. Business address and phone number:

4. Home address and phone number:

5. Email address;

6. Present occupation/title and employer;

7. Education (colleges, degrees, major field of study);

8. Career Highlights: Significant related experience, civic and professional activities, elected offices (include prior advisory committee

experience or career achievements related to the interest to be represented). Attach additional pages, if necessary;

9. Qualifications: Education, training, and experience that qualify you to serve on the Board;

10. Experience or knowledge of wild horse and burro management;

11. Experience or knowledge of horses or burros: (Equine health, training, and management);

12. Experience in working with disparate groups to achieve collaborative solutions (e.g., civic organizations, planning commissions, school boards, etc.);

13. Indicate any BLM permits, leases, or licenses held by you or your employer;

14. Indicate whether you are a federally registered lobbyist; and

15. Explain why you want to serve on the Board.

Attach or have at least one letter of reference sent from special interests or organizations you may represent, including, but not limited to, business associates, friends, co-workers, local, state, and/or Federal government representatives, or members of Congress. Please include any other information that speaks to your qualifications.

As appropriate, certain Board members may be appointed as special government employees. Special government employees serve on the Board without compensation, and are subject to financial disclosure requirements in the Ethics in Government Act and 5 CFR part 2634. Nominations are to be sent to the address listed under **ADDRESSES** above.

*Privacy Act Statement:* The authority to request this information is contained in 5 U.S.C. 301, the Federal Advisory Committee Act (FACA), and Part 1784 of Title 43, Code of Federal Regulations. It is used by the appointment officer to determine education, training, and experience related to possible service on an advisory council of the BLM. If you are appointed as an advisor, the information will be retained by the appointing official for as long as you serve. Otherwise, it will be destroyed 2 years after termination of your membership or returned (if requested) following announcement of the Board's appointments. Submittal of this information is voluntary. However, failure to complete any or all items will inhibit fair evaluation of your qualifications, and could result in you not receiving full consideration for appointment.

*Membership Selection:* Individuals shall qualify to serve on the Board because of their education, training, or experience that enables them to give informed and objective advice regarding the interest they represent. They should demonstrate experience or knowledge of the area of their expertise and a commitment to collaborate in seeking solutions to resource management issues. The Board is structured to provide fair membership and balance, both geographic and interest specific, in terms of the functions to be performed and points of view to be represented. Members are selected with the objective of providing representative counsel and advice about public land and resource planning. No person is to be denied an opportunity to serve because of race, age, sex, religion, or national origin. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils. Pursuant to Section 7 of the Wild Free-Roaming Horses and Burros Act, members of the Board cannot be employed by either Federal or state governments.

**Authority:** 43 CFR 1784.4–1.

**Edwin L. Roberson,**

*Assistant Director, Renewable Resources and Planning.*

[FR Doc. 2013–15873 Filed 7–1–13; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NRNHL–13310; PPWOCRADI0, PCU00RP14.R50000]**

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 8, 2013. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 17, 2013. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 13, 2013.

**J. Paul Loether,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

**ARIZONA**

**Maricopa County**

Tempe Double Butte Cemetery (Pioneer Section), 2505 W. Broadway Rd., Tempe, 13000508

**CALIFORNIA**

**Los Angeles County**

Boyle Hotel—Cummings Block, 101–105 N. Boyle Ave., Los Angeles, 13000509

Case Study House No. 1, (Case Study House Program MPS) 10152 Toluca Lake Ave., Los Angeles, 13000512

Case Study House No. 22, (Case Study House Program MPS) 1635 Woods Dr., Los Angeles, 13000519

Case Study House No. 10, (Case Study House Program MPS) 711 S. San Rafael Ave., Los Angeles, 13000514

Case Study House No. 16, (Case Study House Program MPS) 1811 Bel Air Rd., Los Angeles, 13000515

Case Study House No. 18, (Case Study House Program MPS) 199 Chautauqua Blvd., Los Angeles, 13000516

Case Study House No. 20, (Case Study House Program MPS) 2275 N. Santa Rosa Ave., Los Angeles, 13000517

Case Study House No. 21, (Case Study House Program MPS) 9038 Wonderland Park Ave., Los Angeles, 13000518

Case Study House No. 9, (Case Study House Program MPS) 205 Chautauqua Blvd., Los Angeles, 13000513

Community Clubhouse, 1200 N. Vista St., West Hollywood, 13000510

**Orange County**

Fender's Radio Service, 1–7 S. Harbor Blvd., Fullerton, 13000511

**San Diego County**

Case Study House No. 23A, (Case Study House Program MPS) 2342 Rue de Anne, La Jolla, 13000520

Case Study House No. 23C, (Case Study House Program MPS) 2339 Rue de Anne, La Jolla, 13000521

**Ventura County**

Case Study House No. 28, (Case Study House Program MPS) 91 Inverness Rd., Thousand Oaks, 13000522

COLORADO

Costilla County

Capilla de San Isidro, 21801 Cty. Rd. KS, Los Fuertes, 13000523

Garfield County

Holland—Thompson Property, 1605 CO 133, Carbondale, 13000524

CONNECTICUT

Fairfield County

Williams House, 5 Williams Rd., New Fairfield, 13000525

Hartford County

Sisson—South Whitney Historic District, Roughly bounded by West Blvd., S. Whitney St., Farmington & Sisson Aves., Hartford, 13000526

Swift, M. and Sons Company Historic District, 10 & 60 Love Ln., Hartford, 13000527

Whitfield Cowles House, 118 Spoonville Rd., East Granby, 13000528

GEORGIA

Banks County

Brooks Family Farm, 584 Silver Shoals Rd., Lula, 13000529

Clarke County

Cobb, T.R.R., House, 175 Hill St., Athens, 13000530

Coweta County

Ray, Mary, Memorial School, 771 Raymond Shedden Ave., Raymond, 13000531

Monroe County

Forsyth Railroad Depots and Baggage Room, E. Adams St., Forsyth, 13000532

MASSACHUSETTS

Middlesex County

Wheeler—Harrington House, 249 Harrington Ave., Concord, 13000534

Worcester County

Woodlawn Cemetery, 2 Woodlawn St., Clinton, 13000535

MISSOURI

Clinton County

Stoutimore, David L. and Sallie Ann, House, 501 S. Birch Ave., Plattsburg, 13000536

St. Louis Independent City

Thurman Station, (Auto-Related Resources of St. Louis, Missouri MPS), 2232 Thurman Ave., St. Louis, 13000537

PENNSYLVANIA

Lebanon County

Lebanon Veterans Administration Hospital Historic District, (United States Second Generation Veterans Hospitals MPS), 1700 S. Lincoln Ave., South Lebanon, 13000539

Westmoreland County

Aluminum Research Laboratories, Freeport Rd., New Kensington, 98000413

VIRGINIA

Colonial Heights Independent City

Chesterfield Highlands Historic District, Roughly bounded by the Boulevard, E. Westover, Lafayette, Pickwick, Danville & Lee Aves., Colonial Heights, 13000540

WISCONSIN

Eau Claire County

Borton, Einar and Alice, House, 1819 Lyndale Ave., Eau Claire, 13000541

WYOMING

Fremont County

High Rise Village, Address Restricted, Dubois, 13000542

In the interest of preservation a request to shorten the comment period to three days has been made for the following resources:

MAINE

Hancock County

U.S. Naval Radio Station—Apartment Building and Power House, (Acadia National Park MPS), Atterbury Cir., Winter Harbor, 13000533

OHIO

Stark County

Hoover Company Historic District, 101 E. Maple St., North Canton, 13000538

A request to move has been made for the following resource:

CONNECTICUT

Fairfield County

Lyon, Thomas, House, W. Putnam Ave. and Byram Rd., Greenwich, 77001390

A request for removal has been made for the following resource:

SOUTH CAROLINA

Greenville County

Williams-Earle House, 319 Grove Rd., Greenville, 82003864

[FR Doc. 2013–15788 Filed 7–1–13; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On June 26, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Illinois in the lawsuit entitled *United States, et al.* v. *Gateway Energy & Coke Company, et al.*, Civil Action No. 3:13–cv–00616–DRH–SCW.

The United States, on behalf of the U.S. Environmental Protection Agency, has filed a complaint under the Clean Air Act asserting claims relating to two Midwestern heat recovery coking facilities, one of which is located in Granite City, Illinois (the "Gateway Facility"), and the other of which is located in Franklin Furnace, Ohio (the "Haverhill Facility"). The United States seeks civil penalties and injunctive relief against the owners and operators of the Gateway and Haverhill Facilities. The Haverhill Coke Company, LLC, formerly known as the Haverhill North Coke Company, is an owner and operator of the Haverhill Facility along with SunCoke Energy, Inc. ("SunCoke") (together "the Haverhill Defendants"). The Gateway Energy & Coke Company, LLC is an owner and operator of the Gateway Facility along with SunCoke (together "the Gateway Defendants").

The States of Illinois and Ohio are co-plaintiffs in this action. The State of Illinois asserts claims in this action relating to the Gateway Facility under the Illinois Environmental Protection Act ("Illinois Act"), 415 ILCS 5/1 *et seq.* (2010), and seeks injunctive relief and civil penalties against the Gateway Defendants for violations of the Illinois Act. The State of Ohio asserts claims in this action relating to the Haverhill Facility under Chapter 3745 of the Ohio Revised Code ("ORC"), and the rules adopted thereunder, and seeks injunctive relief and civil penalties against the Haverhill Defendants for violations of ORC Chapter 3704. The Complaint alleges that Gateway Defendants operated the Gateway Facility and the Haverhill Defendants operated the Haverhill Facility in excess of bypass venting limits specified in their Prevention of Significant Deterioration permits, and that the Haverhill Defendants failed to comply with emissions monitoring and reporting requirements.

The Consent Decree would require (1) installation of process equipment to provide redundancy that will allow hot coking gases to be routed to a pollution control device instead of vented directly to the atmosphere in the event of equipment downtime; (2) installation of continuous emissions monitor for sulfur dioxide at one bypass vent per process unit (two at the Haverhill Facility and one at the Gateway Facility); (3) payment of a civil penalty of $1.995 million, of which $1.27 million will go to the United States, $575,000 to the State of Illinois, and $150,000 to the State of Ohio; and (4) performance of a lead hazard abatement supplemental environmental project at a cost of $255,000 at the Gateway Facility.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to

*United States, et al.* v. *Gateway Energy & Coke Company, et al.*, D.J. Ref. Nos. 90–5–2–1–09890 and 90–5–2–1–10065. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| To submit comments: | Send them to: |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $29.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $16.25.

**Maureen Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2013–15775 Filed 7–1–13; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Claim for Compensation by a Dependent Information Reports

**ACTION:** Notice.

**SUMMARY:** On July 1, 2013, the Department of Labor (DOL) will submit the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, "Claim for Compensation by a Dependent Information Reports," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

**DATES:** Submit comments on or before July 31, 2013.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201302-1240-001* (this link will only become active on July 2, 2013) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR covers forms a dependent of a deceased Federal employee, whose death is work-related, uses to prove continued eligibility for benefits, to show entitlement to remaining compensation payments of the deceased employee, and to show dependency. The collection of this information is required by 5 U.S.C. 8110 and regulations 20 CFR 10.7, 10.105, 10.410, 10.413, 10.417, 10.535, and 10.537. Specifically, this ICR covers Forms CA–5, CA–5b, CA–1031, and CA–1074, as well as related form letters used to obtain follow-up information commonly needed to clarify an initial benefit claim.

This ICR seeks to revise Forms CA–5 and CA–5b, in order to collect information that will allow for the direct deposit of benefit payments into a beneficiary's account with a financial institution. In addition, the OWCP is adding information about how a respondent with a disability may obtain further assistance in responding to the forms and letters covered by this ICR. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 12, 2013 (78 FR 15742).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0013. The current approval is scheduled to expire on July 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by July 31, 2013. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0013. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–OWCP.

*Title of Collection:* Claim for Compensation by a Dependent Information Reports.

*OMB Control Number:* 1240–0013.

*Affected Public:* Individuals or Households.

*Total Estimated Number of Respondents:* 2,920.

*Total Estimated Number of Responses:* 2,920.

*Total Estimated Annual Burden Hours:* 1,571.

*Total Estimated Annual Other Costs Burden:* $1,431.

Dated: June 24, 2013.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2013–15737 Filed 7–1–13; 8:45 am]

BILLING CODE 4510–CH–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,702; TA–W–82,702A; TA–W–82,702B]**

### Electrolux Home Care Products, Inc., a Subsidiary of Electrolux North America, Inc., Electrolux Major Appliances, 1700 West Second Street, Webster City, Iowa; Leased Workers from Cornerstone, Working On-Site at Electrolux Home Care Products, Inc., Webster City, Iowa; Electrolux Home Care Products, Inc., a Subsidiary of Electrolux North America, Inc., Electrolux Major Appliances, Including On-Site Leased Workers From Per Mar Security, 400 Des Moines Street, Webster City, Iowa; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 10, 2013, applicable to workers of Electrolux Home Care Products, Inc., Electrolux Major Appliances, a subsidiary of Electrolux North America, Inc., Webster City, Iowa (TA–W–82,702) and leased workers from Cornerstone working on-site at Electrolux Home Care Products, Inc., Webster City, Iowa (TA–W–82,702A). The workers are engaged in activities related to the production of laundry products and related technical services. The notice was published in the **Federal Register** on May 30, 2013 (78 FR 32466).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred during the relevant time period at the 400 Des Moines Street, Webster City, Iowa location of Electrolux Home Care Products, Inc., a subsidiary of Electrolux North America, Inc., Electrolux Major Appliances. The worker group also includes on-site leased workers from Per Mar Security. A shift in the production of laundry products and related technical services to Mexico contributed importantly to worker separations at the 400 Des Moines Street facility and the 1700 West Second Street facility of the subject firm.

Accordingly, the Department is amending the certification to include workers of the 400 Des Moines Street, Webster City, Iowa of Electrolux Home Care Products, Inc., a wholly owned subsidiary of Electrolux North America, Inc., Electrolux Major Appliances, including on-site leased workers from Per Mar Security.

The amended notice applicable to TA–W–82,702, TA–W–82,702A and TA–W–82,702B are hereby issued as follows:

All workers of Electrolux Home Care Products, Inc., a subsidiary of Electrolux North America, Inc., Electrolux Major Appliances Division, Webster City, Iowa, (TA–W–82,702), who became totally or partially separated from employment on or after February 16, 2013, through May 10, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, AND

All leased workers from Cornerstone, working on-site at Electrolux Home Care Products, Inc., Webster City, Iowa, (TA–W–82,702A) who became totally or partially separated from employment on or after April 29, 2012, through May 10, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, AND

All workers Electrolux Home Products, Inc., a subsidiary of Electrolux North America, Inc., Electrolux Major Appliances, 400 Des Moines Street, Webster City, Iowa (TA–W–82,702B) who became totally or partially separated from employment on or after June 18, 2013, through May 10, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended,

Signed in Washington, DC, this 18th day of June, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–15742 Filed 7–1–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,203]**

### Huntingdon County Site, FCI USA, LLC, Americas Division, a Subsidiary of FCI SA, Including On-Site Leased Workers From Manpower Inc. and Geodis Wilson Inc., Mount Union, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 18, 2012, applicable to workers of Huntingdon County Site, FCI USA, LLC, Americas Division, a subsidiary of FCI SA, including on-site leased workers from Manpower Inc., Mount Union, Pennsylvania. The Department's notice of determination was published in the **Federal Register** on January 10, 2013 (Volume 78 FR Pages 2288–2291).

At the request of a worker, the Department reviewed the certification for workers of the subject firm. The workers were engaged in production of electronic connectors.

The company reports that workers leased from Geodis Wilson Inc. were employed on-site at the Mount Union, Pennsylvania location of Huntingdon County Site, FCI USA, LLC. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Geodis Wilson Inc. working on-site at the Mount Union, Pennsylvania location of Huntingdon County Site, FCI USA, LLC.

The amended notice applicable to TA–W–82,203 is hereby issued as follows:

All workers of Huntingdon County Site, FCI USA, LLC, Americas Division, a subsidiary of FCI SA, including on-site leased workers from Manpower Inc. and Geodis Wilson Inc., Mount Union, Pennsylvania, who became totally or partially separated from employment on or after February 23, 2012, through December 18, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 18th day of June, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–15743 Filed 7–1–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,537; TA–W–82,537A; TA–W–82,537B]**

### Monta Vista Software, LLC, a Subsidiary of Cavium, Inc., Including Workers Whose Unemployment Insurance (UI) Wages are Reported Through Trinet HR Corporation, Arlington, Texas; Monta Vista Software, LLC, a Subsidiary of Cavium, Inc., Including Workers Whose Unemployment Insurance (UI) Wages are Reported Through Trinet HR Corporation, San Jose, California; Monta Vista Software, LLC, A Subsidiary of Cavium, Inc., Including Workers Whose Unemployment Insurance (UI) Wages, are Reported Through Trinet HR Corporation, Tempe, Arizona; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 3, 2013, applicable to workers of Monta Vista Software, LLC, a subsidiary of Cavium, Inc., Arlington, Texas, Monta Vista Software, LLC, a subsidiary of Cavium, Inc., San Jose, California and Monta Vista Software, LLC, a subsidiary of Cavium, Inc., Tempe, Arizona. The workers are engaged in activities related to the production of software. The notice was published in the **Federal Register** on April 30, 2013 (78 FR 25306).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information from the company shows that TriNet HR Corporation provides outsourced human resources and employer services such as payroll, benefits and other function services to Cavium, Inc. Workers separated from employment at the Arlington, Texas, San Jose, California and Temple, Arizona locations of Monta Vista Software, LCC, a subsidiary of Cavium, Inc. had their wages reported through a separate unemployment insurance (UI) tax account under the name TriNet HR Corporation.

Accordingly, the Department is amended this certification to include workers of the subject firm whose unemployment insurance (UI) wages are reported through TriNet HR Corporation.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in software services to India.

The amended notice applicable to TA–W–82,537 is hereby issued as follows:

All workers from Monta Vista Software LLC, a subsidiary of Cavium, Inc., including workers whose unemployment insurance (UI) wages are reported to TriNet HR Corporation, Arlington, Texas (TA–W–82,537); Monta Vista Software LLC, a subsidiary of Cavium, Inc., including workers whose unemployment insurance (UI) wages are reported through TriNet HR Corporation, San Jose, California (TA–W–82,537A); and Monta Vista Software LLC, a subsidiary of Cavium, Inc., including workers whose unemployment insurance (UI) wages are reported through TriNet HR Corporation, Tempe, Arizona (TA–W–82,537B), who became totally or partially separated from employment on or after March 5, 2012, through April 3, 2015, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this June 12, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–15741 Filed 7–1–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–82,678
Cannon Equipment,
Carts Department, A Subsidiary of IMI Americas, Inc., Including On-Site Leased Workers From Aerotek And The Work Connection, Rosemount, Minnesota
TA–W–82,678A
Cannon Equipment, A Subsidiary of IMI Americas, Inc., Including On-Site Leased Workers From Aerotek And The Work Connection, Cannon Falls, Minnesota

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 16, 2013, applicable to workers of Cannon Equipment Carts Department, a subsidiary of IMI Americas, Inc., including on-site leased workers from Aerotek and The Work Connection, Rosemount, Minnesota. The notice was published in the **Federal Register** on May 30, 2013 (78 FR 32467).

At the request of the Minnesota State agency, the Department reviewed the certification for workers of the subject firm. As the result of an earlier corporate decision, all production and employees of the Rosemount Minnesota location of Cannon Equipment, a subsidiary of IMI Americas, Inc. were shifted to the Cannon Falls, Minnesota location of the subject firm in order to improve the firm's competitiveness and profitability. Both locations experienced worker separations during the relevant time period due to an increase of imports of articles.

Accordingly, the Department is amending the certification to include workers of the Cannon Falls, Minnesota location of Cannon Equipment, a subsidiary of IMI Americas, Inc.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by imports of articles.

The amended notice applicable to TA–W–82,678 is hereby issued as follows:

All workers from Cannon Equipment, Carts Department, a subsidiary of IMI Americas, Inc., including on-site leased workers from Aerotek and The Work Connection, Rosemount, Minnesota (TA–W–82,678) and Cannon Equipment, a subsidiary of IMI Americas, Inc., including on-site leased workers from Aerotek and The Work Connection, Cannon Falls, Minnesota (TA–W–82,678A) who became totally or partially separated from employment on or after April 19, 2012 through May 16, 2015, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 13th day of June 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–15738 Filed 7–1–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of June 10, 2013 through June 14, 2013.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Seotion 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

### Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,522 | Ithaco Space Systems, Inc., Goodrich Corporation, United Technologies Corporation, Adecco, etc. | Ithaca, NY | February 28, 2012. |
| 82,604 | Steinerfilm, Inc., Metallized Dielectric Film, Steinerfilm International, Inc. | Williamstown, MA | March 22, 2012. |
| 82,604A | Steinerfilm, Inc., Polypropylene Dielectric Film, Steinerfilm International, Inc. | Williamstown, MA | March 22, 2012. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,634 | Prudential, Global Business Technology Solutions, Central Security Services. | Dresher, PA | April 4, 2012. |
| 82,634A | Prudential, Global Business Technology Solutions, Central Security Services. | Iselin, NJ | April 4, 2012. |
| 82,634B | Prudential, Global Business Technology Solutions, Central Security Services. | Plymouth, MN | April 4, 2012. |
| 82,634C | Prudential, Global Business Technology Solutions, Central Security Services. | Scottsdale, AZ | April 4, 2012. |
| 82,634D | Prudential, Global Business Technology Solutions, Central Security Services. | Roseland, NJ | April 4, 2012. |
| 82,634E | Prudential, Global Business Technology Solutions, Central Security Services. | Jacksonville, FL | April 4, 2012. |
| 82,668 | Optical Supply, Inc., Essilor Laboratories of America, Kelly Services, Gill Staffing, & Force. | Grand Rapids, MI | April 16, 2012. |
| 82,683 | Office Depot, Inc., Finance & Accounting Organization, American Cyber, Ascendo Resources, etc. | Boca Raton, FL | April 22, 2012. |
| 82,705 | The Boeing Company, BCA—Hourly Manufacturing & Quality | Auburn, WA | April 26, 2012. |
| 82,705A | The Boeing Company, BCA—Hourly Manufacturing & Quality | Everett, WA | April 26, 2012. |
| 82,705B | The Boeing Company, BCA—Hourly Manufacturing & Quality | Puyallup, WA | April 26, 2012. |
| 82,705C | The Boeing Company, BCA—Hourly Manufacturing & Quality | Renton, WA | April 26, 2012. |
| 82,705D | The Boeing Company, BCA—Hourly Manufacturing & Quality | Seattle, WA | April 26, 2012. |
| 82,705E | The Boeing Company, BCA—Hourly Manufacturing & Quality | Tukwila, WA | April 26, 2012. |
| 82,732 | Harding Marketing Communications, Inc., Web/Interactive Marketing Division. | San Jose, CA | May 2, 2012. |
| 82,734 | Schawk, Stamford, Schawk, Inc. USA | Stamford, CT | May 6, 2012. |
| 82,754 | Jostens, Visant Holdings, Scholastic Division, RL Enterprise, LLC | Laurens, SC | May 20, 2012. |
| 82,770 | Ecke Ranch, Inc., Agribio Group | Connellsville, PA | May 22, 2012. |
| 82,786 | Eaton Corporation, Infotrieve, Belcan Tech Services, Advantage Human Resourcing, 804 Technolog. | Decatur, AL | June 4, 2012. |
| 82,790 | Ascension Technology Corporation, Northern Digital, Inc. (NDI), Westaff. | Milton, VT | June 6, 2012. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,483 | Register Citizen, Composing Department | Torrington, CT | |
| 82,483A | New Haven Register, Composing Department | New Haven, CT | |
| 82,741 | Cerner Corporation, Automated Testing Department. | Kansas City, MO | |

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,598 | Amphenol Backplane Systems | Nashua, NH | |
| 82,725 | Omnova Solutions, Engineered Surfaces—Jeannette Plant, The Callos Companies. | Jeanette, PA | |

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,349 | Davis-Standard LLC | Pawcatuck, CT | |
| 82,519 | Allegheny Ludlum, LLC, Allegheny Technologies Incorporated, Staffmark. | Walterboro, SC | |
| 82,569 | Abbott Laboratories, Abbott Nutrition Division | Altavista, VA | |
| 82,600 | Fliteline Remanufactured Engines LLC, DBA One Source Engines | Fort Smith, AR | |
| 82,663 | Belden, Inc., Adecco | Horseheads, NY | |
| 82,690 | Cypress Semiconductor Corporation, Formerly Known as Ramtron International Corporation. | Colorado Springs, CO | |
| 82,728 | The Boeing Company, Boeing Defense and Space Division | Wichita, KS | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,776 | Honeywell International, Inc., Honeywell Process Solutions, Honeywell Field Products, Engineering Document. | York, PA | |

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,752 | Prudential, Global Business Technology Solutions, Central Security Services. | Iselin, NJ | |
| 82,769 | Prudential, Global Business Technology Solutions, Central Security Services. | Plymouth, MN | |

I hereby certify that the aforementioned determinations were issued during the period of June 10, 2013 through June 14, 2013. These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: June 19, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–15745 Filed 7–1–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of June 3, 2013 through June 7, 2013.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,530 | Sherwood Valve LLC, Taylor-Wharton International LLC | Washington, PA | March 5, 2012. |
| 82,685 | VMC Consulting, VMC Division, Volt Information Sciences, Volt Workforce Solutions. | Charlotte, NC | April 18, 2012. |
| 82,749 | Dillon Yarn Corporation, Draw Winding Department | Dillon, SC | May 13, 2012. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,364 | Atmel Corporation, Colorado Springs Foundry Operations Group, Colorado Springs Test Group. | Colorado Springs, CO | January 22, 2012. |
| 82,415 | Masco Cabinetry LLC, Masco Corporation | Atkins, VA | February 4, 2012. |
| 82,641 | EMC Corporation | Hopkinton, MA | January 19, 2013. |
| 82,664 | Jabil Circuit, Inc., Aerotek, American Society, Express Employment, Extra Resources, Snelling. | Auburn Hills, MI | April 16, 2012. |
| 82,666 | Siaburges Automotive Actuators, Johnson Electric, Staffmark | Springfield, TN | April 17, 2012. |
| 82,676 | Honeywell International, Inc., Environmental Combustion & Controls, Engineering Document Control, Manpower. | Golden Valley, MN | April 11, 2012. |
| 82,700 | Dell Products L.P., Dell, Inc., Parmer North 1 Facility (PNI), Adecco, Apex Systems, APN, etc. | Austin, TX | April 29, 2012. |

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,703 | Sanyo Solar of Oregon, LLC, Wafer Slicing and Quality Control Operations, Brown and Dunton. | Salem, OR | May 1, 2012. |
| 82,709 | Baxter Healthcare Corporation, Renal Division, Fabrication Shops Area, Kelly Services, Aerotek, etc. | Largo, FL | May 3, 2012. |
| 82,711 | Penske Truck Leasing Company, L.P., Warranty Department, Purchase Order Team. | Reading, PA | April 23, 2012. |
| 82,726 | Campbell Soup Supply Company, L.L.C., Campbell Soup Company | Sacramento, CA | May 9, 2012. |
| 82,730 | Baxter Healthcare of PR, Kelly Services | Aibonito, PR | May 7, 2012. |
| 82,735 | Kongsberg Automotive, Inc., Light Duty Cable Division, Kongsberg Automotive Holding ASA, Adecco, etc. | Benton, LA | May 3, 2012. |
| 82,760 | Hartford Financial Services Group, Inc, Operations/Strategic Workforce Capabilities/Performance Measurement. | Hartford, CT | May 22, 2012. |
| 82,760A | Hartford Financial Services Group, Inc, Operations/Strategic Workforce Capabilities/Performance Measurement. | Windsor, CT | May 22, 2012. |
| 82,762 | United Telephone Company of the Northwest, Hood River Assignment Center, Embarq Corporation/CenturyLink, Inc.. | Hood River, OR | May 22, 2012. |
| 82,763 | AxleTech International, A General Dynamics Company | Oshkosh, WI | May 23, 2012. |
| 82,772 | Haemonetics Corporation, Aerotek, The Alpha Group | Braintree, MA | May 21, 2012. |

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,364A | Atmel Corporation, Equipment Engineering Services Group | Colorado Springs, CO | January 22, 2012. |

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,675 | DMI Industries, Inc., Otter Tail Corp., Volt, Manpower, Spherion, Preference. | Fargo, ND | February 13, 2012. |
| 82,675A | DMI Industries, Inc., Otter Tail Corp., Volt, Manpower, Spherion, Preference. | Tulsa, OK | February 13, 2012. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,529 | Nuance Transcription Services, Nuance Communications, Inc | Burlington, MA. | |

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,036 | Interface Sealing Solutions, Inc., Manpower | Croghan, NY. | |
| 82,461 | Tennessee Apparel Corporation | Waynesboro, TN. | |
| 82,503 | GMAC Mortgage, LLC, Residential Capital, LLC, Now Ocwen Loan Servicing, LLC, Ocwen Financial. | Waterloo, IA. | |
| 82,697 | AT&T Corporation, AT&T Inc., Business Billing Customer Care | Pittsburgh, PA. | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions

filed earlier covering the same petitioners.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,751 ..... | Hewlett Packard Company, Enterprise Storage Servers and Networking (TAPE) Group, d/b/a Enterprise. | Fort Collins, CO. | |

I hereby certify that the aforementioned determinations were issued during the period of June 3, 2013 through June 7, 2013. These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: June 10, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–15740 Filed 7–1–13; 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 July 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 July 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 19th day of June 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

APPENDIX

[20 TAA petitions instituted between 6/10/13 and 6/14/13]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 82794 ..... | Hasbro Inc. (Workers) ..... | Pawtucket, RI ..... | 06/10/13 | 06/07/13 |
| 82795 ..... | Thermo Fisher Scientific (Company) ..... | Sun Prairie, WI ..... | 06/10/13 | 06/07/13 |
| 82796 ..... | Harbor Paper (State/One-Stop) ..... | Hoquiam, WA ..... | 06/10/13 | 06/07/13 |
| 82797 ..... | Simpson's John's Prairie Operations (State/One-Stop) ..... | Shelton, WA ..... | 06/10/13 | 06/07/13 |
| 82798 ..... | Kingston Technology (Company) ..... | Fountain Valley, CA ..... | 06/11/13 | 06/10/13 |
| 82799 ..... | General Dynamics Armament and Technical Products (Workers). | Saco, ME ..... | 06/11/13 | 06/10/13 |
| 82800 ..... | Osram Sylvania Inc. (Company) ..... | Winchester, KY ..... | 06/11/13 | 06/10/13 |
| 82801 ..... | Baldwin Hardware Corporation (Company) ..... | Reading, PA ..... | 06/12/13 | 06/11/13 |
| 82802 ..... | Hammary Furniture (Workers) ..... | Granite Falls, NC ..... | 06/12/13 | 06/10/13 |
| 82803 ..... | Cadmus Communication (Workers) ..... | Lancaster, PA ..... | 06/12/13 | 06/12/13 |
| 82804 ..... | LTX-Credence Corporation (Workers) ..... | Milpitas, CA ..... | 06/12/13 | 06/11/13 |
| 82805 ..... | Citigroup Realty Services/Finance, Financial Services—Planning and Analysis (State/One-Stop). | New York, NY ..... | 06/12/13 | 06/11/13 |
| 82806 ..... | Utica National Insurance, Corporate Claims Support Unit (State/One-Stop). | New Hartford, NY ..... | 06/12/13 | 06/11/13 |
| 82807 ..... | GM Powertrain (Union) ..... | Saginaw, MI ..... | 06/13/13 | 06/12/13 |
| 82808 ..... | American Express (Workers) ..... | Phoenix, AZ ..... | 06/13/13 | 06/12/13 |
| 82809 ..... | Verizon Enterprise Solutions (State/One-Stop) ..... | Alpharetta, GA ..... | 06/13/13 | 06/12/13 |
| 82810 ..... | Direct Brands, Inc. (Company) ..... | New York, NY ..... | 06/13/13 | 06/12/13 |
| 82811 ..... | Computer Sciences Corporation (Workers) ..... | Coppell, TX ..... | 06/13/13 | 06/12/13 |
| 82812 ..... | Seco Tools Inc. (Company) ..... | Lenoir City, TN ..... | 06/13/13 | 06/12/13 |
| 82813 ..... | Sony Pictures Imageworks (State/One-Stop) ..... | Culver City, CA ..... | 06/14/13 | 06/13/13 |

[FR Doc. 2013–15744 Filed 7–1–13; 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 July 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 July 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 13th day of June 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

APPENDIX

[19 TAA petitions instituted between 6/3/13 and 6/7/13]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 82775 .. | CACI International, Inc. (TechniGraphics, Inc) (Workers) | Wooster, OH | 06/03/13 | 05/31/13 |
| 82776 .. | Honeywell International, Inc. (Company) | York, PA | 06/03/13 | 06/02/13 |
| 82777 .. | Findings, Incorporated (Company) | Keene, NH | 06/04/13 | 06/03/13 |
| 82778 .. | Energizer Holding Inc. (State/One-Stop) | Westlake, OH | 06/04/13 | 06/03/13 |
| 82779 .. | Electrolux Home Care Products (Company) | Charlotte, NC | 06/05/13 | 05/10/13 |
| 82780 .. | Novartis (State/One-Stop) | Lincoln, NE | 06/05/13 | 06/04/13 |
| 82781 .. | FLSmidth Inc. (Company) | Bethlehem, PA | 06/05/13 | 06/04/13 |
| 82782 .. | C&D Technologies (Company) | Milwaukee, WI | 06/05/13 | 06/04/13 |
| 82783 .. | Greenbrier/Gunderson (State/One-Stop) | Portland, OR | 06/06/13 | 06/05/13 |
| 82784 .. | Harte-Hanks (State/One-Stop) | Shawnee, KS | 06/06/13 | 06/05/13 |
| 82785 .. | Boeing Company (The) (Workers) | Houston, TX | 06/06/13 | 05/21/13 |
| 82786 .. | Eaton Corporation (Company) | Decatur, AL | 06/06/13 | 06/04/13 |
| 82787 .. | Xerox Corporation (State/One-Stop) | North Bend, OR | 06/06/13 | 06/04/13 |
| 82788 .. | Liberty Medical Supply (State/One-Stop) | Port Saint Lucie, FL | 06/07/13 | 06/06/13 |
| 82789 .. | Centrinex (State/One-Stop) | Lenexa, KS | 06/07/13 | 06/06/13 |
| 82790 .. | Ascension Technology Corporation (Company) | Milton, VT | 06/07/13 | 06/06/13 |
| 82791 .. | ITW Hi-Cone (Workers) | Zebulon, NC | 06/07/13 | 06/06/13 |
| 82792 .. | BASF Corporation (State/One-Stop) | Louisville, KY | 06/07/13 | 06/05/13 |
| 82793 .. | Arvato Digital Services (Workers) | Valencia, CA | 06/07/13 | 06/05/13 |

[FR Doc. 2013–15739 Filed 7–1–13; 8:45 am]
BILLING CODE 4510–FN–P

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting

Notice

**DATE AND TIME:** The Legal Services Corporation's Finance Committee will meet telephonically on July 9, 2013. The meeting will commence at 11:00 a.m., EDT, and will continue until the conclusion of the Committee's agenda.

**LOCATION:** John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

**PUBLIC OBSERVATION:** Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

**CALL-IN DIRECTIONS FOR OPEN SESSIONS:**

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately "MUTE" your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:** 1. Approval of agenda

2. Approval of minutes of the Committee's meeting of June 11, 2013

3. Discussion with Management regarding recommendation for LSC's fiscal year 2015 appropriations request

4. Public comment

5. Consider and act on other business

6. Consider and act on adjournment of meeting.

**CONTACT PERSON FOR INFORMATION:** Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov*.

**ACCESSIBILITY:** LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov*, at least 2 business days in advance of the meeting.

If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 27, 2013.

**Atitaya C. Rok,**

*Staff Attorney.*

[FR Doc. 2013–15907 Filed 6–28–13; 11:15 am]
BILLING CODE 7050–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0136]**

### Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft report; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a draft report for public comment, titled Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor (also referred to as the Spent Fuel Pool Study). The purpose of this study was to examine if faster removal of older, colder spent reactor fuel from pools to dry cask storage significantly reduces risks to public health and safety. Based on previous research showing earthquakes present the dominant risk for spent fuel pools, the draft study evaluated how a potential pool leakage from an unlikely severe earthquake might cause the used fuel to overheat and release radioactive material to the environment. This study provides publicly available consequence estimates of a hypothetical spent fuel pool accident initiated by a low likelihood seismic event at a specific reference plant. The study compares high-density and low-density spent fuel pool loading conditions and assesses the benefits of post-9/11 mitigation measures. Past risk studies have shown that storage of spent fuel in a high-density configuration is safe and risk of a large release due to an accident is very low. This draft study's results are consistent with earlier research conclusions that spent fuel pools are robust structures that are likely to withstand severe earthquakes without leaking. The NRC continues to believe, based on this study and previous studies that spent fuel pools provide adequate protection of public health and safety. The study's results will help inform the Commission's evaluation of whether expedited movement of spent fuel from spent fuel pools to dry storage sooner than current practice provides a substantial increase in safety. The insights from this analysis will inform a broader regulatory analysis of the spent fuel pools at all U.S. operating nuclear reactors as part of the NRC's Japan Lessons-learned Tier 3 plan.

**DATES:** Submit comments by August 1, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0136. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Don Algama, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–251–7940; email: *Don.Algama@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2013–0136 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, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0136.
- *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 notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The draft report is available electronically in ADAMS under Accession No. ML13133A132.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2013–0136 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

**II. Discussion**

The draft report documents a consequence study that continues the Nuclear Regulatory Commission's examination of the risks and consequences of postulated spent fuel pool accidents. The purpose of this study is to examine if faster removal of spent reactor fuel from pools to dry cask storage significantly reduces risks to public health and safety. Based on previous research showing earthquakes present the dominant risk for spent fuel pools, the draft study evaluated how a potential pool leakage from an unlikely severe earthquake might cause the used fuel to overheat and release radioactive material to the environment. A spent fuel pool's robust concrete structure and stainless steel liner keep more than 20 feet of water above the spent fuel stored within it ensuring ample cooling for the spent fuel and adequate radiation shielding for plant personnel. This study compared potential accident consequences from a pool nearly filled with spent fuel and a pool in which fuel that has cooled sufficiently has been removed at a selected U.S. Mark I boiling-water reactor spent fuel pool.

The staff first evaluated whether a severe, though unlikely, earthquake would damage the spent fuel pool to the point of leaking. In order to assess the consequences that might result from a spent fuel pool leak, the study assumed seismic forces greater than the maximum earthquake reasonably expected to occur at the reference plant location. The NRC expects that the ground motion used in this study is more challenging for the spent fuel pool structure than that experienced at the Fukushima Dai-ichi nuclear power plant from the earthquake that occurred off the coast of Japan on March 11, 2011. That earthquake did not result in any spent fuel pool leaks. In the small likelihood that such an extreme earthquake caused a leak, the staff then analyzed how the spent fuel could overheat and potentially release radioactive material into the environment. Finally, the staff analyzed what the public health and environmental effects of a radiological release would be in the area surrounding the plant.

This draft study's results for the specific reference plant and earthquake analyzed are consistent with past studies' conclusions that spent fuel pools are likely to withstand severe earthquakes without leaking. The draft study shows the likelihood of a radiological release from the spent fuel after the analyzed severe earthquake at the reference plant to be very low. The regulatory analysis for this study indicates that expediting movement of spent fuel from the pool does not provide a substantial safety enhancement for the reference plant. The NRC will use this study in a broader regulatory analysis of the spent fuel pools at all U.S. operating nuclear reactors as part of its Japan Lessons-Learned activities. The NRC continues to believe, based on this study and previous studies that spent fuel pools provide adequate protection of public health and safety.

Dated at Rockville, Maryland, this 24th day of June, 2013.

For the Nuclear Regulatory Commission.

**Richard Lee,**

*Chief, Fuel and Source Term Code Development Branch, Division of Systems Analysis, Office of Nuclear Regulatory Research.*

[FR Doc. 2013–15840 Filed 7–1–13; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0001]**

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATE:** Weeks of July 1, 8, 15, 22, 29, August 5, 2013.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of July 1, 2013**

There are no meetings scheduled for the week of July 1, 2013.

**Week of July 8, 2013—Tentative**

*Tuesday, July 9, 2013*

9:30 a.m. Briefing on Security Issues (Closed—Ex. 1).

*Wednesday, July 10, 2013*

9:00 a.m. Briefing on NRC International Activities (Part 1) (Public Meeting) (Contact: Karen Henderson, 301–415–0202).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

10:30 a.m. Briefing on NRC International Activities (Part 2) (Closed—Ex. 1 & 9) (Contact: Karen Henderson, 301–415–0202)

*Thursday, July 11, 2013*

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Ed Hackett, 301–415–7360).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

**Week of July 15, 2013—Tentative**

There are no meetings scheduled for the week of July 15, 2013.

**Week of July 22, 2013—Tentative**

There are no meetings scheduled for the week of July 22, 2013.

**Week of July 29, 2013—Tentative**

There are no meetings scheduled for the week of July 29, 2013.

**Week of August 5, 2013—Tentative**

There are no meetings scheduled for the week of August 5, 2013.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: June 27, 2013.

**Rochelle C. Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2013–15976 Filed 6–28–13; 4:15 pm]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2013–54 and CP2013–70; Order No. 1764]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add a new product to the competitive product list. This document invites public comments on the request and addresses several related procedural steps.

**DATES:** *Comments are due:* July 5, 2013.

**ADDRESSES:** Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a request and associated supporting information to add Priority Mail Contract 60 to the competitive product list.[1] It asserts that Priority Mail Contract 60 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2013–54. The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–70.

*Request.* To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

*Related contract.* The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective one business day after the Commission issues all necessary regulatory approval. *Id.* at 3. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The contract also allows two 90-day extensions of the agreement if the preparation of a successor agreement is active and the Commission is notified. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment E.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

### II. Notice of Filings

The Commission establishes Docket Nos. MC2013–54 and CP2013–70 to consider the Request pertaining to the proposed Priority Mail Contract 60 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than July 5, 2013. The public portions of these

[1] Request of the United States Postal Service to Add Priority Mail Contract 60 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, June 25, 2013 (Request).

filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2013–54 and CP2013–70 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than July 5, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2013–15852 Filed 7–1–13; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL SERVICE

### International Product Change—Priority Mail International Regional Rate Boxes—Non-Published Rates

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service hereby gives notice that it has filed a request with the Postal Regulatory Commission to add Priority Mail International® Regional Rate Boxes—Non-Published Rates to the Competitive Products List.

**DATES:** As of: July 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** Patricia Fortin, (202) 268–8785.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30, on June 25, 2013, it filed with the Postal Regulatory Commission: (1) A request to add Priority Mail International Regional Rate Boxes—Non-Published Rates to the Competitive Product List and, (2) a Notice of Filing Priority Mail International Regional Rate Boxes—Non-Published Rates Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal. The documents are available at *http://www.prc.gov*, Docket Nos. MC2013–53 and CP2013–69.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2013–15767 Filed 7–1–13; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30581; 813–180–09]**

### Invesco Advisers, Inc., et al.; Notice of Application

June 26, 2013.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 ("Act") granting an exemption from all provisions of the Act, except sections 9, 17, 30 and 36 through 53, and the rules and regulations under the Act (the "Rules and Regulations"). With respect to sections 17(a), (d), (e), (f), (g), and (j) of the Act, sections 30(a), (b), (e), and (h) of the Act and the Rules and Regulations, and rule 38a–1 under the Act, applicants request a limited exemption as set forth in the application.

**SUMMARY OF APPLICATION:** Applicants request an order to exempt certain limited partnerships and other entities formed for the benefit of eligible employees of Invesco Ltd. and its affiliates from certain provisions of the Act. Each such entity will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act.

**APPLICANTS:** Invesco Advisers, Inc. ("Invesco"), Chancellor Employees' Direct Fund I, L.P., Chancellor Employees' Partnership Fund I, L.P. (the "Initial Partnerships"), INVESCO ESC Real Estate Fund I, L.P., INVESCO ESC Real Estate Fund II, L.P., WLR IV Parallel ESC, L.P., INVESCO Employees' Partnership Fund II, L.P., INVESCO Employees' Direct Fund V, L.P., INVESCO Employees' Partnership Fund III, L.P., INVESCO Employees' Partnership Fund IV, L.P., IPC Employees Partnership Fund III, L.L.C., IPC Employees' Direct Fund V, L.L.C., INVESCO ESC Partnership Fund II, L.L.C. (the "Additional Funds," together with the Initial Partnerships, the "Existing Funds"), and Invesco Ltd.

**FILING DATES:** The application was filed on December 11, 1997, and amended on March 17, 1998, July 16, 1998, January 6, 1999, June 1, 1999, January 7, 2004, July 22, 2011, August 8, 2012, June 24, 2013, and June 25, 2013.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 1555 Peachtree Street NE., Atlanta, GA 30309.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

**Applicants' Representations:** *

1. Invesco Ltd. is a global money management company organized under the laws of Bermuda. Invesco, a Delaware corporation, provides investment management and distribution services to pension plans, foundations, financial institutions and other global clients and is a wholly-owned subsidiary of Invesco Ltd. Invesco is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Invesco Ltd. and its affiliates, as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the "1934 Act"), are referred to collectively as the "Invesco Group" and individually as an "Invesco Group entity."

2. The Invesco Group has formed the Existing Funds and may from time to time organize additional entities (together with the Existing Funds, the

"Funds"). Each Fund will be a limited partnership, business trust, limited liability company or any other entity, formed or organized under the laws of the State of Delaware or another jurisdiction, including outside the United States.

3. The Funds have been or will be established primarily for the benefit of certain current or former employees and current persons on retainer, including but not limited to, Consultants [1] of the Invesco Group, as part of a program designed to create capital building opportunities that are competitive with those at other financial service firms and to facilitate its recruitment and retention of high caliber professionals. Each Fund will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act. Each of the Funds will operate as a diversified or non-diversified closed-end management investment company within the meaning of the Act. All members or limited partners of a Fund, other than the Manager (defined below) are "Participants" and any partner of a partnership or member of a limited liability company a "Unitholder." The Invesco Group will control the Funds within the meaning of section 2(a)(9) of the Act.

4. Each Fund will have a manager that is an Invesco Group entity ("Manager").[2] The Manager will manage, operate and control each of the Funds. The Manager will be authorized to delegate to another Invesco Group entity or to a committee of Invesco Group employees (including, without limitation, the managers of the Funds) such management responsibility. The Manager of the Initial Partnerships is registered as an investment adviser under the Advisers Act and any other Manager will register as an investment adviser if required under applicable law. Applicants represent and concede that the Manager in managing a Fund is an "investment adviser" within the meaning of sections 9 and 36 of the Act and is subject to those sections.

5. The Manager, the Invesco Group or any employees of the Manager or the Invesco Group may be entitled to receive compensation or a performance-based fee (a "carried interest") [3] based on the gains and losses of the investment program or of the Fund's investment portfolio or, if applicable, of the Client Funds (as defined below) in which the Fund may hold an interest.

6. Interests in a Fund ("Units") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act"), or Regulation D under the Securities Act, and will be sold only to Eligible Employees, Qualified Participants (each as defined below) or Invesco Group entities. Prior to offering Units to an Eligible Employee or Eligible Family Member (as defined below), the Manager must reasonably believe that such individual will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Fund without the benefit of regulatory safeguards and can afford a complete loss of such investment. Participation in a Fund will be voluntary. No sales load or similar fee of any kind will be charged in connection with the sale of Units.

7. An "Eligible Employee" is an individual who is a current or former officer, director, employee or current person on retainer, including, but not limited to, Consultants of the Invesco Group and (a) meets the standard of an "accredited investor" under rule 501(a)(5) or rule 501(a)(6) of Regulation D, or (b) qualifies as an "Other Investor." To qualify as an Other Investor, an individual must meet the conditions of Rule 506(b)(2) of Regulation D and be a "knowledgeable employee," as defined in Rule 3c–5 under the Act, of such Fund (with the Fund treated as though it were a "covered company" for purposes of such rule). A maximum of 35 individuals may become Participants in a Fund as an Other Investor.

8. In the discretion of the Manager of a Fund and at the request of an Eligible Employee, Units may be assigned by such Eligible Employee, or sold directly by the Fund, to a Qualified Participant of an Eligible Employee. In order to qualify as a "Qualified Participant," an individual or entity must be an Eligible Family Member or Qualified Entity, respectively, of an Eligible Employee. An "Eligible Family Member" is a spouse, parent, child, spouse of child, brother, sister or grandchild, including step or adoptive relationships, of an Eligible Employee. If an Eligible Family Member is purchasing a Unit from a Unitholder or directly from the Fund, such Eligible Family Member must be an accredited investor. Eligible Employees may transfer their Units without consideration to Eligible Family Members who may not be accredited investors. A "Qualified Entity" is (a) a trust of which the trustee, grantor and/or beneficiary is an Eligible Employee; (b) a partnership, corporation or other entity controlled by an Eligible Employee; [4] or (c) a trust or other entity established solely for the benefit of Eligible Family Members of an Eligible Employee. A Qualified Entity must be either an accredited investor or an entity for which an Eligible Employee or an Eligible Family Member is a settlor and principal investment decision-maker.

9. The terms of a Fund will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of such Eligible Employee, at the time they are invited to participate in the Fund. Each Eligible Employee and Qualified Participant will be furnished with a private placement memorandum and limited partnership agreement or limited liability company operating agreement ("Fund Agreement"). Any private placement memorandum of a particular Fund will set forth the specific investment objectives and strategies for such Fund. Each Fund will send its Unitholders audited financial statements within 120 days after the end of the fiscal year or as soon as practicable thereafter.[5] In addition, as soon as practicable after the end of each tax year of a Fund, a report will be sent to each Participant setting forth the information with respect to the

[1] A "Consultant" is a person who Invesco Group has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with Invesco Group and its employers.

[2] Invesco Private Capital Investments, Inc. is the Manager of Chancellor Employees' Direct Fund I, L.P., Chancellor Employees' Partnership Fund I, L.P., INVESCO Employees' Direct Fund V, L.P., INVESCO Employees' Partnership Fund III, L.P. and INVESCO Employees' Partnership Fund IV, L.P.; IRI Fund I, L.P. is the Manager of INVESCO ESC Real Estate Fund I, L.P.; IRI Fund II, L.P. is the Manager of INVESCO ESC Real Estate Fund II, L.P.; Invesco WLR IV Associates LLC is the Manager of WLR Parallel ESC IV, L.P.; Invesco ESC Partnership Fund II, L.L.C. is the Manager of INVESCO Employees' Partnership Fund II, L.P.; Invesco Private Capital, Inc. is the Manager of IPC Employees' Partnership Fund III, L.L.C., INVESCO ESC Partnership Fund II, L.L.C. and IPC Employees' Direct Fund V, L.L.C.

[3] A carried interest is an allocation to the Manager based on the net gains of an investment program and is in addition to the amount that is allocable to the Manager in proportion to its capital contributions. A Manager that is registered under the Advisers Act may charge a carried interest only if permitted by rule 205–3 under the Advisers Act. Any carried interest paid to a Manager that is not registered under the Advisers Act will be structured to comply with section 205(b)(3) of the Advisers Act (with the Fund treated as though it were a business development company solely for purposes of that section).

[4] The inclusion of partnerships, corporations or other entities that are controlled by Eligible Employees in the definition of "Qualified Entity" is to enable such Eligible Employees to make investments in the Funds through personal investment vehicles for the purpose of implementing their personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between the Invesco Group and these investment vehicles.

[5] "Audit" will have the meaning defined in rule 1–02(d) of Regulation S–X.

Investor's share of income, gains, losses, credits, and other items for federal and state income tax purposes, resulting from the operation of the Fund during that year.

10. Units in each Fund will be non-transferable except with the prior written consent of the Manager, and in any event, no person or entity will be admitted into the Fund as a Unitholder unless such person is an Eligible Employee, a Qualified Participant, or an Invesco Group entity.

11. Units in the Initial Partnerships will not be subject to repurchase, cancellation or redemption, but one or more Funds may offer Units with certain repurchase rights. Upon termination of an Eligible Employee's employment, such Eligible Employee or his or her Qualified Participant will retain his or her limited partnership interest or limited liability company interest, as applicable, for the Existing Funds unless the Manager exercises its option to purchase his or her limited partnership interest or limited liability company interest, as applicable, and will be permitted to make additional capital contributions in fulfillment of such Eligible Employee's or Qualified Participant's capital commitment made prior to the termination of employment, but such Eligible Employee or Qualified Participant will not be permitted to make new capital commitments or investments or participate in other Funds.

12. Subject to the terms of the applicable Fund Agreement, a Fund will be permitted to enter into transactions involving (a) an Invesco Group entity, (b) a portfolio company, (c) any Unitholder or person or entity affiliated with a Unitholder, (d) an investment fund or separate account that is organized for the benefit of investors or clients who are not affiliated with Invesco Group and over which an Invesco Group entity exercises investment discretion (a "Third-Party Fund"), or any partnership in which a Third-Party Fund is a limited partner, or (e) any partner or other investor in a Third-Party Fund that is not affiliated with the Invesco Group (a "Third-Party Investor"). These transactions may include a Fund's purchase or sale of an investment or an interest from or to any Invesco Group entity (including certain entities formed to make investments and managed by Invesco Group employees, as described in the application (a "Client Fund")) or Third-Party Fund, acting as principal. Prior to entering these transactions, the Manager must determine that the terms are fair to the Unitholders and the Fund, in addition to satisfying any requirements in the organizational document of the Third-Party Fund.

13. A Fund will not acquire any security issued by a registered investment company if, immediately after such acquisition, the Fund will own more than 3% of the outstanding voting stock of the registered investment company.

**Applicants' Legal Analysis**

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) of the Act provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all the provisions of the Act, except sections 9, 17, 30, 36 through 53, and the Rules and Regulations. With respect to sections 17(a), (d), (e), (f), (g), and (j) and 30(a), (b), (e), and (h) of the Act and the Rules and Regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) of the Act to permit (a) an Invesco Group entity (including, without limitation, a Client Fund) or a Third-Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Fund or any company controlled by such Fund; (b) a Fund to invest in or engage in any transaction with any Invesco Group entity (including, without limitation, a Client Fund) or a Third-Party Fund, acting as principal, (i) in which the Fund, any company controlled by the Fund or any Invesco Group entity or a Third-Party Fund has invested or will invest, or (ii) with which such Fund, any company controlled by such Fund or any Invesco Group entity or Third-Party Fund is or will become otherwise affiliated; and (c) a Third-Party Investor, acting as principal, to engage in any transaction directly or indirectly with a Fund or any company controlled by the Fund.

4. Applicants state that the relief is requested to ensure that each Fund will be able to invest in entities in which the Invesco Group, or its employees, officers, directors, members, managers, or partners may make or have already made an investment. Applicants further state that the relief is also requested to permit each Fund the flexibility to deal with its portfolio investments in the manner the Manager deems most advantageous to all Participants in the Fund, or as required by the Invesco Group or the Fund's other co-investors, including, without limitation, restructuring its investments, having its investments redeemed, tendering such Fund's securities or negotiating options or implementing exit strategies with respect to its investments.

5. Applicants believe an exemption from section 17(a) is consistent with the policy of each Fund and the protection of investors and necessary to promote the basic purpose of such Fund. Applicants state that the Participants in each Fund will have been fully informed of the possible extent of such Fund's dealings with the Invesco Group, and as successful professionals employed in the investment management or financial services businesses, will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants in each Fund, on the one hand, and the Invesco Group, on the other hand, is the best insurance against any risk of abuse. Applicants, on behalf of the Funds, represent that any transactions otherwise subject to section 17(a) of the

Act, for which exemptive relief has not been requested, would require approval of the Commission.

6. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request an order to permit affiliated persons of each Fund, or affiliated persons of any of these persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Fund or a company controlled by the Fund is a participant. The exemption requested would permit, among other things, co-investments by each Fund, the Manager, the Client Funds, the Co-Investors[6] and individual employees, officers, or directors of the Invesco Group making their own individual investment decisions apart from the Invesco Group.

7. Applicants assert that compliance with section 17(d) would cause a Fund to forego investment opportunities simply because a Participant in such Fund or other affiliated person of such Fund (or any affiliate of such a person) also had, or contemplated making, a similar investment. Applicants further assert that attractive investment opportunities of the types considered by a Fund often require each participant in the transaction to make funds available in an amount that may be substantially greater than may be available to such Fund alone. Applicants contend that, as a result, the only way in which a Fund may be able to participate in such opportunities may be to co-invest with other persons, including its affiliates. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

8. Applicants state that side-by-side investments held by a Third-Party Fund, or by an Invesco Group entity in a transaction in which an Invesco Group investment was made pursuant to a contractual obligation to a Third-Party Fund, will not be subject to condition 3 below. Applicants assert that in structuring a Third-Party Fund, it is common for the unaffiliated investors of such fund to require that the Invesco Group invest its own capital in Third-Party Fund investments, either through the Third-Party Fund or on a side-by-side basis, and that the Invesco Group investments be subject to substantially the same terms as those applicable to the Third-Party Fund's investments. Applicants state that it is important that the interests of the Third-Party Fund take priority over the interests of the Funds, and that the activities of the Third-Party Fund not be burdened or otherwise affected by activities of the Funds. Applicants also state that the relationship of a Fund to a Third-Party Fund is fundamentally different from a Fund's relationship to the Invesco Group. Applicants contend that the focus of, and the rationale for, the protections contained in the application are to protect the Funds from any overreaching by the Invesco Group in the employer/employee context, whereas the same concerns are not present with respect to the Funds vis-à-vis the investors of a Third-Party Fund.

9. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit an Invesco Group entity (including the Manager), acting as agent or broker, to receive placement fees, advisory fees or other compensation from a Fund in connection with the purchase or sale by the Fund of securities, provided that the fees or other compensation can be deemed "usual and customary." Applicants state that for purposes of the application, fees or other compensation will be deemed "usual and customary" only if (a) the Fund is purchasing or selling securities with other unaffiliated third parties (including Third-Party Funds) who are also similarly purchasing or selling securities, (b) the fees or compensation being charged to the Fund are also being charged to the unaffiliated third parties (including Third-Party Funds), and (c) the amount of securities being purchased or sold by the Fund does not exceed 50% of the total amount of securities being purchased or sold by the Fund and the unaffiliated third parties (including Third-Party Funds). Applicants assert that, because the Invesco Group does not wish to appear be favoring the Funds, compliance with section 17(e) would prevent a Fund from participating in transactions where the Fund would be charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Fund to an Invesco Group entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) under the Act requires that a majority of directors who are not "interested persons" (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees or other remuneration. Rule 17e–1(c) under the Act requires each Fund to comply with the fund governance standards defined in rule 0–1(a)(7) under the Act. Applicants request an exemption from rule 17e–1 to the extent necessary to permit each Fund to comply with the rule without having a majority of the board of directors of Invesco ("Designated Board of Directors") who are not interested persons take actions and make determinations as set forth in paragraph (b) of the rule, and without having to satisfy the standards as required by paragraph (c) of the rule. Applicants state that because the Designated Board of Directors will be interested persons of the Funds, without the relief requested, a Fund could not comply with rule 17e–1(b) and (c). Applicants state that each Fund will satisfy rule 17e–1(b) by having a majority of the Designated Board of Directors take actions and make approvals as set forth in rule 17e–1. Applicants state that each Fund will otherwise comply with rule 17e–1.

11. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–1 under the Act imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) of the Act and the rule 17f–1(c) requirement that a copy of the executed custodian contract be transmitted to the Commission. Applicants believe that, because of the community of interest of all parties involved, and by maintaining such records themselves and making them available for examination by the Commission and its staff, compliance with this requirement would pose an unnecessary burden. Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants state that, because of the community of interest of the parties involved, and the existing requirement for an independent audit, compliance with this requirement would be an unnecessary expense. Applicants will comply with all other requirements of rule 17f–1.

[6] "Co-Investors" means co-investing funds or separate accounts, other than the Funds or the Client Funds, that are organized or managed by an Invesco Group entity, are not affiliated with the Invesco Group (such as by having Invesco Group employees, officers or directors invested in them) and that will co-invest with the Client Funds on a *pari passu* basis.

12. Rule 17f–2 under the Act specifies requirements that must be satisfied for a registered management investment company to act as custodian of its own investments. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of the Manager; (b) for purposes of paragraph (d) of the rule, (i) employees of the Manager (or an Invesco Group entity) will be deemed to be employees of the Funds, (ii) officers or managers of the Manager of a Fund (or an Invesco Group entity) will be deemed to be officers of the Fund and (iii) the Designated Board of Directors will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Manager (or an Invesco Group entity). Applicants expect that many of the Funds' investments may be evidenced only by partnership agreements, participation agreements or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants believe that these instruments are most suitably kept in the files of the Manager, where they can be referred to as necessary.

13. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. The rule also requires that the board of directors of an investment company relying on the rule satisfy the fund governance standards, as defined in rule 0–1(a)(7). Applicants request relief to permit the Designated Board of Directors, who may be deemed interested persons, to take actions and make determinations as set forth in the rule. Applicants state that, because all directors of the Designated Board of Directors will be affiliated persons, a Fund could not comply with rule 17g–1 without the requested relief. Applicants state that each Fund will comply with rule 17g–1 by having a majority of the Designated Board of Directors take actions and make determinations as set forth in rule 17g–1. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and an exemption from the requirements of rule 17g–1(j)(3) relating to compliance with the fund governance standards. Applicants state that the Funds will comply with all other requirements of rule 17g–1.

14. Section 17(j) of the Act and paragraph (b) of rule 17j–1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are burdensome and unnecessary as applied to the Funds.

15. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to a Fund and would entail administrative and legal costs that outweigh any benefit to the Participants in such Fund. Applicants request relief to the extent necessary to permit each Fund to report annually to its Participants. Applicants also request relief from the requirements of section 30(h) to the extent necessary to exempt the Manager of each Fund, directors of the Manager, members of the Designated Board of Directors and any officer or other person who may be deemed members of an advisory board of a Fund, from filing Forms 3, 4, and 5 under section 16(a) of the 1934 Act with respect to their ownership of Units in such Fund. Applicants believe that, because there will be no trading market and the transfers of Units will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

16. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. Applicants state that each Fund will comply with rule 38a–1(a), (c) and (d), except that (a) since the Fund does not have a board of directors, the Designated Board of Directors will fulfill the responsibilities assigned to the Fund's board of directors under the rule, (b) since the Designated Board of Directors does not have any disinterested members, approval by a majority of the disinterested board members required by rule 38a–1 will not be obtained, and (c) since the Designated Board of Directors does not have any disinterested members, the Funds will comply with the requirement in rule 38a–1(a)(4)(iv) that the chief compliance officer meet with the independent directors by having the chief compliance officer meet with the Designated Board of Directors as constituted.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Fund is a party (the "Section 17 Transactions") will be effected only if the Manager determines that:

(a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Unitholders of such Fund and do not involve overreaching of such Fund or its Unitholders on the part of any person concerned; and

(b) the transaction is consistent with the interests of the Unitholders of such Fund, such Fund's organizational documents and such Fund's reports to its Participants.

In addition, the Manager of each Fund will record and preserve a description of Section 17 Transactions, the Manager's findings, the information or materials upon which the Manager's findings are based and the basis therefor. All such records will be maintained for the life of each Fund and at least six years thereafter, and will be subject to examination by the Commission and its staff. Each Fund will preserve the accounts, books and other documents required to be maintained in an easily accessible place for at least the first two years.

2. The Manager of each Fund will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Fund, or any affiliated person of such a person, promoter or principal underwriter.

3. The Manager of each Fund will not invest the funds of such Fund in any

investment in which an "Affiliated Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which such Fund and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment (a) gives such Manager sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless such Fund has the opportunity to dispose of such Fund's investment prior to or concurrently with, and on the same terms as, and pro rata with the Affiliated Co-Investor. The term "Affiliated Co-Investor" with respect to any Fund means any person who is: (a) An "affiliated person" (as such term is defined in section 2(a)(3) of the Act) of the Fund (other than a Third-Party Fund or Third-Party Investor); (b) the Invesco Group; (c) an officer or director of the Invesco Group; or (d) an entity (other than a Third-Party Fund) in which the Manager acts as a general partner or has a similar capacity to control the sale or disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which such Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members, including step and adoptive relationships, of such Affiliated Co-Investor or a trust or other investment vehicle established for any Affiliated Co-Investor or any such family member; (c) when the investment is comprised of securities that are listed on any national securities exchange registered under section 6 of the 1934 Act, (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11A(a)(2)–1 under the 1934 Act; or (e) when the investment is comprised of government securities as defined in section 2(a)(16) of the Act.

4. Each Fund and its Manager will maintain and preserve, for the life of such Fund and at least six years thereafter, such accounts, books and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in such Fund, and each annual report of such Fund required to be sent to such Participants, and agree that all such records will be subject to examination by the Commission and its staff. Each Fund will preserve the accounts, books and other documents required to be maintained in an easily accessible place for at least the first two years.

5. The Manager of each Fund will send to each Participant who had an interest in any capital account of such Fund, at any time during the fiscal year then ended, Fund financial statements audited by such Fund's independent accountants within 120 days after the end of the fiscal year of each of the Funds or as soon as practicable thereafter. At the end of each fiscal year, the Manager will make a valuation or have a valuation made of all of the assets of the Fund as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year, the Manager of such Fund will send a report to each person who was a Participant in such Fund at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Participant of his, her or its federal and state income tax returns and a report of the investment activities of the Fund during such year.

6. In any case where purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a director, officer or employee of Invesco Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in such Fund's determination of whether or not to effect such purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15842 Filed 7–1–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30580; File No. 812–13637]**

## The Dreyfus Corporation, et al.; Notice of Application

June 26, 2013.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

**SUMMARY:** *Summary of Application:* Applicants request an order that would amend and supersede a prior order (the "Non-Affiliated Sub-Adviser Order") [1] that permits them to enter into and materially amend subadvisory agreements for certain multi-managed funds with non-affiliated sub-advisers without shareholder approval and grants relief from certain disclosure requirements. The requested order would permit applicants to enter into, and amend, such agreements with Wholly-Owned Sub-Advisers (as defined below) and non-affiliated sub-advisers without shareholder approval.

**APPLICANTS:** BNY Mellon Funds Trust ("BNY Mellon Funds"), Strategic Funds, Inc. ("Strategic Funds"), The Dreyfus/Laurel Funds, Inc. ("Dreyfus/Laurel Funds") (each, an "Investment Company" and together, the "Investment Companies") and The Dreyfus Corporation ("Dreyfus").

**DATES:** *Filing Dates:* The application was filed on March 2, 2009, and amended on April 14, 2009, December 27, 2012, May 1, 2013 and June 21, 2013.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request

[1] Strategic Funds, Inc., *et al.*, Investment Company Act Release Nos. 29064 (Nov. 30, 2009) (notice) and 29097 (Dec. 23, 2009) (order).

notification by writing to the Commission's Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, 200 Park Avenue, New York, New York 10166.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Sr., Senior Attorney, at (202) 551–6868, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

**Applicants' Representations**

1. Each Investment Company is organized as a Massachusetts business trust or a Maryland corporation and is registered with the Commission as an open-end management investment company under the Act. Each Investment Company offers one or more series of shares (each a "Series" and collectively, "Series") with its own distinct investment objectives, policies and restrictions. Each Series has, or will have, as its investment adviser, Dreyfus or another investment adviser controlling, controlled by or under common control with Dreyfus or its successors (each, an "Adviser" and, collectively with the Series and the Investment Companies, the "Applicants").[2] Dreyfus, a New York corporation, is a wholly-owned subsidiary and the primary mutual fund business of The Bank of New York Mellon Corporation, a global financial services company focused on helping clients manage and service their financial assets, operating in 36 countries and serving more than 100 markets.[3]

2. The Adviser serves as the investment adviser to each Series pursuant to an investment advisory agreement with the applicable Investment Company ("Investment Management Agreement"). The Investment Management Agreement for each existing Series was approved by the board of trustees/directors of the applicable Investment Company (the "Board"), including a majority of the members of the Board who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Series or the Adviser ("Independent Board Members") and by the shareholders of that Series as required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of the Investment Management Agreements comply with section 15(a) of the Act. Each other Investment Management Agreement will comply with section 15(a) of the Act and will be similarly approved.

3. Under the terms of each Investment Management Agreement, the Adviser, subject to the supervision of the applicable Board, provides continuous investment management of the assets of each Series.[4] The Adviser provides investment management of each Series' portfolio in accordance with the investment objectives and policies of the Series. For its services to each Series under the applicable Investment Management Agreement, the Adviser receives an investment management fee from that Series based on either the average net assets of that Series or that Series' investment performance over a particular period compared to a benchmark. Each Investment Management Agreement permits the Adviser, subject to the approval of the applicable Board, including a majority of the Independent Board Members, to enter into investment sub-advisory agreements with one or more Sub-Advisers to manage all or a portion of the assets of a Sub-Advised Series.[5]

4. Applicants request an order to permit the Adviser, subject to the approval of the Board, including a majority of the Independent Board Members, to, without obtaining shareholder approval: (i) Select Sub-Advisers to manage all or a portion of the assets of a Series and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisers, and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisers.[6]

5. Pursuant to each Investment Management Agreement, the Adviser has overall responsibility for the management and investment of the assets of each Sub-Advised Series; these responsibilities include recommending the removal or replacement of Sub-Advisers, determining the portion of that Sub-Advised Series' assets to be managed by any given Sub-Adviser and reallocating those assets as necessary from time to time.[7]

6. The Adviser has entered into sub-advisory agreements with Sub-Advisers ("Sub-Advisory Agreements") to provide investment management services to the Sub-Advised Series.[8] The

[2] Each Adviser is, or will be, registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act"). For purposes of the requested order, "successor" is limited to an entity that results from reorganization into another jurisdiction or a change in the type of business organization.

[3] Applicants request that the relief apply to the Applicants, as well as to any future Series and any other existing or future registered open-end management investment company or series thereof that is advised by an Adviser, uses the multi-manager structure described in the application, and complies with the terms and conditions of the application ("Sub-Advised Series"). All registered open-end investment companies that currently intend to rely on the requested order are named as Applicants. All Series that currently are, or that currently intend to be, Sub-Advised Series are identified in the application. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained the application. The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in Section 2(a)(3) of the 1940 Act, of the Sub-Advised Series or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Sub-Advised Series or another investment company registered under the 1940 Act for which the Adviser serves as investment adviser ("Affiliated Sub-Adviser").

[4] The Adviser may engage EACM Advisors LLC ("EACM"), its affiliate and an investment adviser registered under the Advisers Act, or any other affiliated or non-affiliated entity registered as an investment adviser under the Advisers Act (each, a "Portfolio Allocation Manager") to assist the Adviser in evaluating and recommending Sub-Advisers for a Sub-Advised Series and recommending the portion of a Sub-Advised Series' assets to be managed by each Sub-Adviser, as well as monitoring and evaluating the performance of Sub-Advisers for a Sub-Advised Series and recommending whether a Sub-Adviser should be terminated by a Sub-Advised Series. However, it is the Adviser's overall responsibility to select, subject to the review and approval of the Board, one or more Sub-Advisers to manage all or part of a Sub-Advised Series' assets, determine what portion of that Sub-Advised Series' assets to be managed by any given Sub-Adviser, review the Sub-Advisers' performance and recommend whether Sub-Advisers should be terminated.

[5] As used herein, a "Sub-Adviser" is (1) an indirect or direct "wholly-owned subsidiary" (as such term is defined in the Act) of the Adviser for that Series, or (2) a sister company of the Adviser for that Series that is an indirect or direct "wholly-owned subsidiary" (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a "Wholly-Owned Sub-Adviser" and collectively, the "Wholly-Owned Sub-Advisers"), or (3) not an "affiliated person" (as such term is defined in section 2(a)(3) of the Act) of the Series, applicable Investment Company, or the Adviser, except to the extent that an affiliation arises solely because the sub-adviser serves as a Sub-Adviser to a Series (each a "Non-Affiliated Sub-Adviser").

[6] Shareholder approval will continue to be required for any other sub-adviser change (not otherwise permitted by rule or other action of the Commission or staff) and material amendments to an existing sub-advisory agreement with any sub-adviser other than a Non-Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser (all such changes referred to as "Ineligible Sub-Adviser Changes").

[7] The Adviser has entered into an agreement with EACM to act as Portfolio Allocation Manager in respect of Dreyfus Select Managers Small Cap Growth Fund and Dreyfus Select Managers Small Cap Value Fund.

[8] If the name of any Sub-Advised Series contains the name of a Sub-adviser, the name of the Adviser

terms of each Sub-Advisory Agreement comply fully with the requirements of section 15(a) of the Act and were approved by the applicable Board, including a majority of the Independent Board Members, and, to the extent that the Non-Affiliated Sub-Adviser Order did not apply, the shareholders of the Sub-Advised Series in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The Sub-Advisers, subject to the supervision of the Adviser and oversight of the applicable Board, make the day-to-day investment decisions for the Sub-Advised Series. The Adviser will compensate each Sub-Adviser out of the fee paid to the Adviser under the relevant Investment Management Agreement.

7. Sub-Advised Series will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures ("Modified Notice and Access Procedures"): (a) Within 90 days after a new Sub-Adviser is hired for any Sub-Advised Series, that Sub-Advised Series will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[9] and (b) the Sub-Advised Series will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants state that each Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

8. Applicants also request an order exempting the Sub-Advised Series from certain disclosure obligations that may require the Applicants to disclose fees paid by the Adviser to each Sub-Adviser.[10] Applicants seek relief to permit each Sub-Advised Series to disclose (as a dollar amount and a percentage of the Sub-Advised Series' net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, the "Aggregate Fee Disclosure").

**Applicants' Legal Analysis**

1. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company "except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company." Rule 18f–2 under the Act states that any "matter required to be submitted . . . to the holders of the outstanding voting securities of a series company shall not be deemed to have been effectively acted upon unless approved by the holders of a majority of the outstanding voting securities of each class or series of stock affected by such matter." Further, rule 18(f)–2(c)(1) under the Act provides that a vote to approve an investment advisory contract required by section 15(a) of the Act "shall be deemed to be effectively acted upon with respect to any class or series of securities of such registered investment company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter."

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the "advisory fee payable" by the investment company, including the total dollar amounts that the investment company "paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years."

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fee," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to review and approval of the applicable Board, to select the Sub-Advisers who are in the best position to achieve the Sub-Advised Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisers is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Sub-Advised Series are paying the Adviser—the selection, supervision and evaluation of the Sub-

that serves as the primary adviser to the Sub-Advised Series, or a trademark or trade name that is owned by or publicly used to identity that Adviser, will precede the name of the Sub-Adviser.

[9] A "Multi-manager Notice" will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 ("Exchange Act"), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Sub-Advised Series.

A "Multi-manager Information Statement" will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the order to permit Aggregate Fee Disclosure, as defined below. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

[10] Applicants are not requesting any relief with respect to any fee paid to the Portfolio Allocation Managers.

Advisers—without incurring unnecessary delays or expenses is appropriate in the interest of the Sub-Advised Series' shareholders and will allow such Sub-Advised Series to operate more efficiently. Applicants state that each Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f-2 under the Act and approved by the applicable Board, including a majority of the Independent Board Members, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreements or any agreement with a Portfolio Allocation Manager.

7. Applicants assert that disclosure of the individual fees that the Adviser would pay to the Sub-Advisers of Sub-Advised Series that operate under the multi-manager structure described in the application would not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisers are to inform shareholders of expenses to be charged by a particular Sub-Advised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Adviser will be fully disclosed and, therefore, shareholders will know what the Sub-Advised Series' fees and expenses are and will be able to compare the advisory fees a Sub-Advised Series is charged to those of other investment companies. Applicants assert that the requested relief would benefit shareholders of the Sub-Advised Series because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. The Adviser's ability to negotiate with the various Sub-Advisers would be adversely affected by public disclosure of fees paid to each Sub-Adviser. If the Adviser is not required to disclose the Sub-Advisers' fees to the public, the Adviser may be able to negotiate rates that are below a Sub-Adviser's "posted" amounts. Applicants submit that the relief will also encourage Sub-Advisers to negotiate lower sub-advisory fees with the Adviser if the lower fees are not required to be made public.

8. For the reasons discussed above, Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Sub-Advised Series in the manner described in the application must be approved by shareholders of a Sub-Advised Series before that Sub-Advised Series may rely on the requested relief. In addition, Applicants state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest, including any posed by the use of Wholly-owned Sub-Advisers, and provide that shareholders are informed when Sub-Advisers are hired. Applicants assert that conditions 6, 7, 10 and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest with affiliated person of the Adviser, including Wholly-Owned Sub-Advisers. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:[11]

1. Before a Sub-Advised Series may rely on the order requested in the application, the operation of the Sub-Advised Series in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisers, will be, or has been, approved by a majority of the Sub-Advised Series' outstanding voting securities as defined in the Act, or, in the case of a new Sub-Advised Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Sub-Advised Series' shares to the public.

2. The prospectus for each Sub-Advised Series will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Sub-Advised Series will hold itself out to the public as employing the multi-manager structure described in the application. Each prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the applicable Board, to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. The Adviser will provide general management services to a Sub-Advised Series, including overall supervisory responsibility for the general management and investment of the Sub-Advised Series' assets. Subject to review and approval of the applicable Board, the Adviser will (a) set a Sub-Advised Series' overall investment strategies, (b) evaluate, select, and recommend Sub-Advisers to manage all or a portion of a Sub-Advised Series' assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisers comply with a Sub-Advised Series' investment objective, policies and restrictions. Subject to review by the applicable Board, the Adviser will (a) when appropriate, allocate and reallocate a Sub-Advised Series' assets among multiple Sub-Advisers; and (b) monitor and evaluate the performance of Sub-Advisers.

4. A Sub-Advised Series will not make any Ineligible Sub-Adviser Changes without the approval of the shareholders of the applicable Sub-Advised Series.

5. Sub-Advised Series will inform shareholders of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the applicable Board will be Independent Board Members, and the selection and nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

8. The Adviser will provide the applicable Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Sub-Advised Series basis. The information will reflect the impact on profitability of the hiring or termination of any sub-adviser during the applicable quarter.

9. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the applicable Board with information showing the expected impact on the profitability of the Adviser.

10. Whenever a Sub-Adviser change is proposed for a Sub-Advised Series with an Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser, the applicable Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Sub-Advised Series and its shareholders, and does not involve a conflict of interest from which the

[11] Applicants will only comply with conditions 8, 9 and 12 if they rely on the relief that would allow them to provide Aggregate Fee Disclosure.

Adviser or the Affiliated Sub-Adviser or Wholly-Owned Sub-Adviser derives an inappropriate advantage.

11. No board member or officer of a Sub-Advised Series, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser, except for (i) ownership of interests in the Adviser or any entity, except a Wholly-Owned Sub-Adviser, that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

12. Each Sub-Advised Series will disclose the Aggregate Fee Disclosure in its registration statement.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15841 Filed 7–1–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30568; 812–14080]**

## ETF Issuer Solutions Inc., et al.; Notice of Application

June 26, 2013.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

**APPLICANTS:** ETF Issuer Solutions Inc. ("ETFis"), ETF Actively Managed Trust ("Trust) and ETF Distributors LLC ("Distributor").

**SUMMARY OF APPLICATION:** Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

**FILING DATES:** The application was filed on September 28, 2012, and amended on March 8, 2013 and June 19, 2013.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, 501 Madison Avenue, Suite 501, New York, NY 10022.

**FOR FURTHER INFORMATION CONTACT:** David J. Marcinkus, Attorney-Advisor, at (202) 551–6882 or Dalia Blass, Assistant Director, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

### Applicants' Representations

1. The Trust is a statutory trust organized under the laws of the State of Delaware, and will be registered with the Commission as an open-end management investment company. The Trust will initially offer one actively-managed investment series (the "Initial Fund"). Applicants currently intend to name the Initial Fund the Manna U.S. Equity Enhanced Dividend Income Fund.

2. ETFis, a Delaware corporation, will serve as investment adviser to the Initial Fund. An Advisor (as defined below) may enter into sub-advisory agreements with investment advisers to act as sub-advisers (each a "Subadvisor") with respect to the Funds (as defined below). Each Advisor will be registered as an "investment adviser" under the Investment Advisers Act of 1940 ("Advisers Act"). Any Subadvisor will be registered under the Advisers Act, or not subject to registration. The Distributor, a Delaware limited liability company, serves as the principal underwriter and distributor for each of the Funds. The Distributor is currently in the process of registering as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"), and neither the Trust nor the Initial Fund will commence operations prior to the Distributor becoming registered. The Distributor is an affiliated person of ETFis within the meaning of Section 2(a)(3)(C) of the Act.[1]

3. Applicants request that the order apply to the Initial Fund and any future series of the Trust or of any other open-end management companies or series thereof that utilizes active management investment strategies ("Future Funds"). Any Future Fund will (a) be advised by ETFis or an entity controlling, controlled by, or under common control with ETFis (each, an "Advisor"), and (b) comply with the terms and conditions of the application.[2] The Initial Fund and Future Funds together are the "Funds." Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities), currencies, assets and other positions ("Portfolio Instruments"). If a Fund invests in derivatives, then (i) the

[1] Applicants request that the order also apply to any other future principal underwriter and distributor to Future Funds (each, a "Future Distributor"), provided that any such Future Distributor complies with the terms and conditions of the application.

[2] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

Fund's board of directors or trustees ("Board") will periodically review and approve the Fund's use of derivatives and how the Advisor assesses and manages risk with respect to the Fund's use of derivatives and (ii) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance. Funds may invest in "Depositary Receipts." A Fund will not invest in any Depositary Receipt that the Advisor or Subadvisor, as applicable, deems to be illiquid or for which pricing information is not readily available.[3] Each Fund will operate as an actively managed exchange-traded fund ("ETF"). The Funds may invest in other open-end and/or closed-end investment companies and/or ETFs.[4]

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) (the "Section 12(d)(1) Relief") apply to: (i) Any Fund that is currently or subsequently part of the same "group of investment companies" as an Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same "group of investment companies" as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies, "Investing Management Companies," such unit investment trusts, "Investing Trusts," and Investing Management Companies and Investing Trusts together, "Investing Funds"). Investing Funds do not include the Funds.

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and that the price of a Share will range from $20 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund ("Authorized Participant") with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A broker or dealer registered under the Exchange Act ("Broker") or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (the "NSCC"), a clearing agency registered with the Commission and affiliated with the Depository Trust Company ("DTC"), or (b) a participant in the DTC (such participant, "DTC Participant"). The Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").[5] On any given Business Day[6] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the "Creation Basket." In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[7] except (a) in the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[8] or (c) TBA Transactions,[9] short positions and other positions that cannot be transferred in kind[10] will be excluded from the Creation Basket.[11] If there is a difference between the net asset value ("NAV") attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Amount").

6. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving, a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash[12]; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because (i) such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Funds holding non-U.S. investments ("Global Funds"), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not

[3] Depositary Receipts are typically issued by a financial institution, a "depositary", and evidence ownership in a security or pool of securities that have been deposited with the depositary. No affiliated persons of the Trust or a Fund, Distributor, Advisor or any Subadvisor will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] In no case will a Fund that invests in other open-end and/or closed-end investments companies and/or ETFs in excess of the limits in Section 12(d)(1)(A) rely on the Section 12(d)(1) Relief.

[5] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act"). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[6] Each Fund will sell and redeem Creation Units on each "Business Day," which is defined to include any day that the Trust is open for business as required by Section 22(e) of the Act.

[7] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[8] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[9] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[10] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[11] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (as defined below).

[12] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax considerations may warrant in-kind redemptions.

available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[13]

7. Each Business Day, before the open of trading on a national securities exchange as defined in section 2(a)(26) of the Act ("Stock Exchange"), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. A Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Deposit Instruments and the estimated Cash Amount.

8. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee ("Transaction Fee") to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[14] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant, and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus ("Prospectus") to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

9. Shares will be listed and traded at negotiated prices on a Stock Exchange. Applicants expect that one or more Stock Exchange specialists ("Specialists") or market makers ("Market Makers") will be assigned to make a market in Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

10. Applicants expect that there will be several categories of market participants who are likely to be interested in purchasing Creation Units. One is arbitrageurs, who stand ready to take advantage of any slight premium or discount in the market price of Shares on the Stock Exchange versus the cost of depositing a Creation Deposit and creating a Creation Unit to be broken down into individual Shares. Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV. Applicants also expect that Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[15] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[16]

11. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

12. Neither the Trust nor any Fund will be marketed or otherwise held out as a "mutual fund." Instead, each Fund will be marketed as an "actively-managed exchange-traded fund." In any advertising material where features of obtaining, buying or selling Shares traded on the Stock Exchange are described there will be an appropriate statement to the effect that Shares are not individually redeemable.

13. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include the Prospectus and additional quantitative information updated on a daily basis, including on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund (including any short positions) that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[17]

**Applicants' Legal Analysis**

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from

[13] A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[14] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

[15] If Shares are listed on NYSE Arca, Nasdaq or a similar electronic Stock Exchange, one or more member firms of that Stock Exchange will act as Market Maker and maintain a market for Shares trading on the Stock Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. If Shares are listed on a Stock Exchange such as the NYSE, one or more member firms will be designated to act as a Specialist and maintain a market for the Shares trading on the Stock Exchange. No Market Maker or Specialist will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within Section 2(a)(3)(A) or (C) of the Act due to ownership of Shares, as described below.

[16] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[17] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policies of each registered investment company concerned and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1), if the exemption is consistent with the public interest and the protection of investors.

*Sections 5(a)(1) and 2(a)(32) of the Act*

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

*Section 22(d) of the Act and Rule 22c–1 Under the Act*

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

*Section 22(e) of the Act*

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been made aware that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 15 calendar days.[18] Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction, up to a maximum of 15 calendar days, in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 15 calendar days following the tender of a Creation Unit.

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed, and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 15 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect creations or redemptions in-kind.

*Section 12(d)(1) of the Act*

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

[18] Applicants state that, in the past, settlement in certain countries, including Russia, have extended to 15 calendar days.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company ("Investing Fund Advisor"), sponsor of an Investing Trust ("Sponsor"), any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor ("Investing Fund's Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company ("Investing Fund Subadvisor"), any person controlling, controlled by or under common control with the Investing Fund Subadvisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Subadvisor or any person controlling, controlled by or under common control with the Investing Fund Subadvisor ("Investing Fund's Subadvisory Group").

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [19] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Subadvisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Subadvisor, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the Board of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[20]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds ("FOF Participation Agreement"). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

*Sections 17(a)(1) and (2) of the Act*

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person ("second tier affiliate"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Advisor (an "Affiliated Fund").

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[21] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are an affiliated person or a second tier affiliate.[22]

[19] An "Investing Fund Affiliate" is any Investing Fund Advisor, Investing Fund Subadvisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. "Fund Affiliate" is the investment adviser(s), promoter or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[20] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[21] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[22] Applicants anticipate that most Investing Funds will purchase Shares in the secondary

Continued

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Instruments. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[23] Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

**Applicants' Conditions**

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

*A. ETF Relief*

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. No Advisor or Subadvisor, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange traded funds.

*B. 12(d)(1) Relief*

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of Section 2(a)(9) of the Act. The members of the Investing Fund's Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of Section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares in the same proportion as the vote of all other holders of the Shares. This condition does not apply to the Investing Fund's Subadvisory Group with respect to a Fund for which the Investing Fund Subadvisor or a person controlling, controlled by or under common control with the Investing Fund Subadvisor acts as the investment adviser within the meaning of Section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Advisor and any Investing Fund Subadvisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in Shares exceeds the limit in Section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under Rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in

market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between and Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to also cover the in-kind transactions that would accompany such sales and redemptions.

[23] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

the Fund. Any Investing Fund Subadvisor will waive fees otherwise payable to the Investing Fund Subadvisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Subadvisor, or an affiliated person of the Investing Fund Subadvisor, other than any advisory fees paid to the Investing Fund Subadvisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Subadvisor. In the event that the Investing Fund Subadvisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in Shares in excess of the limits in Section 12(d)(1)(A), each Investing Fund and the Fund will execute an FOF Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares in excess of the limit in Section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under Section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the 12(d)(1) Relief will acquire securities of any investment company or company relying on Section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15781 Filed 7–1–13; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30582; File No. 812–14088]**

## First Trust Exchange-Traded Fund, et al.; Notice of Application

June 26, 2013.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit (a) certain open-end management investment companies or series thereof to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (d) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption.

**APPLICANTS:** First Trust Exchange-Traded Fund, First Trust Exchange-Traded Fund II, First Trust Exchange-Traded Fund III, First Trust Exchange-

Traded Fund IV, First Trust Exchange-Traded Fund V, First Trust Exchange-Traded Fund VI, First Trust Exchange-Traded Fund VII, First Trust Exchange-Traded AlphaDEX® Fund, First Trust Exchange-Traded AlphaDEX® Fund II (the "Existing Trusts"), First Trust Advisors L.P. ("First Trust Advisors"), and First Trust Portfolios, L.P. (the "Distributor").

**DATES:** *Filing Dates:* The application was filed on October 25, 2012, and amended on April 23, 2013. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 120 East Liberty Drive, Suite 400, Wheaton, IL 60187.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel at (202) 551–6817, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

## Applicants' Representations

1. Each Existing Trust is registered under the Act as an open-end management investment company. An Existing Trust initially will offer one Fund (defined below) identified in the application ("Initial Fund"), whose performance will correspond to the price and yield performance, before fees and expenses, of a specified securities index ("Underlying Index").

2. Applicants request that the order apply to the Existing Trusts and the Initial Fund and any other open-end management investment company existing or created in the future (together with the Existing Trusts, the "Trusts" and each, a "Trust") and any existing or future series of the Trusts, advised by First Trust Advisors or an entity controlling, controlled by or under common control with First Trust Advisors (each, an "Adviser") that tracks an Underlying Index ("Future Funds").[1] Any Future Fund will be (a) advised by an Adviser and (b) comply with the terms and conditions of the application. The Initial Fund and any Future Funds together are the "Funds."

3. Certain of the Funds will be based on Underlying Indexes which will be comprised of securities traded in the U.S. markets ("Domestic Indexes"). Other Funds will be based on Underlying Indexes which will be comprised of foreign and domestic securities or solely of securities not traded in the U.S. markets ("Foreign Indexes"). Funds which track Domestic Indexes are referred to as "Domestic Funds" and Funds which track Foreign Indexes are referred to as "Foreign Funds." Underlying Indexes that include both long and short positions in securities are referred to as "Long/Short Indexes." Funds based on Long/Short Indexes are "Long/Short Funds." Underlying Indexes that use a 130/30 investment strategy are referred to as "130/30 Indexes." Funds based on 130/30 Indexes are "130/30 Funds."

4. An Adviser registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") will serve as investment adviser to the Funds. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as a sub-adviser to a Fund (each, a "Sub-Adviser"). Each Sub-Adviser will be registered or not subject to registration under the Advisers Act. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act") and will act as the principal underwriter and distributor for the Funds.[2]

5. Each Fund will hold certain securities and other assets and positions ("Portfolio Positions") selected to correspond to the performance of its Underlying Index.[3] Except with respect to Affiliated Index Funds (defined below), no entity that creates, compiles, sponsors or maintains an Underlying Index ("Index Provider") will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a Fund, the Adviser, any Sub-adviser, or promoter of a Fund, or of the Distributor.

6. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will hold some, but may not hold all, of the Component Securities of its Underlying Index. Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5 percent.

7. Each Fund will issue, on a continuous basis, Creation Units, (*e.g.*, at least 25,000 Shares) with an initial price per Share of $25 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor ("Authorized Participant"). The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished

[1] All entities that currently intend to rely on the order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. Any existing series of a Trust or any other registered open-end management investment company that seeks to rely on the requested relief in the future will be an exchange-traded fund, not a mutual fund.

[2] Applicants request that the order also apply to future distributors that comply with the terms and conditions of the application.

[3] Applicants represent that each Fund will invest at least 80% of its total assets in the component securities that comprise its Underlying Index ("Component Securities") or, as applicable, depositary receipts or TBA Transactions (as defined below) representing Component Securities. Each Fund also may invest up to 20% of its total assets (the "20% Asset Basket") in a broad variety of other instruments, including securities and other instruments not included in its Underlying Index, which the Adviser believes will help the Fund track its Underlying Index.

by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares. An Authorized Participant must be either (a) a "Participating Party," (*i.e.*, a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC"), a clearing house registered with the Commission, or (b) a participant in the Depository Trust Company ("DTC," and such participant, "DTC Participant"), which, in either case, has signed a "Participant Agreement" with the Distributor.

8. The Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").[4] On any given Business Day the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in a Fund's portfolio (including cash positions),[5] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[6] (c) "to be announced" transactions ("TBA Transactions"),[7] short positions, derivatives and other positions that cannot be transferred in kind[8] will be excluded from the Deposit Instruments and the Redemption Instruments;[9] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[10] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a "Rebalancing"). If there is a difference between the net asset value ("NAV") attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Balancing Amount").

9. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[11] (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[12]

10. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act ("Exchange") on which Shares are listed ("Listing Exchange"), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Balancing Amount (if any), for that day. The list of Deposit Instruments and the list of Redemption Instruments will apply until new lists are announced on the following Business Day, and there will be no intra-day changes to the lists except to correct errors in the published lists.

11. For the Long/Short Funds and 130/30 Funds, the Adviser will provide full portfolio holdings disclosure on a daily basis on the Funds' publicly available Web site ("Web site") and will develop an "IIV File," which it will use to disclose the Funds' full portfolio holdings, including short positions. Before the opening of business on each Business Day, the Trust, Adviser or other third party, will make the IIV File available by email upon request. Applicants state that given either the IIV

[4] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act"). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[5] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[6] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[7] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[8] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[9] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Balancing Amount (defined below).

[10] A Fund may only use sampling for this purpose if the sample: (a) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (b) consists entirely of instruments that are already included in the Fund's portfolio; and (c) is the same for all Authorized Participants on a given Business Day.

[11] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax considerations may warrant in-kind redemptions.

[12] A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

File or the Web site disclosure,[13] anyone will be able to know in real time the intraday value of the Long/Short Funds and 130/30 Funds.[14] With respect to the Long/Short Funds and 130/30 Funds, the investment characteristics of any financial instruments and short positions used to achieve short and long exposures will be described in sufficient detail for market participants to understand the principal investment strategies of the Funds and to permit informed trading of their Shares.

12. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker ("Market Maker") and maintain a market in Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

13. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers also may purchase Creation Units for use in market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[15] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

14. Shares will not be individually redeemable. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant.

15. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee ("Transaction Fee") to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[16]

16. None of the Funds will be advertised, marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an "exchange traded fund ("ETF"). All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units. The same approach will be followed in the shareholder reports issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

17. Applicants also request that the order allow them to offer Funds for which the Adviser or an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of a Trust or a Fund, the Adviser, any Sub-Adviser, the Distributor or a promoter of the Fund (each, other than the Adviser, an "Affiliated Person") will serve as the Index Provider ("Affiliated Index Fund"). The Index Provider to an Affiliated Index Fund (the "Affiliated Index Provider"), will create a proprietary, rules based methodology ("Rules-Based Process") to create Underlying Indexes for use by the Affiliated Index Funds and other investors (an "Affiliated Index").[17] The Adviser, if it is the Affiliated Index Provider, will be the owner of the Affiliated Indexes and all related intellectual property thereto, or the Adviser will enter into a license agreement with any Affiliated Person that is an Affiliated Index Provider for the use of the Underlying Indexes and related intellectual property at no cost to a Trust and Affiliated Index Funds.

18. Applicants contend that the potential conflicts of interest arising from the fact that the Affiliated Index Provider will be the Adviser or an Affiliated Person are not actual concerns, and will not have any impact on the operation of the Affiliated Index Funds, because the Affiliated Indexes will maintain transparency. Applicants further state that the Affiliated Index Funds' portfolios will be transparent, and the Adviser, any Affiliated Person who is an Affiliated Index Provider, any Sub-Adviser and the Affiliated Index Funds each will adopt policies and procedures to address any potential conflicts of interest ("Policies and Procedures"). The Affiliated Index Provider will publish in the public domain, including on its Web site and/or the Affiliated Index Funds' Web site, the rules that governing the construction and maintenance of each of its Affiliated Indexes. Applicants believe that this public disclosure will prevent the Adviser from possessing any advantage over other market participants by virtue of being the Affiliated Index Provider or being affiliated with the Affiliated Index Provider. Applicants note that the identity and weightings of the securities of any Affiliated Index will be readily ascertainable by any third party because the Rules-Based Process will be freely available.

19. Like other index providers, the Affiliated Index Provider may modify the Rules-Based Process in the future. The Rules-Based Process could be modified, for example, to reflect changes in the underlying market tracked by an Affiliated Index, the way in which the Rules-Based Process takes into account market events or to change the way a corporate action, such as a stock split, is handled. Such changes would not take effect until the Affiliated Index Provider has given (a) the Calculation Agent (defined below) reasonable prior written notice of such rule changes, and (b) the investing public at least sixty (60) days published notice that such changes will be implemented. Affiliated Indexes may have reconstitution dates and rebalance dates that occur on a periodic basis

[13] The information on the Web site will be the same as that disclosed to Authorized Participants in the IIV File, except that (a) the information provided on the Web site will be formatted to be reader-friendly and (b) the portfolio holdings data on the Web site will be calculated and displayed on a per Fund basis, while the information in the IIV File will be calculated and displayed on a per Creation Unit basis.

[14] Each Listing Exchange or other major market data provider will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund representing the sum of (a) the estimated Balancing Amount and (b) the current value of the Deposit Instruments and any short positions, on a per individual Share basis.

[15] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

[16] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the Transaction Fee imposed on a purchaser or redeemer may be higher.

[17] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be "investment companies" in reliance on section 3(c)(1) or 3(c)(7) of the Act and other pooled investment vehicles for which the Adviser acts as adviser or sub-adviser ("Affiliated Accounts") as well as other such registered investment companies, separately managed accounts, privately offered funds and other pooled investment vehicles for which it does not act either as adviser or sub-adviser ("Unaffiliated Accounts"). The Affiliated Accounts and the Unaffiliated Accounts (collectively, "Accounts"), like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Index(es) or a representative sample of such constituents of the index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

more frequently than once yearly, but no more frequently than monthly.

20. As owner of the Affiliated Indexes, the Affiliated Index Provider will hire a calculation agent ("Calculation Agent"). The Calculation Agent will not be an affiliated person, as such term is defined in the Act, or an affiliated person of an affiliated person, of the Affiliated Index Funds, the Adviser, any Sub-Adviser, any promoter of a Fund or the Distributor. The Affiliated Index Provider will initially apply the Rules Based Process to the universe of equity and/or fixed income securities and will determine the number, type, and weight of securities that will comprise each Affiliated Index, and will perform all calculations necessary to determine the proper make-up of the Affiliated Index. Thereafter, the Calculation Agent will be solely responsible for the calculation and maintenance of each Affiliated Index, as well as the dissemination of the values of each Affiliated Index. The Affiliated Index Provider will be responsible solely for performing the reconstitution updates and rebalance updates for each Affiliated Index.

21. The Adviser, any Affiliated Person who is an Affiliated Index Provider, any Sub-Adviser and the Affiliated Index Funds will adopt and implement Policies and Procedures to address any potential conflicts of interest. Among other things, the Policies and Procedures will be designed to limit or prohibit communication with respect to issues/information related to management, calculation and reconstitution of the Affiliated Indexes between the personnel of the Index Provider who have responsibility for the Affiliated Indexes and the Rules Based Process ("Index Personnel") and the personnel who have responsibility for the maintenance of the Affiliated Index Funds or any Affiliated Accounts. The Index Personnel (a) will not have any responsibility for the management of the Affiliated Index Funds, or the Affiliated Accounts, (b) will be expressly prohibited from sharing this information with those employees of the Adviser or those of any Sub-Adviser, that have responsibility for the management of the Affiliated Index Funds, or any Affiliated Account until such information is publicly announced, and (c) will be expressly prohibited from sharing or using this non-public information in any way except in connection with the performance of their respective duties. In addition, the Adviser and any Sub-Adviser will adopt and implement, pursuant to rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. Also, the Adviser has adopted a code of ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act ("Code of Ethics"). Any Sub-Adviser will be required to adopt a Code of Ethics and provide the Trust with the certification required by rule 17j–1 under the Act. In conclusion, Applicants submit that the Affiliated Index Funds will operate in a manner very similar to the other index-based ETFs which are currently traded.

**Applicants' Legal Analysis**

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act.

*Sections 5(a)(1) and 2(a)(32) of the Act*

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to buy and sell Shares in the secondary market at prices that do not vary materially from their NAV.

*Section 22(d) of the Act and Rule 22c–1 Under the Act*

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution system of investment company shares by eliminating price competition from non-contract dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve Trust assets and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to

discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

*Section 22(e)*

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions for the Foreign Funds will be contingent not only on the settlement cycle of the U.S. securities markets, but also on the delivery cycles in local markets for the underlying foreign securities held by the Foreign Funds. Applicants believe that under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 15 calendar days.[18] Applicants therefore request relief from section 22(e) in order to provide for payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Foreign Fund customarily clear and settle, but in all cases no later than 15 calendar days following the tender of a Creation Unit.[19] With respect to Future Funds that are Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Foreign Fund to be made within a maximum of 15 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will identify those instances in a given year where, due to local holidays, more than seven days will be needed to deliver redemption proceeds and will list such holidays and the maximum number of days, but in no case more than 15 calendar days. Applicants are only seeking relief from section 22(e) to the extent that the Foreign Funds effect redemptions of Creation Units in-kind.

*Sections 17(a)(1) and (2) of the Act*

9. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person ("second-tier affiliate"), from selling any security or other property to or acquiring any security or other property from the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines control as the power to exercise a controlling influence over the management of policies of a company. It also provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser (an "Affiliated Fund").

10. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons or second-tier affiliates of the Fund solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

11. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Units through in-kind transactions. Except as described in Section II.K.2 of the application, the Deposit Instruments and Redemption Instruments will be the same for each purchaser or redeemer regardless of the their identity. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions, regardless of size or number. Deposit Instruments and Redemption Instruments will be valued in the same manner as Portfolio Securities are valued for purposes of calculating NAV. Applicants submit that, by using the same standards for valuing Portfolio Securities as are used for calculating in-kind redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such transactions. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

**Applicants' Conditions**

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The requested relief will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the order, the Shares of such Fund will be listed on an Exchange.

3. No Fund will be advertised or marketed as an open-end investment company or mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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BILLING CODE 8011–01–P

[18] In the past, settlement in certain countries, including Russia, has extended to 15 calendar days.

[19] Applicants acknowledge that relief obtained from the requirements of section 22(e) will not affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69863; File No. SR–BOX–2013–32]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BOX Rule 7130 (Execution and Price/Time Priority) To Adjust the NBBO Exposure Period

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2013, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 7130 (Execution and Price/Time Priority) to adjust the NBBO exposure period. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend BOX Rule 7130 (Execution and Price/Time Priority) to allow the Exchange to set the duration of the NBBO exposure period available to certain unexecuted orders. This is a competitive filing based on the rules of the International Securities Exchange ("ISE").[3]

Under the current BOX Rules, certain orders are exposed at the national best bid or offer ("NBBO") to all Exchange Participants for one (1) second to give Participants an opportunity to execute against the order at the NBBO or better. If no Participants execute against the order during the exposure period, the order will be rejected (in the case of Non-Customer Orders), routed to an Away Exchange[4] (in the case of Public Customer Orders), or, if the best BOX price is then equal to the NBBO, executed on the BOX Book.[5] The Exchange proposes to amend the exposure period language in Rule 7130(b)(4)(ii) to state that the order will be exposed on the BOX Book at the NBBO for a time period established by the Exchange, not to exceed one second.

The proposed change will give the Exchange the flexibility of lowering the NBBO exposure period when necessary, which the Exchange believes will benefit market participants by providing them with more timely executions and reducing their market risk. Today's market participants possess sophisticated trading technology and, as with other time periods on BOX, a longer exposure period may not be necessary.[6] Additionally, these longer time periods expose market participants to additional, and because of current systems technology, unnecessary, market risk.

When setting this NBBO exposure period, the Exchange will take into consideration the technological ability of Participants to respond as well as similar exposure periods implemented by the Exchange and other exchanges. The Exchange will notify Participants of the duration of the exposure period, and any changes to the duration, via regulatory circular at least one week prior to the implementation date. BOX believes this will give Participants an opportunity to change any system settings to coincide with the implementation date.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. In particular, the proposed rule change will facilitate and provide investors with prompt and timely execution of their options orders, while continuing to provide market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Supplementary Material .02 to ISE Rule 1901. The rule was adopted in 2008. *See* Securities Exchange Act Release No. 58038 (June 26, 2008), 73 FR 38261 (July 3, 2008) (SR–ISE–2008–50) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exposure of Public Customer Orders to all ISE Members). ISE's current NBBO Exposure period is set at 150 milliseconds. *See* ISE Market Information Circular 2012–09 from February 29, 2012.

[4] The Exchange is a participant in the Options Order Protection and Locked/Crossed Market Plan ("Plan"). The Plan requires the Participating Options Exchanges to adopt rules "reasonably designed to prevent Trade-Throughs." Under the Plan, the Exchange cannot execute orders at a price that is inferior to the NBBO, nor can the Exchange place an order on its books that would cause the Exchange's best bid or offer ("BBO") to lock or cross another exchange's quote. In compliance with this requirement, incoming orders are not automatically executed at prices inferior to another exchange's Protected Bid or Protected Offer, nor placed on the limit order book if they would lock or cross an Away Market. If the Exchange cannot execute or book an order it will route the order to an Away Exchange on behalf of the Options Participant who submitted the Eligible Order through a third-party broker dealer.

[5] Only orders that are specifically designated by Options Participants as eligible for routing will be routed to an Away Exchange ("Eligible Orders"). However, Market-on-Opening Orders, any Improvement Auction orders, or any order identified with the condition "Fill and Kill" shall not be eligible for routing. *See* BOX Rule 15030(a).

[6] See Securities Exchange Act Release Nos. 59638 (March 27, 2009), 74 FR 15020 (April 2, 2009) (SR–BX–2009–015) (Order Granting Approval of Reduction of Certain Order Handling and Exposure Periods on BOX From Three Seconds to One Second), and 66306 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BX–2011–084) (Order Granting Approval to Reduce the PIP From One Second to One Hundred Milliseconds); 68965 (February 21, 2013), 78 FR 13387 (February 27, 2013) (SR–BOX–2013–08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce the Directed Order Exposure Period on BOX From Three Seconds to One). In connection with the first two proposals, BOX distributed a survey to Participants. The results indicated that the time it takes a message to travel between BOX and the Participants typically is not more than 50 milliseconds each way, and that it typically takes not more than 10 milliseconds for Participant systems to process the information and generate a response. The speed at which technology systems can process information has only increased since then. As such, the Exchange believes that the information gathered from Participants supports the assertion that having the flexibility to reduce the NBBO exposure period to under one second will continue to provide Participants with sufficient time to ensure effective interaction with orders.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

participants with an opportunity to compete for orders exposed at the NBBO.

As proposed, the NBBO exposure period will not exceed one second and will be set by the Exchange, taking into consideration the technological ability of Participants to respond as well as similar exposure periods implemented by other exchanges. The Exchange believes having the ability to set the appropriate duration for the NBBO exposure period will provide flexibility and thereby improve order execution opportunities for Participants. As a result, the Exchange believes the proposed rule change promotes just and equitable principles of trade, will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

Additionally, the proposed change will reduce market risk for BOX Participants responding to orders exposed at the NBBO by providing more timely executions of these orders. As such, BOX believes the proposed rule change would help perfect the mechanism for a free and open national market system, and generally help protect investors' and the public interest. The Exchange believes the proposed rule change is not unfairly discriminatory because the exposure time period for responding to orders exposed at the NBBO would be the same for all Participants. Further, all Participants will have advance notice of the NBBO exposure period and any changes via regulatory circular. All Participants on BOX have today, and will continue to have, an equal opportunity to respond to orders exposed at the NBBO. As such, the Exchange believes the proposed change is not unfairly discriminatory and would benefit investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposed change will reduce market risk for BOX Participants whose orders are exposed at the NBBO and those responding to orders exposed at the NBBO, and that the proposed rule change is not unfairly discriminatory because the exposure time period would be the same for all Participants. All Participants on BOX have today, and will continue to have, an equal opportunity to respond to orders exposed at the NBBO. Further, all Participants will have advance notice of the NBBO exposure period and any changes via regulatory circular. As such, the Exchange believes that a possible reduction in the exposure period would not be unfairly discriminatory and would benefit investors. The Exchange all also believes that the proposed change will not burden intermarket competition and instead will help the market operate efficiently by giving Participants the opportunity to trade on an order before it is routed away or canceled. Additionally, and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to the rules of the ISE.[9]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2013–32 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–BOX–2013–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing 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–BOX–2013–32 and should be submitted on or before July 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

[9] *See supra*, note 3.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69861; File No. SR–CBOE–2013–064]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Message Types and Connectivity

June 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 19, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to codify certain definitions, practices and requirements related to System connectivity and message types to promote transparency and maintain clarity in the rules. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to codify certain definitions, practices and requirements related to System connectivity and message types to promote transparency and maintain clarity in the rules. Specifically, the Exchange is proposing to (i) amend Rule 1.1 (Definitions) to define "API," "Order," and "Quote"; (ii) amend Rule 6.23A to clarify that authorized market participants connect electronically to the Exchange via an "Application Programming Interface" ("API") and specify which APIs are available; (iii) adopt new Rule 6.23B to clarify that a Trading Permit shall entitle the holder to a maximum number of orders and quotes per second(s) as determined by the Exchange and that Trading Permit Holders ("TPHs") seeking to exceed that number of messages per second(s) may purchase additional message packets at prices set forth in the Exchange's Fees Schedule; and, adopt new Rule 6.53A to describe the types of order formats available to TPHs to facilitate order entry. The proposed rule change also amends similar rules applicable to the CBOE Stock Exchange, LLC ("CBSX").[3] Particularly, the Exchange is proposing to amend (i) CBSX Rule 53.25 to clarify that authorized market participants connect electronically to the Exchange via an "Application Programming Interface" ("API") and specify which APIs are available and (ii) adopt new CBSX Rule 51.8A to describe the types of order formats available to facilitate order entry on CBSX. Finally the Exchange seeks to revise Appendix A to the CBSX Rules to account for the revised title of and renumbering to CBOE Rule 6.23A.

The Exchange first proposes to define "Application Programming Interface" ("API"), "Order" and "Quote" in its rules. While there are various references to these three terms throughout the Exchange Rules, nowhere in the CBOE rules are the definitions codified. Therefore, the Exchange believes it would be useful to explicitly define these terms within the rule text to reduce confusion. First, the Exchange proposes to define "API" as a computer interface that allows market participants with authorized access to interface electronically with the Exchange. This proposed definition is substantially similar to the definition of API previously adopted by CBSX.[4] Next the Exchange will define the term "quote" or "quotation" as a bid or offer entered by a Market-Maker that is firm and that updates the Market-Maker's previous quote, if any. The proposed definition will also make clear that electronic quotes may be updated in block quantities. The proposed definition of the term "quote" is similar to the definition previously adopted by the C2 Options Exchange, Incorporated ("C2").[5] Finally, the Exchange seeks to clarify that the term "order" means a firm commitment to buy or sell option contracts.

Next, the Exchange believes it would be useful to codify how authorized market participants may access the Exchange System. Specifically, the Exchange will make clear that authorized market participants access the Exchange via an API. Currently, the Exchange offers two APIs: (1) CBOE Market Interface ("CMi") and (2) Financial Information eXchange ("FIX") Protocol. Multiple versions of each API may exist and be made available to all authorized market participants.[6] Authorized market participants may select which of the available APIs they would like to use to connect to the System. The Exchange believes it is important to provide market participants with this flexibility so that they can determine the API that will be most compatible with their systems and maximize the efficiency of their interface. Connection to the System allows authorized market participants to engage in order and quote entry, as well as auction participation.

The Exchange seeks to codify a similar description of market participant connectivity in the CBSX rules. More specifically, the proposed rule change will amend CBSX Rule 53.25 (Market Participant Connectivity) to clarify that authorized market participants connect electronically to the CBSX System via an API and specify which APIs are available. Authorized market participants may select which of the available APIs they would like to use to connect to the CBSX System. The only distinction between the proposed CBOE and CBSX connectivity rule is that the CBSX rule does not reference auction processing, as CBSX does not utilize electronic auctions as part of the CBSX market.

The Exchange believes that while information relating to connectivity and available APIs for both CBOE and CBSX

[3] CBSX is a stock trading facility of the Exchange.

[4] *See* CBSX Rule 50.1 (Definitions).

[5] *See* C2 Rule 1.1 (Definitions).

[6] Currently, two versions of CMi exist and are available; CMi and CMi2.

is already widely available to all market participants via technical specifications, codifying this information within the rule text will provide additional transparency.

The Exchange also seeks to codify and describe the types of order formats that are available for order entry in new Rule 6.53A (Types of Order Formats). Order formats are message types that are used to send new orders into CBOE Command [7] through a user's selected API. Currently, all orders must be submitted to CBOE using the message type Order Format 1 ("OF1"). Orders using the OF1 format must pass through various processes, including validation checks in the Order Handling Service ("OHS") [8], before execution, entry into the book, cancellation, or routing for manual handling. Examples of such validation checks include validating an order's origin code or contingency type. Where an order is routed for processing by the OHS depends on various parameters configured by the Exchange and the order entry firm itself. Examples of such parameters are firm-specific volume restrictions (*i.e.*, orders larger than a firm-imposed quantity are routed to booth/order management terminal) or inbound limit order price reasonability (*i.e.*, orders may be rerouted to booth/order management terminal for manual review if "too marketable"). OF1 supports all order types, including auction responses.

The Exchange seeks to also codify the order formats available on CBSX and describe the processes that inbound orders must pass through before execution, entry into the book, or cancellation, in new Rule 51.8A (Types of Order Formats). CBSX currently offers two order formats; CBSX Order Format 1 ("CBSX OF1") and CBSX Order Format 2 ("CBSX OF2"). TPHs may elect to use either order format on CBSX, provided that the order format selected supports the given order type. The Exchange believes it is important to provide market participants with this flexibility so that they can determine the order format that will be most compatible with their needs.

[7] CBOE Command is the trading engine platform for CBOE, C2, CBSX and CBOE Futures Exchange ("CFE"). CBOE Command incorporates both order handling and trade processing on the same platform.

[8] The Order Handling System ("OHS") performs basic validation checks and has the capability to route orders to the trade engine for automatic execution and book entry, to Trading Permit Holder and PAR Official workstations located in the trading crowds for manual handling, and/or to other order management terminals ("OMTs") generally located in booths on the trading floor for manual handling.

Similar to CBOE OF1, orders using the CBSX OF1 format pass through various processes, including validation checks in the OHS before execution, entry into the book, or cancellation. Such validation checks include validating an order's origin code or contingency type. Although all orders using the CBSX OF1 format must pass through the OHS, they are not subject to parameter checks related to routing, as routing for manual handling is not an option on CBSX. CBSX OF1 also supports all order types.

Orders using the CBSX OF2 format on the other hand, bypass the OHS system and instead are subject to a different validation process. Although the OHS system is bypassed, orders using the CBSX OF2 format are still subject to similar validation checks as CBSX OF1 (*e.g.*, validating an order's origin code). These checks however, occur in the trade engine rather than OHS. Additionally, fewer fields are required for order entry using OF2 compared to using OF1. The utilization of fewer fields results in a smaller message size, thereby increasing efficiency. CBSX OF2 supports only Immediate-Or-Cancel, ISO, ISO-Book and CBSX-Only orders. Accordingly, orders using the OF2 format will not route to other market centers.

Although the abovementioned order formats are currently offered by the Exchange and are detailed in technical specifications available to all TPHs, they have never been codified in either the CBOE or CBSX rules. Therefore, the Exchange is proposing to introduce new CBOE Rule 6.53A and CBSX Rule 51.8A to make it absolutely clear that these order formats are available to users and to provide transparency and certainty with respect to how orders using these order formats are processed.

The Exchange next proposes to add new Rule 6.23B (Bandwidth Packets). New Rule 6.23B will provide that each Trading Permit shall entitle the holder to a maximum number of orders and quotes per second(s) as determined by the Exchange. The proposed new rule also clarifies that only Market-Makers may submit quotes. Trading Permit Holders seeking to exceed that number of messages per second(s) may purchase additional message packets at prices set forth in the Exchange's Fees Schedule. Additionally, the Exchange shall, upon request and where good cause is shown, temporarily increase a Trading Permit Holder's order entry bandwidth allowance at no additional cost. All determinations to temporarily expand bandwidth allowances will be made in a non-discriminatory manner and on a fair and equal basis. The new rule also provides that no bandwidth limits shall be in effect during the pre-opening prior to 8:25 a.m. CT, which shall apply to all Trading Permit Holders. Finally, the Exchange may determine times periods for which there shall temporarily be no bandwidth limits in effect for all Trading Permit Holders. Any such determination shall be made in the interest of maintaining a fair and orderly market. The Exchange shall notify all TPHs of any such determination.

The Exchange does not have unlimited system bandwidth capacity to support an unlimited number of order and quote entry per second. For this reason, the Exchange limits each Trading Permit to a maximum number of messages per second(s). The Exchange notes that each Trading Permit is subject to the same maximum number of quotes and/or orders per second(s). A TPH can choose to have its bandwidth set at x messages per 1 second or 5x messages per 5 seconds. For example, if the maximum number of orders per second is 5 orders, a user may choose to have its bandwidth set so that it may send in 5 orders per 1 second, or send in 25 orders over the course of 5 seconds. The Exchange however, also recognizes that different TPHs have different needs and affords any TPH the opportunity to purchase additional bandwidth packets at prices set forth in the Exchange's Fees Schedule. For example, continuing with the above illustration (*i.e.*, "x" equals 5), if a TPH purchased one (1) additional bandwidth packet, the TPH would have the ability to submit, depending on how its bandwidth is set, either a total of 10 orders per 1 second or a total of 50 orders over the course of 5 seconds. While these prices and this concept have already been codified in the Fees Schedule, a corresponding rule was never codified within the rule text.[9] Therefore, the Exchange seeks to make clear that each Trading Permit entitles the holder to a maximum number of messages per second(s), and that additional message packets may be purchased for those TPHs seeking to exceed that number.

The Exchange also seeks to make clear that under certain circumstances and upon request, the Exchange may determine to temporarily waive the maximum number of orders per second(s) and expand the bandwidth settings at no additional cost to the requesting Trading Permit Holder. One such example in which bandwidth may

[9] *See* Securities Exchange Act Release No. 62386 (June 25, 2010) 75 FR 38566 (July 2, 2010) (SR–CBOE–2010–060); Securities Exchange Act Release No. 62704 (August 12, 2010) 75 FR 51132 (April 18, 2010) (SR–CBOE–2010–073).

be temporarily increased is in situations where a Trading Permit Holder's system is experiencing technical problems, resulting in a large order queue. Once the problem is resolved, the queue has to be drained. In these instances, it may be necessary to temporarily expand the bandwidth limits for that particular Trading Permit Holder to accommodate the accumulation of orders in its system and to drain the queue of orders. Another example is when another exchange declares a trading halt and a Trading Permit Holder that has orders resting at that exchange redirects that order flow to CBOE. The redirected order flow may at times consist of thousands of orders. To enter such a large quantity of orders, the Trading Permit Holder's bandwidth allowance would require a temporary expansion, which, upon request and demonstrated need, the Exchange could provide at no additional charge. The Exchange also may temporarily expand bandwidth allowances for requesting Trading Permit Holders on Volatility Index ("VIX") settlement days. Particularly, on VIX settlement days, it may be necessary to expand bandwidth during the S&P 500 Index ("SPX") options opening to accommodate the increased order flow. This temporary bandwidth increase ends as soon as the SPX is opened.

All determinations to temporarily expand bandwidth allowances shall be made in a non-discriminatory manner and on a fair and equal basis. Additionally, all Trading Permit Holders who make such request and demonstrate a need shall be entitled to a temporary expansion. The Exchange shall document all requests for a temporary expansion of bandwidth, including whether each request was granted or denied, along with the reasons for each grant or denial. Also, temporary increases of bandwidth generally are in effect for not longer than a few seconds or for as long as is necessary to accommodate an order queue.

Next, the Exchange notes that no bandwidth limits shall be in effect for any Trading Permit Holder during pre-opening, prior to 8:25 a.m. CT. This allows Trading Permit Holders to release, and the Exchange to absorb, order flow that has accumulated overnight and pre-opening. The Exchange also notes that prior to the opening of trading, such bandwidth restrictions are unnecessary. The Exchange may also determine time periods for which there shall temporarily be no bandwidth limits in effect for any Trading Permit Holder. Any such determination shall be made in the interest of maintaining a fair and orderly market. The Exchange shall notify all TPHs of any such determination and shall keep a record of any such notification.

The Exchange finally notes that language proposed in new Rule 6.23B is based off a substantially similar rule previously adopted on C2. Specifically, C2 has Rule 6.35 (Message Packets), which provides that a Trading Permit shall entitle the holder to a maximum number of orders and quotes per second as determined by the Exchange, that only Market-Makers may submit quotes, and that Participants seeking to exceed that number of messages per second may purchase additional message packets at prices set forth in the Exchange's Fees Schedule.[10]

Finally, as a result of this filing, current CBOE rule 6.23A will be renumbered and retitled. Accordingly, the Exchange seeks to revise Appendix A to the CBSX Rules to account for the revised title and renumbering of CBOE Rule 6.23A.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b)[11] of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the requirements under Section 6(b)(5)[12] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

First, clearly defining in the rules three key terms (*i.e.*, API, Quote, and Order) informs market participants. Next, codifying in the rules how authorized market participants access the Exchange electronically and specifying the manner in which inbound orders are submitted and processed provides additional transparency in the rules and provides market participants an additional avenue to easily understand the system and processes CBOE offers. The Exchange believes additional transparency removes a potential impediment to and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest. Additionally, the Exchange believes that the order formats being codified in proposed Rule 6.53A and CBSX Rule 51.8A allows the Exchange to receive from Trading Permit Holders information in a uniform format, which aids the Exchange's efforts to monitor and regulate CBOE's markets and Trading Permit Holders and helps prevent fraudulent and manipulative practices.

The Exchange also believes that the proposed rule changes are designed to not permit unfair discrimination among market participants. For example, under proposed CBOE Rule 6.23A(a) and CBSX Rule 53.25, all authorized market participants may access the Exchange via an available API of their choosing. Additionally, under proposed CBOE Rule 6.23B, all holders of a Trading Permit are limited to maximum number of orders and quotes per second(s) and all holders of Trading Permits are afforded the opportunity to exceed that number by purchasing additional message packets. Any determinations to temporarily expand bandwidth allowances would also be made on a non-discriminatory basis. Finally, proposed CBOE Rule 6.53A is applicable to all TPHs and CBSX Rule 51.8A similarly provides that any TPH may elect to use either one of the two available order formats.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed rule change will not impose any burden because the Exchange is merely harmonizing its Rules with current functionalities and practices. Therefore, the proposed rule change promotes transparency in the rules without adding any burden on market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

[10] *See* C2 Rule 6.35

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2013–064 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–CBOE–2013–064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–064, and should be submitted on or before July 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15847 Filed 7–1–13; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[16] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69862; File No. SR–NYSEArca–2013–60]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Proposing To List and Trade Shares of Market Vectors Low Volatility Commodity ETF and Market Vectors Long/Short Commodity ETF Under NYSE Arca Equities Rule 8.200

June 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 June 12, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to list and trade shares of Market Vectors Low Volatility Commodity ETF and Market Vectors Long/Short Commodity ETF under NYSE Arca Equities Rule 8.200. 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

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts ("TIRs") either by listing or pursuant to unlisted trading privileges ("UTP").[4] The Exchange proposes to list and trade the shares (the "Shares") of the Market Vectors Low Volatility Commodity ETF ("Low Volatility ETF") and Market Vectors Long/Short Commodity ETF ("Long/Short ETF", and, together with Low Volatility ETF, the "Funds") under NYSE Arca Equities Rule 8.200. Each Fund is a series of the Market Vectors Commodity Trust (the "Trust"), a Delaware statutory trust.[5]

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in "Financial Instruments". The term "Financial Instruments", as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[5] The Trust filed a pre-effective amendment to its registration statements with respect to the Funds on Form S–1 under the Securities Act of 1933 ("1933 Act") on December 7, 2012 (File No. 333–179435 for the Low Volatility ETF ("Low Volatility Registration Statement")) and File No. 333–179432

The Exchange notes that the Commission has previously approved the listing and trading of other issues of TIRs on the American Stock Exchange LLC ("Amex"),[6] trading on NYSE Arca pursuant to UTP,[7] and listing on NYSE Arca.[8] In addition, the Commission has approved other exchange-traded fund-like products linked to the performance of underlying commodities.[9]

Van Eck Absolute Return Advisers Corp. is the managing owner of the Funds ("Managing Owner").[10] The Managing Owner also serves as the commodity pool operator and commodity trading advisor of the Funds. The Managing Owner is registered as a commodity pool operator and commodity trading advisor with the Commodity Futures Trading Commission ("CFTC"), and is a member of National Futures Association. Wilmington Trust, National Association ("Trustee"), a national bank with its principal place of business in Delaware, is the sole trustee of the Trust. The Bank of New York Mellon will be the custodian, administrator and transfer agent for the Funds.

Overview of the Funds[11]

According to the Low Volatility Registration Statement, the Low Volatility ETF will seek to track changes, whether positive or negative, in the performance of the Morningstar® Long/Flat Commodity Index℠ (the "Long/Flat Index") over time. According to the Long/Short Registration Statement, the Long/Short ETF will seek to track changes, whether positive or negative, in the performance of the Morningstar® Long/Short Commodity Index℠ (the "Long/Short Index" and, together with the Long/Flat Index, the "Indexes") over time.

Each Fund will seek to achieve its respective investment objective by investing principally in exchange-traded futures contracts on commodities ("Index Commodity Contracts") comprising the Long/Flat Index and the Long/Short Index, respectively, and U.S. Treasury bills maturing in eight weeks or less to reflect "flat" positions, and, in certain circumstances (as described below), futures contracts other than Index Commodity Contracts traded on U.S. or foreign exchanges ("Other Commodity Contracts").[12] In addition, to a limited extent, the Funds may also invest in swap agreements on Index Commodity Contracts or Other Commodity Contracts cleared through a central clearing house or the clearing house's affiliate ("Cleared Swaps"), forward contracts, exchange-traded cash-settled options (including options on one or more Index Commodity Contracts, Other Commodity Contracts or indexes that include any Index Commodity Contracts or Other Commodity Contracts), swaps other than Cleared Swaps and other over-the-counter ("OTC") transactions that provide economic exposure to the investment returns of the commodities markets, as represented by the Indexes and their constituents (collectively, "Other Commodity Instruments," and, together with Other Commodity Contracts and Cleared Swaps, "Other Instruments"), as described below. The Funds also may invest in U.S. Treasury bonds, other U.S. Treasury bills, and other U.S. government securities and related securities, money market funds, certificates of deposit, time deposits and other high credit quality short-term fixed income securities, as described in the Registration Statements (collectively, "Cash Instruments"). The Cash Instruments used to track flat positions in the Indexes will be U.S. Treasury bills.

Each Fund intends to invest first in Index Commodity Contracts. Thereafter, if a Fund reaches the position limits applicable to one or more Index Commodity Contracts or a "Futures Exchange"[13] imposes limitations on the Fund's ability to maintain or increase its positions in an Index Commodity Contract after reaching accountability levels or a price limit is in effect on an Index Commodity Contract during the last 30 minutes of its regular trading session, the Fund's intention is to invest first in Cleared Swaps to the extent permitted under the position limits applicable to Cleared Swaps and appropriate in light of the liquidity in the Cleared Swaps market, and then, using its commercially reasonable judgment, in Other Commodity Contracts or in Other Commodity Instruments. By using certain or all of these investments, the Managing Owner will endeavor to cause a Fund's performance to closely track that of the Long/Flat Index or Long/Short Index, respectively, over time. The specific circumstances under which investments in Other Commodity Contracts and Other Commodity Instruments may be used are discussed below.

Consistent with seeking to achieve each Fund's investment objective, if a Fund reaches position limits applicable to one or more Index Commodity Contracts or when a Futures Exchange has imposed limitations on a Fund's ability to maintain or increase its positions in an Index Commodity Contract after reaching accountability levels or a price limit is in effect on an Index Commodity Contract during the last 30 minutes of its regular trading session, the Managing Owner may cause a Fund to first enter into or hold Cleared Swaps and then, if applicable, enter into and hold Other Commodity Contracts or Other Commodity Instruments. For example, certain Cleared Swaps have standardized terms similar to, and are priced by reference to, a corresponding Index Commodity Contract or Other Commodity Contract. Additionally, certain Other Commodity Instruments can generally be structured as the parties to the contract desire. Therefore, a Fund might enter into multiple Cleared Swaps and/or certain Other Commodity Instruments intended to

for the Long/Short ETF ("Long/Short Registration Statement" and, together with the Low Volatility Registration Statement, the "Registration Statements"). The descriptions of the Funds and the Shares contained herein are based, in part, on the Registration Statements.

[6] *See, e.g.*, Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39) (order approving amendments to Amex Rule 1202, Commentary .07 and listing on Amex of 14 funds of the Commodities and Currency Trust).

[7] *See, e.g.*, Securities Exchange Act Release No. 58163 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR–NYSEArca–2008–73) (order approving UTP trading on NYSE Arca of 14 funds of the Commodities and Currency Trust).

[8] *See, e.g.*, Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91) (order approving listing on NYSE Arca of 14 funds of the Commodities and Currency Trust).

[9] *See, e.g.*, Securities Exchange Act Release Nos. 56932 (December 7, 2007), 72 FR 71178 (December 14, 2007) (SR–NYSEArca–2007–112) (order granting accelerated approval to list iShares S&P GSCI Commodity-Indexed Trust); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (order granting accelerated approval for NYSE Arca listing the ETFS Gold Trust).

[10] The Managing Owner is affiliated with a broker-dealer and has implemented a "fire wall" with respect to such broker-dealer and has policies and procedures in place regarding access to information concerning the composition and/or changes to the Funds' portfolio composition.

[11] Terms relating to the Funds, the Shares and the Indexes (as defined below) referred to, but not defined, herein are defined in the Registration Statements.

[12] The Managing Owner expects that Other Commodity Contracts in which a Fund may invest in the circumstances described below would include futures contracts of different expirations, on different commodities or traded on different exchanges than Index Commodity Contracts.

[13] The Futures Exchanges are the exchanges on which the Index Commodity Contracts are traded, and include the following: the Chicago Mercantile Exchange, Inc. ("CME"), Chicago Board of Trade ("CBOT", a division of CME), NYMEX (a division of CME), ICE Futures US ("ICE–US"), and ICE Futures Europe ("ICE–UK"). Some of a Fund's futures trading may be conducted on commodity futures exchanges outside the United States. Trading on such exchanges is not regulated by any U.S. governmental agency and may involve certain risks not applicable to trading on U.S. exchanges, including different or diminished investor protections.

exactly replicate the performance of one or more Index Commodity Contracts or Other Commodity Contracts, or a single Other Commodity Instrument designed to replicate the performance of the applicable Index as a whole.[14] After reaching position limits applicable to one or more Index Commodity Contracts or when a Futures Exchange has imposed limitations on the Fund's ability to maintain or increase its positions in an Index Commodity Contract after reaching accountability levels or a price limit is in effect on an Index Commodity Contract during the last 30 minutes of its regular trading session, and after entering into or holding Cleared Swaps, a Fund might also enter into or hold Other Commodity Contracts or Other Commodity Instruments to facilitate effective trading, consistent with a Fund's long/flat or long/short strategy, as applicable. In addition, after reaching position limits applicable to one or more Index Commodity Contracts or when a Futures Exchange has imposed limitations on the Fund's ability to maintain or increase its positions in an Index Commodity Contract after reaching accountability levels or a price limit is in effect on an Index Commodity Contract during the last 30 minutes of its regular trading session, and after entering into or holding Cleared Swaps, a Fund might enter into or hold Other Commodity Contracts or Other Commodity Instruments that would be expected to alleviate overall deviation between a Fund's performance and that of the Long/Flat Index or Long/Short Index, as applicable, that may result from certain market and trading inefficiencies or other reasons.

According to the Registration Statements, by using certain or all of these investments, the Managing Owner will endeavor to cause a Fund's performance to closely track that of the Long/Flat Index or Long/Short Index, as applicable, over time. Each Fund will invest to the fullest extent possible in Index Commodity Contracts and Other Instruments without being leveraged (*i.e.*, without seeking performance that is a multiple (*e.g.*, 2X or 3X) or inverse multiple of the Fund's respective Index) or unable to satisfy its expected current or potential margin or collateral obligations with respect to its investments in Index Commodity Contracts and Other Commodity Contracts or Other Instruments.[15]

Each of the Indexes is currently composed of long, flat or short (as applicable) positions in Index Commodity Contracts, each of which is subject to speculative position limits and other position limitations, as applicable, which are imposed by either the CFTC or the rules of the Futures Exchanges on which the Index Commodity Contracts are traded. These position limits prohibit any person from holding a position of more than a specific number of such Index Commodity Contracts. The purposes of these limits are to diminish, eliminate or prevent sudden or unreasonable fluctuations or unwarranted changes in the prices of futures contracts.[16]

According to the Registration Statement, under current regulations, subject to any relevant exemptions, traders, such as each Fund, may not exceed speculative position limits, either individually, or in the aggregate with other persons with whom they are under common control or ownership. Under the proposed regulations challenged by SIFMA, the CFTC requires certain persons to aggregate exchange listed futures and economically equivalent swap positions owned or controlled by such persons.

In addition, exchanges may establish daily price fluctuation limits on futures contracts. The daily price fluctuation limit establishes the maximum amount that the price of futures contracts may vary either up or down from the previous day's settlement price. Once the daily price fluctuation limit has been reached in a particular futures contract, no trades may be made at a price beyond that limit. Futures Exchanges may also establish accountability levels applicable to futures contracts. A Futures Exchange may order a person who holds or controls aggregate positions in excess of specified position accountability levels not to further increase the positions, to comply with any prospective limit which exceeds the size of the position owned or controlled, or to reduce any open position which exceeds position accountability levels if the Futures Exchange determines that such action is necessary to maintain an orderly market. Position limits, accountability levels, and daily price fluctuation limits set by the Futures Exchanges have the potential to cause tracking error, which could cause changes in the net asset value ("NAV") per Share to substantially vary from changes in the level of the Index and prevent an investor from being able to effectively use the Fund as a way to indirectly invest in the global commodity markets.

Although the Managing Owner does not expect the Funds to have a significant exposure to Other Commodity Instruments that trade OTC, the Trust's Declaration of Trust does not limit the amount of funds that the

[14] According to the Registration Statements, assuming that there is no default by a counterparty to an Other Commodity Instrument, the performance of the Other Commodity Instrument should positively correlate with the performance of the Long/Flat Index or Long/Short Index, as applicable, or the applicable Index Commodity Contract.

[15] According to the Registration Statements, the Managing Owner will attempt to minimize these market and credit risks by requiring the Funds to abide by various trading limitations and policies, which will include limiting margin accounts and trading only in liquid markets. The Managing Owner will implement procedures which will include, but will not be limited to: Executing and clearing trades with creditworthy counterparties; limiting the amount of margin or premium required for any Index Commodity Contract or Other Commodity Contract or all Index Commodity Contracts or Other Commodity Contracts combined; and generally limiting transactions to Index Commodity Contracts or Other Commodity Contracts which will be traded in sufficient volume to permit the taking and liquidating of positions.

The Fund will enter into Other Commodity Instruments traded OTC (if any) with counterparties selected by the Managing Owner. The Managing Owner will select such Other Commodity Instrument (if any) counterparties giving due consideration to such factors as it deems appropriate, including, without limitation, creditworthiness, familiarity with the applicable Index, and price. Under no circumstances will the Funds enter into an Other Commodity Instrument traded OTC (if any) with any counterparty whose credit rating is lower than investment-grade at the time a contract is entered into. The Funds expect that investments in OTC Other Commodity Instruments (if any) will be made on terms that are standard in the market for such OTC Other Commodity Instruments. In connection with such OTC Other Commodity Instruments, the Funds may post or receive collateral in the form of Cash Instruments, which will be marked to market daily.

[16] According to the Registration Statements, pursuant to the statutory mandate of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which was signed into law on July 21, 2010, on October 18, 2011, the CFTC adopted regulations that impose new federal position limits on futures and options on a subset of energy, metal, and agricultural commodities (the "Referenced Contracts") and economically equivalent swap transactions. In a lawsuit filed against the CFTC by the International Swaps and Derivatives Association ("ISDA") and the Securities Industry and Financial Markets Association ("SIFMA"), the U.S. District Court for the District of Columbia vacated the new position limit regulations and remanded the matter to the CFTC for further consideration consistent with the court's opinion. The CFTC may appeal the court's decision and seek a stay of the decision pending appeal, and the new position limit regulations, or other regulations with similar effect, could still become effective in the future. The regulations that were the subject of this decision are referred to herein as the "proposed regulations." The proposed regulations would apply to each of the Funds' combined positions across these products. The Referenced Contracts subject to the proposed regulations represent approximately 68% of the Index Commodity Contracts as of February 28, 2013. The proposed regulations are extremely complex and, if ultimately implemented, whether in their current form or an alternative form, may require further guidance and interpretation by the CFTC to determine in all respects how they apply to the Funds. The Funds' investment strategy could be negatively affected by these regulations.

Funds may invest in such Other Commodity Instruments. Therefore, as the amount of funds invested in Other Commodity Instruments that trade OTC increases, the applicable risks described in the Registration Statements increase correspondingly.[17]

The Long/Flat Index

According to the Low Volatility Registration Statement, the Long/Flat Index is a rules-based, fully collateralized commodity futures index that employs a momentum rule to determine if exposure to a particular commodity should be maintained with its prescribed weighting (a "long position") or moved to cash (a "flat position").[18] For each Index Commodity Contract represented by the Long/Flat Index, Morningstar®, Inc. ("Morningstar")[19] calculates a "linked price"[20] that incorporates both price changes and roll yield.[21] Whether a position will be long or flat is determined, at the time of a monthly repositioning, by comparing the linked price of each Index Commodity Contract to its 12-month moving average. For example, if, at a monthly repositioning, the linked price for an Index Commodity Contract exceeds its 12-month moving average, the Long/Flat Index takes the long position in the subsequent month. Conversely, if the linked price for an Index Commodity Contract is below its 12-month moving average, the Long/Flat Index moves the position to cash, *i.e.*, flat.

To be considered for inclusion in the Long/Flat Index, a commodity future must be listed on a U.S. futures exchange, be denominated in U.S. dollars and rank in the top 95% by total U.S. dollar value of the total open interest pool of all eligible commodities. The weight of each Index Commodity Contract is the product of two factors: magnitude and the direction of the momentum signal (*i.e.*, 1 for long, 0 for flat, or -1 for short). On the annual reconstitution date, the magnitude is the open interest weight of the Index Commodity Contract, calculated on the second Friday of December, using data through the last trading day of November. Individual contract weights are capped at 10%. Between reconstitution dates, the weights vary based on the performance of the individual commodity positions. The Long/Flat Index is reconstituted annually and directions (*i.e.*, whether long or flat) of each Index Commodity Contract are determined monthly on the second Friday of each month, which is one week prior to the monthly repositioning. As of February 28, 2013, the sector weightings of the Long/Flat Index were Agriculture (29.44%), Energy (50.37%), Livestock (4.48%) and Metals (15.71%).

The Long/Short Index

According to the Long/Short Registration Statement, the Long/Short Index is a rules-based, fully collateralized commodity futures index that employs a momentum rule to determine if exposure to a particular Index Commodity Contract should be maintained with its prescribed weighting (a "long position") or moved to a short weighting (a "short position").[22] For each Index Commodity Contract represented by the Long/Short Index, Morningstar calculates a "linked price"[23] that incorporates both price changes and roll yield.[24] Whether a position will be long or short (or cash, *i.e.*, flat in the case of energy futures contracts, as described below) is determined, at the time of a monthly repositioning, by comparing the linked price of each Index Commodity Contract to its 12-month moving average. For example, if, at a monthly repositioning, the linked price for an Index Commodity Contract exceeds its 12-month moving average, the Long/Short Index takes a long position in the subsequent month. Conversely, if the linked price for an Index Commodity Contract is below its 12-month moving average, the Long/Short Index takes a short position. An exception is made for commodities in the energy sector. If the signal for an Index Commodity Contract in the energy sector is short, the weight of that Index Commodity Contract is moved to cash (*i.e.*, flat). According to the Long/Short Registration Statement, energy is unique in that its price is extremely sensitive to geopolitical events and not necessarily driven purely by demand-supply imbalances.

To be considered for inclusion in the Long/Short Index, a commodity future must be listed on a U.S. futures exchange, be denominated in U.S. dollars and rank in the top 95% by total U.S. dollar value of the total open interest pool of all eligible commodities.

[17] According to the Registration Statements, markets in which a Fund may effect a transaction in certain Other Commodity Instruments may be in the OTC markets. The participants and dealers in such markets are typically not subject to the same level of credit evaluation and regulatory oversight as are members of the exchange-based markets. This exposes a Fund to the risk that a counterparty will not settle a transaction in accordance with its terms and conditions because of a credit or liquidity problem or a dispute over the terms of the contract (whether or not bona fide), thus causing the Fund to suffer a loss. See note 15, *supra*.

[18] A long position is a position that will increase in market price if the price of the commodities comprising the Long/Flat Index, in the aggregate, are rising during the period when the position is open. A flat position is a position that will not increase in market price whether the price of the commodities comprising the Long/Flat Index, in the aggregate, is rising or falling.

[19] Morningstar, Inc. is the index provider ("Index Provider" or "Morningstar") with respect to the Indexes. Morningstar is not registered as a broker-dealer. Morningstar Investment Services ("MIS"), a wholly-owned subsidiary of the Index Provider, is a broker-dealer and a registered investment adviser under the Investment Advisers Act of 1940. Morningstar has implemented procedures designed to prevent the illicit use and dissemination of material, non-public information regarding the Indexes and has implemented a "fire wall" with respect to its affiliated broker-dealer regarding the Indexes.

[20] A "linking" factor is defined for each commodity that converts the price of the contract in effect at each point in time to a value that accounts for contract rolls, *i.e.*, the "linked price." Each time a contract is rolled, the "linking" factor is adjusted by the ratio of the closing price of the current contract to the closing price of the new contract.

[21] According to the Registration Statements, roll yield is the amount of return generated (either positive or negative) by rolling a short-term contract into a longer-term contract and profiting or losing money from the convergence toward a higher or lower spot price. The linked price is determined on the basis of price changes and roll yields. Rolling a futures contract means closing out a position on near-dated (*i.e.*, commodity futures contracts that are nearing expiration) commodity futures contracts before they expire and establishing an equivalent position in a longer-dated futures contract (*i.e.*, commodity futures contracts that have an expiration date further in the future) on the same commodity. Futures contacts can be in "backwardation," which means that futures contracts with longer-term expirations are priced lower than those with shorter-term expirations, or can exhibit "contango," which means that futures contacts with longer-term expirations are priced higher than those with shorter-term expirations. In backwardation, market roll yields are positive. In contango, market roll yields are negative.

[22] A short position is a position that will increase in market price if the price of the Index Commodity Contracts comprising the Long/Short Index, in the aggregate, are falling during the period when the position is open. The Long/Short Index includes short positions in Index Commodity Contracts. The Long/Short ETF may also obtain a short position relative to certain Index Commodity Contracts by establishing a short position with a counterparty by investing in Other Instruments. According to the Long/Short Registration Statement, the Long/Short ETF will profit if the price of a short position in an Index Commodity Contract or Other Instrument that provides exposure to a short position in such Index Commodity Contract falls while the position is open and the Long/Short ETF will suffer loss if the price of a short position in an Index Commodity Contract or Other Instrument that provides exposure to a short position in such Index Commodity Contract rises while the position is open. Because the value of the Index Commodity Contract or Other Instrument could rise an unlimited amount, a short position in an Index Commodity Contract or Other Instrument that provides exposure to a short position in such Index Commodity Contract theoretically will expose the Long/Short ETF to unlimited losses. In circumstances where a market has reached its maximum price limits imposed by the applicable exchange, the Long/Short ETF may be unable to offset its short position until the next trading day, when prices could expand again in rapid trading.

[23] See note 20, *supra*.

[24] See note 21, *supra*.

The weight of each individual Index Commodity Contract is the product of two factors: Magnitude and the direction of the momentum signal (*i.e.*, 1 for long, 0 for flat, or -1 for short). On the annual reconstitution date, the magnitude is the open interest weight of the Index Commodity Contract, calculated on the second Friday of December, using data through the last trading day of November. Individual contract weights are capped at 10%. Between reconstitution dates, the weights vary based on the performance of the individual Index Commodity Contract positions. The Long/Short Index is reconstituted annually and directions (*i.e.*, whether long, flat or short) of each Index Commodity Contract are determined monthly on the second Friday of each month, which is one week prior to the monthly repositioning. As of February 28, 2013, the sector weightings of the Long/Short Index were Agriculture (29.40%), Energy (49.57%), Livestock (4.69%) and Metals (16.34%). The inception date of the Index was December 21, 1979.

Composition of the Indexes

The following chart provides the composition of the Indexes as of February 28, 2013:

| Commodity | Futures exchange [25] | Long/flat index | | Long/short index | |
|---|---|---|---|---|---|
| | | Signal | Index weight (percent) | Signal | Index weight (percent) |
| Agricultural: | | | | | |
| Coffee 'C'/Colombian | ICE–US | Flat | 1.71 | Short | 1.72 |
| Corn/No. 2 Yellow | CBOT | Long | 7.42 | Long | 7.30 |
| Cotton/1–1/16″ | ICE–US | Long | 1.34 | Long | 1.21 |
| Soybean Meal/48% Protein | CBOT | Long | 1.79 | Long | 1.76 |
| Soybean Oil/Crude | CBOT | Flat | 1.93 | Short | 1.90 |
| Soybeans/No. 2 Yellow | CBOT | Long | 9.00 | Long | 8.87 |
| Sugar #11/World Raw | ICE–US | Flat | 3.11 | Short | 3.21 |
| Wheat/No. 2 Soft Red | CBOT | Flat | 3.137 | Short | 3.43 |
| | | *Total Long* | *19.55* | *Total Long* | *0* |
| | | *Total Short* | *N/A* | *Total Short* | *10.27* |
| | | *Total Flat* | *9.88* | *Total Flat* | *19.14* |
| | | *Total Agricultural* | *29.44* | *Total Agricultural* | *29.40* |
| Energy: | | | | | |
| Crude Oil WTI/Global Spot | NYMEX | Flat | 9.88 | Flat | 9.72 |
| Crude Oil Brent/Global Spot | ICE–UK | Long | 10.20 | Long | 10.03 |
| Gas-Oil-Petroleum | ICE–UK | Long | 9.634 | Long | 9.48 |
| Natural Gas Henry Hub | NYMEX | Flat | 6.81 | Flat | 6.70 |
| Heating Oil #2/Fuel Oil | NYMEX | Long | 6.91 | Long | 6.79 |
| Gasoline Blendstock | NYMEX | Long | 6.95 | Long | 6.84 |
| | | *Total Long* | *33.69* | *Total.* Long | 33.15 |
| | | *Total Flat* | *16.68* | *Total Flat* | *16.42* |
| | | *Total Energy* | *50.37* | Total Energy | *49.57* |
| Livestock: | | | | | |
| Cattle Live/Choice Average | CME | Flat | 2.98 | Short | 3.11 |
| Hogs Lean/Average Iowa/S Minn | | | 1.50 | | 1.58 |
| | | *Total Long* | *0.00* | *Total Long* | *0* |
| | | *Total Short* | *N/A* | *Total Short* | *4.69* |
| | | *Total Flat* | *4.48* | *Total Flat* | *0* |
| | 4.48 | *Total Livestock* | *4.48* | *Total Livestock* | *4.69* |
| Metals: | | | | | |
| Copper High Grade/Scrap No. 2 Wire | NYMEX | Long | 2.40 | Long | 2.36 |
| Gold | NYMEX | Flat | 9.82 | Short | 10.32 |
| Silver | NYMEX | Long | 3.49 | Long | 3.66 |
| | | *Total Long* | *5.89* | *Total Long* | *6.02* |
| | | *Total Short* | *N/A* | *Total Short* | *10.32* |
| | | *Total Flat* | *9.82* | *Total Flat* | *0* |
| | | *Total Metals* | *15.71* | *Total Metals* | *16.34* |

The following chart provides the Futures Exchanges, trading symbol and trading hours (Eastern time ("E.T.")) for the Index components:

| | Exchange | Symbol | Trading hours E.T. |
|---|---|---|---|
| Agricultural: | | | |
| Coffee 'C'/Colombian | ICE–US | KC | 3:30 a.m.–2:00 p.m. |
| Corn/No. 2 Yellow | CBOT | C | 10:30 a.m.–3:00 p.m. |
| Cotton/1–1/16″ | ICE–US | CT | 9:00 p.m.–2:30 p.m. |
| Soybean Meal/48 Protein | CBOT | SM | 10:30 a.m.–3:00 p.m. |
| Soybean Oil/Crude | CBOT | BO | 10:30 a.m.–3:00 p.m. |
| Soybeans/No. 2 Yellow | CBOT | S | 10:30 a.m.–3:00 p.m. |
| Sugar #11/World Raw | ICE–US | SB | 2:30 a.m.–2:00 p.m. |

[25] *See* note 13, *supra*.

| | Exchange | Symbol | Trading hours E.T. |
|---|---|---|---|
| Wheat/No. 2 Soft Red | CBOT | W | 10:30 a.m.–3:00 p.m. |
| Energy: | | | |
| Crude Oil WTI/Global Spot | NYMEX | CL | 9:00 a.m.–2:30 p.m. |
| Crude Oil Brent/Global Spot | ICE–UK | B | 8:00 p.m.–6:00 p.m.—next day. |
| Gas-Oil-Petroleum | ICE–UK | G | 8:00 p.m.–6:00 p.m.—next day. |
| Natural Gas Henry Hub | NYMEX | NG | 9:00 a.m.–2:30 p.m. |
| Heating Oil #2/Fuel Oil | NYMEX | HO | 9:00 a.m.–2:30 p.m. |
| Gasoline Blendstock | NYMEX | RB | 9:00 a.m.–2:30 p.m. |
| Livestock: | | | |
| Cattle Live/Choice Average | CME | LC | 10:05 a.m.–2:00 p.m. |
| Hogs Lean/Average Iowa/S Minn | CME | LH | 10:05 a.m.–2:00 p.m. |
| Metals: | | | |
| Copper High Grade/Scrap No. 2 Wire | NYMEX | HG | 8:10 a.m.–1:00 p.m. |
| Gold | NYMEX | GC | 8:20 a.m.–1:30 p.m. |
| Silver | NYMEX | SI | 8:25 a.m.–1:25 p.m. |

With respect to each of the Indexes, the following are excluded:

(1) Financial futures contracts (*e.g.*, securities, currencies, interest rates, etc.).

(2) Commodity futures contracts not denominated in U.S. dollars.

(3) Commodity futures contracts with less than twelve months of pricing.

Morningstar sorts all commodity futures contracts that meet the above eligibility requirements in descending order by the total U.S. dollar value of open interest. All commodity futures contracts that make up the top 95% of the total open interest pool of all eligible commodity futures contracts, starting with the one with the largest open interest value, will be included in each of the Indexes.

The weight of each Index Commodity Contract in the Indexes is the product of two factors: magnitude and the direction of the momentum signal. Morningstar initially sets the magnitude based on the 12-month average of the dollar value of open interest of each Index Commodity Contract. Morningstar then caps the top magnitude at 10%, redistributing any overage to the magnitudes of the remaining Index Commodity Contracts. Morningstar chooses this capped open-interest weighting system in order to reflect the importance of each Index Commodity Contract in a global economy and to keep the Indexes diversified across commodities.

Each of the Indexes is reconstituted and rebalanced—*i.e.*, the Indexes' membership and constituent weights are reset—annually, on the third Friday of December after the day's closing values of the Indexes have been determined. The reconstitution is effective at the open of trading on first trading day after the third Friday of December.

Morningstar implements all futures contract rolls on the third Friday of each month to coincide with portfolio repositioning and the rolling of the U.S. Treasury bills used for collateral. If the third Friday of the month is a trading holiday, Morningstar rolls and rebalances or reconstitutes on the trading day prior to the third Friday. To ensure that contracts are rolled before becoming committed to receive physical delivery, contracts are selected so that the delivery month is at least two months away from the upcoming month. On each potential roll date, the delivery month of the current contract is compared to the delivery month of the nearest contract whose delivery month is at least two months away from the upcoming month. If the latter is further into the future than the former, the contract is rolled.

Net Asset Value

According to the Registration Statements, NAV means the total assets of each Fund including, but not limited to, all cash and cash equivalents or other debt securities less total liabilities of a Fund, each determined on the basis of generally accepted accounting principles. In particular, NAV includes any unrealized profit or loss on open Index Commodity Contracts, Other Instruments and any Cash Instruments or other credit or debit accruing to a Fund but unpaid or not received by a Fund. The amount of any distribution will be a liability of a Fund from the day when the distribution is declared until it is paid. All open commodity futures contracts traded on a U.S. or non-U.S. exchange will be calculated at their then current market value, which will be based upon the settlement price for that particular commodity futures contract traded on the applicable U.S. or non-U.S. exchange on the date with respect to which NAV is being determined; provided, that if a commodity futures contract traded on a U.S. or on a non-U.S. exchange could not be liquidated on such day, due to the operation of daily limits (if applicable) or other rules of the exchange upon which that position is traded or otherwise, the settlement price on the most recent day on which the position could have been liquidated will be the basis for determining the market value of such position for such day. The Managing Owner may in its discretion (and under extraordinary circumstances, including, but not limited to, periods during which a settlement price of a futures contract is not available due to exchange limit orders or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance) value any asset of a Fund pursuant to such other principles as the Managing Owner deems fair and equitable so long as such principles are consistent with normal industry standards.

The value of Cleared Swaps will be determined based on the value of the Index Commodity Contract in connection with each specific Cleared Swap. In calculating the NAV of a Fund, the settlement value of a Cleared Swap (if any) and an OTC Other Commodity Instrument (if any) will be determined by either applying the then-current disseminated value for the related Index Commodity Contracts or the terms as provided under the applicable Cleared Swap or OTC Other Commodity Instrument, as applicable. However, in the event that one or more of the related Index Commodity Contracts are not trading due to the operation of daily limits or otherwise, the Managing Owner may in its sole discretion choose to value the applicable Fund's Cleared Swaps or OTC Other Commodity Instruments (if any) on a fair value basis in order to calculate such Fund's NAV. These fair value prices would be generally determined based on available

inputs about the current value of the Index Commodity Contract to which the Cleared Swap or OTC Other Commodity Instrument relates and would be based on principles that the Managing Owner deems fair and equitable so long as such principles are consistent with normal industry standards. Exchange-traded Other Commodity Instruments will be valued at their market prices on the exchanges on which such instruments trade.

NAV per Share will be the NAV of each Fund divided by the number of its outstanding Shares.

Creation and Redemption Procedures

With respect to each of the Funds, on any business day, an authorized participant may place an order with the Managing Owner to create one or more blocks of 50,000 Shares ("Baskets"). Purchase orders must be placed by 1:00 p.m., E.T. The day on which the Managing Owner receives a valid purchase order is the purchase order date. Purchase orders are irrevocable.

The total cash payment required to create each Basket is the NAV of 50,000 Shares of a Fund as of the closing time of NYSE Arca or the last to close of the Futures Exchanges on which Index Commodity Contracts are traded, whichever is latest, on the purchase order date. Baskets are issued on the business day immediately following the purchase order date at the applicable NAV as of the closing time of NYSE Arca or the last to close of the Futures Exchanges on which the corresponding Index Commodity Contracts are traded, whichever is latest, on the purchase order date, but only if the required payment has been timely received.

The procedures by which an authorized participant can redeem one or more Baskets mirror the procedures for the creation of Baskets. On any business day, an authorized participant may place an order with the Managing Owner to redeem one or more Baskets. Redemption orders must be placed by 1:00 p.m., E.T. The day on which the Managing Owner receives a valid redemption order is the redemption order date. Redemption orders are irrevocable.

The redemption proceeds from a Fund will consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Baskets of the Fund requested in the authorized participant's redemption order as of the closing time of NYSE Arca or the last to close of the Futures Exchanges on which the Index Commodity Contracts are traded, whichever is latest, on the redemption order date. The Managing Owner will distribute the cash redemption amount on the business day immediately following the redemption order date through Depository Trust Company ("DTC") to the account of the authorized participant as recorded on DTC's book-entry system.

Because the Funds are subject to speculative position limits, accountability levels and other position limitations, as applicable, the Funds' ability to issue new Baskets or to reinvest income in additional Index Commodity Contracts may be limited to the extent these activities would cause a Fund to exceed its applicable limits unless a Fund trades Other Instruments (if any) in addition to and as a proxy for Index Commodity Contracts.

The Exchange will obtain a representation (prior to listing of each Fund) from the Trust that the NAV per Share will be calculated daily and made available to all market participants at the same time.

Each Fund will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 [26] under the Act, the Funds rely on the exception contained in Rule 10A–3(c)(7).[27] A minimum of 100,000 Shares of each Fund will be outstanding as of the start of trading on the Exchange.

Each Fund's investments will be consistent with such Fund's investment objective and will not be used to enhance leverage. That is, a Fund's investments will not be used to seek performance that is a multiple (*e.g.*, 2X or 3X) or inverse multiple of the Fund's respective Index.

A more detailed description of the Shares, the Funds, the Indexes and the Index Commodity Contracts, as well as investment risks, creation and redemption procedures and fees is set forth in the Registration Statements.

Availability of Information Regarding the Shares

The Web site for the Funds and/or the Exchange's Web site, which will be publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV per Share and the reported closing price; (b) the prospectus; and (c) other applicable quantitative information. Each Fund will also disseminate its respective holdings on a daily basis on the Funds' Web site, which will include, as applicable, the names, quantity, price and market value of Index Commodity Contracts, Other Instruments (including forward contracts, OTC swaps and other OTC transactions) and Cash Instruments.

This Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Managing Owner of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to authorized participants. Accordingly, each investor will have access to the current portfolio composition of the Funds through the Funds' Web site. The prices of the Index Commodity Contracts, Other Instruments (except as described below) and Cash Instruments will be available from the applicable exchanges and market data vendors. The Managing Owner will publish the NAV of each Fund and the NAV per Share daily. Disclosure regarding the components of each Index, the percentage weightings of the components of each Index, and the long, short or flat positions therein is available at *http://corporate.morningstar.com/US/asp/subject.aspx?page=2649&filter=Commodity&xmlfile=2738.xml.*

The intra-day level and the most recent end-of-day closing level of each Index will be published by NYSE Arca once every 15 seconds throughout the Exchange's Core Trading Session and as of the close of business for NYSE Arca, respectively.

Any adjustments made to an Index will be published on Morningstar's (which serves as the Index Provider) Web site noted above.

The intra-day indicative value ("IIV") per Share of each Fund will be based on the prior day's final NAV per Share, adjusted every 15 seconds during the Core Trading Session to reflect the continuous price changes of a Fund's Index Commodity Contracts and other holdings. The IIV per Share will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[28]

The normal trading hours for Index Commodity Contracts may begin after 9:30 a.m. and end before 4:00 p.m. E.T., and there will be a gap in time at the beginning and the end of each day during which the Funds' Shares will be

[26] 17 CFR 240.10A–3.

[27] 17 CFR 240.10A–3(c)(7).

[28] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from Consolidated Tape Association ("CTA") or other data feeds.

traded on the NYSE Arca, but real-time trading prices for at least some of the Index Commodity Contracts held by the Funds are not available. As a result, during those gaps the IIVs will be updated but will reflect the closing prices for such Index Commodity Contracts that have stopped trading before the NAV is calculated.

The final NAV of each Fund and the final NAV per Share will be calculated as of the closing time of NYSE Arca Core Trading Session or the last to close of the Futures Exchanges on which the Index Commodity Contracts or Other Commodity Contracts (which are listed on futures exchanges other than Futures Exchanges) are traded, whichever is later, and posted in the same manner. Although a time gap may exist between the close of the NYSE Arca Core Trading Session and the close of the Futures Exchanges on which the Index Commodity Contracts or Other Commodity Contracts are traded, there will be no effect on the NAV calculations as a result.

The value of the Shares may be influenced by non-concurrent trading hours between NYSE Arca and the various Futures Exchanges on which the Index Commodity Contracts are traded. The trading hours for the Futures Exchanges may not necessarily coincide during the times that the Shares trade on NYSE Arca.[29]

The NAV for each Fund will be disseminated to all market participants at the same time. The Exchange will also make available on its Web site daily trading volume of the Shares, closing prices of such Shares, and the corresponding NAV. The closing prices and settlement prices of Index Commodity Contracts or Other Commodity Contracts are also readily available from the Web sites of the applicable Futures Exchanges, other futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The relevant futures exchanges on which the Index Commodity Contracts or Other Commodity Contracts are listed also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for the Index Commodity Contracts or Other Commodity Contracts are also available on such Web sites, as well as other financial informational sources. The prices of forward agreements, swaps and other OTC transactions are not available from the exchanges, but will be available from major market data vendors and financial information service providers such as Reuters and Bloomberg and will be included in: (i) The calculation of the NAV for the Shares, which is disseminated daily; and (ii) the IIV for the Shares, which is widely disseminated at least every 15 seconds during the Core Trading Session by one or more market data vendors. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

The trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered Market Makers in TIRs to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the Index Commodity Contracts or Other Instruments, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule[30] or by the halt or suspension of trading of the underlying futures contracts.

The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IIV, an Index value or the value of the Index Commodity Contracts or Other Instruments occurs. If the interruption to the dissemination of the IIV, an Index value or the value of the Index Commodity Contracts or Other Instruments persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[31] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, futures contracts and exchange-traded options with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG") and FINRA may obtain trading information regarding trading in the Shares, futures contracts and exchange-traded options from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, futures contracts and exchange-

[29] For example, while the Shares generally will trade on NYSE Arca until 8:00 p.m. E.T., NYMEX closes at 1:30 p.m. E.T. As a result, during periods when NYSE Arca is open and the futures exchanges on which the gold Index Commodity Contracts or Other Commodity Contracts are traded (such as NYMEX) are closed, liquidity in the applicable Index Commodity Contracts or Other Commodity Contracts will be reduced or extremely limited. As a result, trading spreads and the resulting premium or discount on the Shares may widen, increasing the difference between the price of the Shares and the NAV of such Shares.

[30] *See* NYSE Arca Equities Rule 7.12.

[31] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

traded options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[32] CME Group, Inc., (which includes CME, CBOT, and NYMEX), and ICE–US are members of ISG. In addition, the Exchange has entered into a comprehensive surveillance sharing agreement with ICE–UK that applies with respect to trading in Index Commodity Contracts. A list of ISG members is available at *www.isgportal.org*.

In addition, with respect to assets of the Funds traded on exchanges, not more than 10% of the weight of such assets in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated, as well as during the Core Trading Session where the IIV may be based in part on static underlying values; (2) the procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from the Funds will receive a prospectus. ETP Holders purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statements. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the futures contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Funds and that the NAV for the Shares will be calculated as of 4:00 p.m. E.T. each trading day. The Bulletin will disclose that information about the Shares of the Funds is publicly available on the Funds' Web site.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[33] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Managing Owner is affiliated with a broker-dealer and has implemented a "fire wall" with respect to such broker-dealer and has policies and procedures in place regarding access to information concerning the composition and/or changes to the Funds' portfolio composition. The Index Provider is not registered as a broker-dealer and has implemented procedures designed to prevent the illicit use and dissemination of material, non-public information regarding the Indexes and has implemented a "fire wall" with respect to its affiliated broker-dealer regarding the Indexes. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, futures contracts and exchange-traded options with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares, futures contracts and exchange-traded options from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, futures contracts and exchange-traded options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. With respect to assets of the Funds traded on exchanges, not more than 10% of the weight of such assets in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Each Fund will also disseminate each Fund's holdings on a daily basis on the Funds' Web site, which will include, as applicable, the names, quantity, price and market value of Index Commodity Contracts, Other Instruments and Cash Instruments. This Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Managing Owner of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. The prices of the Index Commodity Contracts, Other Instruments and Cash Instruments will be available from the applicable exchanges and market data vendors. The Managing Owner will publish the NAV of each Fund and the NAV per Share daily. There will be publicly available Web site disclosure regarding the components of each Index and the long, short or flat positions therein. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule or by the halt or suspension of trading of the Index Commodity Contracts. The Exchange may halt trading during the day in which an interruption to the

[32] The Exchange notes that not all instruments held by the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[33] 15 U.S.C. 78f(b)(5).

dissemination of the IIV, an Index value or the value of the Index Commodity Contracts or Other Instruments occurs. If the interruption to the dissemination of the IIV, an Index value or the value of the Index Commodity Contracts or Other Instruments persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Disclosure regarding the components of each Index, the percentage weightings of the components of each Index, and the long, short or flat positions therein is publicly available [sic]. The NAV for each Fund will be disseminated to all market participants at the same time. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Each Fund intends to invest first in Index Commodity Contracts. Thereafter, if a Fund reaches the position limits applicable to one or more Index Commodity Contracts or a Futures Exchange imposes limitations on the Fund's ability to maintain or increase its positions in an Index Commodity Contract after reaching accountability levels or a price limit is in effect on an Index Commodity Contract during the last 30 minutes of its regular trading session, each Fund's intention is to invest first in Cleared Swaps to the extent permitted under the position limits applicable to Cleared Swaps and appropriate in light of the liquidity in the Cleared Swaps market, and then, using its commercially reasonable judgment, in Other Commodity Contracts or in Other Commodity Instruments.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. The NAV for each Fund will be disseminated to all market participants at the same time. The IIV per Share will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session and on the Managing Owner's Web site. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, IIV, and quotation and last sale information for the Shares.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or 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 will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2013–60 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–2013–60. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2013–60 and should be submitted on or before July 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15779 Filed 7–1–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of 30 day Reporting Requirements Submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before August 1, 2013. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov*

**SUPPLEMENTARY INFORMATION:**

*Title:* HUBZone Electronic Data Survey Form.

*Frequency:* On Occasion.

*SBA Form Number:* 2298.

*Description of Respondents:* Small Business concerns.

*Responses:* 4926.

*Annual Burden:* 2463.

**Curtis Rich,**

*Management Analyst.*

[FR Doc. 2013–15864 Filed 7–1–13; 8:45 am]

**BILLING CODE 8025–01–P**

[34] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Salem Halifax Capital Partners, L.P.

**[License No. 04/04–0300]**

### Notice Seeking Exemption Under the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Salem Halifax Capital Partners, L.P., 2849 Paces Ferry Road, Overlook I, Suite 660, Atlanta, GA 30339, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Salem Halifax Capital Partners, L.P. is seeking post-financing approval from SBA for a debt and equity financing it made to XL Associates, Inc., 1650 Tysons Boulevard, Suite 720, McLean, VA 22102 ("XL").

The financing is brought within the purview of § 107.730(a)(1) and § 107.730(d)(1) of the Regulations because Salem Halifax Capital Partners, L.P. invested in XL, which is considered an Associate of Salem Halifax Capital Partners, L.P., through Halifax Capital Partners', an Associate of Salem Halifax Capital Partners, L.P., ownership of more than 10% of XL's equity. Therefore this transaction is considered a financing constituting a conflict of interest requiring prior SBA approval. Salem Halifax Capital Partners, L.P. has already made its investment in XL and is seeking post-financing SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

**Harry Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 2013–15653 Filed 7–1–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13639 and #13640]**

### Standing Rock Sioux Tribe Disaster #SD–00058

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Standing Rock Indian Reservation (FEMA–4123–DR), dated 06/25/2013.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 05/25/2013 through 06/01/2013.

*Effective Date:* 06/25/2013.

*Physical Loan Application Deadline Date:* 08/26/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/25/2014.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 06/25/2013, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Area:* Standing Rock Indian Reservation.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere ..... | 2.875 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.875 |
| For Economic Injury: | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.875 |

The number assigned to this disaster for physical damage is 13639B and for economic injury is 13640B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2013–15857 Filed 7–1–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13635 and #13636]**

### Alaska Disaster #AK–00029

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4122–DR), dated 06/25/2013.

*Incident:* Flooding.

*Incident Period:* 05/17/2013 through 06/11/2013.

*Effective Date:* 06/25/2013.

*Physical Loan Application Deadline Date:* 08/26/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/25/2014.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 06/25/2013, private non-profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Alaska Gateway REAA, Copper River REAA, Lower Yukon REAA, Yukon Flats REAA, Yukon-Koyukuk REAA.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere | 2.875 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.875 |
| For Economic Injury: | |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.875 |

The number assigned to this disaster for physical damage is 136356 and for economic injury is 136366.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2013–15831 Filed 7–1–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13629 and #13630]**

### California Disaster #CA–00202

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of California dated 06/25/2013.

*Incident:* Powerhouse Fire.

*Incident Period:* 05/30/2013 through 06/11/2013.

*Effective Date:* 06/25/2013.

*Physical Loan Application Deadline Date:* 08/26/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/25/2014.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Los Angeles.

*Contiguous Counties:*

California: Kern, Orange, San Bernardino, Ventura.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 3.750 |
| Homeowners Without Credit Available Elsewhere | 1.875 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 2.875 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.875 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.875 |

The number assigned to this disaster for physical damage is 13629 5 and for economic injury is 13630 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 25, 2013.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2013–15825 Filed 7–1–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13637 and #13638]**

### Arkansas Disaster #AR–00064

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–4124–DR), dated 06/25/2013.

*Incident:* Severe Storms, Tornadoes, and Flooding.

*Incident Period:* 05/30/2013 through 06/03/2013.

*Effective Date:* 06/25/2013.

*Physical Loan Application Deadline Date:* 08/26/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/25/2014.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 06/25/2013, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Cleburne, Cross, Independence, Montgomery, Poinsett, Polk, Scott, Searcy, Stone, Van Buren, Woodruff.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations With Credit Available Elsewhere ... | 2.875 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.875 |
| *For Economic Injury:* | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.875 |

The number assigned to this disaster for physical damage is 13637B and for economic injury is 13638B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2013–15826 Filed 7–1–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13631 and #13632]**

### Texas Disaster #TX–00409

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Texas dated 06/25/2013.

*Incident:* Severe Flooding

*Incident Period:* 06/14/2013 through 06/15/2013

*Effective Date:* 06/25/2013

*Physical Loan Application Deadline Date:* 08/26/2013

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/25/2014

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Maverick.

*Contiguous Counties:*

Texas: Dimmit, Kinney, Uvalde, Webb, Zavala.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere ..... | 3.750 |
| Homeowners Without Credit Available Elsewhere ..... | 1.875 |
| Businesses With Credit Available Elsewhere ..... | 6.000 |
| Businesses Without Credit Available Elsewhere ..... | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere ..... | 2.875 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.875 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere ..... | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.875 |

The number assigned to this disaster for physical damage is 13631 6 and for economic injury is 13632 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 25, 2013.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2013–15824 Filed 7–1–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13633 and #13634]**

### Alaska Disaster #AK–00028

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4122–DR), dated 06/25/2013.

*Incident:* Flooding.

*Incident Period:* 05/17/2013 through 06/11/2013.

*Effective Date:* 06/25/2013.

*Physical Loan Application Deadline Date:* 08/26/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/25/2014.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 06/25/2013, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Areas (Physical Damage and Economic Injury Loans):* Alaska Gateway REAA, Lower Yukon REAA, Yukon Flats REAA Yukon-Koyukuk REAA.

*Contiguous Areas and Boroughs (Economic Injury Loans Only):*

Alaska: Bering Strait REAA, Copper River REAA, Delta/Greely, Denali Borough, Fairbanks North Star Borough, Iditarod Area Reaa, Kashunamiut (Chevak) REAA, Kuspuk REAA, Lower Kuskokwim REAA, North Slope Borough, Northwest Arctic Borough.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere ..... | 3.750 |
| Homeowners Without Credit Available Elsewhere ..... | 1.875 |
| Businesses With Credit Available Elsewhere ..... | 6.000 |
| Businesses Without Credit Available Elsewhere ..... | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere ... | 2.875 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.875 |
| For Economic Injury: | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere ..... | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.875 |

The number assigned to this disaster for physical damage is 136336 and for economic injury is 136340.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2013–15827 Filed 7–1–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### National Small Business Development Center Advisory Board

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice of open Federal Advisory Committee meetings.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time and agenda for the 4th quarter meetings of the National Small Business Development Center (SBDC) Advisory Board.

**DATES:** The meetings for the 4th quarter will be held on the following dates: Tuesday, July 16, 2013 at 1:00 p.m. EST; Tuesday, August 20, 2013 at 1:00 p.m. EST; Tuesday, September 17, 2013 at 1:00 p.m. EST.

**ADDRESSES:** These meetings will be held via conference call.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC Advisory Board.:

—SBA Update

—Annual Meetings

—Board Assignments

—Member Roundtable

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Monika Cuff by fax or email. Her contact information is Monika Cuff, Program Specialist, 409 Third Street SW., Washington, DC 20416, Phone, 202–205–7310, Fax 202–481–0134, email, *monika.cuff@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Monika Cuff at the information above.

**Dan S. Jones,**

*Committee Management Officer.*

[FR Doc. 2013–15820 Filed 7–1–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF STATE

**[Public Notice 8267]**

### 60-Day Notice of Proposed Information Collection: Request for Determination of Possible Loss of United States Citizenship

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

**DATE(S):** The Department will accept comments from the public up to *September 3, 2013.*

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering "Public Notice ####" in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: mailto:Ask-OCS-L-Public-Inquiries@state.gov.*
- *Mail:* (paper, disk, or CD–ROM submissions): U.S. Department of State, CA/OCS/L, SA–29, 4th Floor, Washington, DC 20037–3202
- *Fax:* 202–736–9111
- *Hand Delivery or Courier:* U.S. Department of State, CA/OCS/L, 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037–3202.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/L), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20037–3202, who may be reached at *mailto: Ask-OCS-L-Public-Inquiries@state.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title of Information Collection:* Request for Determination of Possible Loss of United States Citizenship.

- *Title of Information Collection:* Request for Determination of Possible Loss of United States Citizenship
- *OMB Control Number:* No.1405–0178
- *Type of Request:* Extend
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS)
- *Form Number:* DS–4079
- *Respondents:* United States Citizens
- *Estimated Number of Respondents:* 1,729
- *Estimated Number of Responses:* 1,729
- *Average Hours per Response:* 15 minutes
- *Total Estimated Burden:* 432 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Required to obtain or retain benefits

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:*

The purpose of the DS–4079 questionnaire is to determine current citizenship status and the possibility of loss of United States citizenship. The information provided assists consular officers and the Department of State in determining if the U.S. citizen has lost his or her nationality by voluntarily performing an expatriating act with the intention of relinquishing United States nationality. 8 U.S.C. 1501 grants authority to collect the information on the DS–4079.

*Methodology:*

The Bureau of Consular Affairs will post this form on Department of State Web sites to give respondents the opportunity to complete the form online, or print the form and fill it out manually and submit the form in person or by fax or mail.

Dated: June 4, 2013.

**Michelle Bernier-Toth,**

*Managing Director, Bureau of Consular Affairs, Overseas Citizens Services, Department of State.*

[FR Doc. 2013–15834 Filed 7–1–13; 8:45 am]

BILLING CODE 4710–06–P

## DEPARTMENT OF STATE

**[Public Notice 8366]**

### 30-Day Notice of Proposed Information Collection: Shrimp Exporter's/Importer's Declaration

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget (OMB) up to August 1, 2013.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Marlene Menard, Office of Marine Conservation, 2201 C St. NW., Room 2758, Washington, DC 20522–0002, who may be reached on 202–647–5827 or at *menardmm@state.gov.*

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Shrimp Exporter's/Importer's Declaration
- *OMB Control Number:* 1405–0095
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* Bureau of Oceans and International Environmental and Scientific Affairs, Office of Marine Conservation (OES/OMC)
- *Form Number:* DS–2031
- *Respondents:* Business or other for-profit
- *Estimated Number of Respondents:* 3,000
- *Estimated Number of Responses:* 10,000
- *Average Time per Response:* 10 minutes
- *Total Estimated Burden Time:* 1,666 hours
- *Frequency:* On occasion
- *Obligation to Respond:* Mandatory

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:*

The Form DS–2031 is necessary to document imports of shrimp pursuant to the State Department's implementation of Section 609 of Public Law 101–162, which prohibits the entry into the United States of shrimp harvested in ways which are harmful to sea turtles. Respondents are shrimp exporters and government officials in countries that export shrimp to the United States. The DS–2031 Form is to be retained by the importer for a period of three years subsequent to entry, and during that time is to be made available to U.S. Customs and Border Protection or the Department of State upon request.

*Methodology:*

The DS–2031 form is completed by the exporter, the importer, and under certain conditions a government official of the exporting country. The DS–2031 Form accompanies shipments of shrimp and shrimp products to the United States and is to be made available to U.S. Customs and Border Protection at the time of entry.

Dated: June 20, 2013.

**David A. Balton,**

*Deputy Assistant Secretary of State for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.*

[FR Doc. 2013–15836 Filed 7–1–13; 8:45 am]

BILLING CODE 4710–09–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2013–27]**

### 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 and must be received on or before July 22, 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.

**Brenda D. Courtney,**

*Acting Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2007–0383.

*Petitioner:* Ameriflight, LLC. Section of 14 CFR Affected: § 61.51(f)(2).

*Description of Relief Sought:* Ameriflight, LLC seeks an amendment to the condition and limitations that would allow any flight time logged as second-in-command (SIC) flight time under Exemption No. 9770 to be used to gain an additional rating or certificate as prescribed in part 61, to include an airline transport pilot (ATP) certificate. In addition, the petitioner seeks an amendment to remove the condition and limitation that requires SIC flight time gained under this exemption to only be used for the purposes of upgrading from an SIC to PIC in part 135 operations.

[FR Doc. 2013–15777 Filed 7–1–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2013–26]**

### 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 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of 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 July 22, 2013.

**ADDRESSES:** You may send comments identified by Docket Number *FAA–2011–1029* 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 electronically.
- *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 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, ARM–208, (202) 267–4059, FAA, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 26, 2013.

**Brenda D. Courtney,**

*Acting Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2013–0473.

*Petitioner:* Lesly Landron.

*Section of 14 CFR Affected:* § 65.91(c)(5).

*Description of Relief Sought:* The petitioner seeks relief to the extent necessary to allow him to apply for inspection authorization without having held a current effective mechanic certificate, with both an airframe rating and a powerplant rating, which has been in effect for a total of at least 3 years.

[FR Doc. 2013–15776 Filed 7–1–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2013–0018]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 16 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions are effective July 2, 2013. The exemptions expire on July 2, 2015.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or

comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

**Background**

On May 6, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 16 individuals and requested comments from the public (78 FR 26419). The public comment period closed on June 5, 2013 and no comments were received.

FMCSA has evaluated the eligibility of the 16 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

**Diabetes Mellitus and Driving Experience of the Applicants**

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" [49 CFR 391.41(b)(3)].

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 16 applicants have had ITDM over a range of 1 to 28 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the May 6, 2013, **Federal Register** notice and they will not be repeated in this notice.

**Discussion of Comments**

FMCSA received no comments in this proceeding.

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

**Conditions and Requirements**

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Conclusion**

Based upon its evaluation of the 16 exemption applications, FMCSA exempts Luis A. Alvarez (MD), Jessie W. Burnett (KS), Bradley W. Clark (UT), Rickey B. Cohen (MD), Ernest R. Copeland (PA), Ricki A. Dean (FL), Jerry L. Grimit (IA), Bruce K. Harris (TX), Marsha K. Kanable (IN), Richard J. Kirchner (MN), Michael G. Lorelli (NY), Richard B. Maurer (PA), James M. McClarnon (RI), Mario A. Ramirez, Jr. (CA), Daniel L. Smith (NE), Kurt D. Witthoeft (MN) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 21, 2013.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2013–15670 Filed 7–1–13; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Interagency Guidance on Asset Securitization Activities

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, "Interagency Guidance on Asset Securitization Activities." The OCC is also giving notice that it has sent the collection to OMB for review.

**DATES:** Comments must be submitted on or before August 1, 2013.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0217, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0217, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oirasubmission@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** You may request additional information of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, the OCC has submitted to OMB a request to renew the following collection of information.

*Title:* Interagency Guidance on Asset Securitization Activities.

*OMB Control No.:* 1557–0217.

*Type of Review:* Extension, without revision, of a currently approved collection.

*Description:* This information collection applies to institutions engaged in asset securitization activities and provides that any institution engaged in these activities should maintain a written asset securitization policy, document fair value of retained interests, and maintain a management information system to monitor asset securitization activities. Institution management uses the information collected to ensure the safe and sound operation of the institution's asset securitization activities. The OCC uses the information to evaluate the quality of an institution's risk management practices.

*Affected Public:* Businesses or other for-profit.

*Burden Estimates:*

*Estimated Number of Respondents:* 33 national banks; 15 Federal savings associations.

*Estimated Burden per Respondent:* 16.2 hours.

*Estimated Annual Burden:* 778 hours.

*Frequency of Response:* On occasion.

*Comments:* The OCC published a 60-day **Federal Register** notice on April 26, 2013. (78 FR 24811). No comments were received.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 26, 2013.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. 2013–15778 Filed 7–1–13; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Survey of Minority Owned Institutions

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning a continuing information collection titled, "Survey of Minority Owned Institutions." The OCC also is giving notice that it has sent the collection to OMB for review.

**DATES:** Comments must be submitted on or before August 1, 2013.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0236, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may

be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0236, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira submission@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** You may request additional information by contacting: Johnny Vilela or Mary H. Gottlieb, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

*Title:* Survey of Minority Owned Institutions.

*OMB Control No.:* 1557–0236.

*Type of Review:* Renewal, without change.

*Description:* The OCC is committed to assessing its efforts to provide supervisory support, technical assistance, education, and other outreach to the minority-owned institutions under its supervision. To perform this assessment, it is necessary to obtain, from the individual institutions, feedback on the effectiveness of the OCC's current efforts in these areas and suggestions as to how the OCC might enhance or augment its supervision and technical assistance going forward. The OCC uses the information gathered to assess the needs of minority-owned institutions as well as its efforts to address those needs. The OCC also uses the information to focus and enhance its supervisory, technical assistance, education, and other outreach activities with respect to minority-owned institutions.

*Affected Public:* Businesses or other for-profit.

*Burden Estimates:*

*Estimated Number of Respondents:* 55.

*Estimated Number of Responses:* 55.

*Estimated Annual Burden:* 110 hours.

*Frequency of Response:* On occasion.

*Comments:* The OCC issued a 60-day **Federal Register** notice on April 26, 2013. 78 FR 24811. No comments were received. Comments continue to be solicited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 26, 2013.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. 2013–15773 Filed 7–1–13; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Forms 8857 and 8857(SP)

**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 Forms 8857 and 8857(SP), Request for Innocent Spouse Relief.

**DATES:** Written comments should be received on or before September 3, 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 LaNita Van Dyke at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *Lanita.VanDyke@irs.gov*

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Innocent Spouse Relief.

*OMB Number:* 1545–1596.

*Form Numbers:* 8857 and 8857(SP).

Abstract: Section 6013(e) of the Internal Revenue Code allows taxpayers to request, and IRS to grant, "innocent spouse" relief when: the taxpayer files a joint return with tax substantially understated; the taxpayer establishes no knowledge of, or benefit from, the understatement; and it would be inequitable to hold the taxpayer liable. Forms 8857 and 8857(SP) is used to request relief from liability of an understatement of tax on a joint return resulting from a grossly erroneous item attributable to the spouse.

*Current Actions:* There are no changes to the burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 50,000.

*Estimated Time per Respondent:* 4 hours, 49 minutes.

*Estimated Total Annual Burden Hours:* 240,500.

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: June 24, 2013.

**R. Joseph Durbala,**

*Supervisory Tax Analyst.*

[FR Doc. 2013–15774 Filed 7–1–13; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Notice 89–102

**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 Notice 89–102, Treatment of Acquisition of Certain Financial Institutions; Tax Consequences of Federal Financial Assistance.

**DATES:** Written comments should be received on or before September 3, 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 Sara Covington at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *Sara.L.Covington@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Treatment of Acquisition of Certain Financial Institutions; Tax Consequences of Federal Financial Assistance.

*OMB Number:* 1545–1141.

*Notice Number:* Notice 89–102.

Abstract: Section 597 of the Internal Revenue Code provides that the Secretary of the Treasury shall provide guidance concerning the tax consequences of Federal financial assistance received by certain financial institutions. Notice 89–102 provides that qualifying financial institutions that receive Federal financial assistance prior to a planned sale of their assets or their stock to another institution may elect to defer payment of any net tax liability attributable to the assistance. Such financial institutions must file a statement describing the assistance received, the date of receipt and any amounts deferred.

*Current Actions:* There are no changes to this notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 250.

*Estimated Average Time per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 125.

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: June 25, 2013.

**Allan Hopkins,**

*IRS Tax Analyst.*

[FR Doc. 2013–15759 Filed 7–1–13; 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 reporting of nonpayroll withheld liabilities.

**DATES:** Written comments should be received on or September 3, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *Sara.L.Covington@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Reporting of Nonpayroll Withheld Tax Liabilities.

*OMB Number:* 1545–1413.

*Regulation Project Number:* IA–30–95.

Abstract: This regulation relates to the reporting of nonpayroll withheld income taxes under section 6011 of the Internal Revenue Code. The regulations require a person to file Form 945, Annual Return of Withheld Federal Income Tax, only for a calendar year in which the person is required to

withhold Federal income tax from nonpayroll payments.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households business or other for-profit organizations, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

The burden for the collection of information is reflected in the burden for Form 945, Annual Return of Withheld Federal Income Tax.

The following paragraph applies to all of the collections of 1information 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: June 25, 2013 .

**Allan Hopkins,**

*IRS Tax Analyst.*

[FR Doc. 2013–15758 Filed 7–1–13; 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 excise tax on chemicals that deplete the ozone layer and on products containing such chemicals.

**DATES:** Written comments should be received on or before September 3, 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 LaNita Van Dyke at Internal Revenue Service, Room 6511, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3215, or through the Internet at *Lanita.VanDyke@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Excise Tax on Chemicals That Deplete the Ozone Layer and on Products Containing Such Chemicals.

*OMB Number:* 1545–1153.

*Regulation Project Number:* TD 8370.

Abstract: This regulation imposes reporting and recordkeeping requirements necessary to implement Internal Revenue Code sections 4681 and 4682 relating to the tax on chemicals that deplete the ozone layer and on products containing such chemicals. The regulation affects manufacturers and importers of ozone-depleting chemicals, manufacturers of rigid foam insulation, and importers of products containing or manufactured with ozone-depleting chemicals. In addition, the regulation affects persons, other than manufacturers and importers of ozone-depleting chemicals, holding such chemicals for sale or for use in further manufacture on January 1, 1990, and on subsequent tax-increase dates.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents/ Recordkeepers:* 150,316.

*Estimated Time per Respondent/ Recordkeeper:* 30 minutes.

*Estimated Total Annual Burden Hours:* 75,142.

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: June 19, 2013.

**R. Joseph Durbala,**

*Supervisory Tax Analyst.*

[FR Doc. 2013–15764 Filed 7–1–13; 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 computation and characterization of income and earnings and profits under the dollar approximate separate transactions method of accounting (DASTM).

**DATES:** Written comments should be received on or before September 3, 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 LaNita Van Dyke, at (202) 622–3215, or at Internal Revenue Service, room 6511, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Computation and Characterization of Income and Earnings and Profits under the Dollar Approximate Separate Transactions Method of Accounting (DASTM).

*OMB Number:* 1545–1051.

*Regulation Project Number:* TD 8556.

*Abstract:* This regulation provides that taxpayers operating in hyperinflationary currencies must use the United States dollar as their functional currency and compute income using the dollar approximate separate transactions method (DASTM). Small taxpayers may elect an alternate method by which to compute income or loss. For prior taxable years in which income was computed using the profit and loss method, taxpayers may elect to recompute their income using DASTM.

*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 Responses:* 700.

*Estimated Time per Respondent:* 1 hour, 26 minutes.

*Estimated Total Annual Burden Hours:* 1,000.

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: June 19, 2013.

**R. Joseph Durbala,**

*Supervisory, Tax Analyst.*

[FR Doc. 2013–15765 Filed 7–1–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 6524

**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 6524, Office of Chief Counsel—Application.

**DATES:** Written comments should be received on or before September 3, 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 LaNita Van Dyke, at Internal Revenue Service, room 6511, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3215, or through the Internet at *Lanita.VanDyke@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Office of Chief Counsel—Application.

*OMB Number:* 1545–0796.

*Form Number:* 6524.

Abstract: Form 6524 is used as a screening device to evaluate an applicant's qualifications for employment as an attorney with the Office of Chief Counsel. It provides data deemed critical for evaluating an applicant's qualifications such as Law School Admission Test (LSAT) score, bar admission status, type of work preference, law school, and class standing.

*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.

*Estimated Number of Respondents:* 3,000.

*Estimated Time Per Respondent:* 18 minutes.

*Estimated Total Annual Burden Hours:* 900.

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: June 19, 2013.

**R. Joseph Durbala,**

*Supervisory Program Analyst.*

[FR Doc. 2013–15763 Filed 7–1–13; 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 generation-skipping transfer tax.

**DATES:** Written comments should be received on or before September 3, 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 Sara Covington, (202) 622–3945, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Sara.L.Covington@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Generation-Skipping Transfer Tax.

*OMB Number:* 1545–0985 (TD 8644).

*Regulation Project Number:* PS–127–86; PS–128–86; PS–73–88 (TD 8644).

Abstract: This regulation provides rules relating to the effective date, return requirements, definitions, and certain rules covering the generation-skipping transfer tax. The information required by the regulation will require individuals and/or fiduciaries to report information on Forms 706, 706NA, 706GS (D), 706GS (D–1), 706GS (T), 709, and 843 in connection with the generation skipping transfer tax. The information will facilitate the assessment of the tax and taxpayer examinations.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of OMB approval.

*Affected Public:* Individuals and households, and Business or other for-profit organizations.

*Estimated Number of Respondents:* 10.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 50.

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: June 25, 2013.

**Allan Hopkins,**

*IRS Tax Analyst.*

[FR Doc. 2013–15762 Filed 7–1–13; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### United States Mint

### Price for the 2013 5-Star Generals Profile Collection

**AGENCY:** United States Mint, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The United States Mint is announcing a price of $74.95 for the 2013 5-Star Generals Profile Collection.

**FOR FURTHER INFORMATION CONTACT:** Marc Landry, Acting Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

**Authority:** 31 U.S.C. 5111, 5112 & 9701; Pub. L. 111–262, section 6(a).

Dated: June 26, 2013.

**Beverly Ortega Babers,**

*Chief Administrative Officer, United States Mint.*

[FR Doc. 2013–15833 Filed 7–1–13; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0091]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to enroll veterans into the VA health care system and to update an existing enrollee's personal data.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before September 3, 2013.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov*; or to Cynthia Harvey-Pryor, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *cynthia.harvey-pryor@va.gov*. Please refer to "OMB Control No. 2900–0091" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor at (202) 461–5870.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) way to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:*

a. Application for Health Benefits, VA Form 10–10EZ.

b. Health Benefits Renewal Form, VA Form 10–10EZR.

c. VA Form 10–10HS.

*OMB Control Number:* 2900–0091.

*Type of Review:* Revision of a currently approved collection.

*Abstract:*

a. Veterans complete VA Form 10–10EZ to enroll in VA health care system. VA will use the information collected to determine the Veteran's eligibility for medical benefits.

b. Veterans currently enrolled in VA health care system complete VA Form 10–10EZR to update their personal information such as martial status, address, health insurance and financial information.

c. VA Form 10–10HS collects information only from Veterans who are in a copay required status for hospital care and medical services, but due to a loss of income project their income for the current year will be substantially below the VA means test threshold.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,017,000 hours.

a. VA Form 10–10EZ—250,000.

b. VA Form 10–10EZR—204,000.

c. VA Form 10–10HS—1750.

*Estimated Average Burden Per Respondent:*

a. VA Form 10–10EZ—30 minutes.

b. VA Form 10–10EZR—24 minutes.

c. VA Form 10–10HS—15 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 1,017,000.

a. VA Form 10–10EZ—500,000.

b. VA Form 10–10EZR—510,000.

c. VA Form 10–10HS—7,000.

Dated: June 27, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–15811 Filed 7–1–13; 8:45 am]

BILLING CODE 8320–01–P


# FEDERAL REGISTER

Vol. 78 Tuesday,
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Part II

## Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Buena Vista Lake Shrew; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R8–ES–2009–0062; 4500030114]**

**RIN 1018–AW85**

# Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Buena Vista Lake Shrew

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) under the Endangered Species Act (Act). In total, approximately 2,485 acres (1,006 hectares) in Kings and Kern Counties, California, fall within the boundaries of the critical habitat designation. The effect of this regulation is to conserve the Buena Vista Lake shrew's habitat under the Act.

**DATES:** This rule becomes effective on August 1, 2013.

**ADDRESSES:** This final rule is available on the Internet at *http://www.regulations.gov.* at Docket No. FWS–R8–ES–2009–0062. Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA, 95825; telephone 916–414–6600; facsimile 916–414–6713.

The coordinates or plot points, or both, from which the maps were generated are included in the administrative record for this critical habitat designation and are available at *http://criticalhabitat.fws.gov/crithab/,* and at *http://www.regulations.gov* at Docket No. FWS–RS–ES–2009–0062, and at the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble or at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA, 95825; telephone 916–414–6600; facsimile 916–414–6713. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Executive Summary

The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the Buena Vista Lake shrew. In total, we are designating approximately 2,485 acres (ac) (1,006 hectares (ha)), in six units in Kings and Kern Counties, California, as critical habitat for the subspecies. This is a final rule to designate critical habitat for the Buena Vista Lake shrew (shrew).

*Why we need to publish a rule.* Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), any species that is determined to be a threatened or endangered species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule. We listed the Buena Vista Lake shrew as an endangered species in 2002 (67 FR 10101; March 6, 2002), proposed critical habitat in 2004 (69 FR 51417; August 19, 2004), and designated final critical habitat in 2005 (70 FR 3438; January 24, 2005). The previous final designation excluded all but 84 acres (ac) under section 4(b)(2) of the Act. In 2009, under the terms of a settlement agreement, we reproposed the areas originally proposed in 2004 (74 FR 53999; October 21, 2009). We subsequently received new information on additional areas occupied by the shrew, and so revised the proposed critical habitat on July 10, 2012, to include two additional areas and one modification to an existing unit (77 FR 40706). Based on the settlement agreement, we are to submit a final designation to the **Federal Register** by June 29, 2013.

*The basis for our action.* Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary can exclude an area from critical habitat if she determines the benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species. The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the Buena Vista Lake shrew.

*We have prepared an economic analysis of the designation of critical habitat.* In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designations and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on March 5, 2013 (78 FR 14245), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis (FEA) concurrently with this final determination.

*Peer review and public comment.* We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We requested opinions from four knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, and whether or not we had used the best available information. We received responses from two of the four peer reviewers. The peer reviewers that responded provided additional information, and suggestions to improve this final rule. Information we received from the peer reviews is incorporated in this final revised designation. We also considered all comments and information received from the public during the comment period.

## Previous Federal Actions

We published a final rule listing the shrew as endangered in the **Federal Register** on March 6, 2002 (67 FR 10101). The final listing rule is available at *http://www.fws.gov/policy/library/2005/05-982.pdf.* Please refer to the final listing rule for information on Federal actions prior to March 6, 2002, and for additional information on the shrew and its habitat.

On January 12, 2004, the United States District Court for the Eastern District of California issued a Memorandum Opinion and Order (*Kern County Farm Bureau et al.* v. *Anne Badgley, Regional Director of the United States Fish and Wildlife Service, Region 1 et al.,* CV F 02–5376 AWIDLB). The order required us to publish a proposed critical habitat determination for the shrew by July 12, 2004, and a final determination by January 12, 2005. On July 8, 2004, the court extended the deadline for submitting the proposed rule to the **Federal Register** to August 13, 2004. We submitted a proposed rule by the required date, which was published in the **Federal Register** on August 19, 2004 (69 FR 51417). We published a notice in the **Federal**

**Register** making available the DEA for the proposed designation on November 30, 2004 (69 FR 69578), and then published a final critical habitat designation on January 24, 2005 (70 FR 3438). The final designation excluded four of the five proposed units, based on the Secretary of the Interior's authority under section 4(b)(2) of the Act, that the benefits of exclusion outweighed the benefits of inclusion, and that exclusion would not result in the extinction of the subspecies.

In response to a legal complaint and resulting settlement agreement (*Center for Biological Diversity* v. *United States Fish and Wildlife, et al.*, Case No. 08–CV–01490–AWI–GSA), we published a new proposed designation, encompassing the same area as the 2004 proposed designation, on October 21, 2009 (74 FR 53999). We subsequently published a notice in the **Federal Register** on April 28, 2011 (76 FR 23781), announcing the availability of a new DEA, and the reopening of the comment period for the new proposed critical habitat designation, the associated DEA, and the amended required determinations. This document also announced a public hearing, which was held in Bakersfield, California, on June 8, 2011. On March 6, 2012, we were granted an extension by the Court to consider additional information on the shrew prior to publishing our new final critical habitat designation (*Center for Biological Diversity* v. *Kempthorne et al.*, Case 1:08–cv–01490–AWI–GSA, filed March 7, 2012). We published a revised proposed rule on July 10, 2012 (77 FR 40706), in which we proposed to designate approximately 5,182 ac (2,098 ha) in seven units in Kings and Kern Counties, California. We published a notice in the **Federal Register** making available the revised DEA on March 5, 2013 (78 FR 14245), and reopened the comment period on the revised proposed designation and revised DEA. We also announced a public hearing in that document, which took place in Bakersfield, California, on March 28, 2013.

## Background

It is our intent to discuss below only those topics directly relevant to designating critical habitat for the Buena Vista Lake shrew in this final rule. For additional background information, please see the proposed designation of critical habitat for the Buena Vista Lake shrew published on July 10, 2012 (77 FR 40706), and available at *http://ecos.fws.gov*. That information is incorporated by reference into this final rule.

*Species Information.* The Buena Vista Lake shrew is a mammal, approximately the size of a mouse. Like other shrews, the subspecies has a long snout, tiny bead-like eyes, ears that are concealed, or nearly concealed by soft fur, and five toes on each foot (Burt and Grossenheider 1964, p. 2; Ingles 1965, pp. 81–84). Shrews are active day or night. When they are not sleeping, they are searching for food (Burt and Grossenheider 1964, p. 3). The Buena Vista Lake shrew is one of nine subspecies within the ornate shrew (*Sorex ornatus*) species complex known to occur in California (Hall 1981, pp. 37, 38; Owen and Hoffmann 1983, pp. 1–4; Maldonado 1992, p. 3).

## Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Buena Vista Lake shrew during four comment periods, which took place subsequent to the 2009 proposal (73 FR 53999), the 2011 NOA (76 FR 23781), the 2012 revised proposal (77 FR 40705), and the 2013 notice of availability of the revised DEA (78 FR 14245) (see Previous Federal Actions, above). Each of the comment periods ran for 60 days. We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during these comment periods.

During the first comment period, we received five comment letters addressing the proposed critical habitat designation. During the second comment period, we received eight comment letters addressing the proposed critical habitat designation or the 2011 draft economic analysis. During the June 8, 2011, public hearing, one individual provided written comments, but we did not receive oral comments directly addressing the proposed designation. During the third comment period, we received four comments directly addressing the 2012 revised proposed critical habitat designation or the 2011 DEA. During the fourth comment period, we received four comments addressing the 2012 revised proposed critical habitat designation or the 2013 DEA. During the March 28, 2013, public hearing, we received one oral comment addressing the 2012 revised proposed critical habitat designation or the 2013 DEA.

All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received were grouped into general issues specifically relating to the proposed critical habitat designation for the shrew and are addressed in the following summary and incorporated into the final rule as appropriate.

### *Peer Review*

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from two of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the shrew. The peer reviewers provided additional information, clarifications, and suggestions to improve the final critical habitat rule. We address the two peer reviewers comments in the following summary and have incorporated them into the final rule as appropriate.

### *Peer Reviewer Comments*

(1) *Comment:* One peer reviewer referred to the designation as essential to the conservation of the species, and indicated his agreement with our use of best available evidence, our methods, and our identification of essential habitat features (primary constituent elements (PCEs)). He stated that the rule appears to be supported by the latest scientific information; that we have accurately described that information; and that scientific uncertainties seem to have been clearly identified with the implications of those uncertainties described. He also noted that he has no additional information regarding the shrew's conservation needs, or indicating the location of additional populations, but that he is in the process of finalizing a genetic analysis of the shrew as compared to other subspecies in the San Joaquin Valley.

*Our Response:* We thank the reviewer for his comments. Should the genetic analysis provide significant new information regarding essential habitat or populations, we have the option of revising our designation in the future to take the information into account.

(2) *Comment:* The second peer reviewer stated that, because the quantity of habitat necessary to conserve viable populations of the shrew is unknown, all remaining habitat known or suspected to be suitable should be protected. He concluded it was therefore appropriate and necessary to designate the 5,182 ac in 7 units that we had proposed.

*Our Response:* We are designating all occupied areas containing the specific physical and biological features (the primary constituent elements) essential to the shrew. We delineated each area according to the extent of those features on the landscape, thereby including contiguous areas with essential habitat features to which a shrew population could reasonably be expected to extend. When we learned of the additional occupied areas, we published a revised proposal to include those areas in the designation as well. We consider the proposed areas sufficient for the conservation of the shrew because the proposed areas contain a variety of habitats usable by the shrew, meet the recovery goals established for the shrew (Service 1998, p. 192), and are large enough to accommodate expanding populations.

Although we are excluding one of the seven proposed units (see Exclusions, below), we are doing so because we consider the benefits of exclusion to outweigh the benefits of inclusion for the conservation of the shrew in that area. The area (Unit 3) is already protected by various means, and additional protections and benefits to the shrew may result due to exclusion. We thus consider this designation to follow the basic philosophy expressed by the reviewer: that all areas of essential habitat with the potential to benefit the shrew should be protected.

(3) *Comment:* The peer reviewer strongly recommended that we not exclude Unit 3, because the City of Bakersfield's habitat management plan for the area does not ensure optimal conditions for the shrew. Specifically, the plan allows extended periods without water, periodic flooding, and periodic ground disturbance for maintenance and repair of pumps and other equipment. The reviewer also noted that the City has not yet officially adopted the management plan.

*Our Response:* The City of Bakersfield has now submitted information to indicate it had officially adopted the management plan (Bakersfield Water Board Committee 2011, entire; Chianello 2013, p. 2). Although the habitat management plan may not be completely optimal for the shrew, we consider it to provide the best conservation option. Designation of the unit as critical habitat would not prevent the management drawbacks identified by the reviewer, since these drawbacks do not involve action by a Federal agency. We have worked with the City of Bakersfield over multiple years to address monitoring and protection of shrew habitat. We have consequently concluded that excluding the unit from designation will assist our partnership with the City of Bakersfield to manage more effectively for the conservation of the shrew while still accommodating the City's use of the area as a groundwater recharge basin. For further analysis of the tradeoffs and benefits involved in our decision to exclude, see Exclusions Under Section 4(b)(2) of the Act—Kern Fan Water Recharge Area, below.

(4) *Comment:* The peer reviewer suggested we consider designation of the Wind Wolves Preserve (WWP), in southwestern Kern County. We had indicated in the proposed rule (77 FR 40709; July 10, 2012) that shrews in the Wind Wolves Preserve were expected to be adorned ornate shrews (*Sorex ornatus ornatus*), based on preliminary unpublished data from a mitochondrial DNA analysis of a tissue sample taken from one shrew at that location. The reviewer indicated his understanding, based on conversations with the geneticist who conducted the analysis, that the Wind Wolves sample was actually more similar to Buena Vista Lake shrews than to adorned ornate shrews. The reviewer also noted that additional samples from Wind Wolves Preserve still remain to be statistically analyzed, and that these could potentially corroborate the hypothesis that the shrews at Wind Wolves Preserve are Buena Vista Lake shrews.

*Our Response:* In considering whether to propose the Wind Wolves site as critical habitat for the Buena Vista Lake shrew, Service staff with expertise in genetics reviewed papers on shrew taxonomy and habitat by Dr. Maldonado and others, and noted that the historical range of Buena Vista Lake shrew, as depicted by Owen and Hoffman (1983), shows the Buena Vista Lake shrew as embedded within the range of the more common California ornate shrew (*S. ornatus ornatus*), which occupies more upland areas. They also found that the mitochondrial DNA of the one shrew sample contained a genetic type that occurs in ornate shrews at Tranquility and Helm, but not in any Buena Vista Lake shrew occurrences, suggesting that Wind Wolves Preserve might be the California ornate shrew. Our staff communicated with Dr. Maldonado, who supported our tentative conclusion that the Wind Wolves site contains California ornate shrews (Maldonado 2011, unpaginated). We are aware of the further genetic testing that Dr. Maldonado is conducting, and welcome further information from his study. However, we are responsible for using the best available information to complete the rule within the regulatory time-frame. When genetic analysis of the Wind Wolves samples is completed, if the analysis supports the presence of Buena Vista Lake shrews at the Wind Wolves Preserve, the critical habitat designation may be revised to take such data into account.

*Comments From States*

During the development of the proposed rule and this final rule, we coordinated with the appropriate State agencies regarding the designation. Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition." We did not receive any comments from State agencies regarding this critical habitat designation.

*Public Comments*

(5) *Comment:* Several commenters asked us to exclude Unit 2 based on the implementation of a biological opinion (BO) that we issued in 2004 for a wetlands restoration and enhancement project funded though the North American Wetlands Conservation Act (NAWCA) within the historical lake bed of Goose Lake (Service 2004).

*Our Response:* The terms and conditions in the BO all applied to the means by which groundbreaking activities would be carried out for the project (Service 2004, pp. 20–22). There was thus little provision established for ongoing management of the property for the benefit of the shrew after completion of the project. The BO did include several conservation recommendations, including: (1) that the effects of restoration activities on the shrew be monitored; (2) that an outreach and education program for the shrew be developed; and (3) that a programmatic BO be undertaken that would consider long-term seasonal wetlands maintenance actions. To our knowledge, none of these recommended conservation actions have been undertaken. In balancing the benefits of exclusion against the benefits of designation, we generally consider the extent to which exclusion would result in ongoing benefits that would not otherwise be realized. Because the NAWCA-funded wetlands improvement project is a completed project, and no ongoing management plan has been established for the conservation benefit of the shrew under the associated BO, the Secretary is not exercising her discretion to exclude Unit 2 under section 4(b)(2) of the Act.

(6) *Comment:* Several commenters asked us to exclude Unit 3 based on the completion and implementation of a

habitat management plan (HMP) for the area.

*Our Response:* The Secretary has determined that the benefits of exclusion outweigh the benefits of inclusion of the area identified in Unit 3 as critical habitat. As a result, she has excluded Unit 3 under section 4(b)(2) of the Act. See Exclusions below for further discussion of this exclusion.

(7) *Comment:* Three commenters noted that, contrary to our description, the shrew is included as a covered species under the conservation easement establishing the Coles Levee Ecosystem Preserve, which overlaps most of Unit 4. One commenter added that the easement specifically benefits the shrew by establishing a year-round water supply to the artificial pond near which shrews were first found on the unit.

*Our Response:* Although the easement agreement does not specifically use the term "covered species" to apply to the shrew, the shrew is listed in the easement agreement as a "species of concern" (ARCO and CDFG 1992a, p. 9, Exhibit G p. 5). This qualifies it for certain additional protections beyond those applicable under the agreement to native species generally (ARCO and CDFG 1992a, pp. 7–9). However, these additional measures primarily cover actions that must be taken in association with groundbreaking activities, and do not add protections beyond those typically required for an incidental take permit under the Act.

None of the provisions of the conservation easement, or its associated documents such as the management permit, require or mention a year-round water supply for the artificial pond near which shrews were first found on the unit.

(8) *Comment:* Two commenters asked us to exclude Unit 4 based on: (1) a habitat conservation plan (Elk Hills HCP), which they indicated is being prepared for the nearby Elk Hills Oil Fields; and (2) the location of the unit within the confines of the Coles Levee Ecosystem Preserve.

*Our Response:* The Elk Hills HCP has been in preparation since approximately 2005, and is likely to require several more years for completion. Although the Buena Vista Lake shrew is likely to be a covered species, the Elk Hills HCP is intended primarily to minimize and mitigate impacts to upland species from oil and gas production in the Elk Hills Oil Fields (Live Oak Associates (LOA). 2006, pp. 1–3, 5). The Elk Hills Oil Fields area is a 75 square-mile (sq-mi) (194 square-kilometer (sq-km)) area west of Unit 4. The Elk Hills HCP will encompass the Elk Hills Oil Fields, as well as selected rights-of-way and conservation lands within a buffer area surrounding the oil fields (LOA 2006, pp. 5, 8, 9). Although Unit 4 lies within the buffer area, not all lands within that area will be covered by the Elk Hills HCP. The best information currently available to us does not indicate whether Unit 4 will be among those areas afforded protection or not. Because the Elk Hills HCP is still unfinished with no expected date of completion and because it is unclear at this time whether the Elk Hills HCP will apply to the Coles Levee Unit, we do not consider the Elk Hills HCP to add to the benefits of excluding the unit from critical habitat designation. Accordingly, we are not recommending and the Secretary is not considering that the areas identified as critical habitat within the proposed Elk Hills HCP be excluded under section 4(b)(2) of the Act.

The 6,059-ac (2,452-ha) Coles Levee Ecosystem Preserve was established in 1992 (Aera Energy 2011, p. 1), and is covered by a conservation easement held by the California Department of Fish and Wildlife (CDFW) (formerly the California Department of Fish and Game (CDFG)). Approximately 143 ac (58 ha) of the 270 ac (109 ha) in Unit 4 are within the Preserve. We interpret the comment to apply only to those areas of overlap. The purpose of the easement is to preserve the property in a natural condition, subject to oil and gas operations of the property owner (ARCO and CDFG 1992a, pp. 1, 2; ARCO and CDFG 1992b, p. 1). The easement includes terms under which habitat disrupted or destroyed by oil and gas operations can be mitigated by designation of lands within the property as compensation lands, (ARCO and CDFG 1992a, pp. 3, 4). All lands not otherwise being used for oil and gas operations are subject to various wildlife protection provisions, some of which likely benefit the shrew. Such provisions include: (1) Restrictions on use of the property to wildlife conservation, and to oil and gas exploration and production; (2) various operation restrictions designed to minimize impacts to wildlife; (3) reclamation provisions for areas no longer needed for oil or gas extraction; and (4) phasing out of then-existing agricultural leases (ARCO and CDFG 1992a, pp. 2, 4–6, 10).

A management permit attached to the easement also requires biological monitoring for implementation of the wildlife mitigation measures, and an annual management meeting between CDFW and the landowner (ARCO and CDFG 1992a, Exhibit D, pp. 5, 6). These provisions are still being carried out by Aera Energy, which obtained ownership of the property from ARCO in 1998 (Occidental of Elk Hills 2009, p. 3; Vance 2013, p. 1). However, Aera Energy does not have an active management permit for the area (Vance 2013, p. 1), so the requirements established by the management permit written for ARCO (Exhibit D) are presumably not enforceable against Aera.

In considering whether to exclude a particular area from designation, such as those portions of Unit 4 that are within the Coles Levee Ecosystem Preserve, we compare the benefits for the listed species of including the area, to the benefits for the listed species of excluding the area (see Exclusions, below). In this case, the shrew would be unlikely to benefit from exclusion. The conservation easement establishing the Coles Levee Ecosystem Preserve was not designed to protect or enhance riparian and wetland habitat. No partnerships exist between ourselves and other entities to advance shrew conservation in the area, so designation does not have the potential to disrupt such partnerships; and the Preserve will continue to operate in the same manner whether we exclude it from designation or not.

We have expressed concern in the past regarding the potential impacts of designation on CDFW's ability to manage for the shrew (70 FR 3457). CDFW is not currently managing for the shrew in the area, with the exception of avoidance measures established by the easement agreement related to groundbreaking activities (as discussed in our response to the previous comment) (Vance 2013, p. 1). Additionally, we expect incremental costs resulting from critical habitat designation in Unit 4 (in the form of additional time spent for Section 7 consultation) to be low, and to be borne primarily by ourselves, any other involved Federal agency, and the project proponent rather than by CDFW (IEc 2013, pp. 4–4, 4–5, 4–9, 4–10). We therefore expect any additional regulatory burden of critical habitat on CDFW to be minimal. In contrast, designation of the area may benefit the shrew by publicizing the shrew's presence and habitat requirements at the site, thereby allowing present and future landowners to better take those requirements into account in their land-use planning. Accordingly, we are not recommending and the Secretary is not considering that the areas identified as critical habitat within the Coles Levee Unit be excluded under section 4(b)(2) of the Act.

(9) *Comment:* Several commenters stated that certain proposed units should not be included in the final critical habitat designation because they are already subject to adequate management or protection, and therefore fail to meet the Act's definition of critical habitat as areas that "may require special management considérations or protection" (15 U.S.C. 1532(5)(A)(i)). Another commenter asked us to include all proposed areas, regardless of adequate management. The commenter noted that two courts, including the 9th Circuit, have indicated that adequate management is not a valid reason to avoid designation.

*Our Response:* We no longer consider adequate management or protections to be a sufficient basis for not designating an area as critical habitat. However, if an area has adequate management or protections, and if designation of critical habitat in the area may compromise the conservation of the species in some manner, then the Secretary may determine that the benefits of excluding the area from designation outweigh the benefits of inclusion (see Exclusions Based on Other Relevant Impacts, below).

(10) *Comment:* Several commenters asked us to exclude portions of Units 2 through 5 based on expected economic impacts, and on perceived impacts to public health and safety. The commenters were concerned that health and safety impacts would result from potential disruptions to water conveyance through the units, and to operation and maintenance of existing facilities such as natural gas pipelines. Other commenters asked us to designate all proposed critical habitat, and to make no exclusions.

*Our Response:* We are required by section 4(b)(2) of the Act to take into account the economic and other relevant impacts of critical habitat designation. The Secretary may account for those impacts by excluding any area for which the benefits of exclusion outweigh the benefits of designation, so long as this will not result in extinction of the species. Areas that do not contain any physical or biological features for the species, but that are within critical habitat units, do not constitute critical habitat and need not be excluded.

Critical habitat only directly affects Federal agencies. It does not affect the normal operation, maintenance, repair, or replacement of existing non-Federal facilities unless activities involve Federal agencies (permitting, funding). The delivery of water through existing canals, or of natural gas through existing pipes, on private or state land constitutes the normal operation of those structures, and would not trigger section 7 consultation regardless of whether those structures were located within critical habitat. Additionally, some facilities for which exclusions were requested lack all the physical or biological features identified for the shrew, and so do not constitute critical habitat despite being located within the boundaries of a unit (see comment 11, below). These areas were included within the boundaries of the units because of the difficulty of removing these areas due to mapping constraints. Accordingly, with the exception of Unit 3 (see Exclusions below) the Secretary is not exercising her discretion to exclude any areas based on economic or other impacts.

(11) *Comment:* Various commenters asked us to redraw portions of Units 2 through 5 to avoid areas without any physical or biological features or their specific PCEs, such as vegetation-free canals, roads, and pipeline right-of-ways. Additionally, one commenter provided survey information to indicate that several basin areas in Unit 3 are without PCEs for the shrew. Another commenter stated that, based on his first-hand knowledge of the area, most of Unit 2 lacks an overstory of willows and cottonwoods, and that therefore the area does not qualify as critical habitat due to lack of a PCE.

*Our Response:* Based on the information provided, we reevaluated the proposed critical habitat boundaries in Units 2 through 5. As a result, we redrew the maps for Units 2 and 5 to remove two large, primarily concrete-lined canals that do not contain the physical or biological features required by the shrew, or any specific PCEs. In most cases, however, the redrawing of critical habitat units to avoid individual requested areas would require the use of impracticably fine mapping scales. Accordingly, we have removed such areas lacking the physical or biological features from the designation textually, by including the following paragraph in the regulatory description of Buena Vista Lake shrew critical habitat under the Regulation Promulgation section below: "Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located" as of the effective date of the designation.

An overstory of willows and cottonwoods is not a PCE for the Buena Vista Lake shrew. Rather, it is an example of plants that may be present in areas exhibiting the first PCE: riparian or wetland communities containing a complex vegetative structure, with a thick cover of leaf litter or dense mats of low-lying vegetation. Additionally, a given area need only support one of the three PCEs in order to be eligible for designation as critical habitat. As discussed under *Unit 2: Goose Lake Unit,* below, Unit 2 provides suitable moisture for the shrew (PCE 2), as indicated by its scattered freshwater marsh and riparian areas (some of which have been recently restored), and by the intermittent use of the area as a groundwater recharge basin. It also supports a complex vegetative structure (PCE 1) in many areas, including *Frankenia spp.* (frankenia), *Allenrolfea occidentalis* (iodine bush), and *Suaeda spp.* (seepweed) along the slough channels; *Typha spp.* (cattails), *Scirpus spp.* (bulrushes), and *Distichilis spp.* (saltgrass) in intermittently saturated areas; and dense mats of saltgrass and other shrubs in the southern portion of the unit. As is true of all the units, we lack direct evidence of a consistent and diverse supply of prey for the shrew in the unit (PCE 3), but reasonably infer such a supply based on the existence in the unit of habitat that would support it. Such habitat is demonstrated by the presence of the other two PCEs

Because we are excluding Unit 3 in its entirety under section 4(b)(2) (see Exclusions, below), we do not reach the question of whether the unit should be redrawn to reflect a lack of PCEs in certain basins.

(12) *Comment:* Several commenters asked us to redraw Unit 5 to avoid the New Rim Ditch, levee, and adjacent roadway. One commenter also disagreed with our statement in the proposed designation that the moisture regime in Unit 5 is maintained by runoff from the New Rim Ditch, and submitted a report from an engineer who inspected the site and concluded such runoff or seepage was unlikely because, based on the high water mark in the ditch, the water in the ditch remains lower than the surrounding land.

*Our Response:* The bounds of Unit 5, as drawn for the proposed rule and finalized here, do not include the New Rim Ditch and its associated levee and roadway. We have removed reference to runoff from the New Rim Ditch as a contributing factor to the moisture regime in the unit.

(13) *Comment:* Several commenters expressed concern that critical habitat designation would limit various land use practices including: mosquito abatement procedures; groundwater recharge practices around Bakersfield; water conveyance to surrounding farmland; oil and gas development; and flood management.

*Our Response:* Critical habitat designations do not affect ongoing land

use practices conducted without the involvement of a Federal agency. Consultation on critical habitat is only triggered when there is a Federal nexus (action carried out, funded, or authorized by a Federal agency). None of the activities listed above require Federal permits or other direct Federal action when carried out on non-Federal lands. Accordingly, we do not expect critical habitat designation to affect these activities.

(14) *Comment:* One commenter indicated that, based on recent trapping surveys, only 6.5 ac (2.6 ha) of habitat in Unit 2 was occupied by the shrew, and the shrew trapped at those locations may have been the adorned ornate shrew (*Sorex ornatus ornatus*).

*Our Response:* The report for the trapping survey in question states that it was not possible from the trapping effort to determine the abundance or distribution of shrews on the site, but that the distance between capture points suggested they may be widely distributed (Uptain *et al.* 2004, p. 8). We drew the bounds of Unit 2 to encompass those areas in the vicinity of the trapping locations that exhibit at least one of the three PCEs essential to the Buena Vista Lake shrew. We characterize shrews trapped in that area as Buena Vista Lake shrews because the area is within the mesic (moist) lower elevation range of the Buena Vista Lake shrew rather than the semi-arid higher elevation range of the adorned ornate shrew (77 FR 40709). Genetic tests conducted in 2006 on samples from the Goose Lake population are consistent with this characterization (Maldonado 2006, p. i; Service 2011, pp. 9, 10).

(15) *Comment:* One commenter expressed concern that no standardized survey methodology was employed for the identification of areas occupied by Buena Vista Lake shrews.

*Our Response:* We are required by section 4(b)(2) of the Act to designate critical habitat on the basis of the best scientific data available. The surveys and other information we used to determine occupied locations constitute those best data, despite the lack of a standardized survey methodology.

(16) *Comment:* Two commenters thought we should include additional habitat in the designation to provide for recovery. One of those commenters noted that the areas proposed do not meet the recovery recommendations of our recovery plan for Upland Species of the San Joaquin Valley, California ("Recovery Plan", Service 1998, p. 192).

*Our Response:* We note that, normally, it is not necessary for critical habitat to coincide with recovery plan recommendations in order to meet its requirements under the Act. Recovery plans, when available, constitute part of the best scientific evidence that we must consider when designating critical habitat. However, recovery plans do not themselves identify areas with features essential to the conservation of a species. They can therefore inform, but may not determine, the critical habitat designation process.

In addition, the comment regarding the recovery plan was made in response to our 2009 proposed designation, which included approximately 4,649 ac (1,881 ha) in five units. The Recovery Plan recommended three or more disjunct occupied sites comprising a total of 4,940 ac (2,000 ha). Our revised proposed designation of July, 2012 (77 FR 40705) included two additional units, and also increased the acreage of one of the existing units (Unit 4). Accordingly, the revised proposal included approximately 5,182 ac (2,098 ha) in 7 units, and thus met the acreage recommendations of the Recovery Plan. We are completely excluding one of those units (Unit 3) from critical habitat designation (see Exclusions, below), but the site retains the physical and biological habitat features that the shrew requires, and will be managed for the shrew's conservation. We therefore consider the final critical habitat designation to comport well with the recovery plan recommendations.

(17) *Comment:* One commenter requested the legal descriptions of the units.

*Our Response:* The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *http://criticalhabitat.fws.gov/crithab/*, and at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, and at the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**, above).

(18) *Comment:* One commenter noted that the DEA was not available during the comment period immediately following publication of the 2012 revised proposed critical habitat designation (77 FR 40705). The commenter was concerned that: (1) We would proceed with critical habitat designation without completing the DEA; (2) commenters on the proposed rule would not have the benefit of information provided by the DEA; and (3) the opening of a separate comment period subsequent to completion of the DEA would improperly incrementalize the notice and comment process.

*Our Response:* We published a notice in the **Federal Register** making available our completed DEA on March 5, 2013 (78 FR 14245). The notice opened a 60-day comment period for comments on either the DEA or on the July 10, 2012, proposed designation (77 FR 40706). Commenters therefore have had the benefit of reviewing both the proposed designation and a completed DEA during an open comment period and were able to comment on the proposed rule, the revised proposed rule, the DEA, and all associated documents in a nonincrementalized fashion.

(19) *Comment:* Several commenters stated that the critical habitat designation provides no conservation benefit for the shrew, as indicated both by our statements to that effect in our 2004 proposed and 2005 final designations, and by the fact that the DEA estimates critical habitat to result in no additional conservation actions beyond those that would have been implemented due to the shrew's status as an endangered species.

*Our Response:* Our 2004 and 2005 documents indicated our opinion at the time that critical habitat provides "little" additional protection "in most circumstances." The statement thus does not indicate that critical habitat provides no additional protection to the shrew. Additionally, while the DEA does state that we are "unable to foresee a circumstance in which critical habitat would change the conservation efforts recommended for the shrew" (IEc 2013, p. ES–4), that does not account for benefits resulting from the educational and notification value of critical habitat. For instance, by identifying and publishing here the physical and biological habitat features required by the shrew, we inform landowners and Federal agencies of the shrew's habitat needs prior to the beginning of any subsequent consultations, thereby allowing them to plan for, and better incorporate, appropriate avoidance and minimization measures into their initial project descriptions.

(20) *Comment:* Several commenters noted that section 2(c)(2) of the Act requires us to "cooperate with State and local agencies to resolve water resource issues in concert with the conservation of endangered species." The commenters stated that critical habitat designation for the shrew would raise such issues, and that we must therefore cooperate with State and local agencies (to a greater extent than we have already) in order to resolve them.

*Our Response:* We do not expect the designation of critical habitat for the shrew to raise water resource issues. Water deliveries through existing canals

in designated units constitute non-Federal actions, and so do not require consultation for impacts to critical habitat. Construction of new canals within critical habitat would potentially affect the shrew directly, and so would trigger consultation regardless of critical habitat designation.

(21) *Comment:* One commenter stated that we did not vigorously defend our 2005 final critical habitat designation, and that in reaching a settlement agreement to repropose critical habitat we excluded many affected parties from the process.

*Our Response:* By reaching a settlement agreement on the designation of critical habitat, we have not excluded any affected parties from the overall process of critical habitat designation. In fact the opposite may be true as we have had four comment periods totaling 140 days and two public hearings on the 2009 proposed critical habitat and 2012 revision.

(22) *Comment:* One comment stated that the economic analysis should provide an analysis of the monetary benefits of critical habitat designation. The comment describes, that while Executive Order 12866 directs Federal agencies to provide an assessment of both the social costs and benefits of proposed regulatory actions, the Draft Economic Analysis (DEA) fails to evaluate the benefits and only calculates the costs. The comment further stated that methodologies exist to calculate both direct and ancillary benefits, such as maintaining open space, maintaining or revegetating riparian areas for protecting and improving water quality and quantity, preservation of native habitat and migration corridors for other species, and protection of clean air. Because these and other benefits of critical habitat designation were not quantified or detailed qualitatively, the comment asserted that the DEA is inadequate and the Secretary should not rely on it to exclude any areas from critical habitat.

*Our Response:* As described in Chapter 5 of the DEA, critical habitat designation is not expected to generate: (1) Additional conservation measures for the Buena Vista Lake shrew; (2) changes in economic activity; or (3) changes to land management. Absent any changes in the above, incremental economic benefits are not expected to result from the designation of critical habitat.

(23) *Comment:* One comment stated that the term "ancillary benefits" in the DEA appears to minimize the importance of all coincident benefits of critical habitat designation.

*Our Response:* The DEA defines "ancillary benefits" consistent with the Office of Management and Budget's (OMB's) Circular A–4, which provides Federal Agencies with guidelines for conducting economic analyses of regulations. Specifically section 2.3.3 of the DEA defines ancillary benefits as, "favorable impacts of a rulemaking that are typically unrelated, or secondary, to the statutory purpose of the rulemaking." Chapter 5 of the DEA clarifies that the primary intended purpose of the critical habitat designation is to support the conservation of the Buena Vista Lake shrew. Thus, any other potential benefits would be considered ancillary benefits of the rulemaking.

(24) *Comment:* Two comments stated that the DEA does not analyze the cumulative effects of critical habitat designation. One commenter stated that there would be indirect and cumulative economic and social effects of lost local water resources. In addition, a comment stated that there will be cumulative effects on water management activities, farming, and other activities on neighboring properties of designating all four units collectively.

*Our Response:* Chapter 1 of the DEA describes that the geographic scope of the analysis includes all the units of proposed critical habitat, as described in the proposed rule. The analysis therefore considers the potential economic impact of designating all units as critical habitat for the species. Further, as discussed in Chapter 4 of the DEA, we are unable to foresee a circumstance in which critical habitat designation would change the conservation efforts recommended for the shrew. Consequently, the incremental impacts quantified in the DEA are limited to additional administrative costs of section 7 consultation. Critical habitat designation is not anticipated to affect water management, farming and other activities within or adjacent to the critical habitat area.

(25) *Comment:* One comment stated that the economic analysis should include all occupied and suitable unoccupied habitat and not rely on the draft critical habitat as described in the proposed rule. Another comment asserted that the economic analysis fails to include all critical habitat areas for the recovery of the species.

*Our Response:* The economic analysis evaluates potential impacts of critical habitat designation in the areas in which we have proposed critical habitat in the proposed rule. The proposed rule did not include any proposed, unoccupied habitat for the species; accordingly, the economic analysis does not consider impacts of designating these areas as critical habitat. We have determined that the areas designated as critical habitat are sufficient to meet the standards of conserving the species and its habitat and other unoccupied areas were not needed for the species.

(26) *Comment:* One comment stated that the conclusion in the DEA that conservation efforts under the Draft Kern County Valley Floor Habitat Conservation Plan (HCP) are unlikely to change due to critical habitat designation is incorrect. The comment asserts that, when critical habitat is designated, we and California Department of Fish and Wildlife staff review designated lands under heightened scrutiny, resulting in greater survey, take avoidance, and mitigation requirements for any potential project. Similarly, the comment states, both agencies will view properties that are proximate to critical habitat lands as being subject to similar scrutiny and will be concerned about higher mitigation and avoidance requirements.

*Our Response:* As discussed in Section 4.2.6 of the DEA, we anticipate that the same conservation efforts for the shrew will be recommended for the Kern County Valley Floor HCP regardless of whether critical habitat is designated. Specifically, because locations occupied by the shrew are so rare, we expect to recommend protection of such locations for the HCP whether or not CH is designated. As such, critical habitat is not expected to change any survey, mitigation, or other conservation efforts that we recommend be incorporated into the HCP for the shrew.

(27) *Comment:* According to one comment provided on the DEA, critical habitat could adversely affect agricultural productivity and the ability of the affected agricultural and urban water districts to operate if water deliveries are restricted. The comment further stated that the entire City of Bakersfield Kern Fan Water Recharge Unit is proposed for designation and that designation would result in restricted groundwater recharge practices that would adversely affect the ability of the City to provide adequate public drinking water supplies. The commenter stated that the analysis should consider the economic impacts of restricting water supply operations and maintenance upstream of the proposed critical habitat.

*Our Response:* As described in Section 3.3 of the DEA, the City of Bakersfield owns all acres included in proposed Unit 3, which is located entirely within the Kern Fan Water

Recharge Area (KFWRA). The City operates the site for the purposes of flood control, wildlife conservation, limited access public uses, water conservation, and mineral production. In 2004, the City developed a Buena Vista Lake shrew management plan for the site and has managed the area according to this plan since 2005, including surveying for the species, limiting public access, terminating livestock grazing, zoning and managing the entire area as open space, and engaging in water-spreading activities. We do not expect review of this management plan following critical habitat to result in recommendations for changes in shrew conservation. As a result, no additional restrictions to groundwater recharge practices or water supply operations and maintenance are anticipated to result from the designation of critical habitat for the shrew.

(28) *Comment:* One comment expressed concern that the critical habitat designation may adversely affect the duties of the District to manage the Outlet Canal of the Coles Levee in Unit 4 for the purposes of water delivery and flood control. The comment noted that the current management regime of the Canal and Coles Levee Preserve already provide conservation benefits to the shrew and that the District is in the process of preparing a detailed management plan for the shrew. In addition, the comment stated that the current management of the artificial pond on the Coles Levee Preserve according to a conservation easement held by the California Department of Fish and Wildlife is designated to benefit the shrew.

*Our Response:* Section 3.4 of the DEA identifies Aera Energy, Inc. as the manager of 223 ac (90 ha) of proposed critical habitat in Unit 4. Consistent with this comment letter, the Environmental Health and Safety Advisor of Aera Energy, Inc. confirmed that the proposed critical habitat is located in a slough within which preserve managers implement conservation for several species, including the shrew. The DEA also describes that wells within the proposed Unit are managed under a conservation easement agreement that incorporates conservation practices that are similar to those that we recommended through section 7 consultation for other activities. This comment letter adds that management of the Outlet Canal also considers impacts on shrews. It is because activities in Unit 4 are already managed for the conservation of the species that no section 7 consultations have taken place in Unit 4 that consider the shrew. In the case that a Federal nexus exists triggering section 7 consultation on activities in this area in the future, we may review these activities, including operations of the Outlet Canal or management of the artificial pond or energy developments. However, we do not anticipate that critical habitat designation will significantly change the outcome of any section 7 consultations. Although we will fully evaluate the effects of future Federal actions being consulted upon to ensure that the action does not result in adverse modification to designated critical habitat, we expect any recommendations we make to avoid jeopardy to the species will also in most instances avoid adverse modification to critical habitat.

(29) *Comment:* One comment noted that the DEA statement in section 3.4 that, "Unit 4 is located entirely within the Coles Levee Ecosystem Preserve," is incorrect. The commenter stated that therefore the economic analysis likely ignores economic impacts to other landowners and easement holders in Unit 4.

*Our Response:* The referenced sentence in Section 3.4 is corrected in the Final Economic Analysis (FEA) to reflect that Aera Energy manages a portion of Unit 4 as the Coles Levee Ecosystem Preserve. Activities occurring within Unit 4, however, are currently managed with shrew conservation in mind under various conservation easements and management plans, as described above. Further, we expect that any conservation recommendations we may make as part of consultation on activities in this area in the future would be made regardless of critical habitat designation. Consequently, the error highlighted in this comment does not affect the conclusions of the DEA.

(30) *Comment:* A comment stated that the DEA underestimates economic impacts of critical habitat designation, asserting that critical habitat designation restricts the free use of property, including water and water rights, and therefore imposes an opportunity cost on property owners.

*Our Response:* Chapter 2 of the DEA describes the regulatory requirements of critical habitat designation as follows: "When critical habitat is designated, section 7 requires Federal agencies to ensure that their actions will not result in the destruction or adverse modification of critical habitat (in addition to considering whether the actions are likely to jeopardize the continued existence of the species)." As such, critical habitat designation does not directly restrict or regulate private activities occurring on private lands absent Federal funding or permitting. In the case of Buena Vista Lake shrew critical habitat, activities that may result in the destruction or adverse modification of critical habitat would likely also result in jeopardy to the species. Critical habitat is therefore not expected to result in additional recommendations for conservation for the species and does not further restrict, for example water rights, beyond effects generated by the listing of the species. The DEA acknowledges that, in some cases, critical habitat may generate indirect impacts on property owners, for example in the case that the designation triggers changes in State or local regulations or land management practices. The DEA did not, however, identify such changes as likely to result from critical habitat designation for the Buena Vista Lake shrew.

(31) *Comment:* A comment stated that the DEA fails to address the economic report prepared by Dr. Sunding and submitted as a comment to the previous (2004) proposed critical habitat and associated economic analysis. Dr. Sunding concluded that critical habitat for the Buena Vista Lake shrew could "have the potential to exceed $21.8 million annually with a present value of over $311 million."

*Our Response:* The analysis developed by Dr. Sunding is based on assumptions regarding restrictions on water access due to the designation of critical habitat. Specifically, the analysis considers a scenario in which the banked water from the Kern River and Friant-Kern Canal in Unit 3 are made unavailable to the Pioneer Project, Kern Water Bank, and Berrenda Mesa Project. The analysis then estimates the "replacement value" of this water at a rate of $209 per acre-foot for a total of $9.1 million per year (43,337 acre-feet banked annually). The analysis then evaluates "secondary impacts" resulting from timing of water supply and economic dislocation, assuming a revenue multiplier of 2.2 (essentially bringing the $209 per acre-foot estimate to $500 per acre-foot). The resulting present-value impacts are in excess of $311 million ($21.8 million annually).

As described above and detailed in Chapter 4 of the DEA, critical habitat designation is not anticipated to result in additional conservation for the shrew (i.e., we do not anticipate critical habitat to result in additional restrictions on water access). The assumption that the banked water from the Kern River and Friant-Kern Canal in Unit 3 would be inaccessible because of critical habitat designation is therefore not an expected impact of critical habitat designation. Consequently, the results of Dr.

Sunding's evaluation are not considered impacts of critical habitat designation in the DEA.

(33) *Comment:* According to one comment, proposed Unit 5 consists of two separate legal parcels separated by a north south canal that is capable of receiving water flows through the New Rim Ditch and conveying supplemental water to 940 ac (380 ha) of nearby land. In the case that the designation results in the canal becoming not usable, up to 6,400 ac (2,590 ha) of farm ground will be affected. The comment asserted that this could result in hundreds of thousands of dollars in reconstruction costs for an alternate delivery system in addition to the impact on the 6,400 ac (2,590 ha) of farmland.

*Our Response:* As described above and in Chapter 4 of the DEA, critical habitat designation for the shrew is not expected to result in additional restrictions on water use or access. As such, we do not anticipate the need to reconstruct alternate delivery systems because of critical habitat designation.

(34) *Comment:* One comment stated that the DEA fails to appreciate the loss inherent in the need for buffer zones around the critical habitat, which in essence become "unofficial" critical habitat requiring another buffer and so on.

*Our Response:* The DEA evaluates potential economic impacts on projects or activities that may result in the destruction or adverse modification of critical habitat. This includes projects or activities outside of the critical habitat area that may affect the primary constituent elements within the critical habitat area. The designation of critical habitat does not inherently result in the creation of buffer zones in areas adjacent to the designated critical habitat, and so would not properly be a subject of analysis in the Economic Analysis at either the draft or final stage.

(35) *Comment:* A comment submitted by Southern California Gas (SoCalGas) clarifies that the San Joaquin Valley (SJV) HCP, if finalized, will incorporate conservation for the Buena Vista Lake shrew as the species is known to occur in this area. The comment notes that page 3–13 of the DEA describes our uncertainty with respect to the nature of Buena Vista Lake shrew conservation measures that SoCalGas plans to incorporate into the HCP. SoCalGas commented that it intends to perform preactivity surveys in suitable Buena Vista Lake shrew habitat, establish exclusion zones around suitable habitat, and provide biological monitors during construction, as well as restore or compensate for disturbed habitat.

*Our Response:* The FEA incorporates the clarifications from SoCalGas with respect to the SJV HCP.

(36) *Comment:* One comment stated that the DEA does not recognize costs to ourselves resulting from the cycle of critical habitat rulemaking and litigation that we identified in the 2005 final rule as taking up a significant portion of the our budget.

*Our Response:* The purpose of the economic analysis is to identify the incremental impacts associated with the designation of critical habitat. Although the costs of revising or re-doing critical habitat based on litigation is of concern and can require significant time and resources, we cannot predict when these costs may occur or to what degree in the future. Additionally, identifying and including these types of costs are outside the scope of our requirements for determining the economic impacts for a specific critical habitat designation.

**Summary of Changes From the Proposed Rule**

In preparing our final designation of critical habitat for the Buena Vista Lake shrew, we reviewed comments received regarding the 2009 proposed designation, the 2012 revised proposed designation, the initial DEA of 2011, and the revised DEA of 2013. We revised the map unit labels in our 2013 document noticing the availability of the revised DEA, and we keep those revised labels in this final designation. Additionally, this final designation reflects minor clarifications in the text of the 2012 revised proposal, as well as the following more substantive changes:

(1) Under section 4(b)(2) of the Act, the Secretary is excluding proposed Unit 3 (the Kern Fan Recharge Unit). For more information, refer to Exclusions Based on Other Relevant Impacts, below.

(2) We have refined our mapping boundaries by removing large canals lacking PCEs from Units 2 and 5 (Goose Lake and Coles Levee Units).

(3) We evaluated any suggested changes and clarifications we received from the public during our public comment periods and incorporated those changes into this final designation as appropriate.

**Critical Habitat**

*Background*

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with ourselves, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or

biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

*Physical or Biological Features*

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the Buena Vista Lake shrew from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the revised proposed rule to designate critical habitat published in the **Federal Register** on July 10, 2012 (77 FR 40706), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on March 6, 2002 (67 FR 10101); in the 2011 5-Year Review and in the Recovery Plan for Upland Species of the San Joaquin Valley, California (*http://ecos.fws.gov*). We have determined that the Buena Vista Lake shrew requires the following physical or biological features:

*Space for Individual and Population Growth and Normal Behavior*

Historically, the Buena Vista Lake shrew was recorded in association with perennial and intermittent wetland habitats along riparian corridors, marsh edges, and other palustrine (marsh type) habitats in the southern San Joaquin Valley of California. The shrew presumably occurred in the moist habitat surrounding wetland margins in the Kern, Buena Vista, Goose, and Tulare Lakes on the valley floor below elevations of 350 feet (ft) (107 meters (m)) (Grinnell 1932, p. 389; Hall 1981, p. 38; Williams and Kilburn 1984, p. 953; Williams 1986, p. 13; Service 1998, p. 163). With the draining and conversion of the majority of the Buena Vista Lake shrew's natural habitat from wetland to agriculture, and the channelization of riparian corridors for water conveyance structures, the vegetative communities associated with the Buena Vista Lake shrew were lost or degraded, and nonnative plant species replaced those associated with the shrew (Grinnell 1932, p. 389; Mercer and Morgan, 1991 p. 9; Griggs 1992, p. 11; Service 1998, p. 163). Open water does not appear to be necessary for the survival of the shrew. The habitat where

the shrew has been found contains areas with both open water and mesic environments (Maldonado 1992, p. 3; Williams and Harpster, 2001 p. 12). However, the availability of water contributes to improved vegetation structure and diversity, which improves cover availability. The presence of water also attracts potential prey species, improving prey diversity and availability.

Current survey information has identified eight areas where the Buena Vista Lake shrew has been found in recent years (Maldonado 2006, p. 16; Williams and Harpster 2001, p. 1; ESRP 2005, p. 11): the former Kern Lake Preserve (Kern Preserve) on the old Kern Lake bed, the Kern Fan water recharge area, the Coles Levee Ecological Preserve (Coles Levee), the Kern National Wildlife Refuge (Kern NWR), the Goose Lake slough bottoms (Goose Lake), the Atwell Island land retirement demonstration site (Atwell Island), the Lemoore Wetland Reserve, and the Semitropic Ecological Reserve (also known as Main Drain or Chicca and Sons). Based on most areas in which Buena Vista Lake shrews have been found, the shrew appears to strongly prefer marshy areas or areas with moist riparian habitat.

The single occupied site lacking these characteristics is Atwell Island, which has no standing water or riparian vegetation, and which is surrounded by intensively farmed cropland. As discussed in our proposed critical habitat designation (77 FR 40706), we speculate that shrews may persist at Atwell Island by inhabiting rodent burrows and deep cracks in the soil, both of which may provide additional moisture, invertebrate prey, and cover for the shrews. However, we currently lack sufficient information to determine the long-term suitability of this habitat type for Buena Vista Lake shrews, and do not currently believe that this type of habitat is essential to the conservation of the species and so have not designated the Atwell Island site as critical habitat.

*Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements*

The specific feeding and foraging habits of the Buena Vista Lake shrew are not well known. In general, shrews primarily feed on insects and other animals, mostly invertebrates (Harris 1990, p. 2; Maldonado 1992, p. 6). Food probably is not cached and stored, so the shrew must forage periodically day and night to maintain its high metabolic rate (Burt and Grossenheider 1964, p. 3).

Vegetation in the marshy and moist riparian communities described above provide a diversity of structural layers and plant species and likely contribute to the availability of prey for shrews. Therefore, conservation of the shrew should include consideration of the habitat needs of prey species, including structural and species diversity and seasonal availability. Shrew habitat must provide sufficient prey base and cover from which to hunt in an appropriate configuration and proximity to nesting sites. The shrew feeds indiscriminately on available larvae and adults of several species of aquatic and terrestrial insects. An abundance of invertebrates is associated with moist habitats, such as wetland edges, riparian habitat, or edges of lakes, ponds, or drainages that possess a dense vegetative cover (Owen and Hoffmann 1983, p. 3). Therefore, based on the information above, we identify a consistent and diverse supply of invertebrate prey to be an essential component of the biological features essential for the conservation of the Buena Vista Lake shrew.

*Cover or Shelter*

The vegetative communities associated in general with Buena Vista Lake shrew occupancy are characterized by the presence of (but are not limited to): *Populus fremontii* (Fremont cottonwood), *Salix spp.* (willows), *Salicornia spp.* (glasswort), *Elymus spp.* (wild-rye grass), *Juncus spp.* (rush grass), and other emergent vegetation (Service 1998, p. 163). These communities are present at all sites but Atwell Island. In addition, Maldonado (1992, p. 6) found shrews in areas of moist ground that was covered with leaf litter and near other low-lying vegetation, branches, tree roots, and fallen logs; or in areas with cool, moist soil beneath dense mats of vegetation that were kept moist by proximity to the water line. He described specific habitat features that would provide suitable habitat for the shrew: (1) Dense vegetative cover; (2) a thick, three-dimensional understory layer of vegetation and felled logs, branches, and detritus or debris; (3) heavy understory of leaf litter with duff overlying soils; (4) proximity to suitable moisture; and (5) a year-round supply of invertebrate prey. Williams and Harpster (2001, p. 12) determined that, although moist soil in areas with an overstory of willows or cottonwoods appeared to be favored, they doubted that such overstory was essential.

The communities in which Buena Vista Lake shrews have primarily been found are characterized by dense mats of leaf litter or herbaceous vegetation. The insect prey of the shrew also thrives in the dense matted vegetation. Although shrews have also been found at Atwell Island, in an area largely devoid of vegetation but characterized by deep cracks in the soils, little is currently known of the shrew or habitat needs at this site.

The Buena Vista Lake shrew is preyed upon by small mammalian predators as well as by avian predators (Maldonado 1992, p. 7). Dense vegetative structure provides the cover or shelter essential for evading predators. It also serves as habitat for breeding and reproduction, and allows for the protection and rearing of offspring and the growth of adult shrews. Therefore, based on the information above, we identify riparian and wetland communities, and areas with suitable soil moisture that support a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation to be the essential components of the physical and biological features essential to the conservation of the species.

*Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring*

Little is known about the reproductive needs of the Buena Vista Lake shrew. The breeding season begins in February or March and ends in May or June, but can be extended depending on habitat quality and available moisture (Paul Collins 2000, p. 12). The edges of wetland or marshy habitat provide the shrew with a sheltered and hospitable environment, and provide a prey base that enables the shrew to give birth and raise its young. The dense vegetative understory also provides young with cover from predators. Dense vegetation also allows for the soil moisture necessary for a consistent supply of terrestrial and aquatic insect prey (Freas 1990, p. 8; Kirkland 1991, p. 15; Maldonado 1992, p. 3; Maldonado *et al.* 1998, p. 1; Ma and Talmage 2001, p. 123).

*Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species*

Preserving what little habitat remains for the Buena Vista Lake shrew is crucial to the survival of the species. Many factors negatively impact and restrict the shrew and its habitat, including selenium toxicity, habitat fragmentation, urban development, and the effects of climate change. The combined effects of climate change and habitat fragmentation have put immense pressure on species in highly altered or developed areas like the San Joaquin

Valley (Hannah *et al.* 2005, p. 4). Development, draining of wetlands, or the conversion of areas to agriculture has restricted the species to small islands of habitat with little to no connectivity or opportunity for expansion of its range. Climate change is a particular challenge for a variety of species because the interaction between additional stressors associated with climate change and current stressors could push species beyond their ability to survive (Lovejoy 2005, pp. 325–326), including the Buena Vista Lake shrew.

*Climate Change*

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms "climate" and "climate change" are defined by the Intergovernmental Panel on Climate Change (IPCC). The term "climate" refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (such as, temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. (For these and other examples, see IPCC 2007a, p. 30; and Solomon *et al.* 2007, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is "very likely" (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529) (also see IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation; and IPCC 2011 (entire) for a summary of observations and projections of extreme climate events).

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Current climate change projections for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; IPCC 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504). Climate projections for smaller subregions such as California remain uncertain. However, modeling of hydrological responses to potential climate change in the San Joaquin watershed suggests that the hydrological system is very sensitive to climatic variations on a monthly and annual basis, with changes in crop phenology and water use suggested (Ficklin *et al.* 2009, pp. 25–27).

Use of downscaled climate modeling for the Sacramento-San Joaquin River Basin shows projected warming, with substantial decadal and interannual variability and altered streamflow seasonality in the southern San Joaquin Valley, suggesting that water infrastructure modifications would be needed to address changing conditions (Vanrheenen *et al.* 2004, pp. 1, 265–279). Due to the Buena Vista Lake shrew's reliance on dense riparian vegetation and adequate moisture in wetland areas, either increased drying of its home range or changes in water delivery practices that reduce water runoff could negatively affect the shrew, while increases in runoff could benefit the shrew. Regardless of the uncertainty of the specific effects of climate change on the Beuna Vista Lake shrew, the current information does point to the general negative effects of areas being dryer and more unpredictable as far as precipitation and water availability. As a result, the effects of climate change overall will most likely be negative for the shrew and its habitat.

Primary Constituent Elements for the Buena Vista Lake Shrew

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the shrew in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-

history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the shrew are:

Permanent and intermittent riparian or wetland communities that contain:

- A complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation. Associated plant species can include, but are not limited to, Fremont cottonwoods, willows, glasswort, wild-rye grass, and rush grass. Although moist soil in areas with an overstory of willows or cottonwoods appears to be favored, such overstory may not be essential.
- Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semipermanent water; and
- A consistent and diverse supply of prey. Although the specific prey species used by the Buena Vista Lake shrew have not been identified, ornate shrews are known to eat a variety of terrestrial and aquatic invertebrates, including amphipods, slugs, and insects.

*Special Management Considerations or Protections*

When designating critical habitat, we assess whether specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection (16 U.S.C. 1536(3)(5)(A)(i)).

All designated critical habitat units will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of the Buena Vista Lake shrew. Special management considerations or protection may be required to minimize habitat destruction, degradation, or fragmentation associated with such threats as the following: Changes in the water supply allocations, water diversions, flooding, oil and gas extraction, nonnative vegetation, and agriculture. For example, the Coles Levee area is within the boundaries of a proposed oil and gas exploration proposal. Agricultural pressures to convert land to agriculture remain in the southern San Joaquin Valley, with agricultural conversion to orchards noted to have occurred recently in the general area.

The designated units are located in areas characterized by large-scale agricultural production, and consequently, the units may be exposed to a number of pesticides, which could detrimentally impact the species. The Buena Vista Lake shrew currently exists on small remnant patches of natural habitat in and around the margins of a landscape that is otherwise dominated by agriculture. The Buena Vista Lake shrew could be indirectly exposed to pesticides from drift during spraying of crops where pesticide application measures to prevent drift are not followed, or potentially directly exposed during herbicide treatment of canal zones and ditch banks, wetland or riparian edges, or roadsides where shrews might exist. Reduced reproduction in Buena Vista Lake shrews could be directly caused by pesticides ingested through grooming, and secondarily from feeding on contaminated insects (Sheffield and Lochmiller 2001, p. 284). A variety of toxicants, including pesticides and heavy metals, have been shown to negatively affect insectivores, including shrews, that have a high basal metabolism and tight energy balance. Treatment-related decreases in invertebrate prey availability may be especially significant to such insectivore populations (Ma and Talmage 2001, pp. 133–152).

The Buena Vista Lake shrew also faces high risks from random catastrophic events (such as floods or drought) (Service 1998, p. 163). The low numbers of Buena Vista Lake shrews located in small isolated areas increases the risk of a random catastrophic event eliminating entire populations or severely diminishing Buena Vista Lake shrew numbers to the point that recovery is precluded. These threats and others mentioned above could render the habitat less suitable for the Buena Vista Lake shrew by washing away leaf litter and complex vegetation structure (floods) or drying wetland habitat so that vegetative and prey communities die (drought), and special management may be needed to address these threats.

In summary, the critical habitat units identified in this designation may require special management considerations or protection to provide a functioning hydrological regime to maintain the requisite riparian and wetland habitat, which is essential in providing the space and cover necessary to sustain the entire life-cycle needs of the shrew, as well as its invertebrate prey. Changes in water supply could result in the alteration of the moisture regime, which could lead to reduced water quality or hydroperiod, loss of suitable invertebrate supply for feeding, and loss of complex vegetative structure for cover. The units may also require special management considerations due to ongoing pressures for agricultural conversion and oil and gas exploration, and pesticide use, and vulnerabilities associated with low population size and population fragmentation.

*Criteria Used To Identify Critical Habitat*

As required by section 4(b)(2) of the Act, we used the best scientific data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of this species. We designated units based on their possession of sufficient elements of physical or biological features being present to support the shrew's life processes.

In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those occupied at the time of listing—would be necessary to ensure the conservation of the species. At the time of listing, we were aware of four locations (Kern Lake, Kern National Wildlife Refuge, Coles Levee, and the Kern Fan Water Recharge Area) where the Buena Vista Lake shrew was extant, but we also noted that additional remnant patches of wetland and riparian habitat within the Tulare Basin had not been surveyed and might support the shrew (67 FR 10101, 10103). We considered the geographical area occupied by the species to include all areas of remnant wetland and riparian habitat within the Tulare Basin. Shrews were also known from Atwell Island, Tulare County (Williams and Harpster 2001, pp. 13, 14), but had not been identified as Buena Vista Lake shrews at that time. In January 2003, a fifth site, Goose Lake, was surveyed and Buena Vista Lake shrews were also identified at this location (ESRP 2004, p. 8). The Goose Lake Unit was included in the original proposal to designate critical habitat (69 FR 69578). The Lemoore and Semitropic sites were first surveyed for the Buena Vista Lake shrew in April 2005, and Buena Vista Lake shrews were captured at these sites (ESRP 2005, p. 11, 12).

We are only designating areas within the geographical area occupied by the species at the time of listing in 2002. We include as occupied those areas that meet the following two conditions: (1) They contain the physical or biological features that are essential to the conservation of the species, and (2) they were identified as occupied in the original listing documents or later confirmed to be occupied after 2002.

We consider critical habitat units in which shrews were first found after 2002 (units 2, 6 and 7) to have been occupied at time of listing, because the likelihood of dispersal to such areas after listing is very low, and because no surveys had been conducted in those areas prior to listing. Shrews, in general, have small home ranges in which they spend most of their lives, and generally exhibit a high degree of site-attachment. Males and juveniles of some species have been documented to disperse during the breeding season, with movement within a season varying between species from under 10 feet (a few meters) to, in one case, documented movement of 0.5 mi (800 meters) within a year (Churchfield 1990, pp. 55, 56). Because shrews generally only live a single year, half a mile would be the most we would reasonably expect a group of shrews (or a pregnant female) to disperse. No critical habitat unit is in such close proximity to other units or occupied areas. Accordingly, any shrew populations found in a given unit after listing can be assumed to have been present in those areas prior to listing, barring evidence to the contrary such as prelisting surveys. All proposed units retain wetland or riparian features and are within the Tulare Basin, the described historical range of the Buena Vista Lake shrew.

We identified the designated lands based on the presence of the primary constituent elements described above, coupled with occupancy by the shrew (as established by sighting of shrews at the location). These criteria yielded seven units, which we proposed for designation on July 10, 2012 (77 FR 40706). As discussed above, the only occupied site not proposed for designation was Atwell Island, because of its lack of the physical or biological features determined to be essential to the conservation of the species. Because we consider all designated units to have been occupied at the time of listing, we consider them to meet all the first prong of the Act's definition of critical habitat (16 U.S.C. (3)(5)(A)(i), see Background section above).

We also consider all such designated areas to be essential for the conservation of the shrew. Within the historical range of the shrew, these seven units represent the only known remaining areas that contain both extant shrew populations and the PCEs on which the conservation of those populations depends. Additionally, by protecting a variety of habitats and conditions that contain the PCEs, we will increase the ability of the shrew to survive stochastic environmental events (fire, drought, or flood), or demographic (low recruitment), or genetic (inbreeding) problems. Suitable habitat within the historical range is limited, although conservation of substantial areas of remaining habitat in the Semitropic area is expected to benefit the shrew. Remaining habitats are vulnerable to both anthropogenic and natural threats. Also, these areas provide habitats essential for the maintenance and growth of self-sustaining populations of shrews throughout their range. Because all the units are essential to the conservation of the shrew, any units that may subsequently be determined to have been unoccupied at time of listing (based on new information, for instance), will continue to function as critical habitat under the second prong of the Act's critical habitat definition (16 U.S.C. (3)(5)(A)(ii)).

*Methodology Overview*

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific and commercial data available to determine the specific areas within the geographical area occupied by the species at the time of listing, on which are found those physical and biological features that are essential to the conservation of the shrew and which may require special management. This included data and information contained in, but not limited to, the proposed and final rules listing the shrew (65 FR 35033, June 1, 2000; 67 FR 10101, March 6, 2002); the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998); the original proposed critical habitat designation (69 FR 51417, August 19, 2004); the 5-year status review for the shrew (Buena Vista Lake Ornate Shrew 5-Year Review: Summary and Evaluation, Service 2011); research and survey observations published in peer-reviewed articles (Grinnell 1932, 1933; Hall 1981; Owen and Hoffman 1983; Williams and Kilburn 1984; Williams 1986; Maldonado *et al.* 2001; and Maldonado *et al.* 2004); habitat and wetland mapping and other data collected and reports submitted by biologists holding section 10(a)(1)(A) recovery permits; biological assessments provided to us through section 7 consultations; reports and documents that are on file in our field office (Center for Conservation Biology 1990; Maldonado *et al.* 1998; ESRP 1999; ESRP 2004; ESRP 2005; and Maldonado 2006); personal discussions with experts inside and outside of our agency with extensive knowledge of the shrew and habitat in the area; and information received during all previous comment periods.

The five critical habitat units that we originally proposed were delineated by creating roughly defined areas for each unit by screen-digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc. (ESRI)), a computer Geographic Information System (GIS) program. The polygons were created by overlaying current and historical species location points (California Natural Diversity Database (CNDDB) 2004), and mapped wetland habitats (California Department of Water Resources 1998) or other wetland location information, onto SPOT imagery (satellite aerial photography) (CNES/SPOT Image Corporation 1993–2000) and Digital Ortho-rectified Quarter Quadrangles (DOQQs) (USGS 1993–1998) for areas containing the Buena Vista Lake shrew. We utilized GIS data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals. To identify where essential habitat for the shrew occurs, we evaluated the GIS habitat mapping and species occurrence information from the CNDDB (2004). We presumed occurrences identified in CNDDB to be extant unless there was affirmative documentation that an occurrence had been extirpated. We also relied on unpublished species occurrence data contained within our files, including section 10(a)(1)(A) reports and biological assessments, on site visits, and on visual habitat evaluation in areas known to have shrews, and in areas within the historical ranges that had potential to contain shrew habitat.

For the five units, the polygons of identified habitat were further evaluated. Several factors were used to more precisely delineate the proposed critical habitat units from within these roughly defined areas. We reviewed any information in the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998), other peer-reviewed literature or expert opinion for the shrew to determine if the designated areas would meet the species' needs for conservation and whether these areas contained the appropriate primary constituent elements. We refined boundaries using satellite imagery, soil type coverages, vegetation land cover data, and agricultural or urban land use data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, development, and other areas that are unlikely to contribute to the conservation of the shrew.

For the revision of the Coles Levee Unit, and the addition of the Lemoore

and Semitropic Units, we used shrew occurrence data collected by ESRP (Maldonado 2006, pp. 24–27; Phillips 2011), projected data within ArcView (ESRI), and delineated unit polygons. The polygons were created by overlaying species location points (Phillips 2011) onto NAIP imagery (aerial photography) (National Agriculture Imagery Program 2012) to identify wetland and vegetation features, such as vegetated canals, canals with cleared vegetation, vegetated sloughs, agricultural fields, and general changes in vegetation and land type. We also projected the original proposed units onto NAIP imagery and again used additional GIS data derived from a variety of Federal, State, and local agencies.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the shrew. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, on our Internet sites *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A0DV*, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

### Final Critical Habitat Designation

We are designating six units as critical habitat for the Buena Vista Lake shrew. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those six units are: (1) Kern National Wildlife Refuge Unit, (2) Goose Lake Unit, (4) Coles Levee Unit, (5) Kern Lake Unit, (6) Semitropic Ecological Reserve Unit, and (7) Lemoore Wetland Reserve Unit. Note that proposed Unit 3 (the Kern Fan Water Recharge Unit) has been excluded from final designation due to the existing habitat conservation plan (see Exclusions, below). All units are occupied by the subspecies.

TABLE 1—CRITICAL HABITAT UNITS FOR THE BUENA VISTA LAKE SHREW

[Area estimates reflect all land within critical habitat unit boundaries.]

| Critical habitat unit | Size of area in acres (Hectares) | | | | |
|---|---|---|---|---|---|
| | Total | Federal | State | Local | Private |
| 1. Kern National Wildlife Refuge Unit | | | | | |
| Subunit 1A | 274 (111) | 274 (111) | | | |
| Subunit 1B | 66 (27) | 66 (27) | | | |
| Subunit 1C | 47 (19) | 47 (19) | | | |
| 2. Goose Lake Unit | | | | | |
| Subunit 2A | 159 (64) | | | | 159 (64) |
| Subunit 2B | 1,115 (451) | | | | 1,115 (451) |
| Coles Levee Unit | 270 (109) | | 46 (19) | 6 (2) | 217 (88) |
| 5. Kern Lake Unit | | | | | |
| Subunit 5A | 34 (14) | | | | 34, (14) |
| Subunit 5B | 51 (21) | | | | 51 (21) |
| 6. Semitropic Ecological Reserve Unit | 372 (151) | | 3456 (140) | | 27 (11) |
| 7. Lemoore Wetland Reserve Unit | 97 (39) | | | | 97 (39) |
| Total | 2,485 (1,006) | 387 (157) | 391 (159) | 6 (2) | 1,700 (688) |

**Note:** Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Buena Vista Lake shrew, below.

*Unit 1: Kern National Wildlife Refuge Unit*

Unit 1 consists of a total of approximately 387 ac (157 ha). The Kern NWR Unit is completely comprised of Federal lands, and is located within the Kern NWR in northwestern Kern County. The Kern NWR Critical Habitat Unit consists of three subunits: Subunit 1A is approximately 274 ac (111 ha); subunit 1B is 66 ac (27 ha); and subunit 1C is 47 ac (19 ha). The unit was occupied at the time of listing, is currently occupied, and contains the physical and biological features that are essential to the conservation of the shrew. Shrew habitat in Unit 1 receives water from the California Aqueduct. One of the areas where Buena Vista Lake shrews are present has standing water from September 1 through approximately April 15. After that time, the trees in the area may receive irrigation water so the area may possibly remain damp through May, but the area is dry for approximately 3 months during the summer. Another area of known Buena Vista Lake shrew occurrences has standing water from the second week of August through the winter and into early July, and is only dry for a short time during the summer. Buena Vista Lake shrew have been captured in remnant riparian and slough habitat at the Refuge (Service 2005, pp. 48, 49).

Like all the critical habitat units we are designating here (see *Criteria Used to Designate Critical Habitat*, above), this unit is essential to the conservation of the shrew because it is occupied, and because the subunits include riparian habitat that contain the appropriate

physical or biological features and primary constituent elements for the shrew. *Populus fremontii* trees (Fremont cottonwood) and *Salix spp.* (willow) are the dominant woody plants in riparian areas. Additional plants include bulrushes, cattails, *Juncus spp.* (rushes), *Heleocharis palustris* (spike rush), and *Sagittaria longiloba* (arrowhead). Other plant communities on the refuge that support shrews are valley iodine bush scrub, dominated by iodine bush, seepweed, *Frankenia salina* (alkali heath), and salt-cedar scrub, which is dominated by *Tamarix spp.* (salt cedar). Both of these communities occupy sites with moist, alkaline soils.

The Kern NWR completed a Comprehensive Conservation Plan (CCP) for the Kern and Pixley NWRs in February 2005 (Service 2005, pp. 1–103). The CCP provides objectives for maintenance and restoration of Buena Vista Lake shrew habitat on the Kern NWR. Objectives listed in the CCP include: completing baseline censuses and monitoring for the shrew; enhancement and maintenance of the 215-ac (87-ha) riparian habitat through regular watering to provide habitat for riparian species including the shrew; and additional restoration of 15 ac (6 ha) of riparian habitat along canals in a portion of the Refuge to benefit the shrew and riparian bird species (Service 2005, pp. 84, 85). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative species such as salt cedar, and from changes in hydrology due to offsite water management.

*Unit 2: Goose Lake Unit*

The Goose Lake Unit consists of a total of approximately 1,274 ac (515 ha) of private land, and is located about 10 mi (16 km) south of Kern NWR in northwestern Kern County, in the historical lake bed of Goose Lake. The Goose Lake Unit consists of two subunits: Subunit 2A contains 159 ac (64 ha), and Subunit 2B contains 1,115 ac (451 ha). We consider that the unit was occupied at the time of listing and assume that it was not identified as occupied at that time because it had not yet been surveyed for small mammals. In January 2003, when the area was first surveyed for small mammals, approximately 6.5 ac (2.6 ha) of potential shrew habitat located along the Goose Lake sloughs were surveyed (ESRP 2004, p. 8), resulting in the capture of five Buena Vista Lake shrews. The maximum distance between two shrew captures was 1.6 mi (2.6 km), suggesting that Buena Vista Lake shrews are widely distributed on the site. The unit has been determined to have the necessary physical or biological features present and therefore meets the definition of critical habitat under section 3(5)(A)(i) of the Act. The unit was included in the 2004 proposed critical habitat designation.

Although we continue to presume that the unit meets the definition of critical habitat under section 3(5)(A)(i) of the Act (prong 1), we are also designating the unit under section 3(5)(A)(ii) of the Act (prong 2). As discussed above under *Criteria Used To Identify Critical Habitat*, even if subsequent evidence were to indicate that the unit was not occupied at the time of listing, it would remain critical habitat under the second prong of the Act's definition. The unit is essential for the conservation of the shrew because it is among the very few remaining areas that support both an extant shrew population and the physical and biological features necessary to conserve that population.

In the past, Buena Vista Lake shrew habitat in this unit experienced widespread losses due to the diversion of water for agricultural purposes. However, small, degraded examples of freshwater marsh and riparian communities still exist in the area of Goose Lake and Jerry Slough (a portion of historical Goose Slough, an overflow channel of the Kern River), allowing shrews to persist in the area. Dominant vegetation along the slough channels includes frankenia, iodine bush, and seepweed. The northern portion of the unit consists of scattered mature iodine bush shrubs in an area that has relatively moist soils. The southern portion of the unit is characterized by a dense mat of saltgrass and clumps of iodine bush and seepweed. A portion of the unit currently exhibits inundation and saturation during the winter months. Dominant vegetation in these areas has included cattails, bulrushes, and saltgrass.

The area consisting of the former bed of Goose Lake is managed by the Semitropic Water Storage District (WSD) as a ground-water recharge basin. Water from the California Aqueduct is transferred to the Goose Lake area in years of abundant water, where it is allowed to recharge the aquifer that is used for irrigated agriculture. At the time that the unit was originally proposed, the landowners, in cooperation with Ducks Unlimited, Inc. and Semitropic WSD, proposed to create and restore habitat for waterfowl in the unit area; wetland restoration that we expected to substantially increase the quantity and quality of Buena Vista Lake shrew habitat on the site. Restoration activities were completed in the last 6 years. The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative species such as salt cedar, from recreational use, and from changes in hydrology due to water management and maintenance of water conveyance facilities. No conservation agreements currently cover this land.

*Unit 3: Kern Fan Recharge Unit*

The Kern Fan Recharge Unit was excluded under section 4(b)(2) of the Act. See Exclusions section below.

*Unit 4: Coles Levee Unit*

The Coles Levee Unit is approximately 270 ac (109 ha) in Kern County, of which 217 ac (88 ha) is owned by Aera Energy. An additional 46 ac (19 ha) are State lands within the Tule Elk Reserve, and 6 ac (2 ha) are part of a Kern County park. The unit is located northeast of Tupman Road near the town of Tupman, is directly northeast of the California Aqueduct, and is largely within the Coles Levee Ecosystem Preserve, which was established as a mitigation bank in 1992, in an agreement between Atlantic Richfield Company (ARCO) and CDFW. The preserve serves as a mitigation bank to compensate for the loss of habitat for listed upland species; the Buena Vista Lake shrew is not a covered species. ARCO had been issued an incidental take permit under section 10(a)(1)(B) of the Act for the Coles Levee Ecological Preserve Area (Service 2001, p. 1). However, the take authorization provided by the permit lapsed when ARCO sold the property to the current owner and the permit was not transferred. Habitat on the preserve consists mostly of highly degraded upland saltbush and mesquite scrub, and is interlaced with slough channels for the historical Kern River fan where the river entered Buena Vista Lake from the northeast. Most slough channels are dry except in times of heavy flooding. This site runs parallel to the Kern River bed and contains approximately 2 mi (3.2 km) of much-degraded riparian vegetation along the Kern River.

A manmade pond, which was constructed in the late 1990s or early 2000s, is located within the unit. Water from the adjacent oil fields is constantly pumped into the basin. Vegetation includes bulrushes, *Urtica dioica* (stinging nettle), *Baccharis salicifolia* (mulefat), salt grass, *Atriplex lentiformis* (quailbush), and *Conium maculatum*

(poison hemlock). A few willows and Fremont cottonwoods are scattered throughout the area.

In the 2009 proposed rule (74 FR 53999. October 21, 2009), we reproposed 214 ac (87 ha) of critical habitat as the Coles Levee Unit. In this unit, Buena Vista Lake shrews were originally captured along a nature trail that was adjacent to a slough, and were close to the water's edge where there was abundant ground cover but little or no canopy cover. The unit is delineated in a general southeast to northwest direction, along both sides of the Kern River Flood Channel and Outlet Canal, which runs through the Preserve. During a construction project in the summer of 2011, two Buena Vista Lake shrews were found just north of the previous northerly boundary of the unit. We have therefore extended the unit boundary along both sides of the canal to encompass the contiguous riparian habitat to the point where water is no longer retained and riparian vegetation essentially stops, thereby including riparian habitat along the Outlet Canal within the Tule Elk Reserve.

This unit is essential to the conservation of the species because it was occupied at the time of listing (67 FR 10102), is considered currently occupied, and includes willow-cottonwood riparian habitat that contains the PCEs. The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from construction activities associated with projects to tie-in water conveyance facilities to the California Aqueduct and oil and gas-related activities, including pipeline projects. The area adjacent to Coles Levee is a site of active gas and oil production, and the Coles Levee Unit is within an area that was recently proposed for additional oil and gas exploration.

*Unit 5: Kern Lake Unit*

The Kern Lake Unit is approximately 85 ac (35 ha) in size, and is located at the edge of the historical Kern Lake, approximately 16 miles south of Bakersfield in southwestern Kern County. This unit lies between Hwy 99 and Interstate 5, south of Herring Road near the New Rim Ditch. The Kern Lake Unit consists of two subunits: Subunit 5A contains 34 ac (14 ha), and Subunit 5B contains 51 ac (21 ha). The unit was occupied at the time of listing, is considered currently occupied, and contains the physical and biological features that are essential to the conservation of the Buena Vista Lake shrew. Since the advent of reclamation and development, the surrounding lands have seen intensive cattle and sheep ranching and, more recently, cotton and alfalfa farming. Currently, Kern Lake itself is generally a dry lake bed; however, the unit contains wet alkali meadows and a spring-fed pond known as "Gator Pond," which is located near the shoreline of the lake bed. A portion of the runoff from the surrounding hills travels through underground aquifers, surfacing as artesian springs at the pond. The heavy clay soils support a distinctive assemblage of native species, providing an island of native vegetation situated among agricultural lands. The unit contains three ecologically significant natural communities: freshwater marsh, alkali meadow, and iodine bush scrub.

This unit is essential to the conservation of the species because it is currently occupied and includes habitat that contains the PCEs identified for the shrew. The Kern Lake area was formerly managed by the Nature Conservancy for the J.G. Boswell Company, and was once thought to contain the last remaining population of the Buena Vista Lake shrew.

The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from reductions in water delivery, from effects of surrounding agricultural use, and from industrial and commercial development. This area does not have a conservation easement and is managed by the landowners. We are unaware of any plans to develop this site; however, it is within a matrix of lands managed for agricultural production.

*Unit 6: Semitropic Ecological Reserve Unit*

The Semitropic Ecological Reserve Unit is approximately 372 ac (151 ha) in size and is located about 7 mi (11 km) south of Kern NWR and 7 mi (11 km) north of the Goose Lake Unit along the Main Drain Canal in Kern County. It is bordered on the south by State Route 46, approximately 2 mi (3 km) east of the intersection with Interstate 5. The CDFW holds 345 ac (140 ha) under fee title, and manages the area as part of the Semitropic Ecological Reserve. An additional 27 ac (11 ha) of the unit are private land.

We consider that the unit was occupied at the time of listing and assume that it was not identified as occupied at that time because it had not yet been surveyed for small mammals (see Criteria Used To Identify Critical Habitat). Buena Vista Lake shrews were identified in the unit on April 27, 2005, when it was first surveyed for small mammals (ESRP 2005, pp. 10–13). At that time, Buena Vista Lake shrews were found in the southwestern portion of the unit, next to the Main Drain Canal. The unit has been determined to have the necessary PCEs present and therefore meets the definition of critical habitat under section 3(5)(A)(i) of the Act. Although we presume that the unit meets the definition of critical habitat under section 3(5)(A)(i) of the Act, we are also designating the unit under section 3(5)(A)(ii) of the Act. Even if the unit was not occupied at the time of listing, it is essential for the conservation of the Buena Vista Lake shrew due to its location approximately midway between Units 1 and 2, and location near the southern edge of remnant natural wetland and riparian habitat. The unit is also essential for the conservation of the shrew because it is considered to be currently occupied, and contains a matrix of riparian and wetland habitat, including riparian habitat both along the canal and within and adjacent to oxbow and slough features.

The major vegetative associations at the site are valley saltbush scrub and valley sink scrub. Valley saltbush scrub is found within the relatively well-drained soils at slightly higher elevations, and the valley sink scrub is found in the heavier clay soils. Dominant vegetation at the site includes *Bromus diandrus* (ripgut brome), *Bromus madritensis ssp. rubens* (red brome), *Carex spp.* (sedges), *Juncus spp.* (rushes), *Polygonum spp.* (knotweed), *Polypogon monspeliensis* (rabbitfoot grass), *Rumex crispus* (curly dock), and *Vulpia myuros* (foxtail fescue). There is a light overstory of cottonwoods at the trapping location where the most Buena Vista Lake shrews have been observed.

The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from ongoing oil and gas exploration and development, ongoing conversion of natural lands for agricultural development, changes in water management, weed control activities including use of herbicides, and the occurrence of range trespass in an open range area. Semitropic reserve lands are not fenced and are subject to occasional range trespass by sheep and cattle (CDFW 2012). State lands in the unit were acquired under the provisions of the Metro Bakersfield Habitat Conservation Plan (HCP), and are managed for listed upland species. Location of the Main Drain Canal in the unit, and the presence of wetland

features are expected to benefit the shrew, although the shrew is not a covered species under the HCP. The State does not yet have a management plan for the Semitropic Ecological Reserve.

*Unit 7: Lemoore Wetland Reserve Unit*

The Lemoore Wetland Reserve Unit, 97 ac (39 ha) in size, is located east of the Lemoore Naval Air Station and is 4 mi (6 km) west of the City of Lemoore in Kings County. The unit is bounded along the southern border by State Route 198, and on the north and west sides by a bare water-conveyance canal. The unit is managed by the Natural Resources Conservation Service for waterfowl enhancement.

We consider that the unit was occupied at the time of listing and that it was not identified as occupied at that time because it had not yet been surveyed for small mammals (see *Criteria Used To Identify Critical Habitat*). Buena Vista Lake shrews were identified in the unit in April 2005, when it was first surveyed for small mammals (ESRP 2005, pp. 10–13). The unit has been determined to have the necessary PCEs present and, therefore, meets the definition of critical habitat under section 3(5)(A)(i) of the Act. Although we presume that the unit meets the definition of critical habitat under section 3(5)(A)(i) of the Act, we are also designating the unit under section 3(5)(A)(ii) of the Act. The unit is essential for the conservation of the shrew due to its location at the northernmost extent of the subspecies' range and its geographic isolation from other units, due to occupancy, and due to remnant natural wetland and riparian habitat that contains the PCEs.

The site is part of an area that was created to provide a place for city storm water to percolate and drop potential contaminants to shield the Kings River during years of flood runoff. Portions of the area are flooded periodically, forming fragmented wetland communities throughout the area.

The plant communities of the Lemoore Wetland Reserve Unit include a mixture of vegetation communities: nonnative grassland, vernal marsh, and elements of valley sink scrub. Commonly occurring plants include *Brassica nigra* (black mustard), red brome, *B. hordeaceus* (soft chess), saltgrass, alkali heath, rushes, *Lactuca serriola* (prickly lettuce), rabbitfoot grass, cottonwood, *Rumex crispus* (curly dock), *Salix ssp.* (willow), *Scirpus ssp.* (bulrush), *Sonchus oleraceus* (common sowthistle), cattails, foxtail fescue and *Xanthium strumarium* (cocklebur). This unit is essential to the conservation of the species because it is currently occupied and contains the PCEs identified for the shrew.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including ourselves, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with us on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001) and *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from ourselves under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species, or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives for the project, if any are identifiable. The alternatives identify how the likelihood of jeopardy to the species, or destruction or adverse modification of critical habitat, may be avoided. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

*Application of the "Adverse Modification" Standard*

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the essential physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the Buena Vista Lake shrew.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. We list examples of such activities below. All such activities would also trigger consultation in the absence of critical habitat, as required by section 7(a)(2) of the Act, in order to avoid jeopardizing the continued existence of the subspecies. Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the shrew. These activities include, but are not limited to:

(1) Actions carried out, permitted or funded by Federal agencies that would affect the delivery of water to riparian or wetland areas within critical habitat. Such activities could include damming, diversion, and channelization. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering, or growth of Buena Vista Lake shrews.

(2) Groundbreaking activities within critical habitat, as carried out, permitted, or funded by Federal agencies. Such activities could include construction of roads or communication towers, Superfund site cleanup, and projects to control erosion or flooding. These activities could eliminate or reduce the complex vegetative structure, soil moisture, or prey base necessary for reproduction, sheltering, foraging, or growth of Buena Vista Lake shrews.

(3) Activities carried out, permitted, or funded by Federal agencies that could affect water quality within critical habitat, including the deposition of silt. Such activities could include placement of fill into wetlands or discharge of oil or other pollutants into streams. These activities could eliminate or reduce the habitat and prey base necessary for the reproduction, feeding, or growth of Buena Vista Lake shrews.

(4) Activities carried out on critical habitat designated on Federal lands (Unit 1) that could reduce the complex vegetative structure, soil moisture, or prey base of critical habitat. Such activities could include fire management actions or invasive species removal. These activities could eliminate or reduce the habitat or prey base necessary for reproduction, sheltering, foraging, or growth of Buena Vista Lake shrews.

**Exemptions**

*Application of Section 4(a)(3) of the Act*

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands within the proposed critical habitat designation. Therefore, we are not exempting lands from this final designation of critical habitat for the Buena Vista Lake shrew pursuant to section 4(a)(3)(B)(i) of the Act.

**Exclusions**

*Application of Section 4(b)(2) of the Act*

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise her discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the Buena Vista Lake shrew, the benefits of critical habitat include public awareness of the shrew's presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for the shrew due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a management plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

**Summary of Exclusions**

Based on the information provided by entities seeking exclusion, as well as additional public comments and information received, we evaluated whether certain lands in the proposed critical habitat (Units 2, 3, 4, and 7 in their entirety, and portions of Units 2, 3, 4, 5, and 7) were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We identified Unit 3 (Kern Fan Water Recharge Unit) in its entirety (2,687 ac (1,088 ha)) for exclusion from critical habitat designation for the shrew.

We are excluding this area because we believe that:

(1) Its value for conservation will be preserved for the foreseeable future by existing protective actions, and, therefore:

(2) It is appropriate for exclusion under the "other relevant impacts" provisions of section 4(b)(2) of the Act.

**Exclusions Based on Economic Impacts**

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis (DEA) of the proposed critical habitat designation and related factors (Industrial Economics (IEc) 2013a) (available at *http://www.regulations.gov*, Docket No. FWS–R8–ES–2009–0062). We then opened a public comment period announcing the availability of the DEA (78 FR 14245; March 5, 2013), and subsequently completed a final economic analysis (FEA) (IEc 2013b) (also available at *http://www.regulations.gov*, Docket No. FWS–R8–ES–2009–0062), on which we base our determination of economic exclusions.

The intent of the FEA is to quantify the economic impacts of all potential conservation efforts for the Buena Vista Lake shrew. Some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decisionmakers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 2002 (the year of the species' listing) (67 FR 10101), and considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe.

The FEA quantifies economic impacts of Buena Vista Lake shrew conservation efforts associated with various economic activities, including: (1) Water management; (2) agricultural production; and (3) energy development. Incremental impacts (attributable to critical habitat) are expected to result from the need for additional consultations between ourselves and other Federal agencies seeking to fund or permit new projects in critical habitat units. The total estimated incremental economic impact for all areas proposed as revised critical habitat over the next 20 years is $130,000 ($11,000 annualized), assuming a 7 percent discount rate. More than half of those impacts ($79,000) are estimated to apply to Unit 3, which we are excluding based on an established habitat management plan for the area (see Exclusions Based on Other Relevant Impacts below). Please refer to the FEA for a comprehensive discussion of all potential impacts.

Because the impacts of critical habitat estimated by the FEA are relatively low, and not distributed in such a way as to unduly burden any particular area or group, the Secretary is not exercising her discretion to exclude any units based on economic impacts. A copy of the FEA with supporting documents may be obtained by contacting the Sacramento Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at *www.regulations.gov*, (Docket No. FWS–R8–ES–2009–0062).

**Exclusions Based on National Security Impacts**

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We have determined that the lands within Buena Vista Lake shrew critical habitat units are not owned or managed by the Department of

Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security.

**Exclusions Based on Other Relevant Impacts**

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether any conservation partnerships would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

*Land and Resource Management Plans, Conservation Plans, or Agreements based on Conservation Partnerships*

We consider a current land management or conservation plan to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We consider the habitat management plan operated by the City of Bakersfield for the Kern Fan Water Recharge Area (Kern Fan Habitat Management Plan (HMP)) to fulfill the above criteria, and the Secretary is therefore excluding non-Federal lands covered by this plan (all of Unit 3) that provide for the conservation of the Buena Vista Lake shrew.

**Exclusions Under Section 4(b)(2) of the Act—Kern Fan Water Recharge Area**

Proposed Unit 3 is covered in its entirety by the Kern Fan Water Recharge Area, which is owned and operated by the City of Bakersfield. The Water Recharge Area consists of approximately 2,800 ac (1,133 ha) west of Bakersfield, on which the City spreads water, as available, from the Kern River and State Water Project (LOA 2004, p. 8). By spreading water over the Recharge Area, the City is able to buffer downstream flooding and allow for the recharge of underground aquifers. Water used in this fashion also supports the physical or biological features essential to the shrew. The City has worked closely with us since 2004 to develop and implement a habitat management plan (Kern Fan HMP) for the conservation of the shrew (LOA 2004, entire).

The Kern Fan HMP benefits the shrew in several ways. First, it incorporates several preexisting beneficial management practices, thereby making those practices more likely to persist, and giving us input regarding any future proposals to change them. The practices include limitation of public access to the site, cessation of livestock grazing, and maintenance of the site as open space left predominantly in its natural vegetative state (LOA 2004, pp. 20, 21). Second, it applies the results of a baseline habitat survey to establish priorities according to which available waters will be spread so as to most benefit the shrew (LOA 2004, pp. 22–24). Third, it establishes a monitoring program involving yearly habitat surveys (LOA 2004, pp. 25–27). And fourth, it incorporates adaptive management provisions by establishing goals for various areas and adjusting management to meet those goals as necessary (LOA 2004, pp. 24, 27–28). The plan requires monitoring results to be shared with us, and provides for yearly meetings between ourselves and the City to discuss adaptive management options (LOA 2004, p. 28).

The City of Bakersfield has carried out the terms of this plan since 2005 (LOA 2005, entire; LOA 2006, entire; LOA 2007, entire; LOA 2008, entire; LOA 2009, entire; LOA 2010, entire; LOA 2012a, entire; LOA 2012b, entire). In 2011, with our input, the City proposed an addendum, referred to as the "Enhanced Management Plan," under which monitoring efforts would be expanded to include prey-base surveys and trapping surveys for presence of the shrew (LOA 2011, p. 8). The Enhanced Management Plan also provided additional assurances that the plan would continue to be carried out, by calling for funding provisions and for the establishment of a City resolution to codify the City's long-term commitment (LOA 2011, p. 7). That resolution has been passed, subject to a condition that we exclude the Kern Fan Water Recharge Area from critical habitat designation (Bakersfield Water Board Committee 2011, entire).

*Benefits of Inclusion—Kern Fan Water Recharge Area*

The potential benefits to the shrew of designating the proposed Kern Fan Water Recharge Unit as critical habitat include increased oversight of Federal agencies to assure that they do not permit, fund, or carry out actions in the area that could destroy or adversely modify critical habitat. However, because Buena Vista Lake shrews occur in the proposed unit, Federal agencies carrying out actions affecting the area would be required to consult with us if their actions might affect the shrew, even in the absence of critical habitat (IEc 2013, p. 4–3). Critical habitat may result in additional protective measures from consultation due to the additional emphasis it places on habitat, and due to the different standard used under the Act for judging impacts to that habitat. However, in this particular case, we expect that additional protective measures resulting from critical habitat would be rare. Any such benefits would also be limited to ameliorating the potential impacts of Federal actions. They would not extend to proactive, ongoing management of the habitat to maintain or increase essential habitat features.

Critical habitat designation would also serve to alert the public and State agencies of the presence of the shrew in the area. However, the City of Bakersfield's habitat management plan for the shrew would also serve that purpose to some extent.

*Benefits of Exclusion—Kern Fan Water Recharge Area*

The benefits of exclusion, in this case, would include the continued participation of the City of Bakersfield in its established habitat management plan (LOA 2004, entire), and the adoption by the city of additional improvements as specified in the Enhanced Management Plan (LOA 2011, entire). As discussed above, this would mean habitat protection, monitoring of conditions, and adaptive management to benefit the shrew on an ongoing basis, regardless of actions by Federal agencies in the area. In considering the potential benefits of any management plan we must also consider the likelihood that the plan will continue to be implemented in the future. The City of Bakersfield has demonstrated a commitment to continued implementation by consistently carrying out the terms of the 2004 management plan since its inception. The City's prospective adoption of the Enhanced

Management Plan, and its passage of a conditional resolution indicating commitment to that plan and continued funding, also provide strong indications that the City will implement the plan into the indefinite future.

Additional benefits of exclusion include the building of a working relationship between ourselves and the City of Bakersfield, which may foster an atmosphere of mutual trust and input by both sides into shrew conservation actions. Successful establishment of such a relationship can increase the likelihood that other landowners may be willing to enter similar relationships for the benefit of threatened and endangered species.

*Benefits of Exclusion Outweigh Benefits of Inclusion—Kern Fan Water Recharge Area*

Both designation and exclusion of the Kern Fan Recharge Area provide direct and indirect benefits for the shrew, which we must weigh against each other while taking into account the likelihood that such benefits will actually be realized. In this case, we consider the direct benefits of exclusion to outweigh those of designation, because exclusion can lead to ongoing adaptive conservation management under the Kern Fan HMP. In contrast, designation can only protect the shrew against certain Federal actions, and because the area is occupied year-round by the shrew, most of those actions are already covered by the Act's prohibition against jeopardizing the continued existence of a listed species (16 U.S.C. 1536(7)(a)(2)).

Similarly, the indirect benefits of exclusion (the fostering of a working relationship with the City of Bakersfield to provide for the conservation of the shrew), outweigh the indirect benefits of designation (alerting the public to the shrew's presence in the area). Another indirect benefit of critical habitat is the establishment and general publication of the habitat needs of the species, but this benefit can be realized through this designation without need to designate the Kern Fan Water Recharge Area specifically.

Finally, although the benefits of designating the Kern Fan area are essentially certain, the benefits of exclusion are also very likely to occur. The City of Bakersfield has established a long-standing practice of following its habitat management plan for the conservation benefit of the shrew. They have also worked closely with us to improve the plan, and have passed a city ordinance to codify their intent to carry out the terms of the improved plan into the indefinite future. Accordingly, we find that the conservation benefits of excluding the Kern Fan Water Recharge Area from critical habitat designation outweigh the conservation benefits of specifying the area as part of the shrew's critical habitat.

*Exclusion Will Not Result in Extinction of the Subspecies*

Because of the conservation benefits and habitat protections discussed above that the City of Bakersfield will implement, with our input, in the absence of critical habitat designation and because the shrew is known from seven existing locations, six of which we are designating as critical habitat, we conclude that exclusion of the Kern Fan Water Recharge Area (proposed Unit 3) will not result in extinction of the subspecies. Therefore, based on the above discussion, the Secretary is exercising her discretion to exclude approximately 2,687 ac (1,088 ha) of land in the Kern Fan Water Recharge Area from this final revised critical habitat designation.

**Required Determinations**

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of 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 rule in a manner consistent with these requirements.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the Buena Vista Lake shrew will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the final designation of critical habitat for the shrew would significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., energy, local government). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number"

or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Buena Vista Lake shrew. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the "Adverse Modification Standard"* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Buena Vista Lake shrew and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 3 through 5 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Water management (availability and delivery); (2) agricultural production; and (3) energy development.

The incremental impacts for this designation are expected to consist almost entirely of administrative costs. These costs are likely to be borne by city and county governmental jurisdictions, as well as several energy utilities. Exhibit A–1 of the FEA describes entities that may potentially be affected by critical habitat designation and assesses whether they are considered small entities under the RFA based on the applicable small entity thresholds by North American Industry Classification System (NAICS) code. While there is a potential for other third party involvement, these are the entities we foresee potentially participating in consultation. As shown in Exhibit A–1, none of the entities expected to bear incremental impacts is considered to be small under the RFA. Potentially, some incremental impacts borne by the energy utilities may be passed on to individual customers in the form of increased energy prices. However, given the small size of the impacts, such an outcome is unlikely.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities. None of the entities potentially affected in any significant way by such costs qualify as small entities under the SBREFA. Therefore, we are certifying that the designation of critical habitat for the Buena Vista Lake shrew will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration:

- Reductions in crude oil supply in excess of 10,000 barrels per day (bbls);
- Reductions in fuel production in excess of 4,000 barrels per day;
- Reductions in coal production in excess of 5 million tons per year;
- Reductions in natural gas production in excess of 25 million mcf per year;
- Reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity;
- Increases in energy use required by the regulatory action that exceed the thresholds above;
- Increases in the cost of energy production in excess of one percent;
- Increases in the cost of energy distribution in excess of one percent; or
- Other similarly adverse outcomes.

Although two energy companies operate facilities within the designation (Pacific Gas and Electric (PG&E) and Southern California Gas Company (SoCal Gas)), we do not anticipate recommending additional shrew conservation measures on their activities due to the designation of critical habitat. As a result, we do not anticipate critical habitat designation to affect energy use, production, or distribution. Additional administrative time spent consulting with us due to critical habitat may cost these companies $2,000 on an annualized basis, which is less than 0.01 percent of the annual revenues of either PG&E or SoCal Gas.

In addition, our analysis concludes that it is possible that solar energy developments and oil and gas exploration may be proposed in the future within the critical habitat. No current plans exist for these activities, however. In the case that future solar energy project or oil and gas developments are proposed, we do not expect the presence of critical habitat for the shrew to change our recommendations with respect to shrew conservation. That is, all conservation efforts recommended via section 7 consultation on these projects would be made regardless of whether critical habitat is designated. Consequently, the only costs would be from the relatively minor administrative effort to consider critical habitat as part of future consultations.

Accordingly, the FEA finds that none of the potential outcomes listed above are likely to result from this designation of critical habitat (IEc 2013, Appendix A). Thus, based on information in the economic analysis, energy-related impacts associated with Buena Vista Lake shrew conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental

mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because the designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Also, this rule would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations; however, these are not expected to significantly affect small governments.

Consequently, we do not believe that this critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Buena Vista Lake shrew in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The FEA has concluded that this critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the Buena Vista Lake shrew does not pose significant takings implications for lands within or affected by the designation.

*Federalism—Executive Order 13132*

In accordance with Executive Order 13132 (Federalism), this rule does not have significant federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we specifically met with, requested information from, and coordinated development of this critical habitat designation with appropriate State resource agencies in California. We did not receive comments from State agencies. The designation of critical habitat in areas currently occupied by the Buena Vista Lake shrew may impose nominal additional restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

*Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the Buena Vista Lake shrew. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

*et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands occupied by the Buena Vista Lake shrew at the time of listing that contain the physical or biological features essential to conservation of the species, and no tribal lands unoccupied by the shrew that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the shrew on tribal lands.

**References Cited**

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Author(s)**

The primary authors of this rulemaking are the staff members of the Sacramento Fish and Wildlife Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.95, amend paragraph (a) by revising the entry for "Buena Vista Lake Shrew (*Sorex ornatus relictus*)", to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

(a) *Mammals.*

* * * * *

Buena Vista Lake Shrew (*Sorex ornatus relictus*)

(1) Critical habitat units are depicted for Kings and Kern Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Buena Vista Lake shrew consist of permanent and intermittent riparian or wetland communities that contain:

(i) A complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation. Associated plant species can include, but are not limited to, Fremont cottonwoods, willows, glasswort, wild-rye grass, and rush grass. Although moist soil in areas with an overstory of willows or cottonwoods appears to be favored, such overstory may not be essential.

(ii) Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semipermanent water.

(iii) A consistent and diverse supply of prey. Although the specific prey species used by the Buena Vista Lake shrew have not been identified, ornate shrews are known to eat a variety of terrestrial and aquatic invertebrates, including amphipods, slugs, and insects.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *http://criticalhabitat.fws.gov/crithab/*, and at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, and at the field office responsible for this designation. You may obtain field office location information by contacting one of our regional offices, the addresses of which are listed at 50 CFR 2.2.

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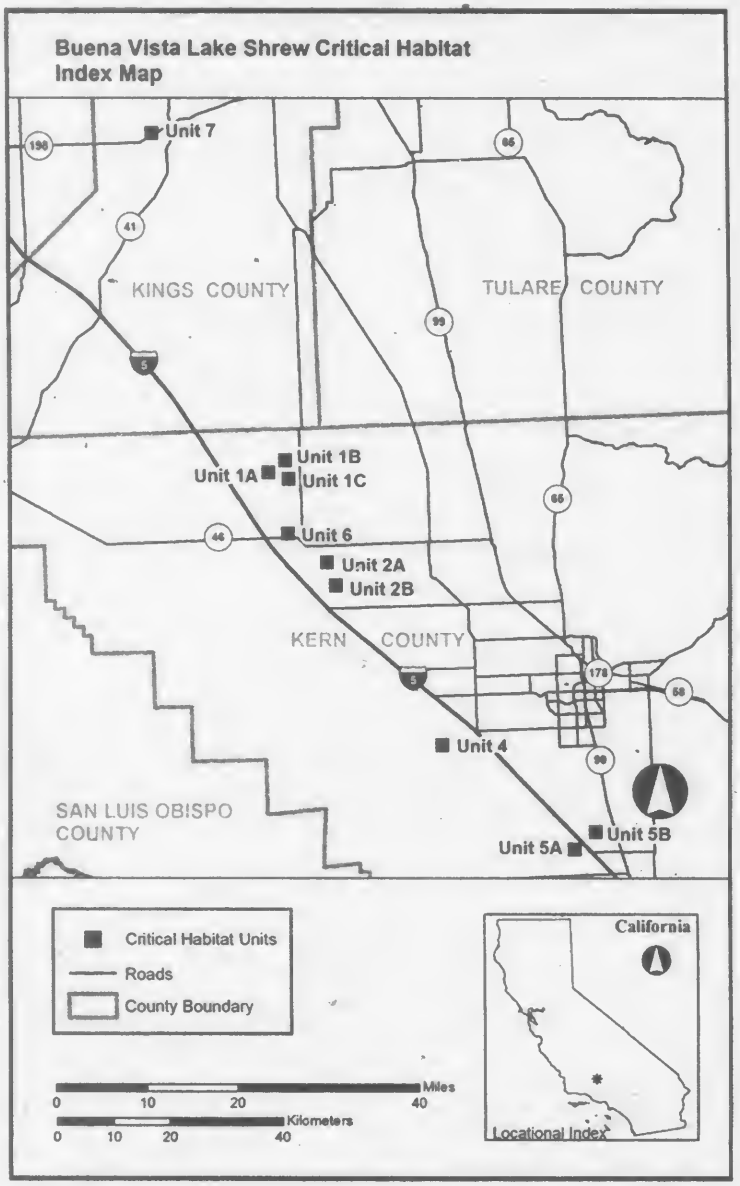
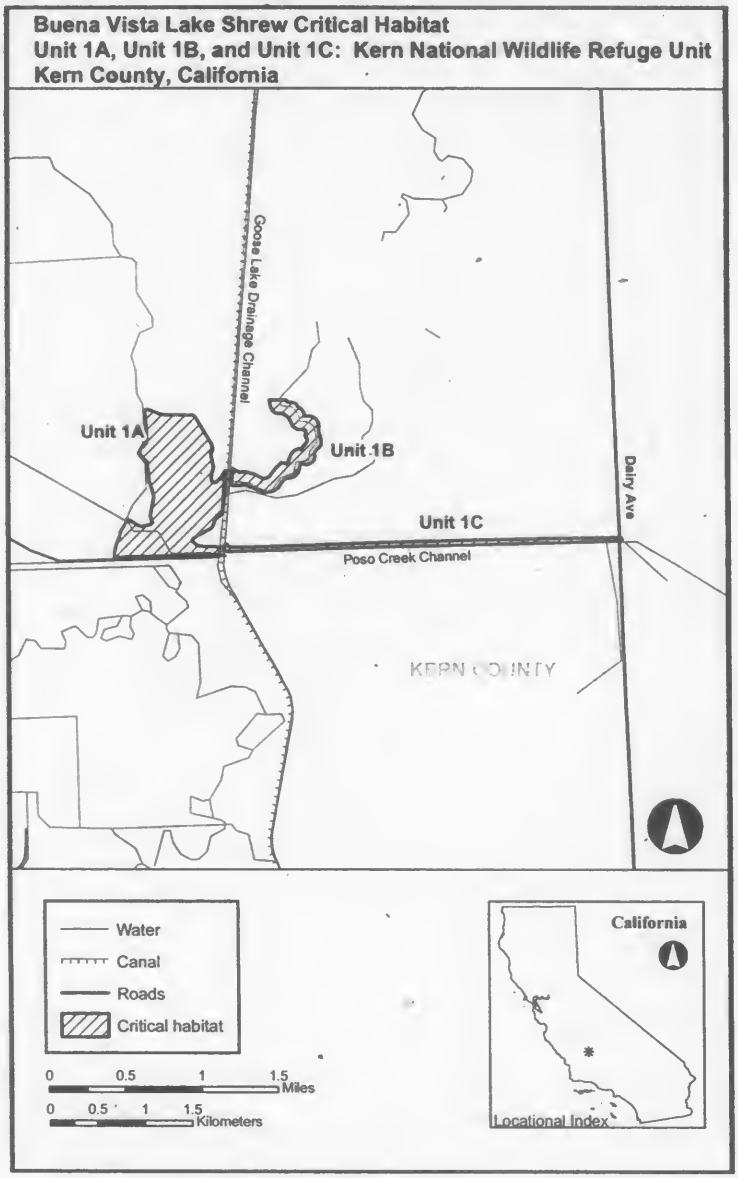
(5) Index map of Buena Vista Lake shrew critical habitat units follows:

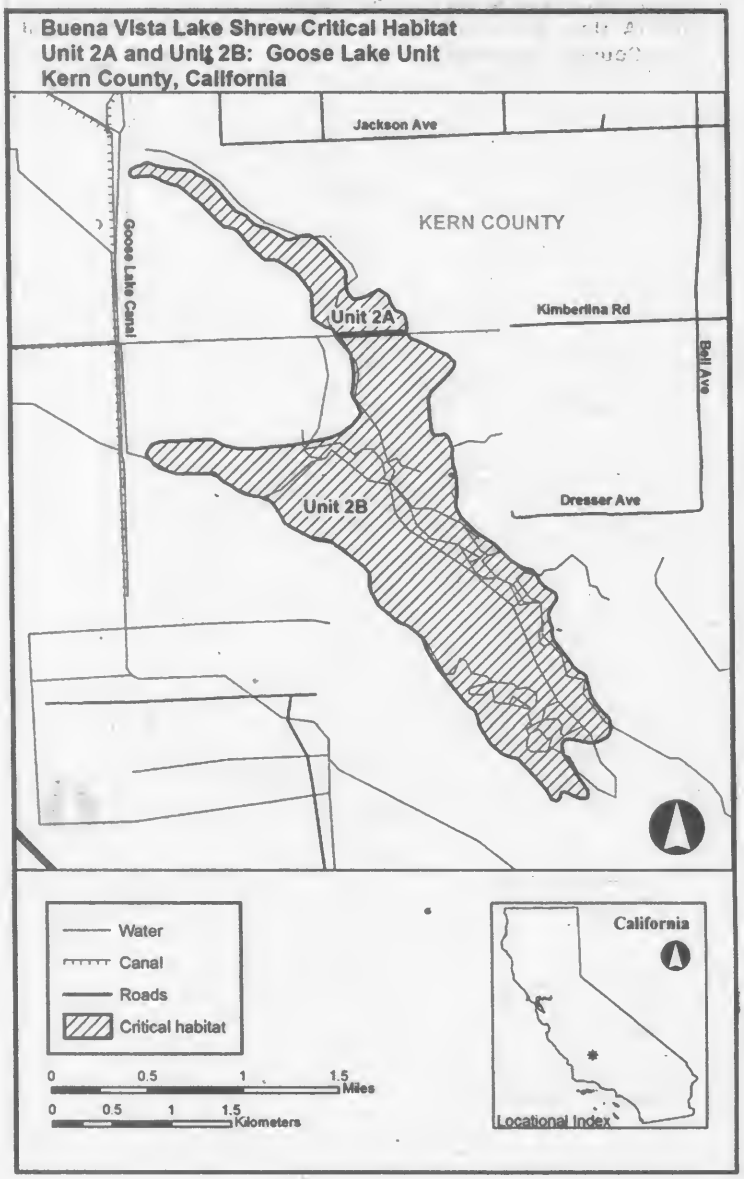


(6) Unit 1: Kern National Wildlife Refuge Unit, Kern County, California.

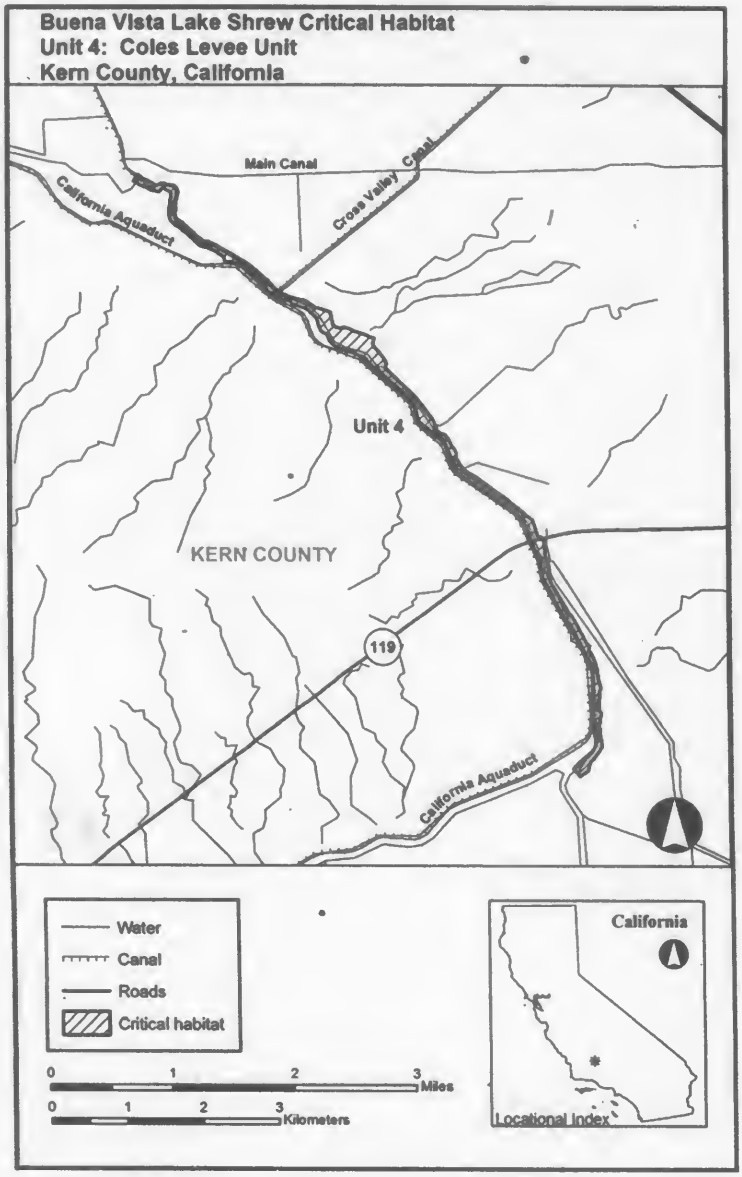
Note: Map of Unit 1, Kern National Wildlife Refuge Unit, follows:



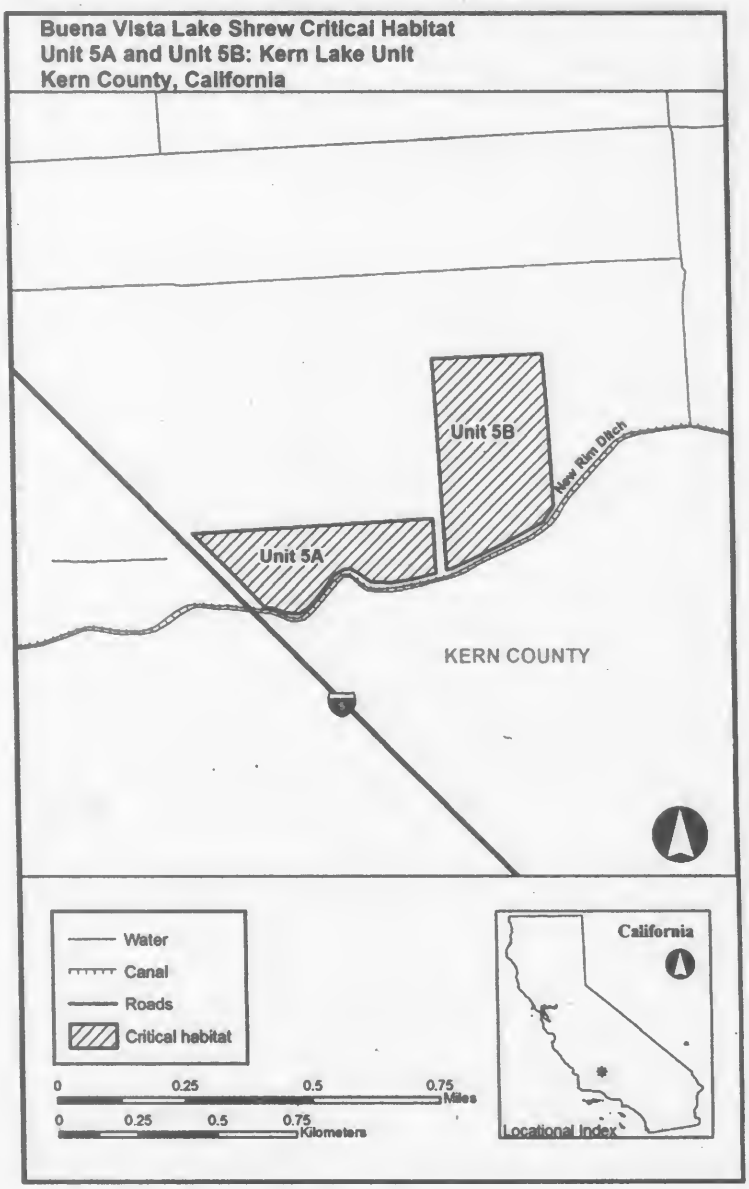
(7) Unit 2: Goose Lake Unit, Kern County, California. Note: Map of Unit 2, Goose Lake Unit, follows:



(8) Unit 4: Coles Levee Unit, Kern County, California. Note: Map of Unit 4, Coles Levee Unit, follows:



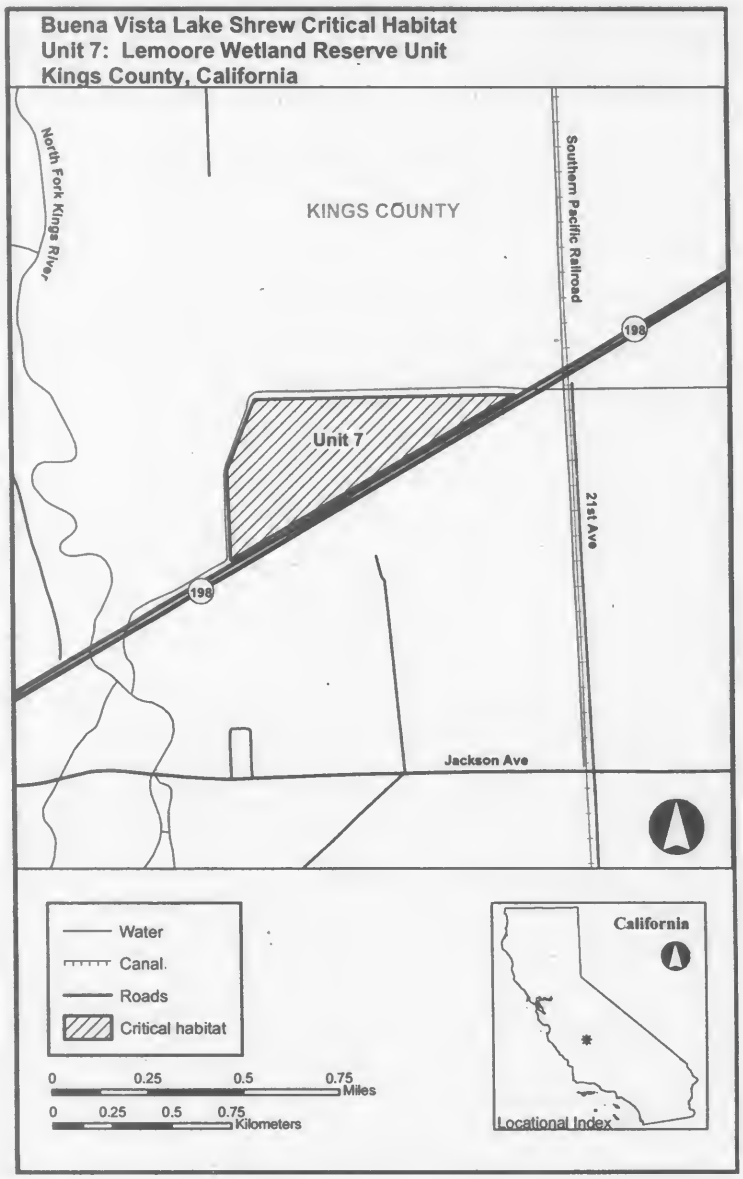
(9) Unit 5: Kern Lake Unit, Kern County, California. Note: Map of Unit 5, Kern Lake Unit, follows:



(10) Unit 6: Semitropic Ecological Reserve Unit, Kern County, California.

Note: Map of Unit 6, Semitropic Ecological Reserve Unit, follows:

(11) Unit 7: Lemoore Wetland Reserve Unit, Kings County, California. Note: Map of Unit 7, Lemoore Wetland Reserve Unit, follows:




* * * * *

Dated: June 20, 2013.

**Rachel Jaconson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2013–15586 Filed 7–1–13; 8:45 am]

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# FEDERAL REGISTER

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Coverage of Certain Preventive Services Under the Affordable Care Act; Final Rules

**DEPARTMENT OF THE TREASURY**

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**[TD–9624]**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Parts 147 and 156**

**[CMS–9968–F]**

**RIN 0938–AR42**

# Coverage of Certain Preventive Services Under the Affordable Care Act

**AGENCIES:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Final rules.

**SUMMARY:** This document contains final regulations regarding coverage of certain preventive services under section 2713 of the Public Health Service Act (PHS Act), added by the Patient Protection and Affordable Care Act, as amended, and incorporated into the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code. Section 2713 of the PHS Act requires coverage without cost sharing of certain preventive health services by non-grandfathered group health plans and health insurance coverage. Among these services are women's preventive health services, as specified in guidelines supported by the Health Resources and Services Administration (HRSA). As authorized by the current regulations, and consistent with the HRSA guidelines, group health plans established or maintained by certain religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the otherwise applicable requirement to cover certain contraceptive services. These final regulations simplify and clarify the religious employer exemption. These final regulations also establish accommodations with respect to the contraceptive coverage requirement for group health plans established or maintained by eligible organizations (and group health insurance coverage provided in connection with such plans), as well as student health insurance coverage arranged by eligible organizations that are institutions of higher education. These regulations also finalize related amendments to regulations concerning Affordable Insurance Exchanges.

**DATES:** *Effective date:* These final regulations are effective on August 1, 2013. *Applicability date:* With the exception of the amendments to the religious employer exemption, which apply to group health plans and health insurance issuers for plan years beginning on or after August 1, 2013, these final regulations apply to group health plans and health insurance issuers for plan years beginning on or after January 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** For inquiries related to the religious employer exemption and eligible organization accommodations: Jacob Ackerman, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS), at (410) 786–1565; Amy Turner or Beth Baum, Employee Benefits Security Administration (EBSA), Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service (IRS), Department of the Treasury, at (202) 927–9639.

For matters related to the Federally-facilitated Exchange user fee adjustment: Ariel Novick, CMS, HHS, at (301) 492–4309.

*Customer Service Information:* Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*www.dol.gov/ebsa*). Information from HHS on private health insurance coverage can be found on CMS's Web site (*www.cms.gov/cciio*), and information on health care reform can be found at *www.HealthCare.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was enacted on March 30, 2010. These statutes are collectively known as the Affordable Care Act. The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act of 1974 (ERISA) and section 9815(a)(1) to the Internal Revenue Code (Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The sections of the PHS Act incorporated into ERISA and the Code are sections 2701 through 2728.

Section 2713(a)(4) of the PHS Act, as added by the Affordable Care Act and incorporated into ERISA and the Code, requires that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide benefits for certain women's preventive health services without cost sharing, as provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA). On August 1, 2011, HRSA adopted and released guidelines for women's preventive health services (HRSA Guidelines) based on recommendations of the independent Institute of Medicine. As relevant here, the HRSA Guidelines include all Food and Drug Administration (FDA)-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity, as prescribed by a health care provider (collectively, contraceptive services).[1] Except as discussed later in this section, non-grandfathered group health plans and health insurance coverage are required to provide coverage consistent with the HRSA Guidelines without cost sharing for plan years (in the individual market, policy years) beginning on or after August 1, 2012.[2]

Interim final regulations implementing section 2713 of the PHS Act were published on July 19, 2010 (75 FR 41726) (2010 interim final

[1] The HRSA Guidelines exclude services relating to a man's reproductive capacity, such as vasectomies and condoms.

[2] Interim final regulations published by the Departments on July 19, 2010, generally provide that plans and issuers must cover a newly recommended preventive service starting with the first plan year (in the individual market, policy year) that begins on or after the date that is one year after the date on which the new recommendation is issued. 26 CFR 54.9815–2713T(b)(1); 29 CFR 2590.715–2713(b)(1); 45 CFR 147.130(b)(1).

regulations). On August 1, 2011, the Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments) amended the 2010 interim final regulations to provide HRSA with authority that would effectively exempt group health plans established or maintained by certain religious employers (and group health insurance coverage provided in connection with such plans) from the requirement to cover contraceptive services consistent with the HRSA Guidelines (76 FR 46621) (2011 amended interim final regulations), and, on the same date, HRSA exercised this authority in the HRSA Guidelines such that group health plans established or maintained by these religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the requirement to cover contraceptive services.[3] The 2011 amended interim final regulations specified that, for purposes of this exemption, a religious employer is one that: (1) Has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a nonprofit organization described in section 6033(a)(1) and (a)(3)(A)(i) or (iii) of the Code. Section 6033(a)(3)(A)(i) and (iii) of the Code refers to churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any religious order. Final regulations issued on February 10, 2012, adopted the definition of religious employer in the 2011 amended interim final regulations without modification (2012 final regulations).[4]

Contemporaneous with the issuance of the 2012 final regulations, HHS, with the agreement of the Departments of Labor and the Treasury, issued guidance establishing a temporary safe harbor from enforcement of the contraceptive coverage requirement by the Departments for group health plans established or maintained by certain nonprofit organizations with religious objections to contraceptive coverage (and group health insurance coverage provided in connection with such plans).[5] The guidance provided that the temporary enforcement safe harbor would remain in effect until the first plan year beginning on or after August 1, 2013. The Departments committed to rulemaking during the 1-year safe harbor period to ensure more women broad access to recommended preventive services, including contraceptive services, without cost sharing, while simultaneously protecting certain additional nonprofit religious organizations with religious objections to contraceptive coverage from having to contract, arrange, pay, or refer for such coverage.

On March 21, 2012, the Departments published an advance notice of proposed rulemaking (ANPRM) that described and solicited comments on possible approaches to achieve these goals (77 FR 16501).

On February 6, 2013, following review of the comments on the ANPRM, the Departments published proposed regulations at 78 FR 8456 (proposed regulations). The regulations proposed to simplify and clarify the definition of religious employer for purposes of the religious employer exemption. The regulations also proposed accommodations for health coverage established or maintained or arranged by certain nonprofit religious organizations with religious objections to contraceptive coverage. These organizations were referred to as eligible organizations.

The regulations proposed that, in the case of an insured group health plan established or maintained by an eligible organization, the health insurance issuer providing group health insurance coverage in connection with the plan would be required to assume sole responsibility, independent of the eligible organization and its plan, for providing contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. The Departments proposed a comparable accommodation with respect to insured student health insurance coverage arranged by eligible organizations that are institutions of higher education.

In the case of a self-insured group health plan established or maintained by an eligible organization, the proposed regulations presented potential approaches under which the third party administrator of the plan would arrange for a health insurance issuer to provide contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. An issuer (or its affiliate) would be able to offset the costs incurred by the third party administrator and the issuer in the course of arranging and providing such coverage by claiming an adjustment in the Federally-facilitated Exchange (FFE) user fee.

The Departments received over 400,000 comments (many of them standardized form letters) in response to the proposed regulations. After consideration of the comments, the Departments are publishing these final regulations. With the exception of the amendments to the religious employer exemption, which apply to group health plans and group health insurance issuers for plan years beginning on or after August 1, 2013, these final regulations apply to group health plans and health insurance issuers for plan years beginning on or after January 1, 2014, which is when the majority of plan years begin.[6] [7] Contemporaneously issued amendments to the HRSA Guidelines implementing the simplified and clarified religious employer exemption authorized by 45 CFR 147.131(a) of these final regulations will be effective on August 1, 2013.

[3] The 2011 amended interim final regulations were issued and effective on August 1, 2011, and published on August 3, 2011(76 FR 46621).

[4] The 2012 final regulations were published on February 15, 2012 (77 FR 8725).

[5] Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans, and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code, issued on February 10, 2012, and reissued on August 15, 2012. Available at: *http://www.cms.gov/CCIIO/Resources/Files/Downloads/prev-services-guidance-08152012.pdf*. The guidance, as reissued on August 15, 2012, clarifies, among other things, that plans that took some action before February 10, 2012, to try, without success, to exclude or limit contraceptive coverage are not precluded from eligibility for the safe harbor. The temporary enforcement safe harbor is also available to insured student health insurance coverage arranged by nonprofit institutions of higher education with religious objections to contraceptive coverage that meet the conditions set forth in the guidance. See final rule entitled "Student Health Insurance Coverage" published March 21, 2012 (77 FR 16457).

[6] Section 2713(b) of the PHS Act and the companion provisions of ERISA and the Code provide that the Secretary shall establish an interval of not less than one year between when new recommendations or guidelines under PHS Act section 2713(a) are issued and the first plan year (in the individual market, policy year) for which coverage of services addressed in such recommendations or guidelines must be in effect. Under the 2010 interim final regulations, the requirement on a non-exempt, non-grandfathered group health plan or group or individual health insurance policy to cover a newly recommended preventive service without cost sharing takes effect starting with the first plan year (in the individual market, policy year) that begins on or after the date that is one year after the new recommendation is issued. 26 CFR 54.9815–2713T(b)(1); 29 CFR 2590.715–2713(b)(1); 45 CFR 147.130(b)(1). In the case of contraceptive services, this 1-year period ended on August 1, 2012, because the HRSA Guidelines including such services were issued on August 1, 2011. These final regulations do not alter this effective date.

[7] This estimate is based on the Department of Labor's analysis of Form 5500 data.

Two additional guidance documents are being issued contemporaneously with these final regulations. First, HHS is issuing guidance extending the temporary safe harbor from enforcement of the contraceptive coverage requirement by the Departments to encompass plan years beginning on or after August 1, 2013, and before January 1, 2014. This guidance continues to include a form to be used by an organization during this temporary period to self-certify that its plan qualifies for the temporary enforcement safe harbor. Second, as described in more detail later in this preamble, HHS and DOL are also issuing a self-certification form to be executed by an organization seeking to be treated as an eligible organization for purposes of an accommodation under these final regulations. This self-certification form is applicable in conjunction with the accommodations under these final regulations (that is, for plan years beginning on or after January 1, 2014), after the expiration of the temporary enforcement safe harbor.

## II. Overview of the Final Regulations

These final regulations promote two important policy goals. First, the regulations provide women with access to contraceptive coverage without cost sharing, thereby advancing the compelling government interests in safeguarding public health and ensuring that women have equal access to health care. Second, the regulations advance these interests in a narrowly tailored fashion that protects certain nonprofit religious organizations with religious objections to providing contraceptive coverage from having to contract, arrange, pay, or refer for such coverage. The regulations finalize the general approach described in the proposed regulations, with modifications in response to comments that are intended primarily to simplify administration of the policy.

Section 2713 of the PHS Act reflects a determination by Congress that coverage of recommended preventive services without cost sharing by non-grandfathered group health plans and health insurance coverage is necessary to achieve access to basic health care for more Americans. Individuals are more likely to use preventive services if they do not have to satisfy cost-sharing requirements (such as a copayment, coinsurance, or a deductible). Use of preventive services results in a healthier population and reduces health care costs by helping individuals avoid preventable conditions and receive treatment earlier.[8] Further, Congress, by amending the Affordable Care Act during Senate consideration of the bill to ensure that recommended preventive services for women would be covered adequately by non-grandfathered group health plans and health insurance coverage, recognized that women have unique health care needs.[9] Such needs include contraceptive services.[10]

Some commenters asserted that contraceptive services should not be considered preventive health services, arguing that they do not prevent disease and have been shown by some studies to be harmful to women's health. The HRSA Guidelines are based on recommendations of the independent Institute of Medicine (IOM), which undertook a review of the scientific and medical evidence on women's preventive services. As documented in the IOM report, "Clinical Preventive Services for Women: Closing the Gaps," women experiencing an unintended pregnancy may not immediately be aware that they are pregnant, and thus delay prenatal care. They also may be less motivated to cease behaviors during pregnancy, such as smoking and consumption of alcohol, that pose pregnancy-related risks. Studies show a greater risk of preterm birth and low birth weight among unintended pregnancies.[11] In addition, contraceptive use helps women improve birth spacing and therefore avoid the increased risk of adverse pregnancy outcomes that comes with pregnancies that are too closely spaced. Short interpregnancy intervals in particular have been associated with low birth weight, prematurity, and small-for-gestational age births.[12] Contraceptives also have medical benefits for women who are contraindicated for pregnancy, and there are demonstrated preventive health benefits from contraceptives relating to conditions other than pregnancy (for example, prevention of certain cancers, menstrual disorders, and acne).[13] In addition, by reducing the number of unintended pregnancies, contraceptives reduce the number of women seeking abortions.[14] It is for a woman and her health care provider in each particular case to weigh any risks against the benefits in deciding whether to use contraceptive services in general or any particular contraceptive service.

Covering contraceptives also yields significant cost savings. A 2000 study estimated that it would cost 15 to 17 percent more not to provide contraceptive coverage in employee health plans than to provide such coverage, after accounting for both the direct medical costs of pregnancy and the indirect costs, such as employee absence.[15] Consistent with this finding, when contraceptive coverage was added to the Federal Employees Health Benefits Program, premiums did not increase because there was no resulting net health care cost increase.[16] Specific to public financing of contraceptive services, a 2010 analysis projected that expanding access to family planning services under Medicaid saves $4.26 for every $1 spent.[17] Additional research

[8] Institute of Medicine, *Clinicol Preventive Services for Women: Closing the Gops, Woshington,* DC: National Academy Press, 2011, at p. 16.

[9] S.Amdt. 2791 to S.Amdt. 2786 to H.R. 3590 (Service Members Home Ownership Tax Act of 2009), December 3, 2009.

[10] Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gops,* Washington. DC: National Academy. Press, 2011, at p. 9; *see olso* Sonfield, A., The Case for Insurance Coverage of Contraceptive Services and Supplies Without Cost Sharing, 14 *Guttmocher Policy Review.* 10 (2011), available at *www.guttmocher.org/pubs/gpr/14/1/gpr140107.html. See also Congressionol Record,* S12025 (Dec. 1, 2009), S12114, S12271, S12277 (December 3, 2009) (statements of Senators B. Boxer, D. Feinstein, A. Franken, and B. Nelson, respectively).

[11] Gipson, J.D., *et ol.,* The Effects of Unintended Pregnancy on Infant, Child and Parental Health: A Review of the Literature, *Studies on Fomily Planning,* 2008, 39(1):18–38.

[12] Conde-Aguledo, A., *et ol.,* Birth Spacing and Risk of Adverse Perinatal Outcomes—A Meta-Analysis, *Journol of the American Medicol Associotion,* 295(15):1809–1823 (2006); *see olso* Zhu, B., Effect of Interpregnancy Interval on Birth Outcomes: Findings from Recent U.S. Studies, *Internotionol Journol of Gynecology & Obstetrics,* 89:S25–S33 (2005); Fuentes-Afflick, E., & Hessol, N., Interpregnancy Interval and the Risk of Premature Infants, *Obstetrics & Gynecology,* 95(3):383–390 (2000).

[13] Institute of Medicine, *Clinicol Preventive Services for Women: Closing the Gops,* Washington, DC: National Academy Press, 2011, at p. 107.

[14] Institute of Medicine, *Clinicol Preventive Services for Women: Closing the Gaps, Washington,* DC: National Academy Press, 2011, at p. 105. See *olso,* Peipert, J., *et ol.,* Preventing Unintended Pregnancies by Providing No-Cost Contraception, *Obstetrics & Gynecology,* 120(6): 1291–1297 (2012); see *olso* Bongaarts, J., & Westoff, C., The Potential Role of Contraception in Reducing Abortion, *Studies in Fomily Plonning,* 31(3): 193–202 (2000).

[15] Testimony of Guttmacher Inst., submitted to the Comm. on Preventive Servs. for Women, Institute of Medicine, January 12, 2012, p. 11, citing Bonoan, R. & Gonen, J.S., Promoting Healthy Pregnancies: Counseling and Contraception as the First Step, Washington Business Group on Health, Family Health in Brief, Issue No. 3. August 2000; *see olso* Sonfield, A., The Case for Insurance Coverage of Contraceptive Services and Supplies Without Cost Sharing, 14 *Guttmocher Pol'y Rev.* 10 (2011); Mavranezouli, I., Health Economics of Contraception, 23 *Best Proctice & Res. Clinicol Obstetrics & Gynecology* 187–198 (2009); Trussell, J., *et ol.,* Cost Effectiveness of Contraceptives in the United States, 79 *Controception* 5–14 (2009); Trussell, J., The Cost of Unintended Pregnancy in the United States, 75 *Contraception* 168–170 (2007).

[16] Dailard, C., Special Analysis: The Cost of Contraceptive Insurance Coverage, *Guttmocher Rep. on Public Policy* (March 2003).

[17] Sawhill, R., *et ol.,* An Ounce of Prevention: Policy Prescriptions to Reduce the Prevalence of Fragile Families, *Future of Children,* 20(2):133–155.

arrived at a similar conclusion and found that, in total, services provided at publicly funded family planning centers saved $5.1 billion in 2008.[18]

Further, the importance of covering contraceptive services has been recognized by many states, issuers, and employers. Twenty-eight states now have laws requiring health insurance issuers to cover contraceptives.[19] A 2002 study found that more than 89 percent of insured plans covered contraceptives.[20] And a 2010 survey of employers revealed that 85 percent of large employers and 62 percent of small employers offered coverage of FDA-approved contraceptives, with another 32 percent of small employers reporting that they did not know whether they did so.[21]

Furthermore, in directing non-grandfathered group health plans and health insurance coverage to cover preventive services and screenings for women described in HRSA Guidelines without cost sharing, the statute acknowledges that both existing health coverage and existing preventive services recommendations often did not adequately serve the unique health needs of women. This disparity placed women in the workforce at a disadvantage compared to their male coworkers. Research shows that access to contraception improves the social and economic status of women.[22] Research also shows that cost sharing can be a significant barrier to access to contraception.[23] As IOM noted, women use preventive services more than men, generating significant out-of-pocket expenses for women.[24] Thus, eliminating cost sharing is particularly critical to addressing the gender disparity of concern here.

The Departments aim to advance these compelling public health and gender equity interests by providing more women broad access to recommended preventive services, including contraceptive services, without cost sharing, while simultaneously protecting certain nonprofit religious organizations with religious objections to contraceptive coverage from having to contract, arrange, pay, or refer for such coverage, as described in these final regulations. Moreover, through these final regulations, the Departments seek to achieve these goals in ways that take into account the responsibilities imposed on health insurance issuers and third party administrators.

*A. Amendments to Coverage of Recommended Preventive Health Services—26 CFR 54.9815–2713, 29 CFR 2590.715–2713, 45 CFR 147.130*

These sections of the final regulations finalize technical amendments to the existing preventive services coverage regulations as proposed. The final regulations amend paragraph (a) of the existing regulations so that the general requirement to provide coverage for recommended preventive services without cost sharing is subject to the religious employer exemption and eligible organization accommodations discussed later in this section.

The regulations also finalize proposed amendments to paragraph (a)(1)(iv) of the existing regulations. As amended, the authorization for HRSA to exempt religious employers from the contraceptive coverage requirement and the definition of religious employer are now located in new 45 CFR 147.131(a) of the HHS regulation and incorporated by reference in the regulations of the Departments of Labor and the Treasury.

There are no other changes to the provisions of the 2010 interim final regulations related to providing coverage for recommended preventive services without cost sharing. Accordingly, consistent with the general rules for the provision of coverage for recommended preventive services without cost sharing set forth in the 2010 interim final regulations, nothing prevents a plan or issuer from using reasonable medical management techniques to determine the frequency, method, treatment, or setting for an item or service to the extent not specified in a recommendation or guideline and nothing requires a plan or issuer that has a network of health care providers to provide benefits or eliminate cost sharing for items or services that are delivered out-of-network.[25]

*B. Religious Employer Exemption and Accommodations for Health Coverage Established or Maintained or Arranged by Eligible Organizations—26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A, 45 CFR 147.131*

These sections of the final regulations simplify and clarify the criteria for the religious employer exemption from the contraceptive coverage requirement. These sections also establish accommodations with respect to the contraceptive coverage requirement for group health plans established or maintained by eligible organizations (and group health insurance coverage provided in connection with such plans), as well as student health insurance coverage arranged by eligible organizations that are institutions of higher education.

1. Religious Employer Exemption

Under the 2012 final regulations, HRSA has the authority to issue guidelines in a manner that exempts group health plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) from any requirement to cover contraceptive services consistent with the HRSA Guidelines that would otherwise apply. A religious employer was defined for this purpose as one that: (1) Has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who

[18] Frost, J., *et al.*, Contraceptive Needs and Services, National and State Data, 2008 Update, New York: Guttmacher Institute (2010).

[19] Sonfield, A., *et al.*, U.S. Insurance Coverage of Contraceptives and the Impact of Contraceptive Coverage Mandates, *Perspectives on Sexual and Reproductive Health* 36(2):72–79, 2002.

[20] Sonfield, A., *et al.*, U.S. Insurance Coverage of Contraceptives and the Impact of Contraceptive Coverage Mandates, *Perspectives on Sexual and Reproductive Health* 36(2):72–79, 2002.

[21] Claxton, G., *et al.*, *Employer Health Benefits: 2010 Annual Survey*, Menlo Park, Cal.: Kaiser Family Found. & Chicago, Illinois: Health Research & Education Trust, 2010. While many employers included contraceptive coverage in their group health plans prior to the Affordable Care Act, the Departments note that the contraceptive coverage requirement promotes the government's interests with respect to even these plans' participants and beneficiaries by ensuring that these plans cover contraceptive services without cost sharing, a significant financial barrier to such services that was prevalent before the contraceptive coverage requirement. Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps*, Washington, DC: National Academy Press, 2011, at p. 107. *See also* Postlethwaite, D., *et al.*, A Comparison of Contraceptive Procurement Pre- and Post-Benefit Change, 76 *Contraception* 360 (2007).

[22] Testimony of Guttmacher Institute, submitted to the Comm. on Preventive Services for Women, Institute of Medicine, January 12, 2012, p. 6, citing Goldin, C. & Katz, L., Career and Marriage in the Age of the Pill, *American Economic Review*, 2000, 90(2):461–465; Goldin, C. & Katz, L.F., The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions, *Journal of Political Economy*, 2002, 110(4):730–770; Bailey, M.J., More Power to the Pill: The Impact of Contraceptive Freedom on Women's Life Cycle Labor Supply, *Quarterly Journal of Economics*, 2006, 121(1):289–320.

[23] Postlethwaite, D., *et al.*, A Comparison of Contraceptive Procurement Pre- and Post-Benefit Change, 76 *Contraception* 360 (2007).

[24] Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps*, Washington, DC: National Academy Press, 2011, p. 19.

[25] *See* 26 CFR 54.9815–2713T(a)(3) and (4); 29 CFR 2590.715–2713(a)(3) and (4); 45 CFR 147.130(a)(3) and (4). Note, however, if a plan or issuer does not have in its network a provider who can provide the particular service, then the plan or issuer must cover the item or service when performed by an out-of-network provider and not impose cost sharing with respect to the item or service. *See* FAQs About Affordable Care Act Implementation (Part XII), Q3 (February 20, 2013), available at: *http://www.dol.gov/ebsa/faqs/faq-oca12.html*.

share its religious tenets; and (4) is a nonprofit organization described in section 6033(a)(1) and 6033(a)(3)(A)(i) or (iii) of the Code. Section 6033(a)(3)(A)(i) and (iii) of the Code refers to churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any religious order.

The Departments proposed to simplify and clarify the definition of religious employer by eliminating the first three prongs and clarifying the fourth prong of the definition. Under this proposal, an employer that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Code would be considered a religious employer for purposes of the religious employer exemption. These proposed amendments were intended to eliminate any question as to whether group health plans of houses of worship that provide educational, charitable, or social services to their communities qualify for the exemption. Specifically, they were intended to ensure that an otherwise exempt plan is not disqualified because the employer's purposes extend beyond the inculcation of religious values or because the employer hires or serves people of different religious faiths. The Departments also proposed to clarify that, for purposes of the religious employer exemption, an employer that is organized and operates as a nonprofit entity is not limited to any particular form of entity under state law. The Departments reiterate that, under this standard, it is not necessary to determine the federal tax-exempt status of the nonprofit entity in determining whether the religious employer exemption applies.[26]

The Departments received numerous comments addressing the definition of religious employer. Some commenters stated that the proposed definition of religious employer was too narrow and should be broadened to include all employers, both nonprofit and for-profit, that have a religious objection to providing contraceptive coverage in their group health plan. Some commenters requested that the definition of religious employer be expanded to exempt not only churches and other houses of worship, but also religiously affiliated hospitals and other health care organizations and other religiously affiliated ministries using the concepts of Code section 414(e). Other commenters recommended that the requirement to cover contraceptive services be rescinded altogether.

Some commenters stated that the exemption for religious employers should be eliminated and that religious employers should instead be subject to the accommodations for eligible organizations so that their employees may also receive alternative contraceptive coverage without cost sharing. Other commenters opposed eliminating the first three prongs of the definition of religious employer, stating that only churches and other houses of worship that meet the criteria of all of the prongs should be subject to the exemption. Many commenters agreed with the Departments that the proposed definition of religious employer would not materially expand the universe of religious employers, but others felt that the proposed definition would unduly broaden it.

Based on their review of these comments, the Departments are finalizing without change the definition of religious employer in the proposed regulations. As indicated in the preamble to the proposed regulations (78 FR 8461), the simplified and clarified definition of religious employer does not expand the universe of religious employers that qualify for the exemption beyond that which was intended in the 2012 final regulations, but only eliminates any perceived potential disincentive for religious employers to provide educational, charitable, and social services to their communities. The Departments believe that the simplified and clarified definition of religious employer continues to respect the religious interests of houses of worship and their integrated auxiliaries in a way that does not undermine the governmental interests furthered by the contraceptive coverage requirement. Houses of worship and their integrated auxiliaries that object to contraceptive coverage on religious grounds are more likely than other employers to employ people of the same faith who share the same objection, and who would therefore be less likely than other people to use contraceptive services even if such services were covered under their plan.

Contemporaneous with the issuance of these final regulations, HRSA is issuing amended guidelines implementing the simplified and clarified religious employer exemption authorized by 45 CFR 147.131(a) of these final regulations (and incorporated by reference in 26 CFR 54.9815–2713(a)(1)(iv) and 29 CFR 2590.715–2713(a)(1)(iv)). The amendments to the guidelines will become effective beginning August 1, 2013.

2. Accommodations for Health Coverage Established or Maintained or Arranged by Eligible Organizations

In addition to simplifying and clarifying the definition of religious employer, these final regulations establish accommodations with respect to the contraceptive coverage requirement for health coverage established or maintained or arranged by eligible organizations, as defined in these final regulations. After meeting a self-certification standard, as described in more detail in this preamble, nonprofit religious organizations that qualify for these accommodations are not required to contract, arrange, pay, or refer for contraceptive coverage; however, plan participants and beneficiaries (or student enrollees and their covered dependents) will still benefit from separate payments for contraceptive services without cost sharing or other charge in accordance with section 2713 of the PHS Act and the companion provisions of ERISA and the Code. As discussed later in this section, the accommodations established under these final regulations do not require the issuance of a separate excepted benefits individual health insurance policy covering contraceptive services, as set forth in the proposed regulations, but instead require a simpler method of providing direct payments for contraceptive services.

a. Definition of Eligible Organization

The final regulations retain the definition of eligible organization set forth in the proposed regulations. Accordingly, under these final regulations, an eligible organization is an organization that: (1) Opposes providing coverage for some or all of the contraceptive services required to be covered under section 2713 of the PHS Act and the companion provisions of ERISA and the Code on account of religious objections; (2) is organized and operates as a nonprofit entity; (3) holds itself out as a religious organization; and (4) self-certifies that it satisfies the first three criteria (as discussed in more detail later in this section).

Some commenters requested that the definition of eligible organization be broadened to include nonprofit secular employers and for-profit employers with religious objections to contraceptive coverage. Other commenters urged that the definition not be extended to for-profit employers, arguing that for-profit employers should not be accommodated because their purposes are commercial, not religious. Additionally, several

[26] Similarly, whether a nonprofit entity is a religious employer is determined under this definition without regard to whether the entity files Form 990 with the IRS.

commenters recommended clarifying how an eligible organization would show that it holds itself out as a religious organization. Specifically, commenters suggested clarifying that only organizations that prominently and consistently hold themselves out to the public as religious organizations may qualify for an accommodation.

The Departments decline to adopt these suggestions. The definition of eligible organization in these final regulations is the same as that in the proposed regulations, and is intended to allow health coverage established or maintained or arranged by various types of nonprofit religious organizations with religious objections to contraceptive coverage to qualify for an accommodation. Consistent with religious accommodations in related areas of federal law, such as the exemption for religious organizations under Title VII of the Civil Rights Act of 1964, the definition of eligible organization in these final regulations does not extend to for-profit organizations. The Departments are unaware of any court granting a religious exemption to a for-profit organization, and decline to expand the definition of eligible organization to include for-profit organizations.

b. Self-Certification

Each organization seeking to be treated as an eligible organization under the final regulations, to avoid contracting, arranging, paying, or referring for contraceptive coverage, is required to self-certify, prior to the beginning of the first plan year to which an accommodation is to apply, that it meets the definition of an eligible organization.[27] The self-certification (as described in these final regulations) needs to be executed once. A copy of the self-certification needs to be provided to a new health insurance issuer or a new third party administrator if the eligible organization changes issuers or third party administrators. Comments addressing this topic generally approved of the approach proposed by the Departments, but some commenters suggested that stronger protections were needed to promote oversight, enforcement, and transparency and to prevent abuse. For example, some commenters recommended requiring eligible organizations to file their self-certifications with the Departments and making such records available to the public. Other commenters argued that the act of self-certification would infringe on the First Amendment right of free speech.

The final regulations do not require the self-certification to be submitted to any of the Departments. An eligible organization must simply maintain the self-certification (executed by an authorized representative of the organization) in its records, in a manner consistent with the record retention requirements under section 107 of ERISA, and make the self-certification available for examination upon request. The Departments believe that the requirement to make the self-certification available for examination upon request appropriately balances regulators', issuers', third party administrators', and plan participants and beneficiaries' (and student enrollees and their covered dependents') interest in verifying compliance and eligible organizations' interest in avoiding undue inquiry into their character, mission, or practices. Further, the Departments do not believe that the self-certification standard infringes on freedom of speech.

The proposed regulations provided that the self-certification would specify the contraceptive services for which the organization will not establish, maintain, administer, or fund coverage. The final regulations eliminate this requirement, pursuant to the standard exclusion policy discussed later in this section. Further, the final regulations provide that, if an organization seeks to be treated as an eligible organization under the final regulations, an issuer or third party administrator may not require any documentation from the organization beyond its self-certification as to its status as an eligible organization. The form to be used for the self-certification is being finalized contemporaneous with the issuance of these final regulations through the process provided for under the Paperwork Reduction Act of 1995.

As discussed previously, the self-certification form is applicable in conjunction with the accommodations under these final regulations (that is, for plan years beginning on or after January 1, 2014), after the expiration of the temporary enforcement safe harbor. The self-certification standard referenced in these final regulations (and the form to be executed by an eligible organization to make such self-certification, which is being issued contemporaneously with these final regulations) are different from the standard (and the form) associated with the guidance regarding the extension of the temporary enforcement safe harbor, which is also being issued contemporaneously with these final regulations.

c. Separate Payments for Contraceptive Services for Participants and Beneficiaries in Insured Group Health Plans

The proposed regulations provided, in the case of an insured group health plan established or maintained by an eligible organization, that the health insurance issuer providing group coverage in connection with the plan be required to assume sole responsibility, independent of the eligible organization and its plan, for providing separate individual health insurance policies covering contraceptive services for plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. Under this proposal, an organization seeking to be treated as an eligible organization would need only to meet the self-certification standard. The issuer, in turn, would automatically enroll plan participants and beneficiaries in separate individual health insurance policies that cover contraceptive services (and notify them of such enrollment) without the imposition of any cost-sharing requirement (such as a copayment, coinsurance, or a deductible), premium, fee, or other charge on plan participants or beneficiaries or on the eligible organization or its plan..

Some commenters stated that the Departments should not provide a tailored accommodation for an eligible organization that objects to only some types of contraceptive services. These commenters said that customizing individual contraceptive policies for participants and beneficiaries (or students enrollees and their covered dependents) in plans of eligible organizations based on the differing religious objections to contraceptive coverage of each eligible organization would create an administrative burden for issuers and confuse plan participants and beneficiaries (or student enrollees and their covered dependents). Some commenters also noted that requiring coordination of benefits might not be feasible, because many states prohibit coordination between individual and group health insurance coverage.

In response to these comments, the final regulations provide that an issuer providing payments for contraceptive services in accordance with these final regulations may use a standard exclusion from a group health insurance policy that encompasses all recommended contraceptive services

[27] Although not required to do so by these final regulations, nothing in these final regulations prevents a religious employer from drafting and executing a self-certification regarding its status as a religious employer and sharing the self-certification with issuers, plan service providers, plan participants or beneficiaries, or others.

and not violate PHS Act section 2713 and the companion provisions of ERISA and the Code with respect to the requirement to cover contraceptive services. While issuers may, at their option, choose to offer customized exclusions from group health insurance policies based on the differing religious objections to contraceptive coverage of each eligible organization (or offer several different but standardized exclusions from group health insurance policies from which eligible organizations may choose), they are not required to do so under these final regulations. Regardless of whether an issuer uses a standard or customized exclusion from a group health insurance policy, plan participants and beneficiaries (and student enrollees and their covered dependents) are assured that the issuer will make payments for any recommended contraceptive services excluded from the group health insurance policy (or student health insurance coverage).

Some commenters noted that the proposed individual health insurance policies covering contraceptive services might not be viewed as enforceable contracts under state contract law because there would be no premium associated with the coverage and no ability for an individual to decline coverage. Commenters suggested that states would need to develop new regulatory processes for reviewing forms and rates for such policies, and noted that the inability to charge a premium for such policies could raise actuarial soundness and financial reserve concerns. Commenters also noted that state laws would prevent issuers licensed to issue group health insurance policies in one state from issuing individual health insurance policies to employees of an eligible organization residing in other states, and expressed concern about the cost and administrative complexity of issuing and administering individual contraceptive coverage policies.

These final regulations achieve the same end by requiring that a health insurance issuer providing group health insurance coverage in connection with a group health plan established or maintained by an eligible organization assume sole responsibility for providing separate payments for contraceptive services directly for plan participants and beneficiaries, without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. The requirement that, for plan participants and beneficiaries, issuers provide payments for contraceptive services, in lieu of individual health insurance policies that cover contraceptive services, represents a simpler approach and responds to concerns raised by commenters, while still ensuring that eligible organizations and their plans do not contract, arrange, pay, or refer for such coverage, and that contraceptive coverage is expressly excluded from the group health insurance coverage.

Under these final regulations, as under the proposed regulations, the eligible organization need only meet the self-certification standard and provide to the issuer a copy of its self-certification. The issuer that receives the copy of the self-certification from the eligible organization must expressly exclude contraceptive coverage—either all contraceptive coverage or coverage of specific contraceptive services if the issuer chooses to customize the exclusion—from the group health insurance coverage of the eligible organization. The issuer must also notify plan participants and beneficiaries, contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective beginning on the first day of each applicable plan year, that the issuer provides payments for contraceptive services at no cost separate from the group health plan for so long as the participant or beneficiary remains enrolled in the plan, as discussed later in this section. Unlike under the proposed regulations, the issuer is not required to issue to plan participants and beneficiaries individual health insurance policies covering contraceptive services, and, thus, there is no need to consider such coverage excepted benefits, as proposed. Instead, under these final regulations, the issuer must, as a federal regulatory requirement, provide payments for contraceptive services for plan participants and beneficiaries, separate from the group health plan, without the imposition of cost sharing, premium, fee, or other charge on plan participants or beneficiaries or on the eligible organization or its plan. Under this simplified approach, issuers will not incur the associated administrative costs of issuing individual contraceptive coverage policies.

This simpler approach to the accommodation for insured coverage does not trigger certain aspects of state insurance law. As the payments at issue derive solely from a federal regulatory requirement, not a health insurance policy, they do not implicate issues such as issuer licensing and product approval requirements under state law, and they minimize cost and administrative complexity for issuers. At the same time, because the payments for contraceptive services are not a group health plan benefit under this approach, this policy ensures that eligible organizations and their plans do not contract, arrange, pay, or refer for contraceptive coverage, and that such coverage is expressly excluded from their group health insurance policies. This approach also minimizes barriers in access to care because plan participants and beneficiaries (and their health care providers) do not have to have two separate health insurance policies (that is, the group health insurance policy and the individual contraceptive coverage policy). Furthermore, Small Business Health Insurance Options Programs (SHOPs) (the small group market Exchanges) do not need to make operational changes as a result of the accommodation. Small employers that are eligible organizations purchasing coverage through a SHOP can simply provide a copy of their self-certification to the issuer (rather than provide it to the SHOP) to ensure that their small group market policy is provided in a manner consistent with these final regulations.

Although these payments for contraceptive services are not benefits under a health insurance policy, to fulfill an issuer's responsibilities under section 2713 of the PHS Act and the companion provisions of ERISA and the Code and consistent with the proposed regulations, an issuer must make them available in a way that meets minimum standards for consumer protection, which would ordinarily accompany coverage of recommended preventive health services without cost sharing under section 2713 of the PHS Act and the companion provisions of ERISA and the Code. Thus, issuers, in order to satisfy their regulatory obligations under these final regulations, must make these payments for contraceptive services in a manner consistent with the requirements under the following provisions of the PHS Act and the companion provisions of ERISA and the Code (and their implementing regulations): PHS Act sections 2706 (non-discrimination in health care), 2709 (coverage for individuals participating in approved clinical trials), 2711 (no lifetime or annual limits), 2713 (coverage of preventive health services), 2719 (appeals process), and 2719A (patient protections), as incorporated by reference into ERISA section 715 and Code section 9815.[28] Consistent with

[28] With respect to the accommodation for self-insured coverage of eligible organizations under these final regulations, a comparable requirement to

these standards and as described in the 2010 interim final regulations, an issuer may apply reasonable medical management techniques and may require that contraceptive services be obtained in-network (if an issuer has a network of providers) in order for plan participants and beneficiaries to obtain such services without cost sharing.[29]

Issuers are prohibited from charging any premium, fee, or other charge to eligible organizations or their plans, or to plan participants or beneficiaries, for making payments for contraceptive services, and must segregate the premium revenue collected from eligible organizations from the monies they use to make such payments. In making such payments, the issuer must ensure that it does not use any premiums collected from eligible organizations. Issuers have flexibility in how to structure these payments, provided that the payments in no way involve the eligible organization, and provided that issuers are able to account for this segregation of funds in accordance with applicable, generally accepted accounting and auditing standards.

The Departments stated in the preamble of the proposed regulations that issuers would find that providing contraceptive coverage is at least cost neutral because they would be insuring the same set of individuals under both the group health insurance policies and the separate individual contraceptive coverage policies and, as a result, would experience lower costs from improvements in women's health, healthier timing and spacing of pregnancies, and fewer unplanned pregnancies. The Departments continue to believe, and have evidence to support, that, with respect to the accommodation for insured coverage established under these final regulations, providing payments for contraceptive services is cost neutral for issuers. Several studies have estimated that the costs of providing contraceptive coverage are balanced by cost savings from lower pregnancy-related costs and from improvements in women's health.[30] [31] The Departments are unaware of any studies to the contrary.[32]

Some commenters raised specific premium rating and accounting issues related to the proposed regulations' approach to the cost neutrality of issuers providing contraceptive coverage. These commenters generally asserted that the cost savings due to lower pregnancy-related costs and improvements in women's health would flow to employers through reduced premiums, thereby leaving issuers uncompensated for the cost of providing contraceptive coverage. Further, commenters stated that, in the case of a group health insurance policy in the small group market, the small employer's reduced claims experience attributable to contraceptive coverage (not including the issuer's direct costs of contraceptive coverage) would be spread across the issuer's single risk pool for the entire small group market in a state and result in a lower index rate for pricing all of the issuer's small group market products. Thus, according to these commenters, in both the large and small group markets, issuers would not reap the cost savings attributable to contraceptive coverage, and would need to fund the costs of a free-standing contraceptive coverage policy from some other source.

One commenter suggested that it would be possible to view the provision of contraceptive coverage as cost neutral if an issuer were to set the premium otherwise charged to an eligible organization as though plan participants and beneficiaries did not have separate contraceptive coverage. Other commenters argued that the rationale for providing Federally-facilitated Exchange (FFE) user fee adjustments in connection with the accommodation for self-insured group health plans of eligible organizations was equally applicable in the context of insured group health plans of eligible organizations and recommended that issuers be permitted to charge a premium or otherwise be compensated for providing contraceptive coverage.

In response to these comments, the Departments continue to believe that issuers have various options for achieving cost neutrality, notwithstanding that they must make payments for contraceptive services without cost sharing, premium, fee, or other charge to the eligible organization, the group health plan, or plan participants or beneficiaries.

Issuers of large group insured products have an option by which they can ensure that they accrue the cost savings from reduced pregnancy-related expenses and other health care costs. For large group market products, issuers base premiums on an employer's prior year claims cost (that is, experience rating) and other factors.[33] Some commenters asserted that this rating practice means that any cost savings from fewer pregnancies and childbirths and improvements in women's health will be passed to the employer in the large group insured market. Given that there appears to be no legal requirement that issuers use this particular rating practice, and that this practice often entails adding costs to premiums that are not based solely on the experience of the employer's group,[34] issuers reasonably could set the premium for an eligible organization's large group policy as if no payments for contraceptive services had been provided to plan participants and beneficiaries—reflecting the actual terms of the group policy, which expressly excludes contraceptive coverage. This approach would be consistent with pricing methodologies currently used in the health insurance industry.

provide separate payments for contraceptive services consistent with these consumer protections is not explicitly placed on the third party administrator. This is because, as the plan administrator for contraceptive coverage, the third party administrator is already required to comply with these consumer protections, as well as all other provisions of ERISA that are applicable to group health plans, including ERISA sections 104 and 503, and the requirements of Part 7 of ERISA.

[29] See 26 CFR 54.9815–2713T(a)(3) and (4); 29 CFR 2590.715–2713(a)(3) and (4); 45 CFR 147.130(a)(3) and (4).

[30] Bertko, J., Glied, S., *et al.* The Cost of Covering Contraceptives Through Health Insurance (February 9, 2012), *http://aspe.hhs.gov/health/reports/2012/contraceptives/ib.shtml;* Washington Business Group on Health, Promoting Healthy Pregnancies: Counseling and Contraception as the First Step, Report of a Consultation with Business and Health Leader (September 20, 2000), *http://www.businessgrouphealth.org/pdfs/healthypregnancy.pdf;* Campbell, K.P., Investing in Maternal and Child Health: An Employer's Toolkit, National Business Group on Health *http://www.businessgrouphealth.org/healthtopics/maternalchild/investing/docs/mch_toolkit.pdf;* Trussell, J., *et al.* The Economic Value of Contraception: A Comparison of 15 Methods, American Journal Public Health, 1995; 85(4):494–503, Revenues of H.R. 3162, the Children's Health and Medicare Protection Act, for the Rules Committee (August 1, 2007) *http://www.cbo.gov/ftpdocs/85xx/doc8519/HR3162.pdf.*

[31] The Departments believe that these same cost savings found by issuers of group health insurance would also be found by issuers of student health insurance coverage.

[32] One commenter cited two studies disputing the cost effectiveness of preventive health services, but these studies are not specific to contraceptive services. Further, these studies find that preventive care is not cost effective when a large population receives the preventive service but only a small fraction of that population would have developed the condition being prevented, a circumstance not presented here. *See* Cohen, J., *et al.*, New England Journal of Medicine. 2008, 358:661–663 (February 14, 2008) *http://www.nejm.org/toc/nejm/358/7;* CBO Letter to Congressman Nathan Deal, (August 7, 2009). *http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/104xx/doc10492/08-07-prevention.pdf.*

[33] *http://www.nahu.org/consumer/Group Insurance.cfm.*

[34] *http://www.actuary.org/files/Draft_Large_Group_Medical_Business_Practice_Note_Jan_2013.pdf.*

Another option is to treat the cost of payments for contraceptive services for women enrolled in insured group health plans established or maintained by eligible organizations as an administrative cost that is spread across the issuer's entire risk pool, excluding plans established or maintained by eligible organizations given that issuers are prohibited from charging any premium, fee, or other charge to eligible organizations or their plans for providing payments for contraceptive services. In the small group market, issuers are required beginning in 2014 to treat all of their non-grandfathered business within a state as a single risk pool, and administrative costs may be spread evenly across all plans in the single risk pool (although issuers are permitted to apply them on a plan basis). In the large group market, while there is no single risk pool requirement, issuers generally spread administrative costs across their entire book of business.[35] In 2011, health insurance issuers earned approximately $290 billion in premiums in the insured small and large group markets.[36] If the cost of providing payments for contraceptive services for participants and beneficiaries in insured group health plans established or maintained by eligible organizations were treated as an administrative cost spread across an issuer's entire book of business (excluding plans established or maintained by eligible organizations), the cost of providing such payments would result in an imperceptible increase in administrative load.[37] These changes in premiums would be negligible and effectively cost neutral to issuers, even before considering any reductions in claims costs that accrue to the issuer.

Under either option, after meeting the self-certification standard, the eligible organization would not contract, arrange, pay, or refer for contraceptive coverage.

HHS intends to clarify in guidance that an issuer of group health insurance coverage that makes payments for contraceptive services under these final regulations may treat those payments as an adjustment to claims costs for purposes of medical loss ratio and risk corridor program calculations.[38] This adjustment compensates for any increase in incurred claims associated with making payments for contraceptive services.

Several commenters expressed concern that participants and beneficiaries in plans of eligible organizations would be automatically enrolled in individual contraceptive coverage policies and recommended providing an opt-out for plan participants and beneficiaries who object to contraceptive coverage on religious grounds. Other commenters stated that allowing participants and beneficiaries to opt out of such contraceptive coverage would create an administrative burden on issuers and privacy concerns for individuals because the issuers would know which individuals opted in or opted out of such coverage. The simplified approach described in these final regulations eliminates this issue altogether, because issuers are not required to issue individual contraceptive coverage policies at all.[39] Rather, they are required only to provide payments for contraceptive services for those plan participants and beneficiaries who opt to use such services. Nothing in these final regulations compels any plan participant or beneficiary to use such services, and nothing causes participants or beneficiaries to be automatically enrolled in contraceptive coverage; therefore, these concerns are addressed without the need for an opt-out mechanism. Moreover, nothing in these final regulations precludes employers or others from expressing any opposition to the use of contraceptives or requires health care providers to prescribe or provide contraceptives, if doing so is against their religious beliefs.

The Departments explained in the preamble of the proposed regulations that a health insurance issuer providing group health insurance coverage in connection with a group health plan established or maintained by an eligible organization would be held harmless if the issuer relied in good faith on a representation by the organization as to its eligibility for the accommodation and such representation was later determined to be incorrect. The Departments also explained that an eligible organization and its plan would be held harmless if the issuer were to fail to comply with the requirement to provide separate payments for contraceptive services for plan participants and beneficiaries at no cost. Some commenters requested that the Departments codify this policy in regulation text. Accordingly, this policy is now codified in paragraph (e) of 26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A, and 45 CFR 147.131 of these final regulations.

To summarize, the following are the key elements of the accommodation that is being made for eligible organizations with insured group health plans:

- An organization seeking to be treated as an eligible organization needs only to self-certify that it is an eligible organization, provide the issuer with a copy of the self-certification, and satisfy the recordkeeping and inspection requirements of the self-certification standard.
- The issuer that receives a self-certification must then expressly exclude contraceptive coverage from the eligible organization's group health insurance coverage.
- The issuer must, contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective beginning on the first day of each applicable plan year, notify plan participants and beneficiaries that the issuer provides separate payments for contraceptive services at no cost for so long as the participant or beneficiary remains enrolled in the plan.
- The issuer must segregate premium revenue collected from the eligible organization from the monies used to make payments for contraceptive services. When it makes payments for contraceptive services used by plan participants and beneficiaries, the issuer must do so without imposing any premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, its group health plan, or its plan participants or beneficiaries. In making such payments, the issuer must ensure that it does not use any premiums collected from eligible organizations. Issuers have flexibility in how to structure these payments, but must be able to account for this segregation of funds, subject to applicable, generally accepted accounting and auditing standards. Thus, an eligible organization need not contract, arrange, pay or refer for contraceptive coverage.

[35] Bluhm, W., ed., Group Insurance, 5th Ed. 2007), 459–460.

[36] 2011 MLR–A data, submitted to CMS in July 2012.

[37] Office of Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, "Cost-Neutrality of Contraceptive Coverage."

[38] See 45 CFR Part 158 for standards related to the medical loss ratio and 45 CFR Part 153 Subpart F for standards related to the risk corridor program.

[39] The same is true with respect to the accommodation for self-insured coverage of eligible organizations under these final regulations, given that third party administrators similarly are not required to arrange for individual contraceptive coverage policies at all.

• Plan participants and beneficiaries may refuse to use contraceptive services.

• An eligible organization and its group health plan are considered to comply with the contraceptive coverage requirement even if the issuer fails to comply with the requirement to provide separate payments for contraceptive services for plan participants and beneficiaries at no cost.

d. Separate Payments for Contraceptive Services for Participants and Beneficiaries in Self-Insured Group Health Plans

Comments varied as to which of the three proposed approaches to providing separate contraceptive coverage without cost sharing for participants and beneficiaries in self-insured plans of eligible organizations should be finalized. Some commenters suggested that none of the proposed approaches would enable objecting employers to separate themselves completely from the administration of contraceptive coverage. These commenters requested an unqualified exemption from the contraceptive coverage requirement for such employers. Other commenters stated that none of the proposed approaches would sufficiently ensure that participants and beneficiaries in self-insured plans of eligible organizations would receive separate contraceptive coverage without cost sharing. These commenters requested that the final regulations require that objecting employers retain legal responsibility for any failure on the part of issuers or third party administrators to provide such coverage.

A number of commenters expressed concern about the responsibilities that one or more of the proposed approaches would impose on third party administrators. Some of these commenters suggested that the proposed requirement that third party administrators arrange for separate contraceptive-only coverage through an issuer would convert third party administrators into health insurance brokers. Others suggested that third party administrators would not be willing to assume the responsibility of arranging for separate contraceptive-only coverage. These commenters also suggested that, even if a third party administrator were willing to assume such responsibility, it would pass along the resultant increase in its administrative costs to the employer.

Other commenters expressed concern about an approach that would require third party administrators to become plan administrators and fiduciaries under section 3(16) of ERISA for the sole purpose of arranging contraceptive coverage. These commenters suggested that requiring third party administrators to serve as fiduciaries would increase their exposure to legal liability and also create conflicts of interest with their plan sponsor clients given that many agreements between third party administrators and plan sponsors prohibit third party administrators from serving as fiduciaries.

A number of commenters questioned the Department of Labor's legal authority to designate a third party administrator as the plan administrator for contraceptive coverage by virtue of the eligible organization providing a copy of its self-certification to the third party administrator. These commenters suggested that the self-certification of the eligibility of the organization for the accommodation would be insufficient to act as a designation under ERISA section 3(16)(A)(i), and questioned whether the self-certification could be defined as an instrument under which the plan is operated.

After reviewing the comments on the three proposed approaches, the Departments are finalizing the third approach under which the third party administrator becomes an ERISA section 3(16) plan administrator and claims administrator solely for the purpose of providing payments for contraceptive services for participants and beneficiaries in a self-insured plan of an eligible organization at no cost to plan participants or beneficiaries or to the eligible organization. The Departments have determined that the ERISA section 3(16) approach most effectively enables eligible organizations to avoid contracting, arranging, paying, or referring for contraceptive coverage after meeting the self-certification standard, while also creating the fewest barriers to or delays in plan participants and beneficiaries obtaining contraceptive services without cost sharing.

Under this approach, as set forth in these final regulations, with respect to the contraceptive coverage requirement, an eligible organization is considered to comply with section 2713 of the PHS Act and the companion provisions in ERISA and the Code if it provides to all third party administrators with which it or its plan has contracted a copy of its self-certification, consistent with the requirements of these final regulations.[40] The self-certification must: (1) State that the eligible organization will not act as the plan administrator or claims administrator with respect to contraceptive services or contribute to the funding of contraceptive services; and (2) cite 29 CFR 2510.3–16 and 26 CFR 54.9815–2713A and 29 CFR 2590.715–2713A, which explain the obligations of the third party administrator. Upon receipt of the copy of the self-certification, the third party administrator may decide not to enter into, or remain in, a contractual relationship with the eligible organization to provide administrative services for the plan.

As relevant here, a plan administrator is defined in ERISA section 3(16)(A)(i) as "the person specifically so designated by the terms of the instrument under which the plan is operated." As a document notifying the third party administrator(s) that the eligible organization will not provide, fund, or administer payments for contraceptive services, the self-certification is one of the instruments under which the employer's plan is operated under ERISA section 3(16)(A)(i). The self-certification will afford the third party administrator notice of obligations set forth in these final regulations, and will be treated as a designation of the third party administrator(s) as plan administrator and claims administrator for contraceptive benefits pursuant to section 3(16) of ERISA. Additional conditions the eligible organization must meet in order to be considered to comply with PHS Act section 2713 and the companion provisions in ERISA and the Code include prohibitions on: (1) Directly or indirectly interfering with a third party administrator's efforts to provide or arrange separate payments for contraceptive services for participants or beneficiaries in the plan and (2) directly or indirectly seeking to influence a third party administrator's

[40] Third party administrators are hired by plan sponsors to process claims and administer other administrative aspects of employee benefit plans. In some cases, a plan hires different third party administrator to administer claims for different classifications of benefits. (For example, one plan may contract with a pharmacy benefit manager (PBM) to handle claims administration for prescription drugs and another third party administrator to handle claims for inpatient and outpatient medical/surgical benefits.) To the extent the plan hires more than one third party administrator, each third party administrator would become the section 3(16) plan administrator with respect to the types of claims it normally processes (that is, the PBM would continue to handle claims for prescription drugs and the other third party administrator would continue to handle claims for inpatient and outpatient medical/surgical benefits); each would do so in accordance with section 2713 of the PHS Act and the companion provisions of ERISA and the Code (even if plan terms might otherwise provide differently) as plan administration that may be funded in accordance with 45 CFR 156.50(d).

decision to provide or arrange such payments.[41]

A third party administrator that receives a copy of the self-certification and that agrees to enter into or remain in a contractual relationship with the eligible organization to provide administrative services for the plan must provide or arrange separate payments for contraceptive services for participants and beneficiaries in the plan without cost sharing, premium, fee, or other charge to plan participants or beneficiaries, or to the eligible organization or its plan. The third party administrator can provide such payments on its own, or it can arrange for an issuer or other entity to provide such payments. In either case, like the payments for contraceptive services under the accommodation for insured plans of eligible organizations discussed previously, the payments are not health insurance policies. Moreover, in either case, the third party administrator can make arrangements with an issuer offering coverage through an FFE to obtain reimbursement for its costs (including an allowance for administrative costs and margin). As discussed later in this section, the issuer offering coverage through the FFE can receive an adjustment to the FFE user fee, and the issuer is required to pass on a portion of that adjustment to the third party administrator to account for the costs of providing or arranging payments for contraceptive services. A third party administrator that provides or arranges the payments is entitled to retain reimbursement for its costs for the period during which it reasonably and in good faith relied on a representation by the eligible organization that it was eligible for the accommodation. This is so even if the organization's representation was later determined to be incorrect.

The third party administrator must provide plan participants and beneficiaries with notice of the availability of the separate payments for contraceptive services contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in coverage that is effective beginning on the first day of each applicable plan year (as discussed in more detail later in this section). Third party administrators must also take on the statutory responsibilities of a plan administrator under ERISA, including setting up and operating a claims procedure under ERISA section 503, providing plan participants and beneficiaries with disclosures required under ERISA section 104, and complying with the requirements of Part 7 of ERISA. The Departments note that there is no obligation for a third party administrator to enter into or remain in a contract with the eligible organization if it objects to any of these responsibilities.

The Departments believe that this approach most successfully addresses both the desire of some commenters for plan participants and beneficiaries to receive contraceptive coverage without cost sharing without delays or other barriers, and the desire of other commenters for objecting employers to be separated from contracting, arranging, paying, or referring for contraceptive coverage. The third party administrator serving as the plan administrator for contraceptive benefits ensures that there is a party with legal authority to arrange for payments for contraceptive services and administer claims in accordance with ERISA's protections for plan participants and beneficiaries. At the same time, the approach enables objecting employers, after providing third party administrators with a copy of the self-certification (as described previously), to separate themselves from contracting, arranging, paying, or referring for contraceptive coverage. Additionally, by substituting payments for contraceptive services for health insurance policies, this approach avoids the complications that would be presented by requiring the creation of a contraceptive-only health insurance product, and allows third party administrators to avoid potentially becoming health insurance brokers. Accordingly, while the Departments appreciate commenters' concerns about the responsibilities that third party administrators must assume under this accommodation, they believe that this approach best ensures that plan participants and beneficiaries receive contraceptive coverage without cost sharing, and without the objecting employers paying for or administering such coverage.

Moreover, none of the comments changed the Department of Labor's view that it has legal authority to require the third party administrator to become the plan administrator under ERISA section 3(16) for the sole purpose of providing payments for contraceptive services if the third party administrator agrees to enter into or remain in a contractual relationship with the eligible organization to provide administrative services for the plan. The Department of Labor has broad rulemaking authority under Title I of ERISA, which includes the ability to interpret the definition of plan administrator under ERISA section 3(16)(A)(i). The Department of Labor's interpretation of the self-certification described herein as one of the "instruments under which the plan is operated" is consistent with the plain meaning of the term because it identifies the limited set of plan benefits (that is, contraceptive coverage) that the employer refuses to provide and that the third party administrator must therefore provide or arrange for an issuer or another entity to provide.

e. Self-Insured Group Health Plans Without Third Party Administrators

Although some commenters addressed the solicitation for comments on whether and how to provide an accommodation for self-insured group health plans established or maintained by eligible organizations that do not use the services of a third party administrator, no comments indicated that such plans actually exist. Accordingly, the Departments continue to believe that there are no self-insured group health plans in this circumstance. However, to allow for the possibility that such a self-insured group health plan does exist, the Departments will provide any such plan with a safe harbor from enforcement of the contraceptive coverage requirement, contingent on: (1) the plan submitting to HHS information (as described later in this section) showing that it does not use the services of a third party administrator; and (2) if HHS agrees that the plan does not use the services of a third party administrator, the plan providing notice to plan participants and beneficiaries in any application materials distributed in connection with enrollment (or re-enrollment) in coverage that is effective beginning on the first day of each applicable plan year, indicating that it does not provide benefits for contraceptive services.

Such plans must submit to HHS at least 60 days prior to the first day of the first applicable plan year all of the following information:

- Identifying information for the plan, the eligible organization that acts as the plan sponsor, and an authorized representative of the organization, along with the authorized representative's telephone number and email address.
- A listing of the five most highly compensated non-clinical plan service providers (other than employees of the plan or plan sponsor), including contact information for each plan service provider, a concise description of the nature of the services provided by each service provider to the plan, and the annual amount of compensation paid to

[41] Nothing in these final regulations prohibits an eligible organization from expressing its opposition to the use of contraceptives.

each plan service provider (examples of plan services include claims processing and adjudication, appeals management, provider network development, and pharmacy benefit management).

• An attestation (executed by an authorized representative of the organization) that the plan is established or maintained by an eligible organization, and is operated in compliance with all applicable requirements of part A of title XXVII of the PHS Act, as incorporated into ERISA and the Code.

Such information must be submitted electronically to *marketreform@cms.hhs.gov*.

If any such submission demonstrates that a self-insured group health plan established or maintained by an eligible organization does not use the services of a third party administrator, the Departments will provide a safe harbor from enforcement of the contraceptive coverage requirement while an additional accommodation is considered. If the Departments discover through any such submission that a self-insured group health plan established or maintained by an eligible organization does in fact use the services of a third party administrator, the eligible organization must either follow the procedures described in these final regulations to obtain an accommodation or otherwise comply with the contraceptive coverage requirement.

f. Notice of Availability of Separate Payments for Contraceptive Services

Consistent with the proposed regulations, the final regulations direct that, for any plan year to which an accommodation is to apply, a health insurance issuer providing separate payments for contraceptive services pursuant to the accommodation, or a third party administrator arranging or providing such payments (or its agent), must provide timely written notice about this fact to plan participants and beneficiaries in insured or self-insured group health plans (or student enrollees and their covered dependents in student health insurance coverage) of eligible organizations.

Under the proposed regulations, this notice would be provided by the issuer contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment (or re-enrollment) in health coverage established or maintained or arranged by the eligible organization. Commenters noted that employers, not issuers, typically distribute plan enrollment (or re-enrollment) materials to employees and that providing this notice contemporaneous with plan enrollment (or re-enrollment) materials would not be possible because issuers typically do not receive enrollee information prior to enrollment.

Consistent with the simplified approach described previously, these final regulations provide that this notice must be provided by either the issuer providing separate payments for contraceptive services under the accommodation, or a third party administrator arranging or providing such payments (or its agent). The notice must be provided contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in coverage that is effective beginning on the first day of each plan year to which the accommodation applies, and it must indicate that the eligible organization does not fund or administer contraceptive benefits, but that the issuer or third party administrator will provide separate payments for contraceptive services at no cost. The Departments believe that the direction that the notice be provided contemporaneous with application materials "to the extent possible" provides sufficient flexibility to address the concerns raised by commenters about the timing of the notice.

The final regulations continue to provide model language that may be used to satisfy this notice requirement. Substantially similar language may also be used to satisfy the notice requirement. Some commenters suggested additions or modifications to the model language. Other commenters stated that the Departments should not allow the use of substantially similar language. Additionally, some commenters recommended the Departments set standards to ensure that the notice is accessible to persons with limited English proficiency and person with disabilities. The Departments believe that the model language in the final regulations, along with existing guidance concerning civil rights obligations, provide sufficient notice. The Departments also believe that the flexibility afforded by the final regulations to use substantially similar language is generally consistent with other federal notice requirements.

The notice must include contact information for the issuer or third party administrator in the event plan participants and beneficiaries (or student enrollees and their covered dependents) have questions or complaints. The Departments note that issuers and third party administrators may find it useful to provide additional written information concerning how to obtain reimbursement for contraceptive services, appeals procedures, provider and pharmacy networks, prescription drug formularies, medical management procedures, and similar issues.[42]

g. Student Health Insurance Coverage

Consistent with the HHS proposed regulation, paragraph (f) of the HHS final regulation provides that an accommodation applies to student health insurance coverage arranged by an eligible organization that is an institution of higher education in a manner comparable to that in which it applies to group health insurance coverage provided in connection with a group health plan established or maintained by an eligible organization that is an employer. For this purpose, any reference to plan participants and beneficiaries is a reference to student enrollees and their covered dependents.

Several commenters supported treating student health insurance like employer-sponsored group health insurance for purposes of these final regulations. Other commenters suggested that an accommodation should not extend to institutions of higher education that arrange student health insurance coverage, because student health insurance coverage is considered a type of individual rather than group health insurance coverage under federal law.[43] One commenter recommended that issuers offering coverage through the Exchanges be required to provide separate contraceptive coverage at no cost to students enrolled in nonprofit religious institutions of higher education with religious objections to contraceptive coverage (and their dependents).

Student health insurance coverage is administered differently than other individual health insurance coverage. Whereas most individual health insurance coverage is issued under a contract between an individual policyholder and a health insurance issuer, student health insurance coverage is available to student enrollees and their covered dependents pursuant to a written agreement between an institution of higher education and a health insurance issuer. Some religiously affiliated colleges and universities object to signing a written agreement or providing financial

[42] Furthermore, as discussed previously, with respect to self-insured coverage, third party administrators that are plan administrators must operate in accordance with Part 1 of ERISA, including ERISA section 104, which generally requires certain disclosures regarding plan benefits and limitations.

[43] 45 CFR 147.147 (77 FR 16453).

assistance for student health insurance coverage that provides benefits for contraceptive services. For these reasons, HHS believes that it is appropriate to take into account religious objections to contraceptive coverage of eligible organizations that are institutions of higher education and is finalizing the provision applicable to student health insurance coverage as proposed. HHS notes that it does not have the authority to require issuers offering coverage through the Exchanges to provide separate contraceptive coverage at no cost to students (and their dependents).

The Departments note that any accommodation specific to a nonprofit religious institution of higher education is intended to accommodate the nonprofit religious institution of higher education only with respect to its arrangement of student health insurance coverage for its students and their covered dependents. With respect to the establishment or maintenance of a group health plan by a nonprofit religious institution of higher education for its employees and their dependents, the nonprofit religious institution of higher education is intended to be accommodated in the same manner as that in which any other eligible organization that has established or maintained a group health plan for its employees and their dependents is to be accommodated.

*C. Adjustments of Federally-Facilitated Exchange User Fees—45 CFR 156.50(d) and 156.80(d)*

These sections of the final HHS regulation set forth processes and standards to fund the payments for the contraceptive services that are provided for participants and beneficiaries in self-insured plans of eligible organizations under the accommodation described previously, at no cost to plan participants or beneficiaries, eligible organizations, third party administrators, or issuers, through an adjustment in the FFE user fee payable by an issuer participating in an FFE.[44]

In response to the proposed regulations, some commenters questioned HHS's authority to establish the FFE user fee adjustment. Commenters also recommended that HHS ensure that the adjustments to user fee collections not undermine FFE operations. Commenters stated that the FFE user fee should not be increased to offset the user fee adjustment. Commenters further stated that the FFE user fee adjustment must be adequate to provide financial incentives to ensure that women in self-insured plans of eligible organizations receive contraceptive coverage at no cost. Commenters suggested that the FFE user fee adjustment may not be an adequate long-term funding source as more states establish Exchanges over time, reducing the number of FFEs and therefore available FFE user fee revenue.

Office of Management and Budget (OMB) Circular No. A–25R establishes federal policy regarding these types of user fees. Consistent with that Circular, the revised FFE user fee calculation (which will result in an adjustment of the FFE user fee) will facilitate the accommodation of self-insured plans established or maintained by eligible organizations by ensuring that plan participants and beneficiaries are provided contraceptive coverage at no cost so that eligible organizations are not required to administer or fund such coverage. By financing the accommodation for self-insured plans of eligible organizations through the FFE user fee adjustment, participants and beneficiaries in such plans can retain their existing coverage, while gaining access to separate payments for contraceptive services at no cost. HHS does not believe that the adjustment to FFE user fee collections, as contemplated under this final regulation, will materially undermine FFE operations.

HHS notes that it is not raising the FFE user fee finalized in the 2014 Payment Notice to offset the FFE user fee adjustments, and estimates that payments for contraceptive services will represent only a small portion of total FFE user fees.

The FFE user fee adjustments support many of the goals of the Affordable Care Act, including improving the health of the population, reducing health care costs, providing access to health coverage, encouraging eligible organizations to continue to offer health coverage, and ensuring access to affordable qualified health plans (QHPs) via efficiently operated Exchanges. Moreover, as described earlier in these final regulations, there are significant benefits associated with contraceptive coverage without cost sharing. Such coverage significantly furthers the governmental interests in promoting public health and gender equality, and promotes the underlying goals of the Exchanges and the Affordable Care Act more generally.

In § 156.50(d) of the proposed regulations, HHS specified that, if an issuer were to provide contraceptive coverage to participants and beneficiaries in self-insured plans of eligible organizations at no cost, and the issuer offers coverage through an FFE, the issuer would be able to seek an adjustment to the FFE user fee for the estimated cost of the contraceptive coverage. Moreover, HHS proposed that, if the issuer providing the contraceptive coverage did not offer coverage through an FFE—either because it was not a QHP issuer, or because it was a QHP issuer but operated in a state without an FFE—an issuer in the same issuer group that offered coverage through an FFE would have been able to seek an adjustment to the FFE user fee on behalf of the issuer providing the contraceptive coverage. HHS proposed to use the definition of issuer group in 45 CFR 156.20, that is, all entities treated under subsection (a) or (b) of section 52 of the Code as a member of the same controlled group of corporations as (or under common control with) a health insurance issuer, or issuers affiliated by the common use of a nationally licensed service mark. Several commenters expressed concern that not every issuer seeking to provide contraceptive coverage to participants and beneficiaries in self-insured plans of eligible organizations would be in the same issuer group as an issuer that offers coverage through an FFE. Commenters further noted that, even if the issuer providing the contraceptive coverage and the issuer offering coverage through an FFE were in the same issuer group, the issuers might incur significant administrative costs in establishing the necessary arrangements.

In response to these comments, and to account for the payments for contraceptive services for participants and beneficiaries in self-insured group health plans of eligible organizations under the accommodation described previously, HHS is finalizing a modification of the proposed policy. In § 156.50(d)(1), a participating issuer (defined at 45 CFR 156.50(a)[45]) offering a plan through an FFE may qualify for an adjustment to the FFE user fee to the extent that the participating issuer either: (i) made payments for contraceptive services on behalf of a third party administrator pursuant to 26 CFR 54.9815–2713A(b)(2)(ii) or 29 CFR 2590.715–2713A(b)(2)(ii); or (ii) seeks an adjustment to the FFE user fee with respect to a third party administrator

[44] The FFE user fee was established in the March 11, 2013 final rule entitled "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014" (78 FR 15410) (2014 Payment Notice).

[45] Under 45 CFR 156.50(a), a participating issuer includes QHP issuers, issuers of multi-state plans, and issuers of stand-alone dental plans. We note that an issuer of a Consumer Operated and Oriented Plan (CO–OP) offered on an FFE is also considered to be a participating issuer for the purpose of the FFE user fee adjustment.

that, following receipt of a copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(4) or 29 CFR 2590.715–2713A(a)(4), made or arranged for payments for contraceptive services pursuant to 26 CFR 54.9815–2713A(b)(2)(i) or (ii) or 29 CFR 2590.715–2713A(b)(2)(i) or (ii). Under the final regulation, neither the third party administrator, nor the participating issuer, nor any entity providing payments for contraceptive services (if neither the third party administrator nor the participating issuer is providing such payments) is required to be part of the same issuer group or otherwise affiliated. This modification allows greater flexibility in the arrangements among third party administrators, issuers, and other entities, while still ensuring that eligible organizations are not required to contract, arrange, pay, or refer for contraceptive coverage. Consistent with the proposed regulations, an allowance for administrative costs and margin in the FFE user fee adjustment accounts for the costs of arrangements among the third party administrator, the participating issuer, and any other entity providing payments for contraceptive services (if neither the third party administrator nor the participating issuer is providing such payments).

In § 156.50(d)(1) through (4) of the proposed regulations, HHS set forth a process through which an issuer seeking an FFE user fee adjustment would submit information to HHS to demonstrate the provision of contraceptive coverage and estimate the cost of such coverage. HHS further proposed that it would review this information and provide an adjustment to the issuer's monthly obligation to pay the FFE user fee in an amount equal to the approved estimated cost of the contraceptive coverage. HHS suggested that the cost of the contraceptive coverage, including administrative costs and margin, could be estimated on a per capita basis by either the issuer or HHS using either actuarial principles and methodologies or, for 2016 and beyond, previous experience. The per capita rate would then be multiplied by the monthly enrollment in the contraceptive coverage in order to calculate the total FFE user fee adjustment.

HHS sought comments on this proposed process for collecting information, calculating the cost of the contraceptive coverage, and applying the FFE user fee adjustment. HHS received several comments suggesting that issuers should be required to submit information only on an annual basis, rather than a monthly basis, to reduce the administrative burden. Commenters also noted that it would likely be difficult to estimate the cost of the contraceptive coverage accurately, particularly in the initial years, given that the prohibition on cost sharing could affect utilization. In addition, commenters noted that costs would likely vary considerably based on differences in utilization patterns and administrative processes.

In response to these comments, HHS is making certain modifications to the process described previously. Rather than using a monthly process, the final regulation at § 156.50(d)(2) requires a participating issuer seeking an FFE user fee adjustment to submit to HHS, in the year following the calendar year in which the contraceptive services for which payments were made under the accommodation described previously were provided, for each self-insured plan, the total dollar amount of the payments for contraceptive services that were provided during the applicable calendar year. The issuer will then receive an adjustment to its obligation to pay the FFE user fee equal to the cost of the contraceptive services that were provided during the previous year, plus an allowance, as specified by HHS, for administrative costs and margin. For example, HHS expects that issuers seeking an FFE user fee adjustment for payments for contraceptive services that were provided in calendar year 2014 will be required to submit to HHS by July 15, 2015, the total dollar amount of the payments. This timing will allow adequate time for claims run-out and data collection. The FFE user fee adjustment will be applied starting in October 2015. Although this approach delays the application of the FFE user fee adjustment, it significantly reduces the administrative burden on issuers, third party administrators, and HHS. HHS believes that tying the FFE user fee adjustment to the actual costs of payments for contraceptive services, plus an allowance for administrative costs and margin, will provide reasonable assurance that the adjustment is adequate to cover the full costs of the payments for contraceptive services, furthering the goal of providing contraceptive coverage without cost sharing, as required by PHS Act section 2713 and the companion provisions in ERISA and the Code.

As discussed later in this section, HHS is also directing third party administrators to submit to HHS a notification that the third party administrator intends for a participating issuer to seek an FFE user fee adjustment. This notification must be provided by the later of January 1, 2014, or the 60th calendar day following the date on which the third party administrator receives a copy of a self-certification from an eligible organization. The notification must be provided whether it is intended that the participating issuer will provide payments for contraceptive services on behalf of the third party administrator, or whether it is intended that the participating issuer will seek an adjustment to the FFE user fee with respect to such payments made or arranged for by the third party administrator. HHS will provide guidance on the manner of submission of the notification, as well as guidance on the application for the FFE user fee adjustment, through the process provided for under the Paperwork Reduction Act of 1995.

HHS is also modifying the standards proposed at § 156.50(d) to align with the final regulations regarding the accommodation for self-insured group health plans of eligible organizations. As discussed previously, under these final regulations, the third party administrator may make the payments for contraceptive services itself, or it may arrange for an issuer (including an issuer that does not offer coverage through an FFE) or another entity to make the payments on its behalf. Under either scenario, a third party administrator that seeks to offset the costs of such payments through an FFE user fee adjustment must enter into an arrangement with a participating issuer offering coverage through an FFE. The participating issuer and the third party administrator must each submit information to HHS, as described in § 156.50(d)(2) of the final regulation, to verify that the payments for contraceptive services were provided in accordance with these final regulations.

Specifically, in § 156.50(d)(2)(i), HHS finalizes submission standards for a participating issuer to receive the FFE user fee adjustment. The participating issuer must submit to HHS, in the manner and timeframe specified by HHS, in the year following the calendar year in which the contraceptive services were provided: (A) Identifying information for the participating issuer and each third party administrator that received a copy of the self-certification with respect to which the participating issuer seeks an adjustment in the FFE user fee (whether or not the participating issuer was the entity that made the payments for contraceptive services); (B) identifying information for each self-insured group health plan with respect to which a copy of the self-certification was received by a third party administrator and with respect to

which the participating issuer seeks an adjustment in the FFE user fee; and (C) for each such self-insured group health plan, the total dollar amount of the payments for contraceptive services that were provided during the applicable calendar year under the accommodation described previously. If such payments were made by the participating issuer directly, the total dollar amount should reflect the amount of the payments made by the participating issuer; if the third party administrator made or arranged for such payments, the total dollar amount should reflect the amount reported to the participating issuer by the third party administrator. Similarly, in § 156.50(d)(2)(ii) and (iii), HHS finalizes submission standards for the third party administrator with respect to which the participating issuer seeks an adjustment in the FFE user fee. In paragraph (d)(2)(ii), HHS finalizes a standard under which the third party administrator must notify HHS, by the later of January 1, 2014, or the 60th calendar day following the date on which it receives the applicable copy of the self-certification, that it intends to arrange for a participating issuer to seek an FFE user fee adjustment. HHS will provide guidance on the manner of this submission through the process provided for under the Paperwork Reduction Act of 1995. This notification is necessary to allow HHS to coordinate the development of the systems for administering the FFE user fee adjustment. In paragraphs (d)(2)(iii)(A) through (E), HHS specifies several other standards under which the third party administrator must submit to HHS, in the year following the calendar year in which the contraceptive services for which payments were made under the accommodation described previously were provided, the following information: (A) Identifying information for the third party administrator and the participating issuer; (B) identifying information for each self-insured group health plan with respect to which the participating issuer seeks an adjustment in the FFE user fee; (C) the total number of participants and beneficiaries in each self-insured group health plan during the applicable calendar year;[46] (D) for each self-insured group health plan with respect to which the third party administrator made payments for contraceptive services, the total dollar amount of such payments that were provided during the applicable calendar year under the accommodation described previously (if such payments were made by the participating issuer directly, the total dollar amount should reflect the amount reported to the third party administrator by the participating issuer; if the third party administrator made or arranged for such payments, the total dollar amount should reflect the amount of the payments made by or on behalf of the third party administrator); and (E) an attestation that the payments for contraceptive services were made in compliance with 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2). If the third party administrator does not meet these standards, the participating issuer may not receive an FFE user fee adjustment to offset the costs of the payments for contraceptive services incurred by or on behalf of the third party administrator. HHS believes that it is necessary to collect this information directly from the third party administrator that has the duty to ensure that the payments for contraceptive services are made to ensure the accuracy of the data provided, without requiring the participating issuer to attest to information to which it may not have access or over which it has little control.

In § 156.50(d)(3), HHS establishes the process by which a participating issuer will be provided a reduction in its obligation to pay the FFE user fee. As long as an authorizing exception under OMB Circular No. A–25R is in effect, the reduction will be calculated as the sum of the total dollar amount of the payments for contraceptive services submitted by the applicable third party administrators, as described in paragraph (d)(2)(iii)(D), and an allowance, specified by HHS, for administrative costs and margin. In the proposed regulations, HHS requested comments on the appropriate method for determining the administrative costs associated with providing the contraceptive coverage, as well as a margin to ensure that issuers receive appropriate compensation for providing the contraceptive coverage. Commenters agreed with the proposal to reimburse for administrative costs and to provide a margin. Commenters noted that administrative costs would be incurred because of the complexities inherent in arrangements between entities seeking the FFE user fee adjustment and entities providing the contraceptive coverage, particularly when the entities operate in different states. In addition, commenters stated that administrative costs incurred by the third party administrators could vary because of variations in billing processes.

As finalized in this regulation, for the initial years of this policy, HHS will specify an allowance for administrative costs and margin, which will be incorporated into the FFE user fee adjustment, rather than request the third party administrator or the participating issuer to submit to HHS an estimate of the third party administrator and the participating issuer's administrative costs. This approach is consistent with the general approach in these final regulations to simplify administration of the accommodations for eligible organizations, while still ensuring that no eligible organization is required to contract, arrange, pay, or refer for contraceptive coverage. HHS notes that it intends to review the methodology for determining reimbursement for administrative costs and margin in future years to ensure that HHS is accurately capturing these costs. HHS will establish the allowance as a percentage of the cost of the payments for contraceptive services because HHS believes that the majority of administrative costs will be related to processing of payments to providers for contraceptive services, and because HHS believes that it is reasonable to measure margin on this business as a percentage of the cost of the contraceptive services. HHS will establish the allowance at no less than ten percent of such cost, and will specify the allowance for a particular calendar year in the annual HHS notice of benefit and payment parameters. The specific allowance for the 2014 calendar year will be proposed for public comment in the HHS Notice of Payment and Benefit Parameters for 2015 (which is scheduled to be published in the fall of 2013). This approach will allow HHS to provide for a reasonable allowance for administrative expenses for the third party administrator, the participating issuer, and any other entity providing the payments for contraceptive services on behalf of the third party administrator, as well as a margin for each entity. HHS welcomes feedback from third party administrators, participating issuers, and other relevant stakeholders on the allowance for administrative costs and margin, including the appropriate percentage and alternative methods for future determination of the allowance for administrative costs and margin.

Section 156.50(d)(4) is similar to the corresponding proposed provision, and specifies that, as long as an exception under OMB Circular No. A–25R is in effect, if the amount of the reduction under paragraph (d)(3) is greater than the amount of the obligation to pay the FFE user fee in a particular month, the participating issuer will be provided a credit in succeeding months in the

[46] No personally identifiable information will be collected from participating issuers or third party administrators pursuant to § 156.50(d)(2).

amount of the excess. HHS notes that the likelihood of this occurring will depend on the relative magnitudes of the cost of payments for contraceptive services and the FFE user fee, the number of participants and beneficiaries in self-insured plans with respect to which the participating issuer seeks an adjustment in the FFE user fee, and the number of individuals enrolled in coverage offered by the issuer through the FFE. HHS also notes that it intends to provide a monthly report, for the initial month in which the FFE user fee adjustment for a particular calendar year is applied, and for succeeding months until the credit is fully applied, to issuers that receive an FFE user fee adjustment. HHS contemplates that this monthly report will include information on the issuer's user fee obligation for the month, its total adjustment for the applicable calendar year, the user fee adjustment applied to date, and the value of the adjustment to be credited to future months (so long as the exception under OMB Circular No. A–25R is in effect). Additionally, HHS intends to provide a monthly report to each applicable third party administrator detailing any FFE user fee adjustment that will be provided to a participating issuer with respect to the costs for contraceptive services incurred by or on behalf of the third party administrator, as well as the portion of the user fee adjustment applied to date.

Section 156.50(d)(5) specifies that, within 60 calendar days of receipt of any adjustment in the FFE user fee, a participating issuer must pay each third party administrator with respect to which it received any portion of such adjustment an amount no less than the portion of the adjustment attributable to the total dollar amount of the payments for contraceptive services submitted by the third party administrator, as described in paragraph (d)(2)(iii)(D). HHS expects that the participating issuer will also agree to pay each third party administrator a portion of such allowance (and that the apportionment will be negotiated between the entities); HHS does not specify such payment in this final regulation, as HHS expects the entities to work out an arrangement that best fits their situation. Finally, HHS notes that this provision does not apply if the participating issuer made the payments for contraceptive services on behalf of the third party administrator, as described in paragraph (d)(1)(i), or is in the same issuer group (as defined in 45 CFR 156.20) as the third party administrator.

In § 156.50(d)(6) and (7), HHS establishes standards relating to documentation and program integrity, similar to those proposed in § 156.50(d)(5), but modified slightly to align with the other changes in this final regulation. In paragraph (d)(6), HHS specifies that a participating issuer receiving an adjustment in the FFE user fee under this section for a particular calendar year must maintain for 10 years following that year, and make available upon request to HHS, the HHS Office of the Inspector General, the Comptroller General, and their designees, documentation demonstrating that it timely paid each third party administrator, with respect to which it received such adjustment, any amount required under paragraph (d)(5). In paragraph (d)(7), HHS specifies documentation standards for third party administrators with respect to which an FFE user fee adjustment is received under this section for a particular calendar year. Third party administrators must maintain for 10 years following the applicable calendar year, and make available upon request to HHS, the HHS Office of the Inspector General, the Comptroller General, and their designees, all of the following: (i) A copy of the self-certification provided by the eligible organization for each self-insured plan with respect to which an adjustment is received; (ii) documentation demonstrating that the payments for contraceptive services were made in compliance with 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2); and (iii) documentation supporting the total dollar amount of the payments for contraceptive services submitted by the third party administrator, as described in paragraph (d)(2)(iii)(D). Although a commenter argued that the documentation retention standards should be shortened from 10 years to 6 years, to align with ERISA standards, we believe that the finalized standard is appropriate as it aligns with timeframes under the False Claims Act, 31 U.S.C. 3729–3733, and standards used for other Exchange programs. HHS notes that a participating issuer or a third party administrator may satisfy these standards by archiving these records and ensuring that they are accessible if needed in the event of an investigation, audit, or other review.

To summarize, costs of payments made for contraceptive services for participants and beneficiaries in self-insured group health plans of eligible organizations under the accommodation described previously will be reimbursed through an adjustment in FFE user fees as follows:

- The adjustment will be made to the FFE user fees of a participating issuer, if that participating issuer made the payments for the contraceptive services under the accommodation on behalf of the third party administrator, or if it seeks the adjustment with respect to such payments made or arranged for by the third party administrator.
- A third party administrator must notify HHS that it intends for a participating issuer to seek the adjustment by the later of January 1, 2014, or the 60th calendar day following the date on which it received the copy of the applicable self-certification.
- For the participating issuer to receive the adjustment, the third party administrator and the participating issuer must notify HHS of the total amount of the payments made for the contraceptive services under the accommodation, and provide certain other information and documentation, including an attestation by the third party administrator that the payments for the contraceptive services were provided in compliance with 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2), by July 15 of the year following the calendar year in which the contraceptive services were provided.
- If the necessary conditions are met, and if an exception under OMB Circular No. A–25R is in effect, the participating issuer will receive an adjustment to its FFE user fee obligation equal to the total amount of the payments for the contraceptive services provided under the accommodation, plus an allowance for administrative costs and margin. If the adjustment exceeds the FFE user fees owed in the month of the initial adjustment, any excess adjustment will be carried over to later months, for so long as the exception under OMB Circular No. A–25R is in effect.
- The allowance, which will be at least ten percent of the costs of the payments for the contraceptive services under the accommodation, will be specified by HHS in the annual HHS notice of benefit and payment parameters.
- Within 60 days of receipt of any adjustment, the participating issuer must pay the third party administrator the portion of the adjustment attributable to payments for contraceptive services made by the third party administrator. No payment is required with respect to the allowance for administrative costs and margin, although it is expected that the participating issuer will agree to pay each third party administrator a portion of such allowance. In addition, no payment is required if the participating issuer made the payments for the contraceptive services under the accommodation on behalf of the third

party administrator, or if the participating issuer and third party administrator are in the same issuer group.

Lastly, in response to comments received, HHS is finalizing a provision clarifying that participating issuers may add any amounts paid out to a third party administrator or incurred by or for the participating issuer in contraceptive claims costs under the accommodation for self-insured group health plans of eligible organizations provided in these final regulations, plus the allowance for administrative costs and margin provided under 45 CFR 156.50(d)(3)(ii), to their net FFE user fee paid to HHS, in calculations relating to the index rate for the single risk pool under 45 CFR 156.80(d), the medical loss ratio under 45 CFR part 158, and the risk corridors program under 45 CFR 153 subpart F. Several commenters noted that improperly incorporating the FFE user fee adjustment provided for under the final regulation into these calculations could lead to unintended consequences. For example, if a participating issuer were required to incorporate the FFE user fee adjustment into the calculation of the medical loss ratio, but not allowed to incorporate the cost of the accommodation for self-insured group health plans of eligible organizations, the adjustment would reduce the amount reported as licensing and regulatory fees (as described in 45 CFR 158.161(a)). This would result in a lower medical loss ratio. HHS agrees that such a result would not accurately reflect the ratio of claims to premiums, as estimated by the medical loss ratio, for the participating issuer's insurance business, because the FFE user fee adjustment occurs due to activity not directly related to the participating issuer's insurance business. Indeed, under § 156.50(d)(5), the participating issuer is required in many circumstances to pay out the greater share of the FFE user fee adjustments to third party administrators responsible for making (or arranging for another entity to make) the payments for contraceptive services. Therefore, HHS clarifies that, for purposes of the medical loss ratio and the risk corridors program, participating issuers should report the sum of: (1) The net FFE user fee paid to HHS; (2) any amounts paid out to a third party administrator or incurred by or for the participating issuer in contraceptive claims costs under the accommodation for self-insured group health plans of eligible organizations provided in these final regulations; and (3) the allowance for administrative costs and margin provided under 45 CFR 156.50(d)(3)(ii), as licensing and regulatory fees referenced in 45 CFR 158.161(a), or taxes and regulatory fees in the case of the risk corridors program. For similar reasons, HHS is modifying the provision at 45 CFR 156.80(d) to clarify that, for the purpose of establishing a single risk pool index rate for a state market, any market-wide adjustments to the index rate for expected Exchange user fees should include: (1) The expected net FFE user fee to be paid to HHS; (2) any amounts paid out to a third party administrator or incurred by or for the participating issuer in contraceptive claims costs under the accommodation for self-insured group health plans of eligible organizations expected to be credited against user fees payable for that state market; and (3) the allowance for administrative costs and margin provided under 45 CFR 156.50(d)(3)(ii) expected to be credited against user fees payable for that state market.

HHS clarifies that, if an issuer provides payments for contraceptive services on behalf of a third party administrator, such payments are not directly linked to any of the health insurance coverage provided by the issuer, and the issuer should not incorporate the cost of such payments into their calculations for the numerator with respect to the medical loss ratio or the risk corridors program.

*D. Treatment of Multiple Employer Group Health Plans*

In the case of several employers offering coverage through a single group health plan, the Departments proposed that each employer be required to independently meet the definition of religious employer or eligible organization in order to avail itself of the exemption or an accommodation with respect to its employees and their covered dependents. Several commenters supported the proposed approach of applying the exemption and the accommodation on an employer-by-employer basis. Other commenters favored a plan-based approach, allowing any employer offering coverage through the same group health plan as a religious employer or eligible organization to qualify for the exemption or the accommodation, citing administrative challenges to an employer-by-employer approach. A few commenters recommended criteria for determining whether an employer is affiliated with a religious employer or eligible organization with which it offers coverage through a single group health plan, such as the control standards in Code section 52(a) and (b), and therefore qualified for the exemption or an accommodation.[47]

The final regulations continue to provide that the availability of the exemption or an accommodation be determined on an employer-by-employer basis, which the Departments continue to believe best balances the interests of religious employers and eligible organizations and those of employees and their dependents. The Departments are clarifying that, for purposes of these final regulations, any nonprofit organization with religious objections to contraceptive coverage that is part of the same controlled group of corporations or part of the same group of trades or businesses under common control (each within the meaning of section 52(a) or (b) of the Code) with a religious employer and/or an eligible organization, and that offers coverage through the same group health plan as such religious employer and/or eligible organization, is considered to hold itself out as a religious organization and therefore qualifies for an accommodation under these final regulations. Each such organization must independently satisfy the self-certification standard.

*E. Religious Freedom Restoration Act and Other Federal Law*

Some commenters expressed concerns about the proposed accommodations for eligible organizations under the Religious Freedom Restoration Act (RFRA) (Pub. L. 103–141) 107 Stat. 1488 (1993) (codified at 42 U.S.C. 2000bb-1).[48] All such concerns were considered. But the accommodations for group health plans established or maintained by eligible organizations (and group health insurance coverage provided in connection with such plans), or student health insurance coverage arranged by eligible organizations that are institutions of higher education, are not required under RFRA. In addition, the accommodations for eligible organizations under these final regulations do not violate RFRA because

[47] Code section 52(a) generally provides that all employees of all corporations that are members of the same controlled group of corporations, including corporations that are at least 50 percent controlled by a common parent corporation, are treated as employed by a single employer. Code section 52(b) generally provides that all employees of trades or businesses (whether or not incorporated) that are under common control are treated as employed by a single employer.

[48] RFRA provides that the federal government generally may not "substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability," unless the burden: "(1) Is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest," 42 U.S.C. 2000bb–1.

they do not substantially burden religious exercise, and they serve compelling government interests and moreover are the least restrictive means to achieve those interests.

First, some commenters asserted that the proposed accommodations would substantially burden their exercise of religion by requiring their involvement in providing coverage of medical services to which they object on religious grounds. These final regulations do not require eligible organizations that provide self-certifications to their issuers or third party administrators to provide health coverage that includes benefits for contraceptive services, or to contract, arrange, pay, or refer for such coverage or services. Issuers and third party administrators cannot pass along the costs because these final regulations specifically prohibit an issuer or third party administrator from charging any premium or otherwise passing on any cost relating to payments for contraceptive services to an eligible organization. Thus, there is no burden on any religious exercise of the eligible organization. And even if the accommodations were found to impose some minimal burden on eligible organizations, any such burden would not be substantial for the purposes of RFRA because a third party pays for the contraceptive services and there are multiple degrees of separation between the eligible organization and any individual's choice to use contraceptive services.

One commenter contended that the mere act of self-certification would facilitate access to contraception, resulting in violation of its religious beliefs. But the self-certification under these final regulations simply confirms that an eligible organization is a nonprofit religious organization with religious objections to contraceptive coverage and so informs the issuer or third party administrator. Even prior to the proposed regulations, because contraceptive benefits are typically in standard product designs, many eligible organizations directed their issuers and third party administrators not to make payments for claims for medical services to which they object on religious grounds. In any event, in order for a burden on religious exercise to be "substantial" under RFRA, its effects on the objecting person cannot be as indirect and attenuated as they are here. Under these final regulations, third parties, not eligible organizations, provide the payments for contraceptive services, at no cost to eligible organizations. And whether such services will be utilized is the result of independent choices by employees or students and their dependents, who have distinct interests and may have their own religious views that differ from those of the eligible organization.

Second, some commenters claimed that the proposed accommodations would force them to fund or subsidize contraceptive coverage because issuers or third party administrators would pass on the costs of such coverage to eligible organizations. Again, however, these final regulations specifically prohibit an issuer or third party administrator from charging any premium, or otherwise passing on any cost, to an eligible organization with respect to the payments for contraceptive services.

Third, some commenters asserted that the contraceptive coverage requirement fails to serve any compelling government interest. As noted previously, however, the contraceptive coverage requirement serves two compelling governmental interests. The contraceptive coverage requirement furthers the government's compelling interest in safeguarding public health by expanding access to and utilization of recommended preventive services for women. HHS tasked IOM with conducting an independent, science-based review of the available literature to determine what preventive services are necessary for women's health and well-being. IOM included in its recommendations for comprehensive guidelines for women's preventive services all FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity. IOM determined that lack of access to contraceptive services has proven in many cases to have serious negative health consequences for women and newborn children.

The government also has a compelling interest in assuring that women have equal access to health care services. Women would be denied the full benefits of preventive care if their unique health care needs were not considered and addressed. For example, prior to the implementation of the preventive services coverage provision, women of childbearing age spent 68 percent more on out-of-pocket health care costs than men, and these costs resulted in women often forgoing preventive care. The IOM found that this disproportionate burden on women imposed financial barriers that prevented women from achieving health outcomes on an equal basis with men. The contraceptive coverage requirement helps remedy this problem by helping to equalize the provision of preventive health care services to women and, as a result, helping women contribute to society to the same degree as men.

Fourth, some commenters suggested that certain provisions of the Affordable Care Act that, in their view, leave some women without contraceptive coverage with no cost sharing demonstrate that the government interests in providing such coverage cannot be truly compelling. But these commenters misunderstand the effect of these provisions.[49]

Nor do the exemption for religious employers and the accommodations for eligible organizations undermine the government's compelling interests. With respect to the religious employer exemption, houses of worship and their integrated auxiliaries that object to contraceptive coverage on religious grounds are more likely than other employers to employ people who are of the same faith and/or adhere to the same objection, and who would therefore be less likely than other people to use contraceptive services even if such services were covered under their plan. Under the eligible organization accommodations, individuals in plans of eligible organizations, who are less likely than individuals in plans of religious employers to share their employer's (or institution of higher education's) faith and objection to contraceptive coverage on religious grounds, will still benefit from payments for contraceptive services, even though such payments will not be provided, funded, or subsidized by their employer (or institution of higher education).

[49] For example, the Affordable Care Act's grandfathering provision is only transitional in effect, and it is expected that a majority of plans will lose their grandfathered status by the end of 2013. (75 FR 34552; June 17, 2010); *see also* Kaiser Family Found. & Health Res. & Ed. Trust, Employer Health Benefits 2012 Annual Survey at 7–8, 190, available at *http://ehbs.kff.org/pdf/2012/8345.pdf*. Moreover, small employers that elect to offer non-grandfathered health coverage to their employees are not exempt from the requirement under the preventive health services coverage regulations to provide coverage for recommended preventive health services, including contraceptive services, without cost sharing (subject to the religious employer exemption and eligible organization accommodations in these final regulations). While the Affordable Care Act excludes small employers from the possibility of tax liability under the employer shared responsibility provision at Code section 4980H, it encourages such employers to offer health coverage to their employees by establishing new group health insurance options through the SHOPs, as well as new tax incentives to exercise such options. With respect to employees of small employers that do not offer health coverage to their employees, the Affordable Care Act establishes new individual health insurance options through the Exchanges, as well as new tax credits to assist the purchase of such insurance; such insurance will cover recommended preventive services, including contraceptive services, without cost sharing.

Fifth, some commenters asserted that the contraceptive coverage requirement is not the least restrictive means of advancing these compelling interests, and proposed various alternatives to these regulations. All of these proposals were considered, and it was determined that they were not feasible and/or would not advance the government's compelling interests as effectively as the mechanisms established in these final regulations and the preventive services coverage regulations more generally. For example, some commenters suggested that the government could provide contraceptive services to all women free of charge (through Medicaid or another program), establish a government-funded health benefits program for contraceptive services, or force drug and device manufacturers to provide contraceptive drugs and devices to women for free. The Departments lack the statutory authority and funding to implement these proposals. Moreover, the Affordable Care Act contemplates providing coverage of recommended preventive services through the existing employer-based system of health coverage so that women face minimal logistical and administrative obstacles. Imposing additional barriers to women receiving the intended coverage (and its attendant benefits), by requiring them to take steps to learn about, and to sign up for, a new health benefit, would make that coverage accessible to fewer women. The same concern undermines the effectiveness of other commenters' suggestion that the government require the multi-state plans on the Exchanges to offer a stand-alone, contraceptive-only benefit to all women without charge.

For another example, some commenters suggested that the government should establish tax incentives for women to use contraceptive services. Again, the Departments lack the statutory authority to implement such proposal. Reliance only on tax incentives would also depart from the existing employer-based system of health coverage, would require women to pay out of pocket for their care in the first instance, and would not benefit women who do not have sufficient income to be required to file a tax return. Such barriers would make a tax incentive structure less effective than the employer-based system of health coverage in advancing the government's compelling interests.

Finally, some commenters expressed concern that the final regulations violate the Religion Clauses of the First Amendment or certain federal restrictions relating to abortion. The regulations do not violate the Free Exercise Clause because they are neutral and generally applicable. The regulations do not target religiously motivated conduct, but rather, are intended to improve women's access to preventive health care and lessen the disparity between men's and women's health care costs. And the regulations are generally applicable because they do not pursue their purpose only against conduct motivated by religious belief. The exemption and accommodations set forth in the regulations serve to accommodate religion, not to disfavor it.

The final regulations also do not violate the Establishment Clause. The exemption and accommodations set forth in the regulations are not restricted to organizations of a particular denomination or denominations. Instead, they are available on an equal basis to religious organizations affiliated with any and all religions.

Finally, the regulations do not violate federal restrictions relating to abortion because FDA-approved contraceptive methods, including Plan B, Ella, and IUDs, are not abortifacients within the meaning of federal law. (62 FR 8611; February 25, 1997) ("Emergency contraceptive pills are not effective if the woman is pregnant[.]"); 45 CFR 46.202(f) ("Pregnancy encompasses the period of time from implantation until delivery."). Further, these regulations do not require nonprofit religious organizations that object to such contraceptive methods to contract, arrange, pay, or refer for such services.

*F. No Effect on Other Law*

The religious employer exemption and eligible organization accommodations under these final regulations are intended to have meaning solely with respect to the contraceptive coverage requirement under section 2713 of the PHS Act and the companion provisions of ERISA and the Code. Whether an employer or organization (including an institution of higher education) is designated as religious for this purpose is not intended as a judgment about the mission, sincerity, or commitment of the employer or organization (including an institution of higher education), or intended to differentiate among the religious merits, mission, sincerity, commitment, or public or private standing of religious entities. The use of such designation is limited solely to defining the class of employers or organizations (including institutions of higher education) that qualify for the religious employer exemption and eligible organization accommodations under these final regulations. The definition of religious employer or eligible organization in these final regulations should not be construed to apply with respect to, or relied upon for the interpretation of, any other provision of the PHS Act, ERISA, the Code, or any other provision of federal law, nor is it intended to set a precedent for any other purpose. For example, nothing in these final regulations should be construed as affecting the interpretation of federal or state civil rights statutes, such as Title VII of the Civil Rights Act of 1964 or Title IX of the Education Amendments of 1972.

Furthermore, nothing in these final regulations precludes employers or others from expressing any opposition to the use of contraceptives; requires anyone to use contraceptives; or requires health care providers to prescribe or provide contraceptives if doing so is against their religious beliefs.

The Departments received several comments requesting clarification about whether the religious employer exemption and eligible organization accommodations in these final regulations supersede state laws that require health insurance issuers to provide contraceptive coverage. The preemption provisions of section 731 of ERISA and section 2724 of the PHS Act (implemented at 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply such that the requirements of part 7 of ERISA and title XXVII of the PHS Act are not to be "construed to supersede any provision of state law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group or individual health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement" of federal law. With respect to issuers subject to state law, insurance laws that provide greater access to contraceptive coverage than federal standards are unlikely to "prevent the application of" the preventive services coverage provision, and therefore are unlikely to be preempted by these final regulations. On the other hand, in states with broader religious exemptions and accommodations with respect to health insurance issuers than those in the final regulations, the exemptions and accommodations will be narrowed to align with those in the final regulations. This is consistent with the application of other federal health insurance standards.

*G. Applicability Dates and Transitional Enforcement Safe Harbor*

These final regulations generally apply to group health plans and health insurance issuers for plan years beginning on or after January 1, 2014, except the amendments to the religious employer exemption apply to group health plans and health insurance issuers for plan years beginning on or after August 1, 2013.

The Departments are extending the current safe harbor from enforcement of the contraceptive coverage requirement by the Departments to encompass plan years beginning on or after August 1, 2013, and before January 1, 2014. This transitional enforcement safe harbor is intended to maintain the status quo with respect to organizations that qualify for the current safe harbor during the period that exists between the expiration of the current safe harbor[50] and the applicability date of the accommodations under these final regulations. This period is designed to provide issuers and third party administrators with sufficient time to prepare to implement the accommodations under these final regulations. Organizations that qualify under the current safe harbor are not required to execute another self-certification if one has already been executed, but are required to provide another notice to plan participants and beneficiaries in connection with plan years beginning on or after August 1, 2013, and before January 1, 2014. The guidance extending the current safe harbor can be found at: *www.cms.gov/cciio* and *www.dol.gov/healthreform.*

## IV. Economic Impact and Paperwork Burden

*A. Executive Orders 12866 and 13563—Department of Health and Human Services and Department of Labor*

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, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a regulation: (1) Having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any one year), and an "economically significant" regulatory action is subject to review by the Office of Management and Budget (OMB). The Departments have concluded that these final regulations are not likely to have economic impacts of $100 million or more in any one year, and therefore do not meet the definition of "economically significant" under Executive Order 12866.

1. Need for Regulatory Action

As stated earlier in this preamble, the Departments previously issued amended interim final regulations authorizing an exemption for group health plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) from certain coverage requirements under section 2713 of the PHS Act (76 FR 46621, August 3, 2011). The amended interim final regulations were finalized on February 15, 2012 (77 FR 8725). In these final regulations, the Departments are amending the definition of religious employer in the HHS regulation at 45 CFR 147.131(a) (incorporated by reference in the regulations of the Departments of Labor and the Treasury) by eliminating the first three prongs of the definition of religious employer that was established in the 2012 final regulations and clarifying the fourth prong. Accordingly, an employer that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Code is a religious employer, and its group health plan qualifies for the exemption from the requirement to cover contraceptive services. In addition, the final regulations establish accommodations that provide women with access to such services, without cost sharing, while simultaneously protecting certain nonprofit religious organizations with religious objections to contraceptive coverage from having to contract, arrange, pay, or refer for such coverage (as detailed herein).

2. Anticipated Effects

The Departments expect that these final regulations will not result in any additional significant burden on or costs to the affected entities.

*B. Special Analyses—Department of the Treasury*

For purposes of the Department of the Treasury, it has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this final regulation. It is hereby certified that the collections of information contained in this final regulation do not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

These final regulations require each organization seeking to be treated as an eligible organization under the final regulations to self-certify that it meets the definition of eligible organization in the final regulations. The self-certification must be executed by an authorized representative of the organization. The organization must maintain the self-certification in its records in a manner consistent with ERISA section 107 and make it available for examination upon request. The final regulations also direct each eligible organization to provide a copy of its self-certification to the group health insurance issuer or third party administrator (as applicable) to avail itself of an accommodation. The Departments are unable to estimate the number of organizations that will seek to be treated as eligible organizations. Of the eligible organizations, some will likely be small entities. It is estimated that each eligible organization will need only approximately 50 minutes of labor to prepare and provide the information

[50] *See* Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans, and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code, issued on February 10, 2012, and reissued on August 15, 2012.

in the self-certification. This will not be a significant economic impact. For these reasons, this information collection requirement will not have a significant impact on a substantial number of small entities.

These final regulations also require health insurance issuers providing payments for contraceptive services, or third party administrators arranging or providing such payments (or their agents), to provide written notice to plan participants and beneficiaries regarding the availability of such payments. The notice will be provided contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment (or re-enrollment) in health coverage established, maintained, or arranged by the eligible organization in any plan year to which the accommodation is to apply. The final regulations contain model language for issuers and third party administrators to use to satisfy the notice requirement. It is unknown how many issuers provide health insurance coverage in connection with insured plans of eligible organizations or how many third party administrators provide plan services to self-insured plans of eligible organizations. However, the cost of preparation and distribution of the notices will not be significant. It is estimated that each issuer or third party administrator will need approximately 1 hour of clerical labor (at $31.64 per hour) and 15 minutes of management review (at $55.22 per hour) to prepare the notices for a total cost of approximately $44. It is estimated that each notice will require $0.46 in postage and $0.05 in materials cost (paper and ink) and the total postage and materials cost for each notice sent via mail will be $0.51. For these reasons, these information collection requirements will not have a significant impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

*C. Paperwork Reduction Act—Department of Health and Human Services*

These final regulations contain information collection requirements (ICRs) that are subject to review by the Office of Management and Budget (OMB). A description of these provisions is given in the following paragraphs with an estimate of the annual burden. Average labor costs (including fringe benefits) used to estimate the costs are calculated using data available from the Bureau of Labor Statistics.

HHS sought comments in the proposed regulations, but did not receive any information that would allow for an estimate of the number of organizations that would seek to be treated as eligible organizations, or an estimate of the number of health insurance issuers that would provide separate payments for contraceptive services. HHS is, nevertheless, seeking OMB approval for the following ICRs consistent with the Paperwork Reduction Act of 1995. The burden estimates will be updated in the future when more information is available.

1. Self-Certification (§§ 147.131(b)(4) and 147.131(c)(1))

Each organization seeking to be treated as an eligible organization under the final regulations must self-certify that it meets the definition of an eligible organization. The self-certification must be executed by an authorized representative of the organization. The self-certification will not be submitted to any of the Departments. The form that will be used by organizations for their self-certification was made available during the comment period for the proposed regulations at *http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*. HHS is finalizing this form with updated instructions and notes, and eliminating the proposed field for listing the contraceptive services for which the organization will not establish, maintain, administer, or fund coverage. The organization must maintain the self-certification in its records in a manner consistent with ERISA section 107 and make it available for examination upon request. The eligible organization must provide a copy of its self-certification to a health insurance issuer for insured group health plans or student health insurance coverage.

HHS is unable to estimate the number of organizations that will seek to be treated as eligible organizations under the final regulations. Therefore, the burden for only one eligible organization, as opposed to all eligible organizations in total, is estimated. It is assumed that, for each eligible organization, clerical staff will gather and enter the necessary information, send the self-certification electronically to the issuer, and retain a copy for record-keeping; a manager and legal counsel will review it; and a senior executive will execute it. HHS estimates that an organization will need approximately 50 minutes (30 minutes of clerical labor at a cost of $30.64 per hour, 10 minutes for a manager at a cost of $55.22 per hour, 5 minutes for legal counsel at a cost of $83.10 per hour, and 5 minutes for a senior executive at a cost of $112.43 per hour) to execute the self-certification. The certification may be electronically transmitted to the issuer at minimal cost. Therefore, the total annual burden for preparing and providing the information in the self-certification is estimated to be approximately $41 for each eligible organization.

2. Notice of Availability of Separate Payments for Contraceptive Services (§ 147.131(d))

The proposed regulations sought comment on a notice of availability of contraceptive coverage. The final regulations instead direct a health insurance issuer providing payments for contraceptive services for participants and beneficiaries in insured plans (or student enrollees and covered dependents in student health insurance coverage) of eligible organizations to provide a written notice to such plan participants and beneficiaries (or such student enrollees and covered dependents) informing them of the availability of such payments. The notice must be provided contemporaneous with (to the extent possible) but separate from any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective on the first day of each applicable plan year, and must specify that contraceptive coverage will not be funded or administered by the eligible organization but that the issuer provides separate payments for contraceptive services. The notice must also provide contact information for the issuer for questions and complaints. To satisfy the notice requirement, issuers may use the model language set forth in the final regulations or substantially similar language.

It is unknown how many issuers provide health insurance coverage in connection with insured plans of eligible organizations. In the proposed regulations, HHS estimated that each issuer would need approximately 1 hour of clerical labor (at $31.64 per hour) and 15 minutes of management review (at $55.22 per hour) to prepare the notices for a total cost of approximately $44. It was estimated that each notice would require $0.46 in postage and $0.05 in materials cost (paper and ink) and the total postage and materials cost for each notice sent via mail would be $0.51.

One commenter stated that the cost of preparing and sending these notices may be greater than estimated, but did not provide an estimate. HHS believes that using the model language provided in the final regulations will help minimize costs and declines to revise the estimate.

3. Collections for FFE User Fee Adjustment (§ 156.50(d))

The final HHS regulation describes information collections with respect to the FFE user fee adjustment under § 156.50(d). The information collection instruments are under development, and HHS will seek public comments and OMB approval on the instruments at a later date, consistent with the Paperwork Reduction Act of 1995.

4. Collections for Self-Insured Group Health Plans Without Third Party Administrators

The final regulations provide that a self-insured group health plan established or maintained by an eligible organization that does not use the services of a third party administrator will be provided a safe harbor from enforcement of the contraceptive coverage requirement by the Departments contingent on, among other things: (1) the plan providing certain information to HHS; and (2) the plan providing participants and beneficiaries with notice that it does not provide benefits for contraceptive services. As noted earlier in these final regulations, the Departments believe that there are no self-insured group health plans in this circumstance. Therefore, because the number of respondents is likely to be fewer than 10, HHS is not seeking OMB approval for this collection.

*D. Paperwork Reduction Act—Department of Labor and Department of the Treasury*

As noted previously, as under the proposed regulations, each organization seeking to be treated as an eligible organization under the final regulations must self-certify that it meets the definition of an eligible organization. This requirement is set out at 26 CFR 54.9815–2713A(a)(4) and 29 CFR 2590.715–2713A(a)(4) of the final regulations of the Departments of Labor and the Treasury.

In addition, the final regulations include a notice of availability of separate payments for contraceptive services. This notice requirement is identical to that set forth in 45 CFR 147.131(d), but it applies to third party administrators in connection with disclosures to participants and beneficiaries in self-insured group health plans of eligible organizations, instead of applying to health insurance issuers in connection with disclosures to participants and beneficiaries in insured group health plans of eligible organizations. Therefore, we are seeking OMB approval for this notice, relying on the same estimates noted previously.

**V. Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, these final regulations do not include any federal mandate that may result in expenditures by state, local, or tribal governments, nor do they include any federal mandates that may impose an annual burden of $100 million, adjusted for inflation, or more on the private sector.[51]

**VI. Federalism—Department of Health and Human Services and Department of Labor**

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have "substantial direct effects" on states, the relationship between the federal government and states, or the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the regulation.

In the Departments' view, these final regulations have federalism implications, but the federal implications are substantially mitigated because, with respect to health insurance issuers, 15 states have enacted specific laws, regulations, or bulletins that meet or exceed the federal standards requiring coverage of specified preventive services without cost sharing. The remaining states, which provide oversight for these federal law requirements, do so using their general authority to enforce these federal standards. Therefore, the final regulations are not likely to require substantial additional oversight of states by HHS.

In general, section 514 of ERISA provides that state laws are superseded to the extent that they relate to any covered employee benefit plan, and preserves state laws that regulate insurance, banking, or securities. ERISA also prohibits states from regulating a covered plan as an insurance or investment company or bank. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) added a new preemption provision to ERISA (as well as to the PHS Act) narrowly preempting state requirements on group health insurance coverage. States may continue to apply state law requirements but not to the extent that such requirements prevent the application of the federal requirement that group health insurance coverage provided in connection with group health plans provide coverage for specified preventive services without cost sharing. HIPAA's Conference Report states that the conferees intended the narrowest preemption of state laws with regard to health insurance issuers (H.R. Conf. Rep. No. 104–736, 104th Cong. 2d Session 205, 1996). State insurance laws that are more stringent than the federal requirement are unlikely to "prevent the application of" the preventive services coverage provision, and therefore are unlikely to be preempted. Accordingly, states have significant latitude to impose requirements on health insurance issuers that are more restrictive than those in federal law.

Guidance conveying this interpretation was published in the **Federal Register** on April 8, 1997 (62 FR 16904) and December 30, 2004 (69 FR 78720), and these final regulations implement the preventive services coverage provision's minimum standards and do not significantly reduce the discretion given to states under the statutory scheme.

The PHS Act provides that states may enforce the provisions of title XXVII of the PHS Act as they pertain to issuers, but that the Secretary of HHS will enforce any provisions that a state does not have authority to enforce or that a state has failed to substantially enforce. When exercising its responsibility to enforce provisions of the PHS Act, HHS works cooperatively with the state to address the state's concerns and avoid conflicts with the state's exercise of its authority.[52] HHS has developed procedures to implement its

[51] In 2013, that threshold level is approximately $141 million.

[52] This authority applies to insurance issued with respect to group health plans generally, including plans covering employees of church organizations. Thus, this discussion of federalism applies to all group health insurance coverage that is subject to the PHS Act, including those church plans that provide coverage through a health insurance issuer (but not to church plans that do not provide coverage through a health insurance issuer).

enforcement responsibilities, and to afford states the maximum opportunity to enforce the PHS Act's requirements in the first instance. In compliance with Executive Order 13132's requirement that agencies examine closely any policies that may have federalism implications or limit the policymaking discretion of states, the Departments have engaged in numerous efforts to consult and work cooperatively with affected state and local officials.

In conclusion, throughout the process of developing these final regulations, to the extent feasible within the specific preemption provisions of ERISA and the PHS Act, the Departments have attempted to balance states' interests in regulating health coverage and health insurance issuers, and the rights of those individuals whom Congress intended to protect in the PHS Act, ERISA, and the Code.

**VII. Statutory Authority**

The Department of the Treasury regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are adopted pursuant to the authority contained in 29 U.S.C. 1002(16), 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Public Law 111–148, 124 Stat. 119, as amended by Public Law 111–152, 124 Stat. 1029; Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010).

The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended; and Title I of the Affordable Care Act, sections 1301–1304, 1311–1312, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, and 1412, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

**List of Subjects**

*26 CFR Part 54*

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 2510*

Employee benefit plans, Pensions.

*29 CFR Part 2590*

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

*45 CFR Part 147*

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

*45 CFR Part 156*

Administrative practice and procedure, Advertising, Advisory committees, Brokers, Conflict of interest, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, American Indian/Alaska Natives, Individuals with disabilities, Loan programs—health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, and Youth.

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

Accordingly, 26 CFR part 54 is amended as follows:

## PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 continues to read, in part, as follows:

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

■ **Par. 2.** Section 54.9815–2713 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(iv) to read as follows:

**§ 54.9815–2713 Coverage of preventive health services.**

(a) * * *

(1) *In general.* Beginning at the time described in paragraph (b) of this section and subject to § 54.9815–2713A, a group health plan, or a health insurance issuer offering group health insurance coverage, must provide coverage for all of the following items and services, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) with respect to those items and services:

* * * * *

(iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, evidence-informed preventive care and screenings provided for in binding comprehensive health plan coverage guidelines supported by the Health Resources and Services Administration, in accordance with 45 CFR 147.131(a).

* * * * *

■ **Par. 3.** Section 54.9815–2713A is added to read as follows:

**§ 54.9815–2713A Accommodations in connection with coverage of preventive health services.**

(a) *Eligible organizations.* An eligible organization is an organization that satisfies all of the following requirements:

(1) The organization opposes providing coverage for some or all of any contraceptive services required to be covered under § 54.9815–2713(a)(1)(iv) on account of religious objections.

(2) The organization is organized and operates as a nonprofit entity.

(3) The organization holds itself out as a religious organization.

(4) The organization self-certifies, in a form and manner specified by the Secretaries of Health and Human Services and Labor, that it satisfies the criteria in paragraphs (a)(1) through (3) of this section, and makes such self-certification available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (b) or (c) of this section applies. The self-certification must be executed by a person authorized to make the certification on behalf of the organization, and must be maintained in a manner consistent with the record retention requirements under section 107 of ERISA.

(b) *Contraceptive coverage—self-insured group health plans*—(1) A group health plan established or maintained by an eligible organization that provides benefits on a self-insured basis complies for one or more plan years with any requirement under § 54.9815–2713(a)(1)(iv) to provide contraceptive coverage if all of the requirements of this paragraph (b)(1) of this section are satisfied:

(i) The eligible organization or its plan contracts with one or more third party administrators.

(ii) The eligible organization provides each third party administrator that will process claims for any contraceptive services required to be covered under § 54.9815–2713(a)(1)(iv) with a copy of the self-certification described in paragraph (a)(4) of this section, which shall include notice that—

(A) The eligible organization will not act as the plan administrator or claims administrator with respect to claims for contraceptive services, or contribute to

the funding of contraceptive services; and

(B) Obligations of the third party administrator are set forth in 29 CFR 2510.3–16 and 26 CFR 54.9815–2713A.

(iii) The eligible organization must not, directly or indirectly, seek to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, and must not, directly or indirectly, seek to influence the third party administrator's decision to make any such arrangements.

(2) If a third party administrator receives a copy of the self-certification described in paragraph (a)(4) of this section, and agrees to enter into or remain in a contractual relationship with the eligible organization or its plan to provide administrative services for the plan, the third party administrator shall provide or arrange payments for contraceptive services using one of the following methods—

(i) Provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or imposing a premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries; or

(ii) Arrange for an issuer or other entity to provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or imposing a premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries.

(3) If a third party administrator provides or arranges payments for contraceptive services in accordance with either paragraph (b)(2)(i) or (ii) of this section, the costs of providing or arranging such payments may be reimbursed through an adjustment to the Federally-facilitated Exchange user fee for a participating issuer pursuant to 45 CFR 156.50(d).

(4) A third party administrator may not require any documentation other than the copy of the self-certification from the eligible organization regarding its status as such.

(c) *Contraceptive coverage—insured group health plans*—(1) *General rule.* A group health plan established or maintained by an eligible organization that provides benefits through one or more group health insurance issuers complies for one or more plan years with any requirement under § 54.9815–2713(a)(1)(iv) to provide contraceptive coverage if the eligible organization or group health plan furnishes a copy of the self-certification described in paragraph (a)(4) of this section to each issuer that would otherwise provide such coverage in connection with the group health plan. An issuer may not require any documentation other than the copy of the self-certification from the eligible organization regarding its status as such.

(2) *Payments for contraceptive services*—(i) A group health insurance issuer that receives a copy of the self-certification described in paragraph (a)(4) of this section with respect to a group health plan established or maintained by an eligible organization in connection with which the issuer would otherwise provide contraceptive coverage under § 54.9815–2713(a)(1)(iv) must—

(A) Expressly exclude contraceptive coverage from the group health insurance coverage provided in connection with the group health plan; and

(B) Provide separate payments for any contraceptive services required to be covered under § 54.9815–2713(a)(1)(iv) for plan participants and beneficiaries for so long as they remain enrolled in the plan.

(ii) With respect to payments for contraceptive services, the issuer may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or impose any premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries. The issuer must segregate premium revenue collected from the eligible organization from the monies used to provide payments for contraceptive services. The issuer must provide payments for contraceptive services in a manner that is consistent with the requirements under sections 2706, 2709, 2711, 2713, 2719, and 2719A of the PHS Act, as incorporated into section 9815. If the group health plan of the eligible organization provides coverage for some but not all of any contraceptive services required to be covered under § 54.9815–2713(a)(1)(iv), the issuer is required to provide payments only for those contraceptive services for which the group health plan does not provide coverage. However, the issuer may provide payments for all contraceptive services, at the issuer's option.

(d) *Notice of availability of separate payments for contraceptive services—self-insured and insured group health plans.* For each plan year to which the accommodation in paragraph (b) or (c) of this section is to apply, a third party administrator required to provide or arrange payments for contraceptive services pursuant to paragraph (b) of this section, and an issuer required to provide payments for contraceptive services pursuant to paragraph (c) of this section, must provide to plan participants and beneficiaries written notice of the availability of separate payments for contraceptive services contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective beginning on the first day of each applicable plan year. The notice must specify that the eligible organization does not administer or fund contraceptive benefits, but that the third party administrator or issuer, as applicable, provides separate payments for contraceptive services, and must provide contact information for questions and complaints. The following model language, or substantially similar language, may be used to satisfy the notice requirement of this paragraph (d): "Your employer has certified that your group health plan qualifies for an accommodation with respect to the federal requirement to cover all Food and Drug Administration-approved contraceptive services for women, as prescribed by a health care provider, without cost sharing. This means that your employer will not contract, arrange, pay, or refer for contraceptive coverage. Instead, [name of third party administrator/health insurance issuer] will provide or arrange separate payments for contraceptive services that you use, without cost sharing and at no other cost, for so long as you are enrolled in your group health plan. Your employer will not administer or fund these payments. If you have any questions about this notice, contact [contact information for third party administrator/health insurance issuer]."

(e) *Reliance—insured group health plans*—(1) If an issuer relies reasonably and in good faith on a representation by the eligible organization as to its eligibility for the accommodation in paragraph (c) of this section, and the representation is later determined to be incorrect, the issuer is considered to comply with any requirement under § 54.9815–2713(a)(1)(iv) to provide contraceptive coverage if the issuer

complies with the obligations under this section applicable to such issuer.

(2) A group health plan is considered to comply with any requirement under § 54.9815–2713(a)(1)(iv) to provide contraceptive coverage if the plan complies with its obligations under paragraph (c) of this section, without regard to whether the issuer complies with the obligations under this section applicable to such issuer.

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

For the reasons stated in the preamble, the Department of Labor amends 29 CFR parts 2510 and 2590 as follows:

## PART 2510—DEFINITION OF TERMS USED IN SUBCHAPTERS C, D, E, F, G AND L OF THIS CHAPTER

■ 1. The authority citation for part 2510 is revised to read as follows:

**Authority:** 29 U.S.C. 1002(2), 1002(16), 1002(21),1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374; Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275, and 29 U.S.C. 1135 note. Sec. 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275. Sec. 2510.3–38 is also issued under sec. 1, Pub. L. 105–72, 111 Stat. 1457.

■ 2. Section 2510.3–16 is added to read as follows:

**§ 2510.3–16 Definition of "plan administrator."**

(a) *In general.* The term "plan administrator" or "administrator" means the person specifically so designated by the terms of the instrument under which the plan is operated. If an administrator is not so designated, the plan administrator is the plan sponsor, as defined in section 3(16)(B) of ERISA.

(b) In the case of a self-insured group health plan established or maintained by an eligible organization, as defined in § 2590.715–2713A(a) of this chapter, the copy of the self-certification provided by the eligible organization to a third party administrator (including notice of the eligible organization's refusal to administer or fund contraceptive benefits) in accordance with § 2590.715–2713A(b)(1)(ii) of this chapter shall be an instrument under which the plan is operated, shall be treated as a designation of the third party administrator as the plan administrator under section 3(16) of ERISA for any contraceptive services required to be covered under § 2590.715–2713(a)(1)(iv) of this chapter to which the eligible organization objects on religious grounds, and shall supersede any earlier designation. A third party administrator that becomes a plan administrator pursuant to this section shall be responsible for—

(1) The plan's compliance with section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13) (as incorporated into section 715 of ERISA) and § 2590.715–2713 of this chapter with respect to coverage of contraceptive services. To the extent that the plan contracts with different third party administrators for different classifications of benefits (such as prescription drug benefits versus inpatient and outpatient benefits), each third party administrator is responsible for providing contraceptive coverage that complies with section 2713 of the Public Health Service Act (as incorporated into section 715 of ERISA) and § 2590.715–2713 of this chapter with respect to the classification or classifications of benefits subject to its contract.

(2) Establishing and operating a procedure for determining such claims for contraceptive services in accordance with § 2560.503–1 of this chapter.

(3) Complying with disclosure and other requirements applicable to group health plans under Title I of ERISA with respect to such benefits.

## PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 3. The authority citation for part 2590 is revised to read as follows:

**Authority:** 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 12(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

■ 4. Section 2590.715–2713 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(iv) to read as follows:

**§ 2590.715–2713 Coverage of preventive health services.**

(a) * * *

(1) *In general.* Beginning at the time described in paragraph (b) of this section and subject to § 2590.715–2713A, a group health plan, or a health insurance issuer offering group health insurance coverage, must provide coverage for all of the following items and services, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) with respect to those items and services:

* * * * *

(iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, evidence-informed preventive care and screenings provided for in binding comprehensive health plan coverage guidelines supported by the Health Resources and Services Administration, in accordance with 45 CFR 147.131(a).

* * * * *

■ 5. Section 2590.715–2713A is added to read as follows:

**§ 2590.715–2713A Accommodations in connection with coverage of preventive health services.**

(a) *Eligible organizations.* An eligible organization is an organization that satisfies all of the following requirements:

(1) The organization opposes providing coverage for some or all of any contraceptive services required to be covered under § 2590.715–2713(a)(1)(iv) on account of religious objections.

(2) The organization is organized and operates as a nonprofit entity.

(3) The organization holds itself out as a religious organization.

(4) The organization self-certifies, in a form and manner specified by the Secretary, that it satisfies the criteria in paragraphs (a)(1) through (3) of this section, and makes such self-certification available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (b) or (c) of this section applies. The self-certification must be executed by a person authorized to make the certification on behalf of the organization, and must be maintained in a manner consistent with the record retention requirements under section 107 of ERISA.

(b) *Contraceptive coverage—self-insured group health plans*—(1) A group health plan established or maintained by an eligible organization that provides benefits on a self-insured basis complies for one or more plan years with any requirement under § 2590.715–2713(a)(1)(iv) to provide contraceptive coverage if all of the requirements of this paragraph (b)(1) are satisfied:

(i) The eligible organization or its plan contracts with one or more third party administrators.

(ii) The eligible organization provides each third party administrator that will

process claims for any contraceptive services required to be covered under § 2590.715–2713(a)(1)(iv) with a copy of the self-certification described in paragraph (a)(4) of this section, which shall include notice that—

(A) The eligible organization will not act as the plan administrator or claims administrator with respect to claims for contraceptive services, or contribute to the funding of contraceptive services; and

(B) Obligations of the third party administrator are set forth in § 2510.3–16 of this chapter and § 2590.715–2713A.

(iii) The eligible organization must not, directly or indirectly, seek to interfere with a third party administrator's arrangements to provide or arrange separate payments for contraceptive services for participants or beneficiaries, and must not, directly or indirectly, seek to influence the third party administrator's decision to make any such arrangements.

(2) If a third party administrator receives a copy of the self-certification described in paragraph (a)(4) of this section, and agrees to enter into or remain in a contractual relationship with the eligible organization or its plan to provide administrative services for the plan, the third party administrator shall provide or arrange payments for contraceptive services using one of the following methods—

(i) Provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or imposing a premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries; or

(ii) Arrange for an issuer or other entity to provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or imposing a premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries.

(3) If a third party administrator provides or arranges payments for contraceptive services in accordance with either paragraph (b)(2)(i) or (ii) of this section, the costs of providing or arranging such payments may be reimbursed through an adjustment to the Federally-facilitated Exchange user fee for a participating issuer pursuant to 45 CFR 156.50(d).

(4) A third party administrator may not require any documentation other than the copy of the self-certification from the eligible organization regarding its status as such.

(c) *Contraceptive coverage—insured group health plans*—(1) *General rule.* A group health plan established or maintained by an eligible organization that provides benefits through one or more group health insurance issuers complies for one or more plan years with any requirement under § 2590.715–2713(a)(1)(iv) to provide contraceptive coverage if the eligible organization or group health plan furnishes a copy of the self-certification described in paragraph (a)(4) of this section to each issuer that would otherwise provide such coverage in connection with the group health plan. An issuer may not require any documentation other than the copy of the self-certification from the eligible organization regarding its status as such.

(2) *Payments for contraceptive services*—(i) A group health insurance issuer that receives a copy of the self-certification described in paragraph (a)(4) of this section with respect to a group health plan established or maintained by an eligible organization in connection with which the issuer would otherwise provide contraceptive coverage under § 2590.715–2713(a)(1)(iv) must—

(A) Expressly exclude contraceptive coverage from the group health insurance coverage provided in connection with the group health plan; and

(B) Provide separate payments for any contraceptive services required to be covered under § 2590.715–2713(a)(1)(iv) for plan participants and beneficiaries for so long as they remain enrolled in the plan.

(ii) With respect to payments for contraceptive services, the issuer may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or impose any premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries. The issuer must segregate premium revenue collected from the eligible organization from the monies used to provide payments for contraceptive services. The issuer must provide payments for contraceptive services in a manner that is consistent with the requirements under sections 2706, 2709, 2711, 2713, 2719, and 2719A of the PHS Act, as incorporated into section 715 of ERISA. If the group health plan of the eligible organization provides coverage for some but not all of any contraceptive services required to be covered under § 2590.715–2713(a)(1)(iv), the issuer is required to provide payments only for those contraceptive services for which the group health plan does not provide coverage. However, the issuer may provide payments for all contraceptive services, at the issuer's option.

(d) *Notice of availability of separate payments for contraceptive services—self-insured and insured group health plans.* For each plan year to which the accommodation in paragraph (b) or (c) of this section is to apply, a third party administrator required to provide or arrange payments for contraceptive services pursuant to paragraph (b) of this section, and an issuer required to provide payments for contraceptive services pursuant to paragraph (c) of this section, must provide to plan participants and beneficiaries written notice of the availability of separate payments for contraceptive services contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective beginning on the first day of each applicable plan year. The notice must specify that the eligible organization does not administer or fund contraceptive benefits, but that the third party administrator or issuer, as applicable, provides separate payments for contraceptive services, and must provide contact information for questions and complaints. The following model language, or substantially similar language, may be used to satisfy the notice requirement of this paragraph (d): "Your employer has certified that your group health plan qualifies for an accommodation with respect to the federal requirement to cover all Food and Drug Administration-approved contraceptive services for women, as prescribed by a health care provider, without cost sharing. This means that your employer will not contract, arrange, pay, or refer for contraceptive coverage. Instead, [name of third party administrator/health insurance issuer] will provide or arrange separate payments for contraceptive services that you use, without cost sharing and at no other cost, for so long as you are enrolled in your group health plan. Your employer will not administer or fund these payments. If you have any questions about this notice, contact [contact information for third party administrator/health insurance issuer]."

(e) *Reliance—insured group health plans*—(1) If an issuer relies reasonably and in good faith on a representation by the eligible organization as to its eligibility for the accommodation in paragraph (c) of this section, and the representation is later determined to be incorrect, the issuer is considered to comply with any requirement under § 2590.715–2713(a)(1)(iv) to provide contraceptive coverage if the issuer complies with the obligations under this section applicable to such issuer.

(2) A group health plan is considered to comply with any requirement under § 2590.715–2713(a)(1)(iv) to provide contraceptive coverage if the plan complies with its obligations under paragraph (c) of this section, without regard to whether the issuer complies with the obligations under this section applicable to such issuer.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR Subtitle A parts 147 and 156 as follows:

## PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 1. The authority citation for part 147 continues to read as follows:

**Authority:** Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 2. Section 147.130 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(iv) to read as follows:

**§ 147.130 Coverage of preventive health services.**

(a) * * *

(1) *In general.* Beginning at the time described in paragraph (b) of this section and subject to § 147.131, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, must provide coverage for all of the following items and services, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible) with respect to those items and services:

* * * * *

(iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, evidence-informed preventive care and screenings provided for in binding comprehensive health plan coverage guidelines supported by the Health Resources and Services Administration.

* * * * *

■ 3. Section 147.131 is added to read as follows:

**§ 147.131 Exemption and accommodations in connection with coverage of preventive health services.**

(a) *Religious employers.* In issuing guidelines under § 147.130(a)(1)(iv), the Health Resources and Services Administration may establish an exemption from such guidelines with respect to a group health plan established or maintained by a religious employer (and health insurance coverage provided in connection with a group health plan established or maintained by a religious employer) with respect to any requirement to cover contraceptive services under such guidelines. For purposes of this paragraph (a), a "religious employer" is an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

(b) *Eligible organizations.* An eligible organization is an organization that satisfies all of the following requirements:

(1) The organization opposes providing coverage for some or all of any contraceptive services required to be covered under § 147.130(a)(1)(iv) on account of religious objections.

(2) The organization is organized and operates as a nonprofit entity.

(3) The organization holds itself out as a religious organization.

(4) The organization self-certifies, in a form and manner specified by the Secretary, that it satisfies the criteria in paragraphs (b)(1) through (3) of this section, and makes such self-certification available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (c) of this section applies. The self-certification must be executed by a person authorized to make the certification on behalf of the organization, and must be maintained in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974.

(c) *Contraceptive coverage—insured group health plans*—(1) *General rule.* A group health plan established or maintained by an eligible organization that provides benefits through one or more group health insurance issuers complies for one or more plan years with any requirement under § 147.130(a)(1)(iv) to provide contraceptive coverage if the eligible organization or group health plan furnishes a copy of the self-certification described in paragraph (b)(4) of this section to each issuer that would otherwise provide such coverage in connection with the group health plan. An issuer may not require any documentation other than the copy of the self-certification from the eligible organization regarding its status as such.

(2) *Payments for contraceptive services*—(i) A group health insurance issuer that receives a copy of the self-certification described in paragraph (b)(4) of this section with respect to a group health plan established or maintained by an eligible organization in connection with which the issuer would otherwise provide contraceptive coverage under § 147.130(a)(1)(iv) must—

(A) Expressly exclude contraceptive coverage from the group health insurance coverage provided in connection with the group health plan; and

(B) Provide separate payments for any contraceptive services required to be covered under § 147.130(a)(1)(iv) for plan participants and beneficiaries for so long as they remain enrolled in the plan.

(ii) With respect to payments for contraceptive services, the issuer may not impose any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or impose any premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries. The issuer must segregate premium revenue collected from the eligible organization from the monies used to provide payments for contraceptive services. The issuer must provide payments for contraceptive services in a manner that is consistent with the requirements under sections 2706, 2709, 2711, 2713, 2719, and 2719A of the PHS Act. If the group health plan of the eligible organization provides coverage for some but not all of any contraceptive services required to be covered under § 147.130(a)(1)(iv), the issuer is required to provide payments only for those contraceptive services for which the group health plan does not provide coverage. However, the issuer may provide payments for all contraceptive services, at the issuer's option.

(d) *Notice of availability of separate payments for contraceptive services—insured group health plans and student health insurance coverage.* For each plan year to which the accommodation in paragraph (c) of this section is to apply, an issuer required to provide

payments for contraceptive services pursuant to paragraph (c) of this section must provide to plan participants and beneficiaries written notice of the availability of separate payments for contraceptive services contemporaneous with (to the extent possible), but separate from, any application materials distributed in connection with enrollment (or re-enrollment) in group health coverage that is effective beginning on the first day of each applicable plan year. The notice must specify that the eligible organization does not administer or fund contraceptive benefits, but that the issuer provides separate payments for contraceptive services, and must provide contact information for questions and complaints. The following model language, or substantially similar language, may be used to satisfy the notice requirement of this paragraph (d): "Your [employer/institution of higher education] has certified that your [group health plan/student health insurance coverage] qualifies for an accommodation with respect to the federal requirement to cover all Food and Drug Administration-approved contraceptive services for women, as prescribed by a health care provider, without cost sharing. This means that your [employer/institution of higher education] will not contract, arrange, pay, or refer for contraceptive coverage. Instead, [name of health insurance issuer] will provide separate payments for contraceptive services that you use, without cost sharing and at no other cost, for so long as you are enrolled in your [group health plan/student health insurance coverage]. Your [employer/institution of higher education] will not administer or fund these payments. If you have any questions about this notice, contact [contact information for health insurance issuer]."

(e) *Reliance*—(1) If an issuer relies reasonably and in good faith on a representation by the eligible organization as to its eligibility for the accommodation in paragraph (c) of this section, and the representation is later determined to be incorrect, the issuer is considered to comply with any requirement under § 147.130(a)(1)(iv) to provide contraceptive coverage if the issuer complies with the obligations under this section applicable to such issuer.

(2) A group health plan is considered to comply with any requirement under § 147.130(a)(1)(iv) to provide contraceptive coverage if the plan complies with its obligations under paragraph (c) of this section, without regard to whether the issuer complies with the obligations under this section applicable to such issuer.

(f) *Application to student health insurance coverage.* The provisions of this section apply to student health insurance coverage arranged by an eligible organization that is an institution of higher education in a manner comparable to that in which they apply to group health insurance coverage provided in connection with a group health plan established or maintained by an eligible organization that is an employer. In applying this section in the case of student health insurance coverage, a reference to "plan participants and beneficiaries" is a reference to student enrollees and their covered dependents.

## PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 4. The authority citation for part 156 continues to read as follows:

**Authority:** Title I of the Affordable Care Act, sections 1301–1304, 1311–1312, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, and 1412, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

■ 5. Section 156.50 is amended by adding paragraph (d) to read as follows:

**§ 156.50 Financial support.**

* * * * *

(d) *Adjustment of Federally-facilitated Exchange user fee*—(1) A participating issuer offering a plan through a Federally-facilitated Exchange may qualify for an adjustment in the Federally-facilitated Exchange user fee specified in paragraph (c) of this section to the extent that the participating issuer—

(i) Made payments for contraceptive services on behalf of a third party administrator pursuant to 26 CFR 54.9815–2713A(b)(2)(ii) or 29 CFR 2590.715–2713A(b)(2)(ii); or

(ii) Seeks an adjustment in the Federally-facilitated Exchange user fee with respect to a third party administrator that, following receipt of a copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(4) or 29 CFR 2590.715–2713A(a)(4), made or arranged for payments for contraceptive services pursuant to 26 CFR 54.9815–2713A(b)(2)(i) or (ii) or 29 CFR 2590.715–2713A(b)(2)(i) or (ii).

(2) For a participating issuer described in paragraph (d)(1) of this section to receive the Federally-facilitated Exchange user fee adjustment—

(i) The participating issuer must submit to HHS, in the manner and timeframe specified by HHS, in the year following the calendar year in which the contraceptive services for which payments were made pursuant to 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2) were provided —

(A) Identifying information for the participating issuer and each third party administrator that received a copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(4) or 29 CFR 2590.715–2713A(a)(4) with respect to which the participating issuer seeks an adjustment in the Federally-facilitated Exchange user fee, whether or not the participating issuer was the entity that made the payments for contraceptive services;

(B) Identifying information for each self-insured group health plan with respect to which a copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(4) or 29 CFR 2590.715–2713A(a)(4) was received by a third party administrator and with respect to which the participating issuer seeks an adjustment in the Federally-facilitated Exchange user fee; and

(C) For each such self-insured group health plan, the total dollar amount of the payments that were made pursuant to 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2) for contraceptive services that were provided during the applicable calendar year. If such payments were made by the participating issuer directly as described in paragraph (d)(1)(i) of this section, the total dollar amount should reflect the amount of the payments made by the participating issuer; if the third party administrator made or arranged for such payments, as described in paragraph (d)(1)(ii) of this section, the total dollar amount should reflect the amount reported to the participating issuer by the third party administrator.

(ii) Each third party administrator that intends for a participating issuer to seek an adjustment in the Federally-facilitated Exchange user fee with respect to the third party administrator for payments for contraceptive services must submit to HHS a notification of such intent, in a manner specified by HHS, by the later of January 1, 2014, or the 60th calendar day following the date on which the third party administrator receives the applicable copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(4) or 29 CFR 2590.715–2713A(a)(4).

(iii) Each third party administrator identified in paragraph (d)(2)(i)(A) of

this section must submit to HHS, in the manner and timeframe specified by HHS, in the year following the calendar year in which the contraceptive services for which payments were made pursuant to 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2) were provided—

(A) Identifying information for the third party administrator and the participating issuer;

(B) Identifying information for each self-insured group health plan with respect to which a copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(4) or 29 CFR 2590.715–2713A(a)(4) was received by the third party administrator and with respect to which the participating issuer seeks an adjustment in the Federally-facilitated Exchange user fee;

(C) The total number of participants and beneficiaries in each such self-insured group health plan during the applicable calendar year;

(D) For each such self-insured group health plan with respect to which the third party administrator made payments pursuant to 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2) for contraceptive services, the total dollar amount of such payments that were provided during the applicable calendar year. If such payments were made by the participating issuer directly as described in paragraph (d)(1)(i) of this section, the total dollar amount should reflect the amount reported to the third party administrator by the participating issuer; if the third party administrator made or arranged for such payments, as described in paragraph (d)(1)(ii) of this section, the total dollar amount should reflect the amount of the payments made by or on behalf of the third party administrator; and

(E) An attestation that the payments for contraceptive services were made in compliance with 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2).

(3) If the requirements set forth in paragraph (d)(2) of this section are met, and as long as an authorizing exception under OMB Circular No. A–25R is in effect, the participating issuer will be provided a reduction in its obligation to pay the Federally-facilitated Exchange user fee specified in paragraph (c) of this section equal in value to the sum of the following:

(i) The total dollar amount of the payments for contraceptive services submitted by the applicable third party administrators, as described in paragraph (d)(2)(iii)(D) of this section.

(ii) An allowance for administrative costs and margin. The allowance will be no less than 10 percent of the total dollar amount of the payments for contraceptive services specified in paragraph (d)(3)(i) of this section. HHS will specify the allowance for a particular calendar year in the annual HHS notice of benefit and payment parameters.

(4) As long as an exception under OMB Circular No. A–25R is in effect, if the amount of the adjustment under paragraph (d)(3) of this section is greater than the amount of the participating issuer's obligation to pay the Federally-facilitated Exchange user fee in a particular month, the participating issuer will be provided a credit in succeeding months in the amount of the excess.

(5) Within 60 days of receipt of any adjustment in the Federally-facilitated Exchange user fee under this section, a participating issuer must pay each third party administrator with respect to which it received any portion of such adjustment an amount no less than the portion of the adjustment attributable to the total dollar amount of the payments for contraceptive services submitted by the third party administrator, as described in paragraph (d)(2)(iii)(D) of this section. No such payment is required with respect to the allowance for administrative costs and margin described in paragraph (d)(3)(ii) of this section. This paragraph does not apply if the participating issuer made the payments for contraceptive services on behalf of the third party administrator, as described in paragraph (d)(1)(i) of this section, or is in the same issuer group as the third party administrator.

(6) A participating issuer receiving an adjustment in the Federally-facilitated Exchange user fee under this section for a particular calendar year must maintain for 10 years following that year, and make available upon request to HHS, the Office of the Inspector General, the Comptroller General, and their designees, documentation demonstrating that it timely paid each third party administrator with respect to which it received any such adjustment any amount required to be paid to the third party administrator under paragraph (d)(5) of this section.

(7) A third party administrator with respect to which an adjustment in the Federally-facilitated Exchange user fee is received under this section for a particular calendar year must maintain for 10 years following that year, and make available upon request to HHS, the Office of the Inspector General, the Comptroller General, and their designees, all of the following documentation:

(i) A copy of the self-certification referenced in 26 CFR 54.9815–2713A(a)(4) or 29 CFR 2590.715–2713A(a)(4) for each self-insured plan with respect to which an adjustment is received.

(ii) Documentation demonstrating that the payments for contraceptive services were made in compliance with 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2).

(iii) Documentation supporting the total dollar amount of the payments for contraceptive services submitted by the third party administrator, as described in paragraph (d)(2)(iii)(D) of this section.

■ 6. Section 156.80 is amended by revising paragraph (d)(1) to read as follows:

**§ 156.80 Single risk pool.**

* * * * *

(d) * * *

(1) *In general.* Each plan year or policy year, as applicable, a health insurance issuer must establish an index rate for a state market described in paragraphs (a) through (c) of this section based on the total combined claims costs for providing essential health benefits within the single risk pool of that state market. The index rate must be adjusted on a market-wide basis for the state based on the total expected market-wide payments and charges under the risk adjustment and reinsurance programs, and Exchange user fees (expected to be remitted under § 156.50(b) or § 156.50(c) and (d) of this subchapter as applicable plus the dollar amount under § 156.50(d)(3)(i) and (ii) of this subchapter expected to be credited against user fees payable for that state market). The premium rate for all of the health insurance issuer's plans in the relevant state market must use the applicable market-wide adjusted index rate, subject only to the plan-level adjustments permitted in paragraph (d)(2) of this section.

* * * * *

Signed this 27th day of June 2013.

**Beth Tucker,**

*Deputy Commissioner for Operations Support, Internal Revenue Service.*

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

Signed this 26th day of June 2013.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

Dated: June 20, 2013

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: June 25, 2013.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

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# FEDERAL REGISTER

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Part IV

## Bureau of Consumer Financial Protection

12 CFR Parts 1002, 1024, and 1026
Amendments to the 2013 Mortgage Rules Under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z); Proposed Rule

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Parts 1002, 1024, and 1026**

**[Docket No. CFPB–2013–0018]**

**RIN 3170–AA37**

## Amendments to the 2013 Mortgage Rules Under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)

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

**ACTION:** Proposed rule with request for public comment.

**SUMMARY:** This rule proposes amendments to certain mortgage rules issued by the Bureau of Consumer Financial Protection (Bureau) in January 2013. These proposed amendments focus primarily on clarifying, revising, or amending provisions on loss mitigation procedures under Regulation X's servicing provisions, amounts counted as loan originator compensation to retailers of manufactured homes and their employees for purposes of applying points and fees thresholds under the Home Ownership and Equity Protection Act and the qualified mortgage rules in Regulation Z, exemptions available to creditors that operate predominantly in "rural or underserved" areas for various purposes under the mortgage regulations, application of the loan originator compensation rules to bank tellers and similar staff, and the prohibition on creditor-financed credit insurance. The Bureau also is proposing to adjust the effective dates for certain provisions of the loan originator compensation rules. In addition, the Bureau is proposing technical and wording changes for clarification purposes to Regulations B, X, and Z.

**DATES:** Comments must be received on or before July 22, 2013.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2013–0018 or RIN 3170–AA37, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

*Instructions:* All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Whitney Patross, Attorney; Richard Arculin, Michael Silver, and Daniel Brown, Counsels; Marta Tanenhaus, Mark Morelli, Senior Counsels and Paul Ceja, Senior Counsel and Special Advisor, Office of Regulations, at (202) 435–7700.

**SUPPLEMENTARY INFORMATION:**

### I. Summary of Proposed Rule

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States (2013 Title XIV Final Rules), pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (2010).[1]

This document proposes several amendments to the provisions adopted by the 2013 Title XIV Final Rules to clarify or revise regulatory provisions and official interpretations primarily relating to the 2013 Mortgage Servicing Final Rules and the 2013 Loan Originator Compensation Final Rule, as described further below. This document also proposes modifications to the effective dates for provisions adopted by the 2013 Loan Originator Compensation Final Rule, and certain technical corrections and minor refinements to Regulations B, X, and Z.

Specifically, the Bureau is proposing several modifications to the Regulation X loss mitigation provisions adopted by the 2013 Mortgage Servicing Final Rules, in § 1024.41. Two of the revisions concern the requirement in § 1024.41(b)(2)(i) that servicers review a borrower's loss mitigation application within five days and provide a notice to the borrower acknowledging receipt and informing the borrower whether the application is complete or incomplete. If the servicer does not deem the application complete, the servicer's notice must also list the missing items and direct the borrower to provide the information by the earliest remaining date of four possible timeframes. The proposed changes would provide servicers more flexibility with regard to setting and describing the date by which borrowers should supply missing information and would set forth requirements and procedures for a servicer to follow in the event that an application is later found by the servicer to be missing information or documentation necessary to the evaluation process. Another proposed modification would provide servicers more flexibility in providing short-term payment forbearance plans based on an evaluation of an incomplete loss mitigation application. Other clarifications and revisions would address the content of notices required under § 1024.41(c)(1)(ii) and (d), which inform borrowers of the outcomes of their evaluation for loss mitigation and any appeal filed by the borrower. In addition, the proposed amendments would address the appropriate timelines to apply where a foreclosure sale has not been scheduled at the time the borrower submits a loss mitigation application or when a foreclosure sale is rescheduled, what actions are permitted while the general ban on proceeding to foreclosure before a borrower is 120

[1] Specifically, on January 10, 2013, the Bureau issued Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4726 (Jan. 30, 2013) (2013 Escrows Final Rule), High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X), 78 FR 6856 (Jan. 31, 2013) (2013 HOEPA Final Rule), and Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 6407 (Jan. 30, 2013) (2013 ATR Final Rule). The Bureau concurrently issued a proposal to amend the 2013 ATR Final Rule, which was finalized on May 29, 2013. See 78 FR 6621 (Jan. 10, 2013) and 78 FR 35430 (June 12, 2013). On January 17, 2013, the Bureau issued the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, 78 FR 10901 (Regulation Z) (Feb. 14, 2013) and 78 FR 10695 (Regulation X) (Feb. 14, 2013) (2013 Mortgage Servicing Final Rules). On January 18, 2013, the Bureau issued the Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215 (Jan. 31, 2013) (2013 ECOA Final Rule) and, jointly with other agencies, issued Appraisals for Higher-Priced Mortgage Loans (Regulation Z), 78 FR 10367 (Feb. 13, 2013). On January 20, 2013, the Bureau issued the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279 (Feb. 15, 2013) (2013 Loan Originator Compensation Final Rule).

days delinquent is in effect, and the application of the 120-day prohibition to foreclosures for certain reasons other than nonpayment.

Second, the Bureau is proposing clarifications and revisions to the definition of points and fees for purposes of the qualified mortgage points and fees cap and the high-cost mortgage points and fees threshold, as adopted in the 2013 ATR Final Rule and the 2013 HOEPA Final Rule, respectively. In particular, the Bureau is proposing to add commentary to § 1026.32(b)(1)(ii) to clarify for retailers of manufactured homes and their employees what compensation must be counted as loan originator compensation and thus included in the points and fees thresholds.

Third, the Bureau is proposing to revise two exceptions available under the 2013 Title XIV Final Rules to small creditors operating in predominantly "rural" or "underserved" areas while the Bureau re-examines the underlying definitions of "rural" or "underserved" over the next two years, as it recently announced it would do in Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z) (May 2013 ATR Final Rule).[2] First, the Bureau is proposing to extend an exception to the general prohibition on balloon features for high-cost mortgages under § 1026.32(d)(1)(ii)(C) to allow all small creditors, regardless of whether they operate predominantly in "rural" or "underserved" areas, to continue originating balloon high-cost mortgages if the loans meet the requirements for qualified mortgages under §§ 1026.43(e)(6) or 1026.43(f). In addition, the Bureau is proposing to amend an exemption from the requirement to establish escrow accounts for higher-priced mortgage loans under the § 1026.35(b)(2)(iii)(A) for small creditors that extend more than 50 percent of their total covered transactions secured by a first lien in "rural" or "underserved" counties during the preceding calendar year. To prevent creditors that qualified for the exemption in 2013 from losing eligibility in 2014 or 2015 because of changes in which counties are considered rural while the Bureau is re-evaluating the underlying definition of "rural," the Bureau is proposing to amend this provision to allow creditors to qualify for the exemption if they extended more than 50 percent of their total covered transactions in rural or underserved counties in any of the previous three calendar years (assuming the other criteria for eligibility are also met).

Fourth, the Bureau is proposing revisions, as well as general technical and wording changes to various provisions of the 2013 Loan Originator Compensation Final Rule in § 1026.36. These include revising the definition of "loan originator" in the regulatory text and commentary, such as provisions addressing when employees (or contractors or agents) of a creditor or loan originator in certain administrative or clerical roles (*e.g.*, tellers or greeters) may become "loan originators" and thus subject to the rule, upon providing contact information or credit applications for loan originators or creditors to consumers. It also proposes a number of clarifications to the commentary on prohibited payments to loan originators.

Fifth, the Bureau is proposing to clarify and revise two aspects of the rules implementing the Dodd-Frank Act prohibition on creditors financing credit insurance premiums in connection with certain consumer credit transactions secured by a dwelling. The Bureau is proposing to add new § 1026.36(i)(2)(ii) to clarify what constitutes financing of such premiums by a creditor. The Bureau also is proposing to add new § 1026.36(i)(2)(iii) to clarify when credit insurance premiums are considered to be calculated and paid on a monthly basis, for purposes of the statutory exclusion from the prohibition for certain credit insurance premium calculation and payment arrangements.

Sixth, the Bureau is proposing to make certain provisions under the 2013 Loan Originator Compensation Final Rule take effect on January 1, 2014, rather than January 10, 2014, as originally provided. The affected provisions would be the amendments to or additions of (as applicable) § 1026.25(c)(2) (record retention), § 1026.36(a) (definitions), § 1026.36(b) (scope), § 1026.36(d) (compensation), § 1026.36(e) (anti-steering), § 1026.36(f) (qualifications), and § 1026.36(j) (compliance policies and procedures for depository institutions). The Bureau believes that this change would facilitate compliance because these provisions largely focus on compensation plan structures, registration and licensing, and hiring and training requirements that are often structured on an annual basis and typically do not vary from transaction to transaction. The Bureau is also seeking comment on whether to adjust the date for implementation of the ban on financing credit insurance under § 1026.36(i), which the Bureau temporarily delayed and extended to January 10, 2014, to provide additional guidance on the issues discussed above. *See* Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z); Prohibition on Financing Credit Insurance Premiums; Delay of Effective Date (2013 Effective Date Final Rule).[3]

In addition to the proposed clarifications and amendments to Regulations X and Z discussed above, the Bureau is proposing technical corrections and minor clarifications to wording throughout Regulations B, X, and Z that are generally not substantive in nature.

## II. Background

### *A. Title XIV Rulemakings Under the Dodd-Frank Act*

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Act, which was signed into law on July 21, 2010. Pub. L. 111–203, 124 Stat. 1376 (2010). In the Dodd-Frank Act, Congress established the Bureau and, under sections 1061 and 1100A, generally consolidated the rulemaking authority for Federal consumer financial laws, including the Equal Credit Opportunity Act (ECOA), Truth in Lending Act (TILA), and Real Estate Settlement Procedures Act (RESPA), in the Bureau.[4] At the same time, Congress significantly amended the statutory requirements governing mortgage practices with the intent to restrict the practices that contributed to and exacerbated the crisis. Under the statute, most of these new requirements would have taken effect automatically on January 21, 2013, if the Bureau had not issued implementing regulations by that date.[5] To avoid uncertainty and potential disruption in the national mortgage market at a time of economic vulnerability, the Bureau issued several final rules in a span of less than two weeks in January 2013 to implement these new statutory provisions and provide for an orderly transition.

[2] 78 FR 35430 (May 29, 2013)

[3] 78 FR 32547 (May 31, 2013).

[4] Sections 1011 and 1021 of the Dodd-Frank Act, in title X, the "Consumer Financial Protection Act," Public Law 111–203, sections 1001–1100H, codified at 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481–5603. Section 1029 of the Dodd-Frank Act excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. 12 U.S.C. 5519.

[5] Dodd-Frank Act section 1400(c), 15 U.S.C. 1601 note.

On January 10, 2013, the Bureau issued the 2013 ATR Final Rule, the 2013 Escrows Final Rule, and the 2013 HOEPA Final Rule. On January 17, 2013, the Bureau issued the 2013 Mortgage Servicing Final Rules. On January 18, 2013, the Bureau issued Appraisals for Higher-Priced Mortgage Loans (Regulation Z)[6] (issued jointly with other agencies) and the 2013 ECOA Final Rule. On January 20, 2013, the Bureau issued the 2013 Loan Originator Compensation Final Rule. Most of these rules will become effective on January 10, 2014.

Concurrent with the 2013 ATR Final Rule, on January 10, 2013, the Bureau issued Proposed Amendments to the Ability to Repay Standards Under the Truth in Lending Act (Regulation Z) (2013 ATR Concurrent Proposal), which the Bureau finalized on May 29, 2013 (May 2013 ATR Final Rule).[7]

*B. Implementation Initiative for New Mortgage Rules*

On February 13, 2013, the Bureau announced an initiative to support implementation of its new mortgage rules (Implementation Plan),[8] under which the Bureau would work with the mortgage industry and other stakeholders to ensure that the new rules can be implemented accurately and expeditiously. The Implementation Plan includes: (1) Coordination with other agencies, including to develop consistent, updated examination procedures; (2) publication of plain-language guides to the new rules; (3) publication of additional corrections and clarifications of the new rules, as needed; (4) publication of readiness guides for the new rules; and (5) education of consumers on the new rules.

This proposal concerns additional clarifications and revisions to the new rules. The purpose of these updates is to address important questions raised by industry, consumer groups, or other agencies. Priority for this set of updates has been given to issues that are important to a large number of stakeholders and critically affect loan originators' and mortgage servicers' implementation decisions. Additional updates will be issued as appropriate.

## III. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under ECOA, TILA, RESPA, and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the "consumer financial protection functions" previously vested in certain other Federal agencies, including the Federal Reserve Board and the Department of Housing and Urban Development. The term "consumer financial protection function" is defined to include "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines."[9] Section 1061 of the Dodd-Frank Act also transferred to the Bureau all of HUD's consumer protections functions relating to RESPA.[10] Title X of the Dodd-Frank Act, including section 1061 of the Dodd-Frank Act, along with ECOA, TILA, RESPA, and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[11]

*A. ECOA*

Section 703(a) of ECOA authorizes the Bureau to prescribe regulations to carry out the purposes of ECOA. Section 703(a) further states that such regulations may contain—but are not limited to—such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions as, in the judgment of the Bureau, are necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance. 15 U.S.C. 1691b(a).

*B. RESPA*

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which includes its consumer protection purposes. In addition, section 6(j)(3) of RESPA, 12 U.S.C. 2605(j)(3), authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA, and section 6(k)(1)(E) of RESPA, 12 U.S.C. 2605(k)(1)(E), authorizes the Bureau to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes. As identified in the 2013 RESPA Servicing Final Rule, the consumer protection purposes of RESPA include responding to borrower requests and complaints in a timely manner, maintaining and providing accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees, and facilitating review for foreclosure avoidance options.

*C. TILA*

Section 105(a) of TILA, 15 U.S.C. 1604(a), authorizes the Bureau to prescribe regulations to carry out the purposes of TILA. Under section 105(a), such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." TILA section 102(a), 15 U.S.C. 1601(a). In particular, it is a purpose of TILA section 129C, as amended by the Dodd-Frank Act, to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, and abusive. Section 105(f) of TILA, 15 U.S.C. 1604(f), authorizes the Bureau to exempt from all or part of TILA any class of transactions if the Bureau determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. Under TILA section 103(bb)(4), the Bureau may adjust the definition of points and fees for purposes of that threshold to include such charges that the Bureau determines to be appropriate.

TILA section 129C(b)(3)(B)(i) provides the Bureau with authority to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of the ability-to-repay requirements; or are necessary and appropriate to effectuate the purposes of

[6] 78 FR 10367.

[7] 78 FR 6622; 78 FR 35430.

[8] Consumer Financial Protection Bureau Lays Out Implementation Plan for New Mortgage Rules. Press Release. Feb. 13, 2013.

[9] 12 U.S.C. 5581(a)(1).

[10] Public Law 111–203, 124 Stat. 1376, section 1061(b)(7); 12 U.S.C. 5581(b)(7).

[11] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws" and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining "enumerated consumer laws" to include TILA), Dodd-Frank section 1400(b), 15 U.S.C. 1601 note (defining "enumerated consumer laws" to include certain subtitles and provisions of Title XIV).

the ability-to-repay requirements, to prevent circumvention or evasion thereof, or to facilitate compliance with TILA sections 129B and 129C. 15 U.S.C. 1639c(b)(3)(B)(i). In addition, TILA section 129C(b)(3)(A) requires the Bureau to prescribe regulations to carry out the purposes of the qualified mortgage provisions, such as to ensure that responsible and affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C. 15 U.S.C. 1639c(b)(3)(A).

*D. The Dodd-Frank Act*

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." 12 U.S.C. 5512(b)(1). Title X of the Dodd-Frank Act is a Federal consumer financial law. Accordingly, the Bureau is exercising its authority under the Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of ECOA, RESPA, TILA, title X, and the enumerated subtitles and provisions of title XIV of the Dodd-Frank Act, and prevent evasion of those laws.

Section 1032(a) of the Dodd-Frank Act provides that the Bureau "may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances." 12 U.S.C. 5532(a). The authority granted to the Bureau in Dodd-Frank Act section 1032(a) is broad, and empowers the Bureau to prescribe rules regarding the disclosure of the "features" of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to Dodd-Frank Act section 1032, the Bureau "shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services." 12 U.S.C. 5532(c). Accordingly, in proposing provisions authorized under Dodd-Frank Act section 1032(a), the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

The Bureau is proposing to amend rules finalized in January 2013 that implement certain Dodd-Frank Act provisions. In particular, the Bureau is proposing to amend regulatory provisions adopted by the 2013 ECOA Final Rule, the 2013 Mortgage Servicing Final Rules, the 2013 HOEPA Final Rule, the 2013 Escrows Final Rule, the 2013 Loan Originator Compensation Final Rule, and the 2013 ATR Final Rule.

## IV. Proposed Effective Dates

*A. For Provisions Other Than Those Related to the 2013 Loan Originator Compensation Final Rule or the 2013 Escrows Final Rule*

In enacting the Dodd-Frank Act, Congress significantly amended the statutory requirements governing a number of mortgage practices. Under the Dodd-Frank Act, most of these new requirements would have taken effect automatically on January 21, 2013, if the Bureau had not issued implementing regulations by that date.[12] Where the Bureau was required to prescribe implementing regulations, the Dodd-Frank Act further provided that those regulations must take effect not later than 12 months after the date of the regulations' issuance in final form.[13] The Bureau issued the 2013 Title XIV Final Rules in January 2013 to implement these new statutory provisions and provide for an orderly transition. To allow the mortgage industry sufficient time to comply with the new rules, the Bureau established January 10, 2014—one year after issuance of the earliest of the 2013 Title XIV Final Rules—as the baseline effective date for nearly all of the new requirements. In the preamble to certain of the various 2013 Title XIV Final Rules, the Bureau further specified that the new regulations would apply to transactions for which applications were received on or after January 10, 2014.

Except for the amendments regarding the 2013 Loan Originator Compensation Final Rule and the 2013 Escrows Final Rule discussed below, the Bureau proposes an effective date of January 10, 2014 for the proposals in this document. The Bureau believes that having a consistent effective date across most of the 2013 Title XIV Final Rules will facilitate compliance. The Bureau requests public comment on this proposed effective date, including on any suggested alternatives.

*B. For Provisions Related to the 2013 Escrows Final Rule*

While the Bureau established January 10, 2014 as the baseline effective date for most of the 2013 Title XIV Final Rules, the Bureau identified certain provisions that it believed did not present significant implementation burdens for industry, including amendments to § 1026.35 adopted by the 2013 Escrows Final Rule. For these provisions, the Bureau set an earlier effective date of June 1, 2013.

As discussed in the section-by-section analysis below, the Bureau is now proposing to amend one such provision, § 1026.35(b)(2)(iii)(A), which provides an exemption from the higher-priced mortgage loan escrow requirement to creditors that extend more than 50 percent of their total covered transactions secured by a first lien in "rural" or "underserved" counties during the preceding calendar year and also meet other small creditor criteria, and do not otherwise escrow loans serviced by themselves or an affiliate. In light of recent changes to which counties meet the definition of "rural," the Bureau is proposing to amend this provision to prevent creditors that qualified for the exemption in 2013 from losing eligibility in 2014 or 2015 because of these changes. The Bureau is proposing to amend this provision to allow creditors to qualify for the exemption if they qualified in any of the previous three calendar years (assuming the other criteria for eligibility are also met). In addition, the Bureau is proposing to amend § 1026.35(b)(2)(iii)(D)(*1*) to prevent creditors that were previously ineligible for the exemption, but may now qualify in light of the proposed changes, from losing eligibility because they had established escrow accounts for first-lien higher-priced mortgage loans (for which applications were received after June 1, 2013), as required when the final rule took effect and prior to the proposed amendments taking effect.

Because the § 1026.35(b)(2)(iii) exemption applies based on a calendar year, the Bureau believes it is appropriate to set a January 1, 2014 effective date for these provisions. The Bureau notes that a January 1, 2014 effective date is more beneficial to industry, because the amendment

[12] Dodd-Frank Act section 1400(c)(3), 15 U.S.C. 1601 note.

[13] Dodd-Frank Act section 1400(c)(1)(B), 15 U.S.C. 1601 note.

would only expand eligibility for the exemption—thus an effective date of January 1, 2014, as opposed to January 10, 2014, would mean that creditors are able to take advantage of this expanded exemption earlier. The Bureau thus proposes that the amendments to § 1026.35(b)(2)(iii) and its commentary take effect for applications received on or after January 1, 2014. The Bureau invites comment on this approach, and specifically whether an effective date for transactions where applications were received on or after January 1, 2014 is appropriate, in light of the proposed changes to the calendar year exemption under § 1026.35(b)(2)(iii).

*C. For Provisions Related to the 2013 Loan Originator Compensation Final Rule*

The proposed effective date for certain provisions in this proposal related to the 2013 Loan Originator Compensation Final Rule is January 1, 2014 for the reasons discussed below.

**V. Proposal To Change the Effective Date of the 2013 Loan Originator Compensation Rule**

As described above, the Bureau established January 10, 2014 as the baseline effective date for nearly all of the provisions in the 2013 Title XIV Final Rules, including most provisions of the 2013 Loan Originator Compensation Final Rule. The Bureau believed that having a consistent effective date across nearly all of the 2013 Title XIV Final Rules would facilitate compliance. However, the Bureau identified a few provisions that it believed did not present significant implementation burdens for industry, including § 1026.36(h) on mandatory arbitration clauses and waivers of certain consumer rights and § 1026.36(i) on financing credit insurance, as adopted by the 2013 Loan Originator Compensation Final Rule. For these provisions, the Bureau set an earlier effective date of June 1, 2013.[14]

Since issuing the 2013 Loan Originator Compensation Final Rule in January, the Bureau has received a number of questions about transition issues, particularly with regard to application of provisions under § 1026.36(d) that generally prohibit basing loan originator compensation on transaction terms but permit creditors to award non-deferred profits-based compensation determined with reference to profits from mortgage-related business so long as the compensation does not exceed 10 percent of the loan originators' total compensation or the loan originator does not engage in more than a specified number of transactions within a 12-month period. For instance, the Bureau has received inquiries about when the 2013 Loan Originator Compensation Final Rule permits creditors and loan originator organizations to begin taking into account transactions for purposes of paying compensation under a non-deferred profits-based compensation plan pursuant to § 1026.36(d)(1)(iv)(B)(*1*) (*i.e.*, the 10-percent total compensation limit, or the 10-percent limit). The Bureau also believes that, given the current effective date, some creditors and loan originator organizations intending to pay compensation under a non-deferred profits-based compensation plan pursuant to § 1026.36(d)(1)(iv)(B)(*1*) might believe that they must undertake a separate accounting for the period from January 1 through January 9, 2014, given that the effective date is January 10, 2014, and is tied to when applications are received.

While the profits-based compensation provisions present relatively complicated transition issues, the Bureau is also conscious of the fact that most other provisions in the 2013 Loan Originator Compensation Final Rule are simpler to implement because they largely recodify and clarify existing requirements that were previously adopted by the Federal Reserve Board in 2010 with regard to loan originator compensation, and by various agencies under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. 5106–5116 (SAFE Act), with regard to loan originator qualification requirements. The provisions are also focused on compensation plan structures, registration and licensing, and hiring and training requirements that are often structured on an annual basis and typically do not vary from transaction to transaction.

For all of these reasons, the Bureau proposes moving the general effective date for most provisions adopted by the 2013 Loan Originator Compensation Final Rule to January 1, 2014. Although that would shorten the implementation period by nine days, the Bureau believes that the change would actually facilitate compliance and reduce implementation burden by providing a cleaner transition period that more closely aligns with changes to employers' annual compensation structures and registration, licensing, and training requirements. In addition, because elements of the 2013 Loan Originator Compensation Final Rule concerning retention of records, definitions, scope, and implementing procedures affect multiple provisions, the Bureau is proposing to make the change with regard to the bulk of the 2013 Loan Originator Compensation Final Rule as described further below, rather than attempting to treat individual provisions in isolation. Finally, the Bureau is also proposing changes, discussed below, to the effective date for provisions on financing of credit insurance under § 1026.36(i), in connection with proposing further clarifications and guidance on the Dodd-Frank Act requirements related to that provision.

These proposed clarifications and amendments to the effective date require only minimal revisions to the rule text and commentary. They primarily would be reflected in the Dates caption and discussion of effective dates in the Supplementary Information of a rule finalizing this proposal. As amended by the Dodd-Frank Act, TILA section 105(a), 15 U.S.C. 1604(a), directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. Further, under Dodd-Frank Act section 1022(b)(1), 15 U.S.C. 5512(b)(1), the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. The Bureau is proposing to change the effective date of the 2013 Loan Originator Compensation Final Rule with respect to those provisions described above pursuant to its TILA section 105(a) and Dodd-Frank Act section 1022(b)(1) authority.

The Bureau believes these changes would facilitate compliance and help ensure that the 2013 Loan Originator Compensation Final Rule does not have adverse unintended consequences. The Bureau requests public comment on these proposed effective dates, including on any suggested alternatives.

*1. Effective Date for Amendments to § 1026.36(d)*

The Bureau is proposing three specific changes to the effective date for

[14] After interpretive issues were raised concerning the credit insurance provision as discussed further below, the Bureau temporarily delayed and extended the effective date for § 1026.36(i) in the 2013 Effective Date Final Rule until January 10, 2014. 78 FR 32547 (May 31, 2013).

the amendments to § 1026.36(d). First, the Bureau is proposing that the provisions of the 2013 Loan Originator Compensation Final Rule revising § 1026.36(d) would be effective January 1, 2014, not January 10, 2014. The Bureau is concerned that an effective date of January 10, 2014, for the revisions to § 1026.36(d) may result in creditors and loan originator organizations believing that they have to account separately for the period from January 1 through January 9, 2014, when applying the new compensation restrictions under § 1026.36(d) (for example, if a creditor wishes to pay individual loan originators through non-deferred profits-based compensation plans pursuant to § 1026.36(d)(1)(iv), or if a loan originator organization wishes to pay to an individual loan originator compensation pursuant to § 1026.36(d)(2)(i)(C)). The Bureau recognizes that this proposal would make certain aspects of the 2013 Loan Originator Compensation Final Rule effective nine days earlier than originally stated, meaning that creditors and loan originator organizations would have a slightly shorter implementation period. On balance, however, the Bureau believes this proposed change will ease compliance burdens for creditors and loan originator organizations by eliminating any concern about a need for separate accountings as described above. As noted above, the Bureau is also proposing to change the effective date for the addition of § 1026.25(c)(2) (records retention) from January 10, 2014, to January 1, 2014. This proposed change dovetails with the proposal to change the effective date of § 1026.36(d) to January 1, 2014, to ensure that records on compensation paid between January 1 and January 10, 2014, are properly maintained.

Second, the Bureau is proposing that the revisions to § 1026.36(d) (other than the addition of § 1026.36(d)(1)(iii), as discussed below) would apply to transactions that are consummated and for which the creditor or loan originator organization paid compensation on or after January 1, 2014. The Bureau believes applying the effective date for the revisions to § 1026.36(d) based on application receipt, rather than based on transaction consummation and compensation payment, could present compliance challenges. This proposed change would permit transactions to be taken into account for purposes of compensating individual loan originators under the exceptions set forth in § 1026.36(d)(1)(iv) if the transactions were consummated and compensation was paid to the individual loan originator on or after January 1, 2014, even if the applications for those transactions were received prior to January 1, 2014. The Bureau believes this clarification, in conjunction with the proposed change to the effective date for the revisions to § 1026.36(d) described above, will reduce compliance burdens on creditors and loan originator organizations by allowing them to take into account all transactions consummated in 2014 (and for which compensation is paid to individual loan originators in 2014) for purposes of paying compensation under § 1026.36(d)(1)(iv) that is earned in 2014. This proposed revision will also allow the consumer-paid compensation restrictions and exceptions thereto in the revisions to § 1026.36(d)(2) to be effective upon the consummation of any transaction where such compensation is paid in 2014 even if the application for that transaction was received in 2013. Making this proposed clarification would eliminate the concern that creditors and loan originator organizations would potentially have to undertake separate accountings depending on when the applications for the transactions were received.[15]

For example, assume a creditor utilizes a calendar-year accounting method and wishes, pursuant to the exception for non-deferred profits-based compensation in § 1026.36(d)(1)(iv)(B)(*1*), to pay a bonus to an individual loan originator with reference to the profits of the creditor's mortgage-related business during the first quarter of calendar year 2014. In applying the 10-percent limit under § 1026.36(d)(1)(iv)(B)(*1*) to determine the maximum permissible amount of the quarterly bonus, a creditor could have interpreted the 2013 Loan Originator Compensation Final Rule's effective date provision to mean that it would have to account separately for transactions that were consummated in 2014 but where the applications were received in 2013 (*i.e.*, by not counting them in the calculation of the 10-percent limit for the first quarter of 2014). The Bureau's proposal would alleviate this concern by allowing the creditor to calculate the bonus with reference to the creditor's mortgage-related business profits during the first quarter of 2014 without having to inquire into the particular details about the transactions on whose terms the compensation was based, such as when the applications for those transactions were received.

Third, the Bureau is proposing that the provisions of § 1026.36(d)(1)(iii), which pertain to contributions to or benefits under designated tax-advantaged plans for individual loan originators, would apply to transactions for which the creditor or loan originator organization paid compensation on or after January 1, 2014, regardless of when the transactions were consummated or their applications were received. These changes regarding the effective date for the revisions to § 1026.36(d)(1)(iii) more clearly reflect the Bureau's intent to permit payment of compensation related to designated tax-advantaged plans during both 2013 (as explained in CFPB Bulletin 2012–2 clarifying current § 1026.36(d)(1))[16] and thereafter (under the 2013 Loan Originator Compensation Final Rule). Without this proposed change, the Bureau believes there could be uncertainty about whether the clarification in the Bulletin, new § 1026.36(d)(1)(iii), or neither would apply if a creditor or loan originator organization wished to pay compensation in 2014 in the form of contributions to or benefits under designated tax-advantaged plans where the compensation was determined based on the terms of transactions consummated during 2013.

In addition to the three specific changes to the effective date described above, the Bureau solicits comment generally on whether the proposed changes to the effective date for the amendments to § 1026.36(d) are appropriate or whether other approaches should be considered. In particular, the Bureau solicits comment on whether the amendments to

[15] The Bureau recognizes that, under this proposed revision, creditors and loan originator organizations would still have to account separately for compensation under a non-deferred profits-based compensation plan that is paid in 2014 but is earned in 2013 (*e.g.*, a year-end bonus paid in January 2014 based on profits of a creditor's mortgage-related business during calendar year 2013). This approach is consistent with how compensation under a non-deferred profits-based compensation plan is treated generally for purposes of the 10-percent limit calculation under § 1026.36(d)(1)(iv)(B)(*1*) (*i.e.*, non-deferred profits-based compensation that is earned during one time period but is actually paid during a second time period is excluded from the total compensation amount for the second time period, and may be included in total compensation for the first time period). *See* comment 36(d)(1)–3.v.C, as proposed to be revised.

[16] The Bureau explained in the Supplementary Information to the 2013 Loan Originator Compensation Final Rule that it issued CFPB Bulletin 2012–2 (the Bulletin) to address questions regarding the application of § 1026.36(d)(1) to "Qualified Plans" (as defined in the Bulletin). The Bureau noted in that Supplementary Information that until the final rule takes effect, the clarifications in CFPB Bulletin 2012–2 remain in effect and that the Bureau interprets "Qualified Plan" as used in the Bulletin to include the designated tax-advantaged plans described in the final rule.

§ 1026.36(d) should take effect on January 1, 2014, and apply to all payments of compensation made on or after that date, regardless of the date of consummation of the transactions on whose terms the compensation was based. The Bureau believes such an approach would create a bright line that the payment of compensation on or after January 1, 2014, would be subject to the new rule. However, this approach could raise complexity about how the new rule would apply to payments under non-deferred profits-based compensation plans pursuant to § 1026.36(d)(1)(iv)(B)(*1*) made on or after January 1, 2014, where the compensation payments are based on the terms of transactions consummated in 2013, prior to the effect of the new rule.[17] This approach also could incentivize creditors and loan originator organizations to structure their compensation programs for 2013 to pay non-deferred profits-based compensation earned during 2013 in early 2014, rather than in 2013 when the current rule would remain in effect (although the Bureau also notes that the 10-percent limit would set an upper limit on such behavior).

*2. Effective Dates for Amendments to or Additions of § 1026.36(a), (b), (e), (f), (g), and (j)*

Rather than implementing the proposed change in effective dates for § 1026.36(d) in isolation, the Bureau is also proposing to make the amendments to or additions of (as applicable) § 1026.36(a) (definitions), § 1026.36(b) (scope), § 1026.36(e) (anti-steering provisions), § 1026.36(f) (loan originator qualification requirements) and § 1026.36(j) (compliance policies and procedures for depository institutions) take effect on January 1, 2014. The Bureau is proposing not to tie the effective date to the receipt of a particular loan application, but rather to a date certain. Because these provisions rely on a common set of definitions and in some cases cross reference each other,[18] the Bureau is proposing to make them effective on January 1, 2014, and without reference to receipt of applications to avoid a potential incongruity among the effective dates of those substantive provisions and the effective dates of the regulatory definitions and scope provisions supporting those substantive provisions. Thus, the Bureau believes this proposed revision would facilitate compliance.

The Bureau is not, however, proposing to adjust the effective date for § 1026.36(g), which requires that loan originators' names and identifier numbers be provided on certain loan documentation, except to clarify and confirm that the provision takes effect with regard to any application received on or after January 10, 2014, by a creditor or a loan originator organization. Because this provision requires modifications to documentation for individual loans and the systems that generate such documentation, the Bureau believes it is appropriate to have it take effect with the other 2013 Title XIV Final Rules that affect individual loan processing.

*3. Effective Date for § 1026.36(i)*

As discussed in the 2013 Effective Date Final Rule and below, the Bureau initially adopted a June 1, 2013 effective date for § 1026.36(i), but later delayed the provision's effective date to January 10, 2014, while the Bureau considered addressing interpretive questions concerning the provision's applicability to transactions other than those in which a lump-sum premium is added to the loan amount at consummation. As discussed in the section-by-section analysis below, the Bureau is now proposing amendments to § 1026.36(i), which will not be finalized until the Bureau has appropriately considered public comments and issued a final rule. The Bureau believes that creditors will need time to adjust certain credit insurance premium billing practices once the clarifications are finalized. However, the Bureau believes that the January 10, 2014 effective date adopted in the 2013 Effective Date Final Rule will allow sufficient time for compliance. This is consistent with the generally applicable effective date for the 2013 Title XIV Final Rules, including for several provisions the Bureau is proposing to amend through this notice. The Bureau requests comment on whether the effective date for § 1026.36(i) may be set earlier than January 10, 2014, upon finalization of any clarifications and amendments, and still permit sufficient time for creditors to adjust credit insurance premium practices as necessary.

## VI. Section-by-Section Analysis

### *A. Regulation B*

Section 1002.14 Rules on Providing Appraisals and Other Valuations

14(b) Definitions

14(b)(3) Valuation

The Bureau is proposing to amend commentary to § 1002.14 to clarify the definition of "valuation" as adopted by the 2013 ECOA Final Rule. Dodd-Frank Act section 1744 amended ECOA by, among other things, defining "valuation" to include any *estimate* of the value of the dwelling developed in connection with a creditor's decisions to provide credit. *See* ECOA section 701(e)(6). Similarly, the 2013 ECOA Final Rule adopted § 1002.14(b)(3), which defines "valuation" as any *estimate* of the value of a dwelling developed in connection with an application for credit. Consistent with these provisions, the Bureau intended the term "valuation" to refer only to an *estimate* for purposes of the 2013 ECOA Final Rule's newly adopted provisions. However, the 2013 ECOA Final Rule added two comments that refer to a valuation as an appraiser's *estimate or opinion* of the value of the property: Comment 14(b)(3)–1.i, which gives examples of "valuations," as defined by § 1002.14(b)(3); and comment 14(b)(3)–3.v, which provides examples of documents that discuss or restate a valuation of an applicant's property but nevertheless do not constitute "valuations" under § 1002.14(b)(3).

The Bureau did not intend by these two comments to alter the meaning of "valuation" to become inconsistent with ECOA section 701(e)(6) and § 1002.14(b)(3). Accordingly, the Bureau proposes to clarify comments 14(b)(3)–1.i and 14(b)(3)–3.v by removing the words "or opinion" from their texts.

### *B. Regulation X*

General—Technical Corrections

In addition to the proposed clarifications and amendments to Regulation X discussed below, the Bureau is proposing technical corrections and minor wording adjustments for the purpose of clarity throughout Regulation X that are not substantive in nature. The Bureau is proposing such technical and wording clarifications to regulatory text in §§ 1024.30, 1024.39, and 1024.41; and to commentary to §§ 1024.17, 1024.33 and 1024.41.

[17] For example, the 2013 Loan Originator Compensation Final Rule revised § 1026.36(d)(1)(i) and comment 36(d)(1)–2 to clarify how to determine whether a factor is a proxy for a term of a transaction, and § 1026.36(d)(1)(ii) now contains a definition of "term of a transaction." Thus, there is a question as to whether, with respect to payments under a non-deferred profits-based compensation plan pursuant to § 1026.36(d)(1)(iv)(B)(*1*), a creditor or loan originator organization would have to apply the new proxy provisions and definition of a term of a transaction retroactively in assessing whether compensation based on transactions consummated in 2013 can be paid in 2014.

[18] For example, § 1026.36(j) requires that depository institutions establish written policies and procedures reasonably designed to ensure and monitor compliance with § 1026.36(d), (e), (f), and (g).

Sections 1024.35 and .36, Error Resolution Procedures and Requests for Information

The Bureau is proposing minor amendments to the error resolution and request for information provisions of Regulation X, adopted by the 2013 Mortgage Servicing Final Rules. The error resolution procedures largely parallel the information request procedures (particularly in the areas in which amendments are proposed); thus the two sections are discussed together below. Section 1024.35 implements section 6(k)(1)(C) of RESPA, and § 1024.36 implements section 6(k)(1)(D) of RESPA. To the extent the requirements under §§ 1024.35 and 1024.36 are applicable to qualified written requests, these provisions also implement sections 6(e) and 6(k)(1)(B) of RESPA. As discussed in part V (Legal Authority), the Bureau proposes these amendments pursuant to its authority under RESPA sections 6(j), 6(k)(1)(E) and 19(a). As explained in more detail below, these amendments are necessary and appropriate to achieve the consumer protection purposes of RESPA, including ensuring responsiveness to consumer requests and complaints and the provision and maintenance of accurate and relevant information.

35(c) and 36(b), Contact Information for Borrowers To Assert Errors and Information Requests

The Bureau is proposing to amend the commentary to § 1024.35(c) and § 1024.36(b) with respect to disclosure of the exclusive address (if a servicer chooses to establish one) when a servicer discloses contact information to the borrower for the purpose of assistance from the servicer. Section 1024.35(c) states that a servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit a notice of error to a servicer in accordance with the procedures set forth in § 1024.35. Comment 35(c)–2 clarifies that, if a servicer establishes any such exclusive address, the servicer must provide that address to the borrower in any communication in which the servicer provides the borrower with contact information for assistance from the servicer. Similarly, § 1024.36(b) states that a servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit information requests to a servicer in accordance with the procedures set forth in § 1024.36. Comment 36(b)–2 clarifies that, if a servicer establishes any such exclusive address, a servicer must provide that address to the borrower in any communication in which the servicer provides the borrower with contact information for assistance from the servicer.

The Bureau is concerned that comments 35(c)–2 and 36(b)–2 could be interpreted more broadly than the Bureau had intended. Section 1024.35(c) and comment 35(c)–2, as well as § 1024.36(b) and comment 36(b)–2, are intended to inform borrowers of the correct address for the borrower to use for purposes of submitting notices of error or information requests, so that borrowers do not inadvertently send these communications to other non-designated servicer addresses (which would not provide the protections afforded by §§ 1024.35 and 1024.36, respectively). If interpreted literally, the existing comments would require the servicer to include the designated address for notices of error and requests for information when *any* contact information for the servicer is given to the borrower. However, if the servicer is merely including a phone number or web address (without a mailing address), there is no risk of the borrower mailing a notice of error or information request to a wrong address. Thus it would be unnecessary to mandate that the servicer provide the designated address every time a phone number or web address is given. The Bureau does not intend that the servicer be required to inform the borrower of the designated address in all communications with borrowers where any contact information whatsoever for assistance from the servicer is provided.

Accordingly, the Bureau is proposing to amend comment 35(c)–2 to provide that, if a servicer establishes a designated error resolution address, the servicer must provide that address to a borrower in any communication in which the servicer provides the borrower with an *address* for assistance from the servicer. Similarly, the Bureau is proposing to amend comment 36(b)–2 to provide that if a servicer establishes a designated information request address, the servicer must provide that address to a borrower in any communication in which the servicer provides the borrower with an *address* for assistance from the servicer. The Bureau requests comment regarding this proposed revision to comments 35(c)–2 and 36(b)–2, and in particular about whether these updated comments appropriately clarify when the address must be disclosed.

35(g) and 36(f) Requirements Not Applicable

35(g)(1)(iii)(B) and 36(f)(1)(v)(B)

The Bureau is proposing amendments to § 1024.35(g)(1)(iii)(B) (untimely notices of error) and § 1024.36(f)(1)(v)(B) (untimely requests for information). Section 1024.35(g)(1)(iii)(B) provides that a notice of error is untimely if it is delivered to the servicer more than one year after a mortgage loan balance was paid in full. Similarly, § 1024.36(f)(1)(v)(B) provides that an information request is untimely if it is delivered to the servicer more than one year after a mortgage loan balance was paid in full.

The Bureau is proposing to replace the references to the date a mortgage loan balance is paid in full to the date the mortgage loan is discharged. This change would specifically address circumstances in which a loan is terminated without being paid in full, for example, because it was discharged through foreclosure or deed in lieu of foreclosure. This change would also align more closely with the § 1024.38(c)(1) record retention requirements, which require a servicer to retain records that document actions taken with respect to a borrower's mortgage loan account only until one year after the date a mortgage loan is discharged. The Bureau requests comment regarding these proposed changes.

Section 1024.41 Loss Mitigation Procedures

As discussed in part V (Legal Authority), the Bureau proposes amendments to § 1024.41 pursuant to its authority under sections 6(j)(3), 6(k)(1)(E), and 19(a) of RESPA. The Bureau believes that these proposed amendments are necessary to achieve the consumer protection purposes of RESPA, including to facilitate the evaluation of borrowers for foreclosure avoidance options. Further, the proposed amendments implement, in part, a servicer's obligation to take timely action to correct errors relating to avoiding foreclosure under section 6(k)(1)(C) of RESPA by establishing servicer duties and procedures that must be followed where appropriate to avoid errors with respect to foreclosure. In addition, the Bureau relies on its authority pursuant to section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial law, including the purpose and objectives under sections 1021(a) and (b) of the Dodd-Frank Act. The Bureau

additionally relies on its authority under section 1032(a) of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service both initially and over the terms of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

41(b) Receipt of a Loss Mitigation Application

41(b)(2) Review of Loss Mitigation Application Submission

41(b)(2)(i) Requirements

The Bureau is proposing to amend the commentary to § 1024.41(b)(2)(i) to clarify servicers' obligations with respect to providing notices to borrowers regarding the review of loss mitigation applications. Section 1024.41(b)(2)(i) requires a servicer that receives a loss mitigation application 45 days or more before a foreclosure sale to review and evaluate the application promptly and determine, based on that review, whether the application is complete or incomplete.[19] If the application is incomplete, the servicer must also determine what additional documentation and information are required to make it complete. The servicer then must notify the borrower within five days (excluding legal public holidays, Saturdays and Sundays) that the servicer acknowledges receipt of the application, and that the servicer has determined that the loss mitigation application is either complete or incomplete. If an application is incomplete, the notice must state the additional documents and information that the borrower must submit to make the loss mitigation application complete. In addition, servicers are obligated under § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information necessary to complete an incomplete application, which may require, when appropriate, the servicer to contact the borrower and request such information as illustrated in comment 41(b)(1)–4.i.

The Bureau believes that additional commentary is warranted to address situations in which a servicer determines additional information from the borrower is needed to complete an evaluation of a loss mitigation application after either (1) the servicer has provided notice to the borrower informing the borrower that the loss mitigation application is complete, or (2) the servicer has provided notice to the borrower identifying specific information or documentation necessary to complete the application and the borrower has furnished that documentation or information. The notice required by § 1024.41(b)(2)(i)(B) is intended to provide the borrower with timely notification that a loss mitigation application was received and either is considered complete by the servicer or is considered incomplete and that the borrower is required to take further action for the servicer to evaluate the loss mitigation application. The Bureau has received repeated questions concerning circumstances in which a borrower submits information that appears facially complete based on an initial review by the servicer, but the servicer, upon further evaluation, determines that it does not in fact have enough information to evaluate the borrower for a loss mitigation option pursuant to requirements imposed by an investor or guarantor of a mortgage loan. The Bureau is very conscious of concerns that servicers have prolonged loss mitigation processes by incomplete and inadequate document reviews that lead to repeated requests for supplemental information, and designed the rule to ensure an adequate up-front review. At the same time, the Bureau does not believe it is in the best interest of borrowers or servicers to create a system that leads to borrower applications being denied solely because they contain inadequate information and the servicer believes it may not request the additional information needed.

The Bureau is therefore proposing three provisions to address these concerns. First, the Bureau is proposing new comment 41(b)(2)(i)(B)–1 to clarify that, notwithstanding that a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), a servicer must request additional information from a borrower if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information is required.

Second, the Bureau is proposing new comment 41(b)(2)(i)(B)–2, to clarify that except as provided in § 1024.41(c)(2)(iv), the provisions and timelines triggered by a complete loss mitigation application in § 1024.41 are not triggered by an incomplete application. An application is considered complete only when a servicer has received all the information the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower, regardless of whether the servicer has sent a § 1024.41(b)(2)(i)(B) notification incorrectly informing the borrower that the loss mitigation application is complete or incorrectly informed the borrower of the information necessary to complete such application. The Bureau notes that the proposed clarifications do not allow servicers to inform borrowers that facially incomplete applications are complete or to incorrectly describe the information necessary to complete an application. Servicers are required under § 1024.41(b)(2)(i)(A) to review a loss mitigation application to determine whether it is complete or incomplete. In addition, servicers are subject to the § 1024.38(b)(2)(iv) requirement to have policies and procedures reasonably designed to achieve the objectives of identifying documents and information that a borrower is required to submit to complete an otherwise incomplete loss mitigation application, and servicers are obligated under § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information necessary to complete an incomplete application.

Third, as described more fully below, the Bureau is proposing new § 1024.41(c)(2)(iv) to require that, if a servicer creates a reasonable expectation that a loss mitigation application is complete but later discovers information is missing, the servicer must treat the application as complete for certain purposes until the borrower has been given a reasonable opportunity to complete the loss mitigation application. The Bureau believes the proposed rule would mitigate potential risks to consumers that could arise through a loss mitigation process prolonged by incomplete and inadequate document reviews and repeated requests for supplemental information. The Bureau believes these new provisions will provide flexibility to servicers who make good faith mistakes in conducting up-front reviews of loss mitigation applications for completeness, while ensuring that borrowers do not lose the protections under the rule due to such mistakes and that servicers have incentives to conduct rigorous up-front review of loss mitigation applications. However, the Bureau requests comment regarding whether proposed comments 41(b)(2)(i)(B)–1 and –2, in connection

[19] A "complete loss mitigation application" is defined in § 1024.41(b)(1) as "an application in connection with which a servicer has received all the information the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower."

with proposed § 1024.41(c)(2)(iv), adequately balance the consumer interests in receipt of accurate notices. The Bureau also seeks comment regarding whether further provisions would be warranted to protect borrowers' interests in reducing dual tracking and prolonged loss mitigation processing, and avoiding application denials for lack of adequate information, while also providing servicers strong incentives to conduct rigorous up-front reviews and appropriate flexibility in the event of good-faith and clerical mistakes in conducting such reviews.

41(b)(2)(ii) Time Period Disclosure

The Bureau is proposing to amend the § 1024.41(b)(2)(ii) time period disclosure requirement, which requires a servicer to provide a date by which a borrower should submit any missing documents and information necessary to make a loss mitigation application complete. Section 1024.41(b)(2)(ii) requires a servicer to provide in the notice required pursuant to § 1024.41(b)(2)(i)(B) the earliest remaining of four specific dates set forth in § 1024.41(b)(2)(ii). The four dates set forth in § 1024.41(b)(2)(ii) are: (1) The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower; (2) the date that is the 120th day of the borrower's delinquency; (3) the date that is 90 days before a foreclosure sale; and (4) the date that is 38 days before a foreclosure sale.

In general, many of the protections afforded to a borrower by § 1024.41 are dependent on a borrower submitting a complete loss mitigation application a certain amount of time before a foreclosure sale, and such protections decrease as a foreclosure sale approaches. It is therefore in the interest of borrowers to complete loss mitigation applications as early in the delinquency and foreclosure process as possible. However, even if a borrower does not complete a loss mitigation application sufficiently early in the process to secure *all* the protections available under § 1024.41, that borrower may still benefit from some of the protections afforded. Borrowers should not be discouraged from completing loss mitigation applications merely because they cannot complete a loss mitigation application by the date that would be most advantageous in terms of securing the protections available under § 1024.41. Accordingly, the goal of § 1024.41(b)(2)(ii) is to inform borrowers of the time by which they should complete their loss mitigation applications to receive the greatest set of protections available, without discouraging later efforts if any such timeline is not met. The Bureau notes § 1024.41(b)(2)(ii) requires servicers to inform borrowers of the date by which the borrower *should* make the loss mitigation application complete, as opposed to the date by which the borrower *must* make the loss mitigation application complete.

The Bureau believes based on communications with consumer advocates, servicers, and trade associations that the requirement in § 1024.41(b)(2)(ii) may be over-prescriptive and may prevent a servicer from having the flexibility to suggest an appropriate date by which a borrower should complete a loss mitigation application. For example, if a borrower submits a loss mitigation application on the 114th day of delinquency, the servicer would have to inform him or her by the 119th day that the borrower should complete the loss mitigation application by the 120th day under the current provision. A borrower is unlikely to be able to assemble the missing information within one day, and would be better served by being advised to complete the loss mitigation application by a reasonable later date that would afford the borrower the benefits of the rule as well as enough time to gather the information.

In response to these concerns, and in accordance with the goals of the provision, the Bureau is proposing to amend the requirement in § 1024.41(b)(2)(ii). Specifically, the Bureau proposes to replace the requirement that a servicer disclose the earliest remaining date of the four specific dates set forth in § 1024.41(b)(2)(ii) with a more flexible requirement that a servicer determine and disclose a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. The Bureau proposes to clarify this amendment in proposed comment 41(b)(2)(ii)–1, which would clarify that, in determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under § 1024.41, except when doing so would be impracticable. Proposed comment 41(b)(2)(ii)–1 would further clarify that a servicer should consider the four deadlines previously set forth in § 1024.41(b)(2)(ii) as factors in selecting a reasonable date. Proposed comment 41(b)(2)(ii)–1 also would clarify that if a foreclosure sale is not scheduled, for the purposes of determining a reasonable date, a servicer may make a reasonable estimate of when a foreclosure sale may be scheduled. This proposal is intended to provide appropriate flexibility while also requiring that servicers consider the impact of the various timing requirements set forth in § 1024.41. The Bureau requests comment regarding the proposed revision to § 1024.41(b)(2)(ii).

41(b)(3) Timelines

The Bureau is proposing to add a new provision in § 1024.41(b)(3) addressing the timelines when no foreclosure sale is scheduled as of the date a complete loss mitigation application is received or a foreclosure sale is rescheduled after receipt of a complete application. As discussed above, § 1024.41 is structured to provide different procedural rights to borrowers and impose different requirements on servicers depending on the number of days remaining until a foreclosure sale is scheduled to occur, as of the time that a complete loss mitigation application is received. In particular, § 1024.41(e)(1) requires that, if a complete loss mitigation application is received 90 days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer. Similarly, § 1024.41(h) provides borrowers with a right to appeal a denial of a loan modification option when a complete loss mitigation application is received 90 days or more in advance of a foreclosure sale. Alternatively, § 1024.41(e)(1) provides that if a complete loss mitigation application is received less than 90 but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than seven days after the servicer provides such offer, and under § 1024.41(h), the borrower does not have a right to appeal denial of a loan modification option in this circumstance. Likewise, the prohibition on foreclosure sales in § 1024.41(g) sets limitations on a servicer's ability to move for judgment or order of sale or to conduct a foreclosure sale when a complete application is received more than 37 days before a foreclosure sale.

However, the provisions of § 1024.41 do not expressly address situations in which a foreclosure sale is rescheduled, or has not yet been scheduled at the time a complete loss mitigation application is received. Since issuance of the final rule, the Bureau has received questions about the applicability of the timing provisions in such scenarios. Specifically, industry stakeholders have asked whether it is appropriate to use

estimated dates of foreclosure where a foreclosure sale has not been scheduled at the time a complete loss mitigation application is received, and have requested guidance on how to apply the timelines if no foreclosure is scheduled as of the date a complete loss mitigation application is received, but a foreclosure sale is subsequently scheduled less than 90 days after receipt of such application, or if a foreclosure sale has been scheduled for less than 90 days after a complete application is received, but is then postponed to a date that is 90 days or more after the receipt date.

The Bureau believes guidance in such situations is appropriate, and is proposing in § 1024.41(b)(3) to provide that, for purposes of § 1024.41, timelines based on the proximity of a foreclosure sale to the receipt of a complete loss mitigation application will be determined as of the date a complete loss mitigation application is received. Proposed comment 41(b)(3)–1 would clarify that if a foreclosure sale has not yet been scheduled as of the date that a complete loss mitigation application is received, the application shall be treated as if it were received at least 90 days before a foreclosure sale. Proposed comment 41(b)(3)–2 would clarify that such timelines would remain in effect even if at a later date, a foreclosure sale was rescheduled.

The Bureau believes this approach would provide certainty to both servicers and borrowers as well as ensure that borrowers receive the broadest protections available under the rule in situations in which a foreclosure sale has not been scheduled at the time a borrower submits a complete loss mitigation application. The Bureau considered proposing a rule that would vary the applicable timelines depending on the number of days remaining until foreclosure sale at the time that a foreclosure sale is in fact scheduled even when the scheduling (or rescheduling) occurs after a complete loss mitigation application is received. Such an approach would have some advantages to both servicers (in reducing the risk of foreclosure sale delays compared to categorically applying the procedures applicable to applications received at least 90 days before a scheduled foreclosure sale when no foreclosure sale has yet been scheduled when a complete loss mitigation application is received) and to consumers (in providing appeal rights if a sale is initially scheduled to occur less than 90 days after receipt of a completed application but is later delayed). However, the Bureau was concerned that such a rule would have a number of disadvantages. First, it would add significant complexity and uncertainty to the existing timelines under the regulation. Second, it could create incentives for servicers to draw out their evaluation processes in the hope that a foreclosure sale would be scheduled in the intervening period, and disincentives for servicers to push off a previously scheduled foreclosure sale. Third, it could potentially create borrower confusion if changes to the timelines were permitted to occur after the servicer has provided the borrower with the notice required under § 1024.41(c)(1)(ii) explaining whether the loss mitigation application has been approved and laying out applicable timelines for follow-up. Similarly, the Bureau was concerned that allowing servicers to estimate foreclosure dates where a complete loss mitigation application is received before a foreclosure sale is scheduled would be imprecise—the Bureau believes it is necessary to clearly define what rights a borrower is entitled to and does not believe it is appropriate for a borrower's rights to turn on an estimated date.

Thus, on balance, the Bureau believes that a straightforward rule under which deadlines are calculated as of the date of receipt of a complete loss mitigation application, and a complete loss mitigation application is treated as having been received 90 days or more before a foreclosure sale if no sale is scheduled as of the date the application is received, may be preferable because it would provide industry and borrowers with clarity regarding its application, without the unnecessary complexity that may arise from an approach where the timelines would vary based on the number of days remaining before a later-scheduled foreclosure sale and whether a notice has already been provided to the borrower. The Bureau recognizes that the proposed rule might in some cases require a servicer to delay a foreclosure sale to adhere to the specified time for the borrower to respond to a loss mitigation offer and to appeal the servicer's denial of a loan modification option, where applicable. However, the Bureau believes that, in most circumstances, a foreclosure sale that is not scheduled at the time a complete application is received is unlikely to be subsequently scheduled to occur less than 90 days after the receipt date. The Bureau requests comment and supporting data regarding circumstances in which this may occur. Additionally, the Bureau believes borrowers should not lose certain protections of the rule because a servicer quickly schedules a foreclosure sale, particularly when a borrower has been informed by either the § 1024.41(c)(1)(ii) notice or the § 1024.41(h)(4) notice that he or she has such rights. The Bureau seeks comment on this provision addressing the calculation of timelines as of the date a complete loss mitigation application is received, or a scheduled foreclosure sale is subsequently rescheduled after receipt of a complete loss mitigation application. In particular the Bureau seeks comment as to whether the alternative approach that would vary the applicable timelines depending on the number of days remaining until foreclosure sale at the time that a foreclosure sale is in fact scheduled or subsequently rescheduled would be preferable and whether there are additional situations in which application of the timelines should be clarified or modified.

41(c) Evaluation of Loss Mitigation Applications

41(c)(1) Complete Loss Mitigation Application

41(c)(1)(ii)

The Bureau is proposing to amend § 1024.41(c)(1)(ii) to state explicitly that the notice required by § 1024.41(c)(1)(ii) must state the deadline for accepting or rejecting a servicer's offer of a loss mitigation option, in addition to the requirements currently in § 1024.41(d)(2) to specify, where applicable, that the borrower may appeal the servicer's denial of a loan modification option, the deadline for doing so, and any requirements for making an appeal. The Bureau intended that the § 1024.41(c)(1)(ii) notice would specify the time and procedures for the borrower to accept or to reject the servicer's offer, in accordance with the timing requirements specified in § 1024.41(e). Indeed, § 1024.41(e)(2) provides both that the servicer may deem the borrower to have rejected the offer if the borrower does not respond within the timelines specified under § 1024.41(e)(1) and that the servicer must give the borrower a reasonable opportunity to complete documentation necessary to accept the offer if the borrower does not follow the specified procedures but begins making payments in accordance with the offer by the deadline specified in § 1024.41(e)(1). The Bureau is therefore proposing to amend § 1024.41(c)(1)(ii) to state explicitly that the notice provided to the borrower under the provision must state the date and procedures by which the borrower is required to respond to an offer of a loss mitigation option, in addition to the information regarding appeals currently required to be

included in such notices under § 1024.41(d)(2).

41(c)(2) Incomplete Loss Mitigation Application Evaluation

41(c)(2)(iii) Payment Forbearance

The Bureau is proposing to modify the requirement in § 1024.41(c)(2) to allow servicers to offer certain short-term forbearances to borrowers, notwithstanding the prohibition on servicers offering a loss mitigation option to a borrower based on the review of an incomplete loss mitigation application. The Bureau had intentionally drafted § 1024.41 with broad definitions of "loss mitigation option" and "loss mitigation application," to provide a streamlined process in which a borrower will be evaluated for all available loss mitigation options at the same time, rather than having to apply multiple times to be evaluated for different options one at a time. Since publication of the final rule, however, both industry and consumer advocates have raised questions and concerns about how the rule applies in situations in which a borrower merely needs and requests short-term forbearance. For instance, a number of servicers have inquired about whether the rule would prevent them from granting a borrower's request for waiver of late fees or other short-term relief after a natural disaster until the borrower submits all information necessary for evaluation of the borrower for long-term loss mitigation options. Additionally, both consumer advocates and servicers have raised concerns about whether a borrower's request for short-term relief would later preclude a borrower from invoking the protections afforded by the rule if the borrower encounters a significant change in circumstances that warrants long-term loss mitigation alternatives.

The Bureau is very conscious of the difficulties involved in distinguishing short-term forbearance programs from other types of loss mitigation and of the fact that some servicers have significantly exacerbated borrowers' financial difficulties in the past by using short-term forbearance programs inappropriately instead of reviewing the borrowers for long-term options. Nevertheless, the Bureau believes that it may be possible to revise the rule to facilitate appropriate use of short-term payment forbearance programs without creating undue risk for borrowers who need to be evaluated for a full range of loss mitigation alternatives.

At the outset, the Bureau notes that it does not construe the existing rule to require that servicers obtain a complete loss mitigation application prior to exercising their discretion to waive late fees. Additionally the Bureau notes that a servicer may offer any borrower any loss mitigation option if the borrower has not submitted a loss mitigation application or if the option is not based on an evaluation of information submitted by the borrower in connection with a loss mitigation application, as clarified in existing comment 41(c)(2)(i)–1.

With regard to short-term forbearance programs that involve more than simply waiving late fees, such as where a servicer allows a borrower to forgo making two payments and then to catch up by spreading the cost over the next year, the Bureau believes that the issues raised by various stakeholders can most appropriately be addressed by providing more flexibility to servicers to provide such relief notwithstanding that a borrower has submitted an incomplete loss mitigation application. Thus, the Bureau is not proposing to change the current definition of loss mitigation option, which includes all forbearance programs, but rather to relax the prohibition in § 1024.41(c)(2)(i) against evading the requirement to evaluate a borrower's complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of an incomplete loss mitigation application. Specifically, the Bureau is proposing to add § 1024.41(c)(2)(iii) to provide that a servicer may offer a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application.

The proposed exemption in § 1024.41(c)(2)(iii) would apply only to short-term payment forbearance programs. Proposed comment 41(c)(2)(iii)–1 states that a payment forbearance program is a loss mitigation option for which a servicer allows a borrower to forgo making certain payments for a period of time. Payment forbearance programs are usually offered when a borrower is having a short-term difficulty brought on, for example, a natural disaster. In such cases, the servicer offers a short-term payment forbearance arrangement to assist the borrower in managing the hardship. The Bureau believes it is appropriate for servicers to have the flexibility to offer short-term payment forbearance programs prior to receiving a complete loss mitigation application for all available loss mitigation options.

Proposed comment 41(c)(2)(iii)–1 also would explain how to determine whether a particular payment forbearance program is "short-term." Specifically, it would provide that short-term programs allow the forbearance of payments due over periods of up to two months. Thus, if a borrower is allowed to forgo making payments due in January and February, but must make the monthly obligation due in March, such a program would be considered a two-month program. The proposed comment clarifies this would be considered a two-month payment forbearance, regardless of the amount of time the servicer provides the borrower to make up the forborne payments, and provides examples illustrating this principle. Different payment forbearance programs may have the borrower make up the payments at the end of the forbearance period, spread over a certain period of time (for example, over the next 12 payments) or may make the forgone payments due when the loan matures. The Bureau believes these all would be considered two-month payment forbearance programs despite the different repayment time periods because, under all of these scenarios, the borrower would resume making regular payments in March.

The Bureau notes that, under the proposed approach, servicers that receive a request for a short-term payment forbearance and grant such requests would remain subject to the requirements triggered by the receipt of a loss mitigation application in § 1024.41. Thus, as explained in proposed comment 41(c)(2)(iii)–2, if a servicer offers a payment forbearance program based on an incomplete loss mitigation application, the servicer is still required to review the application for completeness, to send the § 1024.41(b)(2)(i)(B) notice to inform the borrower whether the application is complete or incomplete, and if incomplete what documents or additional information are required, and to use due diligence to complete the loss mitigation application. If a borrower submits a complete application, the servicer must evaluate it for all available loss mitigation options. The Bureau believes that maintaining these requirements is important to ensure that borrowers are not inappropriately diverted into short-term forbearance programs without access to the full protections of the regulation. At the same time, if a borrower in fact does not want an evaluation for long-term options, the borrower will simply fail to provide the additional information necessary to submit a complete application and the servicer will therefore not be required to conduct a full assessment for all options.

To ensure that a borrower who is receiving an offer of short-term payment forbearance program understands the options available, proposed § 1024.41(c)(2)(iii) would require a servicer offering a short-term payment forbearance program to a borrower based on an incomplete loss mitigation application to include in the § 1024.41(b)(2)(i)(B) notice additional information, specifically that: (1) The servicer has received an incomplete loss mitigation application and on the basis of that application the servicer is offering a short-term payment forbearance program; (2) absent further action by the borrower, the servicer will not be reviewing the incomplete application for other loss mitigation options; and (3) if the borrower would like to be considered for other loss mitigation options, he or she must submit the missing documents and information required to complete the loss mitigation application. The Bureau believes that providing this more specific information, coupled with the proposed amendments under § 1024.41(c)(2)(iii), is critical to ensure that the rule provides both flexibility to servicers and borrowers to avoid unwarranted delays and paperwork where short-term forbearance is appropriate and a safeguard against the misuse of short-term forbearance to avoid addressing long-term problems. For example, suppose a borrower submits information in connection with a request for a payment forbearance program, but such information is not a complete loss mitigation application as defined in § 1024.41(b)(1). Under proposed § 1024.41(c)(2)(iii), the servicer would be able to offer the borrower a payment forbearance program. However, the servicer would have to send the notice required by § 1024.41(b)(2)(i)(B) notifying the borrower that his or her loss mitigation application is incomplete and stating the additional documents and information the borrower must submit to make the loss mitigation application complete. The borrower then would have the information needed to complete the loss mitigation application if he or she would like a full review for all loss mitigation options. However, if the borrower feels the payment forbearance program is sufficient, he or she would be able to decline to complete the loss mitigation application and the full § 1024.41 procedures would not be triggered.

Finally, the Bureau proposes comment 41(c)(2)(iii)–3 clarifying servicers' obligations on receipt of a complete loss mitigation application. The proposed comment states that, notwithstanding that a servicer offers a borrower a payment forbearance program after an evaluation of an incomplete loss mitigation application, a servicer must still comply with all requirements in § 1024.41 on receipt of a borrowers submission of a complete loss mitigation application. This comment is intended to clarify that, even though payment forbearance may be offered as short-term assistance to a borrower, a borrower is still entitled to submit a complete loss mitigation application and receive an evaluation of such application for all available loss mitigation options. Although payment forbearance may assist a borrower with a short-term hardship, a borrower should not be precluded from demonstrating a long-term inability to afford a mortgage, and being considered for long-term solutions, such as a loan modification, when that may be appropriate.

Accordingly, the Bureau proposes to amend the loss mitigation provisions in § 1024.41 by adding new § 1024.41(c)(2)(iii) and new comments 41(c)(2)(iii)–1, –2, and –3. The Bureau requests comment regarding all aspects of these proposed provisions, and in particular on whether the proposed amendments appropriately address concerns regarding servicers' ability to work with borrowers by offering payment forbearance programs as appropriate, pending receipt and evaluation of complete loss mitigation applications. Additionally, the Bureau requests comment as to whether short-term forbearance programs are appropriately defined and whether it might be appropriate to develop tailored definitions to address specific situations such as programs offered to victims of natural disasters or unemployment. Further, the Bureau seeks comment as to whether it would be helpful to require that additional language be added to the § 1024.41(b)(2)(i)(B) notice when a servicer is offering a short-term payment forbearance program based on an incomplete loss mitigation application to encourage a borrower to assess realistically whether he or she is encountering short-term or long-term problems and to complete a loss mitigation application as appropriate. Finally, the Bureau seeks comment on whether additional safeguards would be appropriate or necessary to provide flexibility for appropriate use of short-term forbearance programs without creating loopholes for abuse or disincentives to long-term loss mitigation activities.

41(c)(2)(iv) Servicer Creates Reasonable Expectation That a Loss Mitigation Application Is Complete

As discussed above, the Bureau is proposing new § 1024.41(c)(2)(iv) which states that if a servicer creates a reasonable expectation that a loss mitigation application is complete but later discovers that the application is incomplete, the servicer shall treat the application as complete as of the date the borrower had reason to believe the application was complete for purposes of applying paragraphs (f)(2) and (g) until the borrower has been given a reasonable opportunity to complete the loss mitigation application. This provision is designed to work in connection with proposed new comments 41(b)(2)(i)–1 and –2 as discussed above to address scenarios when a servicer determines that an application the servicer determined to be complete or to be missing particular information in fact is lacking additional information needed for evaluation.

The Bureau has received questions about the impact of an error in the notice required by § 1024.41(b)(2)(i)(B), particularly in light of the short time period the servicer has to review the information submitted by the borrower. As discussed above the Bureau recognizes that, in certain circumstances, a borrower may submit information that appears facially complete, or that appears to be missing only specific information, but that a servicer, upon further evaluation, may determine that additional information is needed in order for the servicer to evaluate the borrower for all available loss mitigation options. The proposed commentary to § 1024.41(b)(2)(i) is intended to clarify that servicers are required to obtain the missing information in such situations. Proposed § 1024.41(c)(2)(iv) is intended to protect borrowers while a servicer requests the missing information.

Proposed comment 41(c)(2)(iv)–1 would clarify that a servicer creates a reasonable expectation that a loss mitigation application is complete when the servicer notifies the borrower in the § 1024.41(b)(2)(i)(B) notice that the application is complete or when the servicer notifies the borrower in the § 1024.41(b)(2)(i)(B) notice that certain items are missing and the borrower provides all the missing documents and information. The Bureau believes that a borrower would have a reasonable expectation that his or her loss mitigation application was complete in either of these situations.

Where a servicer creates a reasonable expectation that a loss mitigation

application is complete but later discovers that the application is incomplete, proposed § 1024.41(c)(2)(iv) would provide that the servicer shall treat the application as complete for certain purposes until the borrower has been given a reasonable opportunity to supply the missing information necessary to complete the loss mitigation application. Specifically, under this provision, the servicer would need to treat the application as complete for purposes of the foreclosure referral ban in § 1024.41(f)(2) and the foreclosure sale limitations in § 1024.41(g). Proposed § 1024.41(c)(2)(iv) would ensure that servicers that make good faith mistakes in making initial determinations of completeness need not be considered in violation of the rule, and that borrowers do not lose protections under the rule due to such mistake. The Bureau believes that, once a borrower is given reason to believe he or she has the benefit of certain protections (which are triggered by submission of a complete loss mitigation application), if the servicer discovers that an application is incomplete, the borrower should have a reasonable opportunity to complete the application before losing the benefit of such protections.

Proposed comment 41(c)(2)(iv)–2 gives guidance on what would be a reasonable opportunity for the borrower to complete a loss mitigation application. The comment states that a reasonable opportunity requires that the borrower be notified of what information is missing and be given sufficient time to gather the information and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.

The Bureau believes proposed § 1024.41(c)(2)(iv) would provide incentives to servicers to conduct rigorous up-front reviews, while providing servicers the ability to correct a good-faith mistake or clerical error. Further, servicers seeking relief under the provision need only give borrowers a reasonable opportunity to provide the missing information, thus allowing a servicer to continue the foreclosure process if a borrower does not provide such information. The Bureau seeks comment on all aspects of this proposed provision. In particular, the Bureau seeks comment as to if the additional information is supplied by the borrower, should the application be considered complete as of the date the borrower was given a reasonable belief it was complete, or as of the date it was actually completed. Additionally the Bureau seeks comment as to if other measures would be necessary or useful to clarify servicer obligations and risks regarding the § 1024.41(b)(2)(i)(B) notice.

Section 1024.41(d) Denial of Loan Modification Options

As discussed above, the Bureau is proposing to move the substance of § 1024.41(d)(2) to § 1024.41(c)(1)(ii). Therefore, the Bureau is proposing to re-codify § 1024.41(d)(1) as § 1024.41(d) and to re-designate the corresponding commentary accordingly.

The Bureau is also proposing to clarify the requirement in § 1024.41(d)(1), re-codified as § 1024.41(d), that a servicer must disclose the reasons for the denial of any trial or permanent loan modification option available to the borrower. The Bureau believes it is appropriate to clarify that the requirement to disclose the reasons for denial focuses on only those determinations actually made by the servicer and does not require a servicer to continue evaluating additional factors after a decision has been established. Thus, when a servicer's automated system uses a program that considers a borrower for a loan modification by proceeding through a series of questions and ends the process if the consumer is denied, the servicer need not modify the system to continue evaluating the borrower under additional criteria. For example, suppose a borrower must meet qualifications A, B, and C to receive a loan modification, but the borrower does not meet any of these qualifications. A servicer's system may start by asking if the borrower meets qualification A, and on the failure of that qualification end the analysis for that specific loan modification option. If a servicer were required to disclose all potential reasons why the borrower may have been denied for that loan modification option (i.e., A, B, and C), it would need to consider a lengthy series of hypothetical scenarios: For example, if the borrower had met qualification A, would the borrower also have met qualification B? The Bureau did not intend such a requirement, which it believes would be potentially burdensome.

The Bureau instead intended to require only the disclosure of the actual reason or reasons on which the borrower was evaluated and denied. Accordingly, the Bureau is proposing to amend § 1024.41(d) to require that a denial notice provided by the servicer must state the "specific reason or reasons" for the denial and also, where applicable, disclose that the borrower was not evaluated based on other criteria. The Bureau believes that this additional information will help borrowers understand the status of their application and the fact that they were not fully evaluated under all factors (where applicable). The Bureau is also proposing new comment 41(d)–1 stating that, if a servicer's system reaches the first issue that causes a denial but does not evaluate borrowers for additional factors, a servicer need only provide the reason or reasons actually considered. Amended § 1024.41(d) would also require that the notice must state the servicer did not evaluate the borrower on other criteria. The notice is not required to list such criteria. Thus, a servicer would not be required to consider hypothetical situations to compile a complete list of potential reasons for denial of the loan modification option, but a borrower would not be given the false impression that the denial reason stated is the only grounds on which he or she might have been denied. The Bureau believes this proposed amendment appropriately balances potential concerns about compliance challenges with concerns about informing borrowers about the status of their applications and about information that is relevant to potential appeals. The Bureau seeks comment on this proposed amendment to the denial notification requirement.

41(f) Prohibition on Foreclosure Referral

The Bureau is proposing new comment 41(f)–1 to clarify what servicer actions are prohibited during the pre-foreclosure review period. Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan is more than 120 days delinquent; a servicer is also prohibited from making such a notice or filing while a borrower's complete loss mitigation application is being evaluated. The Bureau has received numerous questions about what is prohibited. Specifically, the Bureau has been asked if the first notice or filing includes the breach letters required by Fannie Mae (typically required at 60 days delinquency). Additionally, the Bureau has been asked if the phrase "first notice or filing" has the same interpretation as the Federal Housing Administration (FHA) uses to define the "first public action," which marks the initiation of the foreclosure process (which includes filing a complaint or petition, recording a notice of default or publication of a notice of sale, but not merely posting a notice on the property). In light of the requests for clarification of what is allowed under

this provision, the Bureau believes additional guidance is appropriate.

The Bureau notes that the foreclosure process is a matter of State law, and is addressed differently in each State. Thus, the first notice or filing required by applicable law will be determined based on State law. In general, once a loan is delinquent, a servicer continues collection activity and will begin early intervention outreach. The Bureau believes that servicers frequently use demand or breach letters to notify borrowers of their delinquency at this stage. It is at this point that the Fannie Mae breach letter would typically be sent. At some point, many servicers will internally refer the loan to a foreclosure department or will send the loan to a foreclosure attorney. The formal foreclosure process will begin, generally, with a notice of default mailed to the borrower in a non-judicial State or with the onset of a legal action in a judicial State. It is at this point that the "first public action," as FHA defines it, would typically occur.

The Bureau designed the pre-foreclosure review period to mitigate the harms of dual tracking, by giving borrowers the opportunity to submit a complete loss mitigation application and have it considered without the pressure imposed by an active foreclosure process. Once a formal foreclosure process has begun, there is both more potential confusion on the part of borrowers due to dual tracking between foreclosure procedures and loss mitigation applications, and there is more pressure on the servicer to comply with State requirements and owner/investor requirements and expectations to complete the foreclosure process in a timely fashion. The Bureau is concerned that defining "first notice or filing" to match the terms used by the FHA and Fannie Mae for purposes of managing their foreclosure processes would be inconsistent with the intent behind the pre-foreclosure review period under 1024.41(f). In particular, the Bureau is concerned that the FHA "first public action" requirement could occur significantly later in the foreclosure process than the Bureau had intended under the "first notice or filing" standard because the term "first public action," as defined by FHA, does not encompass notices to the borrower. The Bureau believes that interpreting the term "first notice or filing" consistent with the term "first public action" would allow activity the rule intended to delay until after the pre-foreclosure review period.

The Bureau notes that the rule does not prohibit servicers from engaging in collection activity or communication with the borrower; in fact, other provisions of the rules affirmatively require that periodic statements with delinquency information be sent and that the servicer must engage in early intervention activities. The Bureau believes it would be appropriate for a servicer to send a breach letter at day 60, if the letter were sent for the general purpose of notifying the borrower of his or her delinquency and encouraging discussions about potential cures and loss mitigation options. However, to the extent that the servicer is sending a breach letter at day 60 with the purpose of serving as the formal notification of default to begin foreclosure proceedings in a non-judicial State, that is the type of activity that the rule was intended to delay until after the pre-foreclosure review period. The Bureau is therefore proposing a new comment to clarify what is prohibited under § 1024.41(f). Proposed comment 41(f)–1 would state that whether a document is considered the first notice or filing is determined according to applicable State law. A document that would be used as evidence of compliance with foreclosure practices required pursuant to State law is considered the first notice or filing, and a servicer thus is prohibited from filing such a document during the pre-foreclosure review period. Documents that would not be used in this fashion are not considered the first notice or filing. Thus, a servicer is not prohibited from attempting to collect the debt, sending periodic statements, sending breach letters or any other activity during the pre-foreclosure review period, so long as such documents would not be used as evidence of complying with requirements applicable pursuant to State law in connection with a foreclosure process, and are not banned by other applicable law (e.g., the Fair Debt Collection Practices Act or bankruptcy law). Instead, the Bureau expects that, when a State requires the first step to begin the formal foreclosure process is that a notice of default must be mailed to the borrower, such a notice would be sent after the expiration of the pre-foreclosure review period because earlier notices could not be used for such purposes consistent with the regulation.

Thus, under proposed comment 41(f)–1, to comply with the requirements of § 1024.41(f), any document that would be used as evidence of compliance with a State law requirement to initiate the foreclosure process by providing the borrower with a notice of default must be provided after the pre-foreclosure review period required by § 1024.41(f). If a State law process mandates a notice to a borrower of the availability of mediation and such notice is a necessary prerequisite under State law to commence the foreclosure process, that notice is included in the definition of first notice or filing for the purposes of § 1024.41.

The Bureau acknowledges that the provisions of § 1024.41 extend the timeline of a foreclosure by an additional 120 days. While the proposed clarifications may highlight that existing state procedures in connection with the Bureau's rule may create delays in the foreclosure process that are longer than 120 days, the Bureau notes this is not a new delay imposed by the proposed clarifications. The Bureau seeks to establish a rule that balances protecting consumers and encouraging communication between borrowers and servicers. The proposed rule would protect consumers by giving effect to the provisions in § 1024.41 intended to ensure a borrower is given sufficient time to submit a complete loss mitigation application and a servicer has time to work with the borrower without the pressure of a foreclosure practice. The rule would encourage communication by allowing the servicer to engage in any activity not being used as a prerequisite to State foreclosure practices. Further, the Bureau seeks to establish a workable rule that will clearly define what is and is not allowed, a goal that is complicated in light of both the varying foreclosure laws of different states, and the fact that a notice to the borrower may be sent for multiple reasons. The Bureau believes the proposed clarifications best balance these goals, but seeks comment on this topic.

41(f)(1) Pre-Foreclosure Review Period

The Bureau is proposing to amend the prohibition on referral to foreclosure until after the 120th day of delinquency by limiting the foreclosure ban in two scenarios: when the foreclosure is based on a borrower's violation of a due-on-sale clause, and when the servicer is joining the foreclosure action of a subordinate lienholder. Section 1024.41(f)(1) requires a 120-day pre-foreclosure review period; A servicer may not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent. This review period is intended to ensure a borrower's loss mitigation application may be submitted and reviewed without the pressure of an active foreclosure process and to mitigate some of the consumer harms associated with dual tracking. However,

the Bureau notes that there may be some circumstances where a servicer forecloses for reasons that do not involve a borrower's delinquency. In such scenarios, the Bureau acknowledges the protections for delinquent borrowers may not be appropriate or necessary. For example, if a borrower were current on his or her loan but transferred the property to another party (in breach of the loan contract), the rationale for the pre-foreclosure review of loss mitigation applications would not be applicable. Similarly, if a borrower were current on his or her first lien but was delinquent on a second lien mortgage, and the servicer for the second lien began a foreclosure action, it would be appropriate for the servicer of the first lien to join the foreclosure action, regardless of the fact that the borrower is current on the first lien mortgage.

The Bureau believes it may be appropriate to include an exemption to the 120-day pre-foreclosure review period in certain scenarios and is proposing to amend § 1024.41(f)(1) to include exclusions to the 120-day foreclosure ban when the foreclosure is based on a borrower's violation of a due-on-sale clause or when the servicer is joining the foreclosure action of a subordinate lienholder. The Bureau seeks comment on the proposed changes. Additionally, the Bureau seeks comment on whether other scenarios would appropriately be exempted from the 120-day foreclosure ban and on whether the exemption is appropriate in situations in which a borrower has submitted a complete loss mitigation application

41(h) Appeal Process

41(h)(4) Appeal Determination

The Bureau is proposing to amend § 1024.41(h)(4) to provide expressly that the notice informing a borrower of the determination of his or her appeal must also state the amount of time the borrower has to accept or reject an offer of a loss mitigation option after the notice is provided to the borrower. For the reasons discussed in the section-by-section analysis of § 1024.41(c)(1)(ii), which would require the § 1024.41(b)(2)(i)(B) notice to include how long the borrower has to accept or reject an offer of a loss mitigation option, the Bureau believes it is important that borrowers be informed of their rights. The Bureau believes that a borrower who is offered a loss mitigation option should be informed of how long he or she has to accept that option regardless of whether the option is being offered in response to an initial evaluation of a loss mitigation application or after the conclusion of an appeal. The Bureau seeks comment on this amendment.

41(j) Prohibition on Foreclosure Referral

As discussed above, the Bureau is proposing to amend the prohibition on referral to foreclosure until after the 120th day of delinquency by limiting the foreclosure ban in two situations: when the foreclosure is based on a borrower's violation of a due-on-sale clause and when the servicer is joining the foreclosure action of a subordinate lienholder. For the same reasons, the Bureau believes it would be appropriate to make corresponding amendments to the provision in § 1024.41(j) prohibiting a small servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent. Thus, the Bureau is proposing to amend § 1024.41(j) to allow foreclosure before the 120th day of delinquency when the foreclosure is based on a borrower's violation of a due-on-sale clause and when the servicer is joining the foreclosure action of a subordinate lienholder, by incorporating a cross-reference to § 10124.41(f)(1). The Bureau seeks comment on this amendment.

*C. Regulation Z*

General—Technical Corrections

In addition to the proposed clarifications and amendments to Regulation Z discussed below, the Bureau is also proposing technical corrections and minor clarifications to wording throughout Regulation Z that are not substantive in nature. The Bureau is proposing such technical and wording clarifications to regulatory text in §§ 1026.23, 1026.31, 1026.32, 1026.35, and 1026.36 and to commentary to §§ 1026.25, 1026.32, 1026.34, 1026.36, and 1026.41.

Section 1026.23 Right of Rescission

23(a) Consumer's Right To Rescind

23(a)(3)(ii)

The Bureau is proposing to amend § 1026.23(a)(3)(ii) to update a cross-reference within that section from § 1026.35(e)(2), as adopted by the Bureau's Amendments to the 2013 Escrows Final Rule under the Truth in Lending Act (Regulation Z) (May 2013 Escrows Final Rule),[20] to § 1026.43(g). The cross-reference in the Amendments to the 2013 Escrows Final Rule under the Truth in Lending Act (Regulation Z) is the correct cross-reference during the time period that rule will be in effect for transactions where applications are received on or after June 1, 2013, but prior to January 10, 2014. For transactions where applications are received on or after January 10, 2014, the correct cross-reference will be to § 1026.43(g). For this reason, the Bureau is proposing to remove the cross-reference to § 1026.35(e)(2) and replace it with a cross-reference to § 1026.43(g).

Section 1026.32 Requirements for High-Cost Mortgages

32(b) Definitions

Two of the Bureau's 2013 Title XIV Final Rules—the 2013 ATR Final Rule and the 2013 HOEPA Final Rule—contain provisions that relate to a transaction's "points and fees."[21] Specifically, § 1026.43(e)(2)(iii), as adopted by the 2013 ATR Final Rule, sets forth a cap on points and fees for a closed-end credit transaction to acquire qualified mortgage status. In addition, § 1026.32(a)(1)(ii), as adopted by the 2013 HOEPA Final Rule, sets forth a points and fees coverage threshold for both closed- and open-end credit transactions.[22] These two final rules also adopted definitions of points and fees for closed- and open-end credit transactions.

Section 1026.32(b)(1) defines "points and fees" for closed-end credit transactions, for purposes of both the qualified mortgage points and fees cap and the high-cost mortgage coverage threshold. Section 1026.32(b)(1)(i) defines points and fees for closed-end credit transactions to include all items included in the finance charge as specified under § 1026.4(a) and (b), with the exception of certain items specifically excluded under § 1026.32(b)(1)(i)(A) through (F). These excluded items include interest or time-price differential; certain types and amounts of mortgage insurance premiums; certain bona fide third-party charges not retained by the creditor, loan originator or an affiliate of either; and certain bona fide discount points paid by the consumer. Section 1026.32(b)(1)(ii) through (vi) lists certain other items that are specifically included in points and fees, including compensation paid directly or indirectly by a consumer or creditor to a loan originator; certain real-estate related items listed in § 1026.4(c)(7); premiums

[20] 78 FR 30739 (May 23, 2013).

[21] *See* 78 FR 6407; 78 FR 6856. The Bureau also addressed points and fees in the May 2013 ATR Final Rule. *See* 78 FR 35430.

[22] Section 1026.43(b)(9) provides that, for the qualified mortgage points and fees cap, "points and fees" has the same meaning as in § 1026.32(b)(1).

for various forms of credit insurance, including credit life, credit disability, credit unemployment and credit property insurance; the maximum prepayment penalty, as defined in § 1026.32(b)(6)(i), that may be charged or collected under the terms of the mortgage loan; and the total prepayment penalty as defined in § 1026.32(b)(6)(i) incurred by the consumer if the consumer refinances an existing mortgage loan with the current holder of the existing loan (or a servicer acting on behalf of the current holder, or an affiliate of either).

Section 1026.32(b)(2), which defines points and fees for open-end credit plans for purposes of the high-cost mortgage thresholds, essentially follows the inclusions and exclusions set out in § 1026.32(b)(1) for closed-end transactions, with several modifications and additional inclusions related to fees charged for open-end credit plans.

32(b)(1)

The Bureau is proposing to add new commentary to § 1026.32(b)(1) to clarify when charges paid by parties other than the consumer, including third parties, are included in points and fees. Prior to the Dodd-Frank Act, TILA section 103(aa)(1)(B) provided that a mortgage is subject to the restrictions and requirements of HOEPA if the total points and fees "payable *by the consumer* at or before closing" (emphasis added) exceed the threshold amount. However, section 1431(a) of the Dodd-Frank Act amended the points and fees coverage test to provide in TILA section 103(bb)(1)(A)(ii) that a mortgage is a high-cost mortgage if the total points and fees "payable *in connection with the transaction*" (emphasis added) exceed newly established thresholds. Similarly, TILA section 129C(b)(2)(A)(vii) provides that points and fees "payable *in connection with the loan*" (emphasis added) are included in the points and fees calculation for qualified mortgages.

The Bureau believes that additional clarification concerning the treatment of charges paid by parties other than the consumer, including third parties, for purposes of inclusion in or exclusion from points and fees would be beneficial to consumers and creditors and facilitate compliance with the rule. Specifically, the Bureau is proposing to add new comment 32(b)(1)–2 to clarify the treatment of charges imposed in connection with a closed-end credit transaction that are paid by a party to the transaction other than the consumer, for purposes of determining whether that charge is included in points and fees as defined in § 1026.32(b)(1). The proposed comment states that charges paid by third parties that fall within the definition of points and fees set forth in § 1026.32(b)(1)(i) through (vi) are included in points and fees, and provides examples of third-party payments that are included and excluded. In discussing included charges, the proposed comment notes that a third-party payment of an item excluded from the finance charge under a provision of § 1026.4, while not included in points and fees under § 1026.32(b)(1)(i), may be included under § 1026.32(b)(1)(ii) through (vi). In discussing excluded charges, the proposed comment states that a charge paid by a third party is not included in points and fees under § 1026.32(b)(1)(i) as a component of the finance charge if any of the exclusions from points and fees in § 1026.32(b)(1)(i)(A) through (F) applies.

The proposed comment also discusses the treatment of "seller's points," as described in § 1026.4(c)(5) and commentary. The proposed comment states that seller's points are excluded from the finance charge and thus are not included in points and fees under § 1026.32(b)(1)(i), but also notes that charges paid by the seller may be included in points and fees if the charges are for items in § 1026.32(b)(1)(ii) through (vi). Finally the proposed comment restates for clarification purposes that, pursuant to § 1026.32(b)(1)(i)(A) and (ii), charges that are paid by the creditor, other than loan originator compensation paid by the creditor that is required to be included in points and fees under § 1026.32(b)(1)(ii), are excluded from points and fees. To the extent that the creditor recovers the cost of such charges from the consumer, the cost is recovered through the interest rate, which is excluded from points and fees under § 1026.32(b)(1)(i)(A). Section 1026.32(b)(1)(i) and (A) implements section 103(bb)(4)(A) of TILA to include in points and fees "[a]ll items included in the finance charge under 1026.4(a) and (b)" but specifically excludes "interest and time-price differential." Under § 1026.32(b)(1)(ii), however, compensation paid by the creditor to loan originators, other than employees of the creditor, is included in points and fees.

The Bureau believes this clarification of the treatment of charges paid by parties other than the consumer for points and fees purposes is consistent with the amendment to TILA made by section 1431(a) of the Dodd-Frank Act, discussed above.

32(b)(1)(ii) and 32(b)(2)(ii)

Section 1431(c)(1)(B) of the Dodd-Frank Act requires that points and fees include "all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source . . . . " TILA section 103(bb)(4). The 2013 ATR Final Rule implemented this statutory provision in amended § 1026.32(b)(1)(ii), which provides that, for both the qualified mortgage points and fees limits and the high-cost mortgage points and fees threshold, points and fees include all compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to the transaction at the time the interest rate is set. The 2013 HOEPA Final Rule implemented § 1026.32(b)(2)(ii), which provides the same standard for including loan originator compensation in points and fees for open-end credit plans (*i.e.*, a home equity line of credit, or HELOC). Concurrent with the 2013 ATR Final Rule, the Bureau also issued the 2013 ATR Concurrent Proposal, which, among other things, proposed certain clarifications for calculating loan originator compensation for points and fees. The Bureau finalized the 2013 ATR Concurrent Proposal in the May 2013 ATR Final Rule, which further amended § 1026.32(b)(1)(ii) to exclude certain types of loan originator compensation from points and fees. In particular, the May 2013 ATR Final Rule excludes from points and fees loan originator compensation paid by a consumer to a mortgage broker when that payment has already been counted toward the points and fees thresholds as part of the finance charge under § 1026.32(b)(1)(i). *See* § 1026.32(b)(1)(ii)(A). It also excludes from points and fees compensation paid by a mortgage broker to an employee of the mortgage broker because that compensation is already included in points and fees as loan originator compensation paid by the consumer or the creditor to the mortgage broker. *See* § 1026.32(b)(1)(ii)(B). In addition, the May 2013 ATR Final Rule excludes from points and fees compensation paid by a creditor to its loan officers. *See* § 1026.32(b)(1)(ii)(C).

The 2013 ATR Concurrent Proposal had requested comment on whether additional adjustment of the rules or additional commentary is necessary to clarify any overlapping definitions between the points and fees provisions in the 2013 ATR Final Rule and the 2013 HOEPA Final Rule and the provisions adopted by the 2013 Loan Originator Compensation Final Rule. In particular, the Bureau sought comment

on whether additional guidance would be useful regarding persons who are "loan originators" under § 1026.36(a)(1) but are not employed by a creditor or mortgage broker, such as employees of a retailer of manufactured homes.

In response to the 2013 ATR Concurrent Proposal, several industry and nonprofit commenters requested clarification of what compensation must be included in points and fees in connection with transactions involving manufactured homes. First, they requested additional guidance on what activities would cause a manufactured home retailer and its employees to qualify as loan originators. Second, they requested additional guidance on what compensation paid to manufactured home retailers and their employees would be counted as loan originator compensation and included in points and fees. The Bureau believes it is appropriate to provide additional opportunity for public comment on these issues. Accordingly, rather than provide additional guidance in the May 2013 ATR Final Rule, the Bureau noted that it would propose and seek comment on additional guidance.

The 2013 Loan Originator Compensation Final Rule had provided additional guidance on what activities would cause such a retailer and its employees to qualify as loan originators in light of language from the Dodd-Frank Act creating an exception from the definition of loan originator for employees of manufactured home retailers that engage in certain limited activities. *See* § 1026.36(a)(1)(i)(B) and comments 36(a)–1.i.A and 36(a)–4. Commenters responding to the 2013 ATR Concurrent Proposal nevertheless argued that it remains unclear what activities a retailer and its employees could engage in without qualifying as loan originators and causing their compensation to be included in points and fees. Industry commenters also noted that, because a creditor has limited knowledge of and control over the activities of a manufactured home retailer and its employees, it would be difficult for the creditor to know whether the retailer and its employees had engaged in activities that would require their compensation to be included in points and fees. Industry commenters therefore urged the Bureau to adopt a bright-line rule under which compensation would be included in points and fees only if paid to an employee of a creditor or a mortgage broker.

As noted in the May 2013 ATR Final Rule, the Bureau does not believe it is appropriate to use its exception authority to exclude from points and fees all compensation that may be paid to a manufactured home retailer. As a general matter, to the extent that the consumer or creditor is paying the retailer for loan origination activities, the retailer is functioning as a mortgage broker and compensation for the retailer's loan origination activities should be captured in points and fees. As discussed below, the Bureau is proposing to clarify what compensation must be included in points and fees. As discussed in the **SUPPLEMENTARY INFORMATION** describing proposed revisions and clarifications to the rule text and commentary defining "loan originator," the Bureau is also proposing to clarify the circumstances in which employees of manufactured home retailers are loan originators, including a revision to § 1026.36(a)(i)(B). In addition, the Bureau is continuing to conduct outreach with the manufactured home industry and other interested parties to address concerns about what activities are permissible for a retailer and its employees without causing them to qualify as loan originators.

Industry commenters responding to the 2013 ATR Concurrent Proposal also requested that the Bureau clarify what compensation must be included in points and fees when a retailer and its employees qualify as loan originators. They argued that it is not clear whether the sales price received by the retailer or the sales commission received by the retailer's employee should be considered, at least in part, loan originator compensation. They urged the Bureau to clarify that compensation paid to a retailer and its employees in connection with the sale of a manufactured home should not be counted as loan originator compensation.

Under § 1026.32(b)(1)(ii), loan originator compensation is included in points and fees only if it can be attributed to a transaction at the time the interest rate is set. The Bureau believes that the sales price would not include compensation that is paid for loan origination activities and that can be attributed to a specific transaction. The sales price of a manufactured home allows manufactured home retailers to recover their costs (including the costs of compensating salespersons and other employees) and earn a profit. The Bureau does not believe that manufactured home retailers charge a different sales price depending on whether or not the retailer engages in loan origination activities for that particular transaction. If the retailer does not increase the price to obtain compensation for loan origination activities, then it does not appear that the sales price would include loan originator compensation that could be attributed to that particular transaction.

The Bureau acknowledges that it is theoretically possible that the sales price could include loan originator compensation that could be attributed to a particular transaction at the time the interest rate is set and that therefore should be included in points and fees. One approach for calculating loan originator compensation for manufactured home transactions would be to compare the sales price in a transaction in which the retailer engaged in loan origination activities and the sales prices in transactions in which the retailer did not do so (such as in cash transactions or in transactions in which the consumer arranged credit through another party). To the extent that there is a higher sales price in the transaction in which the retailer engaged in loan origination activities, then the difference in sales prices could be counted as loan originator compensation that can be attributed to that transaction and that therefore should be included in points and fees.

However, the Bureau does not believe that it is workable for the creditor to use this comparative sales price approach to determine whether the sales price includes loan originator compensation that must be included in points and fees. The creditor is responsible for calculating loan originator compensation to be included in points and fees for the qualified mortgage and high-cost mortgage points and fees thresholds. Accordingly, under the comparative sales price approach, the creditor would have to analyze a manufactured home retailer's prices to determine if there were differences in the prices that would have to be included in points and fees as loan originator compensation. This would appear to be an extremely difficult analysis for the creditor to perform. Not only would the creditor have to compare the sales prices from numerous transactions, it would have to determine whether any differences between the sales prices can be attributed to the loan origination activities of the retailer and not to other factors.

As noted above, the Bureau does not believe that the sales price of a manufactured home includes loan originator compensation that can be attributed to a particular transaction. Moreover, the Bureau does not believe it is practicable for the creditor to attempt to analyze the sales price to determine if it does in fact include loan originator compensation that can be attributed to a particular transaction and

therefore must be included in points and fees. Accordingly, the Bureau is proposing guidance providing that the sales price of a manufactured home does not include loan originator compensation that can be attributed to the transaction at the time the interest rate is set and that the sales price therefore does not include loan originator compensation that must be included in points and fees under § 1026.32(b)(1)(ii). The Bureau requests comment on this proposed guidance. In addition, the Bureau requests comment on whether the sales price of a manufactured home does include loan originator compensation that can be attributed to the transaction at the time the interest rate is set, and, if so, whether there are practicable ways for a creditor to measure that compensation so that it could be included in points and fees.

With respect to employees of manufactured home retailers, the Bureau notes that the May 2013 ATR Final Rule added § 1026.32(b)(1)(ii)(B), which excludes from points and fees compensation paid by mortgage brokers to their loan originator employees. It appears to the Bureau that when an employee of a retailer would qualify as a loan originator, the retailer also would qualify as a loan originator and therefore would qualify as a mortgage broker. If the retailer qualifies as a mortgage broker, any compensation paid by the retailer to the employee would be excluded from points and fees under § 1026.32(b)(1)(ii)(B).

The Bureau notes, however, that if there were instances in which an employee of a manufactured home retailer would qualify as a loan originator but the retailer would not, the exclusion from points and fees in § 1026.32(b)(1)(ii)(B) for compensation paid to an employee of a mortgage broker would not apply because the retailer would not be a mortgage broker. Nevertheless, the Bureau believes it may still be appropriate to exclude such compensation paid to an employee of a manufactured home retailer. As noted by some commenters responding to the 2013 ATR Concurrent Proposal, it may be difficult for creditors to determine whether employees of a manufactured home retailer have engaged in loan origination activities and, if so, what compensation they received for doing so. The Bureau understands that a retailer typically pays a sales commission to its employees, so it may be difficult for a creditor to know whether a retailer has paid any compensation to its employees for loan origination activities, as distinct from compensation for sales activities.[23] Accordingly, to prevent any such uncertainty, the Bureau is proposing new § 1026.32(b)(1)(ii)(D), which excludes from points and fees all compensation paid by manufactured home retailers to their employees. The Bureau requests comment on this proposed exclusion. The Bureau also requests comment on whether there are instances in which an employee of a manufactured home retailer would qualify as a loan originator but the retailer would not qualify as a loan originator.

The Bureau notes that it is proposing to exclude from points and fees only compensation that is paid by a manufactured home retailer to its employees. To the extent that an employee of a manufactured home retailer receives from another source (such as the creditor) loan originator compensation that can be attributed to the transaction at the time the interest rate is set, then that compensation must be included in points and fees.

As noted above, the Bureau is proposing new § 1026.32(b)(1)(ii)(D), which excludes from points and fees all compensation paid by manufactured home retailers to their employees. The Bureau is also proposing new § 1026.32(b)(2)(ii)(D), which provides that, for open-end credit plans, compensation paid by manufactured home retailers to their employees is excluded from points and fees for purposes of the high-cost mortgage points and fees threshold.

The Bureau is also proposing new comment 32(b)(1)(ii)–5, which explains what compensation is included in loan originator compensation that must be included in points and fees for manufactured home transactions. Proposed comment 32(b)(1)(ii)–5.i states that, if a manufactured home retailer receives compensation for loan origination activities and such compensation can be attributed to the transaction at the time the interest rate is set, then such compensation is loan originator compensation that is included in points and fees. Proposed comment 32(b)(1)(ii)–5.ii specifies that the sales price of the manufactured home does not include loan originator compensation that can be attributed to the transaction at the time the interest rate is set and therefore is not included in points and fees. Proposed comment 32(b)(1)(ii)–5.iii specifies that, consistent with new § 1026.32(b)(1)(ii)(D), compensation paid by a manufactured home retailer to its employees is not included in points and fees.

The Bureau is proposing new § 1026.32(b)(1)(ii)(D) and (b)(2)(ii)(D) pursuant to its authority under TILA section 105(a) to make such adjustments and exceptions for any class of transactions as the Bureau finds necessary or proper to facilitate compliance with TILA and to effectuate the purposes of TILA, including the purposes of TILA section 129C of ensuring that consumers are offered and receive residential mortgage loans that reasonably reflect their ability to repay the loans. The Bureau's understanding of this purpose is informed by the findings related to the purposes of section 129C of ensuring that responsible, affordable mortgage credit remains available to consumers. The Bureau believes that using its TILA exception authorities will facilitate compliance with the points and fees regulatory regime by not requiring creditors to investigate the manufactured housing retailer's employee compensation practices, and by making sure that all creditors apply the provision consistently. It will also effectuate the purposes of TILA by helping to keep mortgage loans available and affordable by ensuring that they are subject to the appropriate regulatory framework with respect to qualified mortgages and the high-cost mortgage threshold. The Bureau is also invoking its authority under TILA section 129C(b)(3)(B) to revise, add to, or subtract from the criteria that define a qualified mortgage consistent with applicable standards. For the reasons explained above, the Bureau has determined that it is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C and necessary and appropriate to effectuate the purposes of this section and to facilitate compliance with section 129C. With respect to its use of TILA section 129C(b)(3)(B), the Bureau believes this authority includes adjustments and exceptions to the definitions of the criteria for qualified mortgages and that it is consistent with the purpose of facilitating compliance to extend use of this authority to the points and fees definitions for high-cost mortgage in order to preserve the consistency of the qualified mortgage and high-cost mortgage definitions. As

[23] Commenters asserted that creditors may presume that the sales commissions should be treated as loan originator compensation and include such payments in points and fees. They maintain that doing so would prevent most loans from staying under the qualified mortgage points and fees limits and would cause many loans to exceed the high-cost mortgage points and fees thresholds.

noted above, by helping to ensure that the points and fees calculation is not artificially inflated, the Bureau is helping to ensure that responsible, affordable mortgage credit remains available to consumers.

The Bureau also has considered the factors in TILA section 105(f) and has concluded that, for the reasons discussed above, the proposed exemption is appropriate under that provision. Pursuant to TILA section 105(f), the Bureau may exempt by regulation from all or part of this title all or any class of transactions for which in the determination of the Bureau coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. In determining which classes of transactions to exempt, the Bureau must consider certain statutory factors. For the reasons discussed above, the Bureau is proposing to exclude from points and fees compensation paid by a retailer of manufactured homes to its employees because including such compensation in points and fees does not provide a meaningful benefit to consumers. The Bureau believes that the proposed exemption is appropriate for all affected consumers to which the proposed exemption applies, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans covered under the proposed exemption, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection, denying important benefits to consumers, or increasing the expense of the credit process.

The Bureau also concludes that, to the extent that it determines that it would be appropriate to adopt a regulatory provision that excludes from points and fees any loan originator compensation in the sales price of a manufactured home, such an exclusion also would be appropriate under TILA section 105(f). The Bureau believes that including such compensation in points and fees does not provide a meaningful benefit to consumers. The Bureau believes that such an exemption would be appropriate for all affected consumers to which the exemption would apply, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the exemption would be appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the exemption would simplify the credit process without undermining the goal of consumer protection, denying important benefits to consumers, or increasing the expense of the credit process.

32(b)(1)(vi) and 32(b)(2)(vi)

The Bureau is proposing changes to § 1026.32(b)(1)(vi) and (2)(vi) to harmonize more fully the definitions of "total prepayment penalty" adopted in these two sections with the statutory requirement implemented by them. Section 1026.32(b)(1)(vi) and (2)(vi) implements section 1431(c) of the Dodd-Frank Act, which added new TILA section 103(bb)(4)(F). That provision requires that points and fees include "all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor." As adopted by the 2013 ATR Final Rule, § 1026.32(b)(1)(vi) implements this provision as it relates to closed-end credit transactions, and provides that points and fees must include "[t]he total prepayment penalty, as defined in paragraph (b)(6)(i) of this section, incurred by the consumer if the consumer refinances the existing mortgage loan with the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either." As adopted by the 2013 HOEPA Final Rule, § 1026.32(b)(2)(vi) implements this provision as it relates to open-end credit plans (*i.e.*, a home equity line of credit, or HELOC), and provides that points and fees must include "[t]he total prepayment penalty, as defined in paragraph (b)(6)(ii) of this section, incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new closed- or open-end credit transaction, with the current holder of the existing plan, a servicer acting on behalf of the current holder, or an affiliate of either."

The Bureau intended these provisions to work in the same manner for closed-end and open-end credit transactions: To include in points and fees any prepayment charges triggered by the refinancing of an existing loan or termination of a HELOC by obtaining a new credit transaction with the current holder of the existing closed-end mortgage loan or open-end credit plan. The Bureau believes that additional clarification as to when prepayment penalties are included in points and fees in connection with the refinancing of a closed-end mortgage loan or the termination and replacement of a HELOC with the holder of the existing loan or HELOC would be beneficial.

The Bureau is proposing changes to § 1026.32(b)(1)(vi) and (2)(vi) to clarify both provisions' application. Specifically, the Bureau is proposing to state expressly that § 1026.32(b)(1)(vi) applies to instances where the consumer takes out a closed-end mortgage loan to pay off and terminate an existing open-end credit plan held by the same creditor and the plan imposes a prepayment penalty (as defined in § 1026.32(b)(6)(ii)) on the consumer. The Bureau also is proposing to strike from § 1026.32(b)(2)(vi) the reference to obtaining a new closed-end credit transaction because § 1026.32(b)(2)(vi) relates to points and fees only for open-end credit plans and § 1026.32(b)(1)(vi) would apply instead. The Bureau is also proposing to insert in § 1026.32(b)(2)(vi) a reference to § 1026.32(b)(6)(i), the definition of prepayment penalties for closed-end credit transactions, to clarify that this definition applies in calculating the prepayment penalties included where a consumer refinances a closed-end mortgage loan with a HELOC with the creditor holding the closed-end mortgage loan (*i.e.*, the closed-end mortgage loan's prepayment penalties are included in calculating points and fees for the HELOC). The Bureau believes that these changes are consistent with the statutory provision implemented by this section and clarify the Bureau's intended application of § 1026.32(b)(1)(vi) and (2)(vi).

32(b)(2)

The Bureau is proposing the addition of a new comment 32(b)(2)–1 that directs readers for further guidance on the inclusion of charges paid by parties other than the consumer in points and fees for open-end credit plans to proposed comment 32(b)(1)–2 on closed-end credit transactions.

32(d) Limitations

32(d)(1)

32(d)(1)(ii) Exceptions

32(d)(1)(ii)(C)

The Bureau is proposing to revise the exception to the prohibition on balloon payments for high-cost mortgages in § 1026.32(d)(1)(ii)(c) for transactions that satisfy the criteria set forth in § 1026.43(f), which implements a Dodd-

Frank Act provision that allows certain balloon-payment mortgages made by small creditors operating predominantly in "rural or underserved areas" to be accorded status as qualified mortgages under the 2013 ATR Final Rule. The Bureau has received extensive comment on the definitions of "rural" and "underserved" that it adopted for purposes of § 1026.43(f) and certain other purposes in the 2013 Title XIV Final Rules, and recently announced that it would reexamine those definitions over the next two years to determine whether further adjustments are appropriate particularly in light of access to credit concerns.[24] The Bureau also amended the 2013 ATR Final Rule to add § 1026.43(e)(6) to allow small creditors during the period from January 10, 2014, to January 10, 2016, to make balloon-payment qualified mortgages even if they do not operate predominantly in rural or underserved areas.[25] In light of those actions, the Bureau is proposing to revise § 1026.32(d)(1)(ii)(c) to expand the exception to the prohibition on balloon payments for high-cost mortgages for transactions that satisfy the criteria in either § 1026.43(f) or (e)(6).

The balloon qualified mortgage provision in § 1026.43(f) implements a Dodd-Frank Act provision that appears to have been designed to promote access to credit. The Dodd-Frank Act generally prohibits balloon-payment loans from being accorded qualified mortgage status, but Congress appears to have been concerned that small creditors in rural areas might have sufficient difficulty converting from balloon-payment loans to adjustable rate mortgages that they would curtail mortgage lending if they could not obtain qualified mortgage status for their balloon-payment loans. As adopted in the 2013 ATR Final Rule, the exemption is available to creditors that extended more than 50 percent of their total covered transactions secured by a first lien in "rural" or "underserved" counties during the preceding calendar year.

Because commenters raised similar concerns about the prohibition in HOEPA on high-cost mortgages having balloon-payment features, the Bureau decided in the 2013 HOEPA Final Rule to adopt § 1026.32(d)(1)(ii)(C) to allow balloon-payment features on loans that met the qualified mortgage requirements. The Bureau stated that, in its view, (1) allowing creditors in certain rural or underserved areas to extend high-cost mortgages with balloon payments will benefit consumers by expanding access to credit in these areas, and also will facilitate compliance for creditors who make these loans; and (2) allowing creditors that make high-cost mortgages in rural or underserved areas to originate loans with balloon payments if they satisfy the same criteria promotes consistency between the 2013 HOEPA Final Rule and the 2013 ATR Final Rule, and thereby facilitates compliance for creditors that operate in these areas.

Because the Bureau has now decided to allow small creditors an additional two years to transition from balloon-payment loans to other products while it reevaluates the definitions of "rural" and "underserved," the Bureau believes it is appropriate to carry over the flexibility provided by the revised May 2013 ATR Final Rule into the HOEPA balloon loan provisions. Accordingly, the Bureau is proposing to amend § 1026.32(d)(1)(ii)(C) to include the § 1026.43(e)(6) exception. The Bureau is proposing to expand this exception pursuant to its authority under TILA section 129(p)(1), which grants it authority to exempt specific mortgage products or categories from any or all of the prohibitions specified in TILA section 129(c) through (i) if the Bureau finds that the exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen homeownership and equity protections.

The Bureau believes expanding the balloon-payment exception for high-cost mortgages to allow certain small creditors operating in areas that do not qualify as "rural" or "underserved" to continue to originate high-cost mortgages with balloon payments is in the interest of the borrowing public and will strengthen homeownership and equity protection. The Bureau believes allowing greater access to credit in remote areas that nevertheless may not meet the definitions of "rural" or "underserved" while creditors transition to adjustable rate mortgages (or the Bureau reconsiders those definitions) will help those consumers who otherwise may be able to obtain credit only from a limited number of creditors. Further, it will do so in a manner that balances consumer protections with access to credit. In the Bureau's view, concerns about potentially abusive practices that may accompany balloon payments will be curtailed by the additional requirements set forth in § 1026.43(e)(6) and (f). Creditors that make these high-cost mortgages will be required to verify that the loans also satisfy the additional criteria discussed above, including some specific criteria required for qualified mortgages. Further, creditors that make balloon-payment high-cost mortgages under this exception will be required to hold the high-cost mortgages in portfolio for a specified time, which the Bureau believes also decreases the risk of abusive lending practices. Accordingly, for these reasons and for the purpose of consistency between the two rulemakings, the Bureau is proposing to amend the 2013 HOEPA Final Rule to include an exception to the § 1026.32(d)(1) balloon-payment restriction for high-cost mortgages where the creditor satisfies the conditions set forth in §§ 1026.43(f)(1)(i) through (vi) and 1026.43(f)(2) or the conditions set forth in § 1026.43(e)(6).

Section 1026.35 Requirements for Higher-Priced Mortgage Loans

35(b) Escrow Accounts

35(b)(2) Exemptions

35(b)(2)(iii)

35(b)(2)(iii)(A)

The Bureau is proposing to revise the exemption provided by § 1026.35(b)(2)(iii) to the general requirement that creditors establish an escrow account for first lien higher-priced mortgage loans where a small creditor operates predominantly in rural or underserved areas and meets various other criteria. The Bureau has received extensive comment on the definitions of "rural" and "underserved" that it adopted for purposes of § 1026.35(b)(2) and certain other purposes in the 2013 Title XIV Final Rules and recently announced that it would re-examine those definitions over the next two years

[24] *See e.g.*, U.S. Consumer Fin Prot. Bureau, *Clarification of the 2013 Escrows Final Rule* (May 16, 2013), *available at http://www.consumerfinance.gov/blog/clarification-of-the-2013-escrows-final-rule/.*

[25] Specifically, in the May 2013 ATR Final Rule, the Bureau adopted § 1026.43(e)(6), which provided for a temporary balloon-payment qualified mortgage that requires all of the same criteria be satisfied as the balloon-payment qualified mortgage definition in § 1026.43(f) except the requirement that the creditor extend more than 50 percent of its total first-lien covered transactions in counties that are "rural" or "underserved." This temporary balloon-payment qualified mortgage would sunset, however, after January 10, 2016. As discussed in the section-by-section analysis of § 1026.43(e)(6) in the May 2013 ATR Final Rule, the Bureau adopted this two-year transition period for small creditors to roll over existing balloon-payment loans as qualified mortgages, even if they do not operate predominantly in rural or underserved areas, because the Bureau believes it is necessary to preserve access to responsible, affordable mortgage credit for some consumers. The Bureau also noted that, during the two-year period for which § 1026.43(e)(6) is in place, the Bureau intends to review whether the definitions of "rural" and "underserved" should be adjusted further and to explore how it can best facilitate the transition of small creditors that do not operate predominantly in rural or underserved areas from balloon-payment loans to adjustable-rate mortgages. 78 FR 35430.

to determine whether further adjustments are appropriate particularly in light of access to credit concerns. In light of that coming re-examination, the Bureau is proposing to revise § 1026.35(b) and its commentary to minimize volatility in the definitions while they are being re-evaluated.

The exemption in § 1026.35(b)(2)(iii) implements a Dodd-Frank Act provision that appears to have been designed to promote access to credit by exempting small creditors in rural areas that might have sufficient difficulty maintaining escrow accounts that they would curtail making higher-priced mortgage loans rather than trigger the escrow account requirement. As adopted in the 2013 Escrows Final Rule, and as amended by the Amendments to the 2013 Escrows Final Rule,[26] the exemption is available to creditors that extended more than 50 percent of their total covered transactions secured by a first lien on properties that are located in "rural" or "underserved" counties during the preceding calendar year. In general, a county's status as "rural" is defined in relation to Urban Influence Codes (UICs) established by the United States Department of Agriculture's Economic Research Service. Due to updated information from the 2010 Census, however, the list of "rural" counties will change between 2013 and 2014, with a small number of new counties meeting the definition of rural and approximately 82 counties no longer meeting that definition. The Bureau estimates that approximately 200–300 otherwise eligible creditors during 2013 could lose their eligibility for 2014 solely because of changes in the status of the counties in which they operate (assuming the geographical distribution of their mortgage originations does not change significantly over the relevant period).[27] In light of the Bureau's intent to review whether the definitions of "rural" and "underserved" should be adjusted further during the two-year transition period for balloon-payment mortgages discussed above, the Bureau also believes that subjecting small creditors that make higher-priced mortgage loans to such volatility in their eligibility for the exemption from the escrows requirement in the meanwhile could create significant burden for such creditors with little meaningful benefit to consumers in return.

Accordingly, the Bureau is proposing to revise § 1026.35(b)(2)(iii)(A) to provide that, to qualify for the exemption, a creditor must have extended more than 50 percent of its total covered transactions secured by a first lien on properties located in "rural" or "underserved" counties during any of the preceding three calendar years. As proposed, the provision thus would prevent a creditor from losing eligibility for the exemption under the "rural or underserved" element of the test unless it has failed to exceed the 50-percent threshold three years in a row.

As discussed above in the section-by-section analysis of § 1026.32(d)(1)(ii)(C), the Bureau also is proposing to modify the exception from the prohibition on balloon payments for high-cost mortgages in that section. Section 1026.32(d)(1)(ii)(C) provides an exception to the general prohibition on balloon payments for high-cost mortgages for balloon-payment qualified mortgages made by certain creditors operating predominantly in "rural" or "underserved" areas. Believing that the same rationale for allowing balloon-payment qualified mortgages made by creditors in rural or underserved areas applies to high-cost mortgages, the Bureau adopted the § 1026.32(d)(1)(ii)(C) exception in the 2013 HOEPA Final Rule. As explained above, the Bureau believes the same underlying rationale for the two-year transition period for balloon-payment qualified mortgages described above applies equally to the § 1026.32(d)(1)(ii)(C) exception from the high-cost mortgage balloon prohibition. Accordingly, the Bureau believes it is appropriate to extend this temporary framework to § 1026.32(d)(1)(ii)(C) and therefore is proposing to amend § 1026.32(d)(1)(ii)(C) to include loans meeting the criteria under § 1026.43(e)(6). Thus, for both balloon-payment qualified mortgages and for the high-cost mortgage balloon prohibition, the Bureau has adopted or is now proposing to adopt a two-year transition period during which the special treatment of balloon-payment loans does not depend on the creditor operating predominantly in rural or underserved areas.

The Bureau considered taking the same approach with regard to the escrow requirement but concluded ultimately that a smaller adjustment was appropriate. Because higher-priced mortgage loans are already subject to an escrow requirement, all creditors are currently required to maintain escrow accounts for such loans. Implementation of the Dodd-Frank Act exemption will thus reduce burden for some creditors, but does not impose different requirements than the status quo except as to the length of time that an escrow account must be maintained. This is fundamentally different than the ability-to-repay and high-cost mortgage requirements, which would prohibit new balloon-payment loans from being accorded qualified mortgage status or from being made going forward absent implementation of the special exemptions. In addition, the Bureau may change the definition of rural or underserved areas as the result of its re-examination process, but does not anticipate lifting the requirement that creditors operate predominantly in rural or underserved areas to qualify for the exemption because Congress specifically contemplated that limitation on the escrows exemption. Accordingly, the Bureau believes it is appropriate to leave the definition in place, but to prevent volatility in the definition from negatively impacting creditors who have fallen within the existing definition while the Bureau re-evaluates the underlying definitions. The Bureau believes that, as with the other two balloon-payment provisions for which the Bureau believes two-year transition periods are appropriate, this amendment will benefit consumers by expanding access to credit in certain areas that met the definitions of "rural" or "underserved" at some time in the preceding three calendar years and also will facilitate compliance for creditors that make these loans. The Bureau also believes that the proposed amendment will promote additional consistency between the 2013 HOEPA Final Rule, the 2013 ATR Final Rule, and the 2013 Escrows Final Rule, thereby facilitating compliance for affected creditors.

The Bureau notes that the mechanics of proposed § 1026.35(b)(2)(iii)(A) differ slightly from the express transition period ending on January 10, 2016, under § 1026.43(e)(6). Thus, this proposed amendment would not parallel the same transition period precisely, as does proposed § 1026.32(d)(1)(ii)(C), which simply would incorporate § 1026.43(e)(6)'s conditions by cross-reference. Instead, proposed § 1026.35(b)(2)(iii)(A) would approximate a two-year transition period by extending from one to three

[26] 78 FR 30739 (May 23, 2013).

[27] The extent of such volatility in the transition from 2012 rural/non-rural status (for purposes of eligibility for the exemption during 2013) to 2013 rural/non-rural status (for purposes of eligibility for the exemption during 2014) is likely far greater than during other year-to-year transitions. This is due to the fact that this first year-to-year transition under the Bureau's "rural" definition happens to coincide with the redesignation by the USDA's Economic Research Service of U.S. counties' urban influence codes, on which the "rural" definition is generally based. This redesignation occurs only decennially, based on the most recent census data. Nevertheless, for purposes of eligibility for the exemption during 2013 and 2014, the volatility is significant—just as creditors are first attempting to apply the exemption's criteria.

years the time for which a creditor, once eligible for the exemption, cannot lose that eligibility because of changes in the rural (or underserved) status of the counties in which the creditor operates. Because the 2013 Escrows Final Rule took effect on June 1, 2013, the escrows provisions already have begun operating over seven months earlier than the provisions adopted by the 2013 HOEPA and ATR Final Rules (which take effect on January 10, 2014). Thus, whereas the two balloon-payment provisions specifically last through January 10, 2016, the escrows-requirement exemption would guarantee eligibility (for a creditor that is eligible during 2013) through 2015. Thus, the proposed § 1026.35(b)(2)(iii) exemption would approximately, though not exactly, track the extension of the balloon exemption for qualified mortgages under § 1026.43(e)(6), and the proposed extension of the HOEPA balloon exemption under proposed § 1026.32(d)(1)(ii)(C).

In addition to the proposed changes discussed above, the Bureau also is proposing to amend § 1026.35(b)(2)(iii)(D)(*1*) and its commentary to conform to the proposed expansion of the exemption to creditors that may meet the section 35(b)(2)(iii)(A) criteria for calendar year 2014 based on loans made in "rural" or "underserved" counties in calendar year 2011, but not 2012 or 2013. Section § 1026.35(b)(2)(iii)(D)(*1*) currently prohibits any creditor from availing itself of the exemption if it maintains escrow accounts for any extensions of consumer credit secured by real property or a dwelling that it or its affiliate currently service, unless the escrow accounts were established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before June 1, 2013, or were established after consummation as an accommodation for distressed consumers. With respect to loans where escrows were established on or after April 1, 2010, and before June 1, 2013, the Supplementary Information to the 2013 Escrows Final Rule explained that the Bureau believes creditors should not be penalized for compliance with the then current regulation, which would have required any such loans to be escrowed after April 1, 2010, and prior to June 1, 2013—the date the exemption took effect.

The Bureau understands that creditors who did not make more than 50 percent of their first-lien higher-priced mortgage loans in "rural" or "underserved" counties in calendar year 2012 would have been ineligible for the exemption for calendar year 2013, and thus would have been required under § 1026.35(a) to escrow any higher-priced mortgage loans those creditors made after June 1, 2013. However, it is possible in light of the proposed amendments that some of these same creditors may have met this criteria during calendar year 2011—and thus, should the Bureau finalize the proposal and allow creditors to qualify for the exemption (assuming they satisfy the other conditions set forth in § 1026.35(b)(2)(iii)(B), (C), and (D))—such creditors may qualify for the exemption in 2014. However, there would be one barrier: For applications received on or after June 1, 2013, but before the date the proposed amendment takes effect (as proposed, January 1, 2014), such a creditor who made a first-lien higher-priced mortgage loan would have been required to escrow that loan, and thus would be deemed ineligible under § 1026.35(b)(2)(iii)(D).

The Bureau does not believe that such creditors should lose the exemption because they were ineligible prior to the proposed amendment taking effect and thus made loans with escrows from June 1, 2013, through December 31, 2013. As the Bureau discussed in the Supplementary Information to the final rule, the Bureau believes creditors should not be penalized for compliance with the current regulation. The Bureau thus believes it is appropriate to amend § 1026.35(b)(2)(iii)(D)(*1*) and comment 35(b)(2)(iii)–1.iv to exclude escrow accounts established after April 1, 2010 and before January 1, 2014. The Bureau invites comment on this approach, and specifically whether an effective date for transactions where applications were received on or after January 1, 2014 is appropriate, in light of the proposed change to the calendar year exemption under § 1026.35(b)(2)(iii).

Section 1026.36 Loan Originator Compensation

36(a) Definitions

The Bureau is proposing several clarifications, revisions, and amendments to § 1026.36(a) and associated commentary to resolve inconsistencies in wording, to conform the comments to the intended operation of the regulation text, and to address issues raised during the regulatory implementation process. The Bureau proposes these changes pursuant to its TILA section 105(a) and Dodd-Frank Act section 1022(b)(1) authority.

References to Credit Terms

The Bureau is proposing to amend § 1026.36(a) and its commentary to clarify the meaning of "credit terms" in those provisions. For example, § 1026.36(a)(1)(i)(A) excludes from the definition of "loan originator" persons—*i.e.*, a loan originator's or creditor's employees (or agents or contractors thereof) engaged in certain administrative and clerical tasks that are not considered to be loan originator activity under the rules. To be eligible for the exclusion, the person must not, among other things, offer or negotiate "credit terms available from a creditor." Likewise, comment 36(a)–4.i. provides that the definition of loan originator does not include persons who, among other things, do not discuss "specific credit terms or products available from a creditor with the consumer." Similarly, comment 36(a)–4.ii.B provides that the definition of loan originator does not include an employee of a creditor or loan originator who provides loan originator or creditor contact information to a consumer, provided the employee does not, among other things, "discuss particular credit terms available from a creditor." *See also* § 1026.36(a)(1)(i)(B) and comments 36(a)–1.i.A.*2* through –1.i.A.*4* (other similar references to credit terms). As discussed below, the Bureau is proposing to revise comment 36(a)–4.ii.B to clarify that it applies to loan originator or creditor agents and contractors as well as employees.

The Bureau intended the references to "credit terms" in these provisions to refer to particular credit terms that are or may be made available *to the consumer* in light of the consumer's financial characteristics. The Bureau believes that, when a loan originator's or creditor's employee (or agent or contractor thereof) is offering or discussing particular credit terms selected based on his or her assessment of the consumer's financial characteristics, the person is acting in the role of a loan originator. However, this does not extend to a person's discussion of general credit terms that a creditor makes available and advertises to the public at large, such as where such person merely states: "We offer rates as low as 3% to qualified consumers."

In light of inquiries from loan originators and creditors, the Bureau is concerned that the term "credit terms" could be construed too broadly and thus render any person that provides such general information a loan originator. This was not the Bureau's intent. Accordingly, the Bureau is proposing to revise § 1026.36(a)(1)(i)(A) and (B), and comments 36(a)–1 and –4 to address several inconsistencies regarding the meaning of "credit terms" to clarify that any such activity must relate to

"particular credit terms that are or may be available from a creditor to that consumer selected based on the consumer's financial characteristics," not credit terms generally. Thus, a person who discusses with a consumer that, based on the consumer's financial characteristics, a creditor should be able to offer the consumer an interest rate of 3%, would be considered a loan originator. However, a person who merely states general information such as "we offer rates as low as 3% to qualified consumers" would not be considered a loan originator under the proposed rule because the person is not offering particular credit terms that are or may be available to that consumer selected based on the consumer's financial characteristics. In addition, for clarification purposes the Bureau is proposing to move a parenthetical that explains "credit terms" includes rates, fees, and other costs to new § 1026.36(a)(1)(i)(6).

The Bureau believes these changes better align the scope of the loan originator definition with the intended scope of the 2013 Loan Originator Compensation Final Rule. The Bureau solicits comment on whether additional guidance concerning the meaning of particular credit terms that are or may be made available to the consumer in light of the consumer's financial characteristics is necessary, and if so, what clarifications would be helpful.

Application-Related Administrative and Clerical Tasks

Comment 36(a)–4.i provides that the definition of loan originator does not include persons who (1) At the request of the consumer, provide an application form to the consumer; (2) accept a completed application form from the consumer; or (3) without assisting the consumer in completing the application, processing or analyzing the information, or discussing specific credit terms or products available from a creditor with the consumer, deliver the application to a loan originator or creditor.

The Bureau is proposing to revise comment 36(a)–4.i to provide that the definition of loan originator does not include a person who, acting in his or her capacity as an employee (or agent or contractor), provides a credit application form from the entity for whom the person works to the consumer for the consumer to complete. In such a case, provided that the person does not assist the consumer in completing the application or otherwise influence his or her decision, the Bureau believes the person is performing an administrative task, not acting as a loan originator by engaging in a referral to a particular creditor or loan originator or assisting a consumer in obtaining or applying to obtain credit. As also discussed below with respect to persons who provide creditor or loan originator contact information, the Bureau believes ambiguity regarding the meaning of "in response to a consumer's request" could cause unnecessary compliance challenges. Moreover, the Bureau notes that classifying such individuals as loan originators would subject them to the requirements applicable to loan originators with, in the Bureau's view, little appreciable benefit for consumers in situations where the person is providing a credit application from the entity for whom the person works. The Bureau proposes to revise comment 36(a)–4.i accordingly, including removing the condition that the provision of the application must be "at the request of the consumer."

As a result of these proposed revisions, employees (or agents or contractors) of manufactured home retailers who provide a credit application form from one particular creditor or loan originator organization that is not the entity for which they work would not qualify for the exclusion in § 1026.36(a)(1)(i)(B), but those who simply provide a credit application form from the entity for which they work would potentially be eligible for the exclusion if other conditions are met. An employee of a manufactured home retailer who simply provides a credit application form from one particular creditor or loan originator organization that is its employer would potentially be eligible for the exclusion in § 1026.36(a)(1)(i)(B). An agent or contractor of a manufactured home retailer who simply provides a credit application form from one particular creditor or loan originator organization it works for as agent or contractor would potentially be eligible for the exclusion discussed in comment 36(a)–4.i. The revisions would also clarify that someone who merely delivers a completed credit application form from the consumer to a creditor or loan originator would potentially be eligible for the exclusion if other conditions are met but would remove language that could have been misinterpreted to suggest that someone who accepts an application in the sense of taking or helping the consumer complete an application could be eligible for the exclusion.

Responding to Consumer Inquiries and Providing General Information

*Employees (or agents or contractors) of a creditor or loan originator who provide loan originator or creditor contact information.* Comment 36(a)–4.ii.B provides that the definition of loan originator does not include persons who, acting as employees of a creditor or loan originator, provide loan originator or creditor contact information to a consumer in response to the consumer's request, provided that the employee does not discuss particular credit terms available from a creditor and does not direct the consumer, based on the employee's assessment of the consumer's financial characteristics, to a particular loan originator or creditor seeking to originate particular credit transactions to consumers with those financial characteristics. Similar to the clarifications regarding credit terms discussed above, the Bureau also is proposing to clarify that comment 36(a)–4.ii.B applies to loan originator or creditor agents and contractors as well as employees. The Bureau notes this is consistent with comments 36(a)–1.i.B and 36(a)–4.

In addition to making conforming technical revisions, the Bureau is proposing to remove the requirement that creditor or loan originator contact information must be provided "in response to the consumer's request" for the exclusion to apply. The Bureau has received many inquiries on this topic from stakeholders expressing concern that, absent a clarifying amendment, the rule could be interpreted to require tellers, greeters, or other such employees (or contractors or agents) to be classified as loan originators for merely providing contact information to a consumer who did not clearly or explicitly ask for it. Stakeholders have further asserted that such persons should not be considered loan originators when their conduct is limited to following a script prompting them to ask whether the consumer is interested in a mortgage loan and the tellers are not able to engage in any independent assessment of the consumer. Moreover, stakeholders have asserted it would be very costly to implement the training and certification requirements under Regulation Z as amended by the 2013 Loan Originator Compensation Final Rule for employers with large numbers of administrative staff who interact with consumers on a day-to-day basis in the manner described.

In light of these concerns, the Bureau is proposing a limited expansion of the existing exclusion that does not require the consumer to initiate a request for loan originator or creditor contact information as a prerequisite to its availability. The Bureau understands that basing the exclusion on the

consumer requesting contact information could cause those who work for creditor or loan originator organizations in administrative or clerical roles (*e.g.*, tellers) to be treated as loan originators when simply attempting to explain generally what financing products the entity for which the person works offers. The Bureau also believes ambiguity regarding the meaning of "in response to a consumer's request" could cause unnecessary compliance challenges. In such instances, the Bureau does not believe tellers or other such staff should be considered loan originators for merely providing loan originator or creditor contact information to the consumer, provided that the person does not discuss particular credit terms available from a creditor to the consumer and does not direct the consumer, based on his or her assessment of the consumer's financial characteristics, to a particular loan originator or creditor seeking to originate credit transactions to consumers with those financial characteristics. The Bureau also notes that classifying such individuals as loan originators would subject them to the requirements applicable to loan originators with, in the Bureau's view, little appreciable benefit for consumers.

Accordingly, the Bureau is proposing to remove the qualifying phrase "in response to the consumer's request" from comment 36(a)–4.ii.B. However, the Bureau is not proposing to exclude from the definition of "loan originator" employees (or agents or contractors) of creditors and loan originator organizations who, in the course of providing loan originator or creditor contact information to the consumer, direct that consumer to a particular loan originator or particular creditor based on his or her assessment of the consumer's financial characteristics or discuss particular credit terms available from a creditor to the consumer. These actions can influence the credit terms that the consumer ultimately obtains, and the Bureau continues to believe these actions should result in application of the requirements imposed by the rule on loan originators. The Bureau believes this proposed amendment should enable creditors and loan originators to implement the rule with respect to persons acting under the controlled circumstances specified by the comment while still mitigating harmful steering outcomes the Bureau intended for the rule to address.

*Describing other product-related services.* Comment 36(a)–4.ii.C provides that the definition of loan originator does not include persons who describe other product-related services. The Bureau is proposing to amend this comment to provide examples of persons who describe other product-related services. The proposed new examples include persons who describe optional monthly payment methods via telephone or via automatic account withdrawals, the availability and features of online account access, the availability of 24-hour customer support, or free mobile applications to access account information. In addition, the proposed amendment to comment 36(a)–4.iii.C would clarify that persons who perform the administrative task of coordinating the closing process are excluded, whereas persons who arrange credit transactions are not excluded.

*Amounts for Charges for Services That Are Not Loan Origination Activities.* Comment 36(a)–5.iv.B provides that compensation includes any salaries, commissions, and any financial or similar incentive, regardless of whether it is labeled as payment for services that are not loan origination activities. The Bureau is proposing to revise this comment to provide that compensation includes any salaries, commissions, and any financial or similar incentive "to an individual loan originator," regardless of whether it is labeled as payment for services that are not loan origination activities. The proposed wording change conforms this provision to the other provisions in comment 36(a)–5.iv that permit compensation paid to a loan originator organization under certain circumstances for services it performs that are not loan originator activities. The Bureau requests comment on these proposed clarifications generally and on whether other clarifications to comments 36(a)–4 and 36(a)–5 should be considered.

36(b) Scope

The Bureau is proposing to revise the scope of provisions in § 1026.36(b) to reflect the applicability of the servicing provisions in § 1026.36(c) regarding payment processing, pyramiding late fees, and payoff statements as modified by the 2013 TILA Servicing Final Rule.[28] Current § 1026.36(b) and comment 36(b)–1 (relocated from § 1026.36(f) and comment 36–1, respectively, by the 2013 Loan Originator Compensation Final Rule) provide that § 1026.36(c) applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. The new payment processing provisions in § 1026.36(c)(1) and the restrictions on pyramiding late fees in § 1026.36(c)(2) both apply to consumer credit transactions secured by a consumer's principal dwelling. The new payoff statement provisions in § 1026.36(c)(3), however, apply more broadly to consumer credit transactions secured by a dwelling.

The proposal would revise § 1026.36(b) and comment 36(b)–1 to state that § 1026.36(c)(1) and (c)(2) apply to consumer credit transactions secured by a consumer's principal dwelling. The proposed revisions also would provide that § 1026.36(c)(3) applies to a consumer credit transaction secured by a dwelling (even if it is not the consumer's principal dwelling).

The Bureau is proposing these revisions to § 1026.36(b) and comment 36(b)–1 to conform them to modifications made to § 1026.36(c) by the 2013 Servicing Final Rules that changed the applicability of certain provisions in § 1026.36(c). The Bureau believes the proposed revisions are necessary to reflect the applicability of the provisions in § 1026.36(c) as modified by the 2013 Servicing Final Rules.

The Bureau seeks comment on these proposed revisions generally. The Bureau also invites comment on whether additional revisions to § 1026.36(b) and comment 36(b)–1 should be considered to clarify further the applicability of the provisions in § 1026.36(c) as modified by the 2013 Servicing Final Rules.

36(d) Prohibited Payments to Loan Originators

36(d)(1) Payments Based on a Term of the Transaction

36(d)(1)(i)

The Bureau is proposing to revise comments 36(d)(1)–1.ii and 36(d)(1)–1.iii.D, which interpret § 1026.36(d)(1)(i)–(ii), to improve the consistency of the wording across the regulatory text and commentary, and provide further interpretation of the intended meaning of the regulatory text.

36(d)(1)(iii)

The Bureau is proposing to revise the portions of comment 36(d)(1)–3 that interpret § 1026.36(d)(1)(iii) to improve the consistency of the wording across

[28] Among other things, the 2013 TILA Servicing Final Rule implemented TILA sections 129F and 129G added by section 1464 of the Dodd-Frank Act. The requirements in TILA section 129F concerning prompt crediting of payments apply to consumer credit transactions secured by a consumer's principal dwelling. The requirements in TILA section 129G concerning payoff statements apply to creditors or servicers of a home loan. The 2013 TILA Servicing Final Rule, however, did not substantively revise the existing late fee pyramiding requirement in § 1026.36(c) but instead redesignated the requirement as new paragraph 36(c)(2) to accommodate the regulatory provisions implementing TILA sections 129F and 129G.

the regulatory text and commentary, and provide further interpretation of the intended meaning of the regulatory text.

36(d)(1)(iv)

The Bureau is proposing revisions to the portions of comment 36(d)(1)–3 that interpret § 1026.36(d)(1)(iv). Section 1026.36(d)(1)(iv) permits, under certain circumstances, the payment of compensation under a non-deferred profits-based compensation plan to an individual loan originator even if the compensation is directly or indirectly based on the terms of multiple transactions by multiple individual loan originators. Section 1026.36(d)(1)(iv)(B)(*1*) permits this compensation if it does not exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which the compensation under a non-deferred profits-based compensation plan is paid. Comments 36(d)(1)–3.ii through –3.v further interpret § 1026.36(d)(1)(iv)(B)(*1*). Section 1026.36(d)(1)(iv)(B)(*2*) permits this type of compensation if the individual loan originator is a loan originator for ten or fewer consummated transactions during the 12-month period preceding the compensation determination. Comment 36(d)(1)–3.vi further interprets § 1026.36(d)(1)(iv)(B)(*2*).

The Bureau is proposing to amend comment 36(d)(1)–3 to improve the consistency of the wording across the regulatory text and commentary, provide further interpretation as to the intended meaning of the regulatory text in § 1026.36(d)(1)(iv), and ensure that the examples included in the commentary accurately reflect the interpretations of the regulatory text contained elsewhere in the commentary. These proposed amendments include clarifying in comment 36(d)(1)–3.vi that, for purposes of determining whether an individual loan originator was the loan originator for ten or fewer transactions, only consummated transactions are counted, consistent with § 1026.36(d)(1)(iv)(B)(*2*). Nearly all of the proposed revisions address the commentary sections that interpret the meaning of § 1026.36(d)(1)(iv)(B)(*1*) (*i.e.*, setting forth the 10-percent total compensation limit) and not § 1026.36(d)(1)(iv)(B)(*2*).

The Bureau is proposing more extensive clarifications to two comments interpreting § 1026.36(d)(1). First, the Bureau proposes to revise comment 36(d)(1)–3.v.A, which clarifies the meaning of "total compensation" as used in § 1026.36(d)(1)(iv)(B)(*1*). The proposed revisions clarify that the first component of total compensation—all wages and tips reportable for Medicare tax purposes in box 5 on IRS form W–2 (or IRS form 1099–MISC, as applicable)—includes all such wages and tips that are actually paid during the relevant time period regardless of when they are earned, except for any compensation under a non-deferred profits-based compensation plan that is earned during a different time period. The Bureau is proposing these changes to comment 36(d)(1)–3.v.A in conjunction with proposed revisions, described below, to comment 36(d)(1)–3.v.C. The proposed revisions to the two comments cumulatively are intended to provide a more precise interpretation of the following language in § 1026.36(d)(1)(iv)(B)(*1*): "total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid." In particular, the Bureau believes that it is important to state more expressly in the commentary that compensation under a non-deferred profits-based compensation plan that is paid during a particular time period but is earned during a different time period (*e.g.*, a bonus made with reference to mortgage-related business profits for a calendar year that is paid in January of the following calendar year) is excluded from the total compensation amount for the particular time period in which the payment is made. This concept is discussed in an example in comment 36(d)(1)–3.v.C, but the Bureau is concerned that failing to highlight the concept more generally could lead to the language being misinterpreted to apply only to the facts in the example.

The Bureau is also proposing additional language in comment 36(d)(1)–3.v.A to make clearer that compensation under the non-deferred profits-based compensation plan that is earned during a particular time period can be included in the total compensation amount for that time period at the election of the party paying the compensation. This interpretation of the meaning of "total compensation" was implied in several examples in the commentary to § 1026.36(d)(1)(iv)(B)(*1*) (*e.g.*, comment 36(d)(1)–3.v.F.*1*); in this proposal, it is made more explicit.[29] The Bureau also is proposing to clarify that, if the person elects to include in total compensation the amount of any creditor or loan originator organization contributions to accounts of individual loan originators in designated tax-advantaged plans that are defined contribution plans, the contributions must be actually made during the relevant time period (rather than earned during that time period but made during a different time period). The Bureau believes that these changes would facilitate compliance.

Furthermore, the Bureau is proposing to revise comment 36(d)(1)–3.v.C to clarify the meaning of "time period" in § 1026.36(d)(1)(iv)(B)(*1*). The Bureau is concerned that comment 36(d)(1)–3.v.C inadvertently conflates the two relevant time periods to be used for the 10-percent limit calculation: The time period for compensation under the non-deferred profits-based compensation plan, and the time period for the total compensation. The proposed revisions would clarify that: (1) The relevant time period for compensation paid under the non-deferred profits-based compensation plan is the time period for which a person makes reference to profits in determining the compensation (*i.e.*, when the compensation was earned); and (2) the relevant time period for the total compensation is the same time period, but only certain types of compensation may be included in the total compensation amount for that time period, as explained in comment 36(d)(1)–3.v.A.

Collectively, the proposed revisions to comments 36(d)(1)–3.v.A and –3.v.C are intended to clarify that, while the time period used to determine both elements of the 10-percent limit ratio is the same: (1) The non-deferred profits-based compensation for the time period is whatever such compensation was earned during that time period, regardless of when it was actually paid; and (2) compensation that is actually paid during the time period, regardless of when it was earned, generally will be

[29] The Bureau included these commentary provisions in the 2013 Loan Originator Compensation Final Rule based on its belief that creditors and loan originator organizations paying non-deferred profits-based compensation under § 1026.36(d)(1)(iv)(B)(*1*) would potentially benefit from having the discretion to include the non-deferred profits-based compensation in the total compensation amount, which, if done, would increase the amount of non-deferred profits-based compensation that can be paid under the 10-percent limit (although this would make the calculation of total compensation somewhat more complex). The Bureau similarly provided discretion to creditors and loan originator organizations to include in total compensation the amount of any contributions by the creditor or loan originator organization to the individual loan originator's accounts in designated tax-advantaged plans that are defined contribution plans. The Bureau believes the potential marginal increase in the non-deferred profits-based compensation that can be paid under § 1026.36(d)(1)(iv)(B)(*1*) as a result of including these components of compensation in the total compensation amount does not raise a significant risk of steering incentives. See comment 36(d)(1)–3.v.F, as proposed to be revised, for an example of where including non-deferred profits-based compensation in total compensation affects the amount of non-deferred profits-based compensation that can be paid.

included in the amount of total compensation for that time period, but whether the compensation is included ultimately depends on the type of compensation. The proposal also revises the examples in comment 36(d)(1)–3.v.C to reflect the proposed changes to comment 36(d)(1)–3.v.A and, to allay potential confusion about when the provisions take effect, remove reference to calendar year 2013. See part IV of this Supplementary Information for discussion more generally of the Bureau's proposed changes to the effective date for the provisions of § 1026.36(d)(1). The Bureau believes these changes would facilitate compliance.

36(f) Loan Originator Qualification Requirements

36(f)(3)

The Bureau is proposing to change the dates referenced in § 1026.36(f)(3)(i) and (f)(3)(ii) and its associated commentary from January 10, 2014, to January 1, 2014. These proposed changes coincide with the proposed revision of the effective date for § 1026.36(f). See part IV of the Supplementary Information for a discussion of the effective date for § 1026.36(f).

36(i) Prohibition on Financing Credit Insurance

The Bureau is proposing to amend § 1026.36(i) to clarify the scope of the prohibition on a creditor financing, directly or indirectly, any premiums for credit insurance in connection with a consumer credit transaction secured by a dwelling. Dodd-Frank Act section 1414 added TILA section 129C(d), which generally prohibits a creditor from financing premiums or fees for credit insurance in connection with a closed-end consumer credit transaction secured by a dwelling, or an extension of open-end consumer credit secured by the consumer's principal dwelling. The prohibition applies to credit life, credit disability, credit unemployment, credit property insurance, and other similar products, including debt cancellation and debt suspension contracts (defined collectively as "credit insurance" for purposes of this discussion). The same provision, however, excludes from the prohibition credit insurance premiums or fees that are "calculated and paid in full on a monthly basis."

Section 1026.36(i) as Adopted in the 2013 Loan Originator Compensation Final Rule

In the 2013 Loan Originator Compensation Final Rule, the Bureau implemented this prohibition by adopting the statutory provision without substantive change, in § 1026.36(i). The final rule provided an effective date of June 1, 2013 for § 1026.36(i), and clarified that the provision applies to transactions for which a creditor received an application on or after that date.[30]

In the preamble to the final rule, the Bureau responded to public comments on the regulatory text that the Bureau had included in its proposal. The public comments included requests from consumer groups for clarification on the applicability of the regulatory prohibition to certain factual scenarios where credit insurance premiums are charged periodically, rather than as a lump-sum that is added to the loan amount at consummation. In particular, they requested clarification on the meaning of the exclusion from the prohibition for credit insurance premiums or fees that are "calculated and paid in full on a monthly basis." The Bureau did not receive any public comments from the credit insurance industry. The Bureau received a limited number of comments from creditors concerning the general prohibition, but these comments did not address specifically the applicability of the exclusion from the prohibition for premiums that are calculated and paid in full on a monthly basis.

In their comments, the consumer groups described two practices that they believed should be prohibited by the regulatory provision. First, they described a practice in which some creditors charge credit insurance premiums on a monthly basis but add those premiums to the consumer's outstanding principal. They stated that this practice does not meet the requirement that, to be excluded from the prohibition, premiums must be "paid in full on a monthly basis." They also stated that this practice constitutes "financing" of credit insurance premiums, which is prohibited by the provision. Second, the consumer groups described a practice in which credit insurance premiums are charged to the consumer on a "levelized" basis, meaning that the premiums remain the same each month, even as the consumer pays down the outstanding balance of the loan. They stated that this practice does not meet the condition of the exclusion that premiums must be "calculated . . . on a monthly basis," and therefore violates the statutory prohibition. In the preamble of the final rule, the Bureau stated that it agreed that these practices do not meet the condition of the exclusion and violate the prohibition on creditors financing credit insurance premiums.

*Outreach during implementation period following publication of the final rule.* After publication of the final rule, representatives of credit unions and credit insurers expressed concern to the Bureau about these statements in the preamble of the final rule. Credit union representatives questioned whether adding monthly premiums to a consumer's loan balance should necessarily be considered prohibited "financing" of the credit insurance premiums and indicated that, if it is considered financing, they would not be able to adjust their data processing systems before the June 1, 2013 effective date.

Credit insurance company representatives stated that level and levelized credit insurance premiums are in fact "calculated . . . on a monthly basis." (They use the term "levelized" premiums to refer to a flat monthly payment that is derived from a decreasing monthly premium payment arrangement and use the term "level" premium to refer to premiums for which there is no decreasing monthly premium payment arrangement available, such as for level mortgage life insurance.) The companies asserted that levelized premiums are, in fact, "calculated . . . on a monthly basis," because an actuarially derived rate is multiplied by a fixed monthly principal and interest payment to derive the monthly insurance premium. They also asserted that level premiums are "calculated . . . on a monthly basis" because an actuarially derived rate is multiplied by the consumer's original loan amount to derive the monthly insurance premium. Accordingly, they urged that level and levelized credit insurance premiums should be excluded from the prohibition on creditors financing credit insurance premiums so long as they are also paid in full on a monthly basis. Industry representatives have further stated that even if the Bureau concludes that level or levelized credit insurance premiums are not "calculated" on a monthly basis within the meaning of the exclusion from the prohibition, they are not "financed" by a creditor and thus are not prohibited by the statutory provision.

Delay of § 1026.36(i) Effective Date

In light of these concerns, and the Bureau's belief that, if the effective date were not delayed, creditors could face uncertainty about whether and under what circumstances credit insurance premiums may be charged periodically in connection with covered consumer credit transactions secured by a

[30] 78 FR at 11390.

dwelling, the Bureau issued the 2013 Effective Date Final Rule delaying the June 1, 2013 effective date of § 1026.36(i) to January 10, 2014.[31] In that final rule, the Bureau stated its belief that this uncertainty could result in a substantial compliance burden to industry. However, the Bureau also stated that it would revisit the effective date of the provision in this proposal.

Proposed Amendments to § 1026.36(i)

The Bureau is now, as contemplated in the 2013 Effective Date Final Rule, proposing amendments to § 1026.36(i) to clarify the scope of the prohibition on a creditor financing, directly or indirectly, any premiums for credit insurance in connection with a consumer credit transaction secured by a dwelling. The Bureau believes from communications with consumer advocates, creditors, and trade associations that its statement in the final rule in response to consumer group public comments may have been overbroad and left ambiguity about when a creditor violates the prohibition on financing credit insurance premiums.

As an initial, interpretive matter, the Bureau believes it is important to highlight the structure of § 1026.36(i). First, although the heading of the statutory prohibition emphasizes the prohibition on financing "single-premium" credit insurance, which historically has been accomplished by adding a lump-sum premium to the consumer's loan balance at consummation, the provision more broadly prohibits a creditor from "financing" credit insurance premiums "directly or indirectly" in connection with a covered consumer credit transaction secured by a dwelling. That is, it generally prohibits a creditor from financing credit insurance premiums at any time, not just at consummation. The Bureau is proposing to clarify the scope of the prohibition by striking the term "single-premium" from the § 1026.36(i) heading, and by adding redesignated § 1026.36(i)(2)(ii), as discussed below. Second, "credit insurance for which premiums or fees are calculated and paid in full on a monthly basis" is excluded from the general prohibition. However, the mere fact that, under a particular premium calculation and payment arrangement, credit insurance premiums do not meet the conditions of the exclusion that they be "calculated and paid in full on a monthly basis" does not mean that a creditor is necessarily financing them in violation of the prohibition. For example, it is possible that credit insurance premiums could be calculated and paid in full by a consumer directly to a credit insurer on a quarterly basis with no indicia that the creditor is financing the premiums. The Bureau is proposing to clarify the scope of this exclusion by adding § 1026.36(i)(2)(iii), as discussed below.

*"Financing" credit insurance.* The Bureau believes that practices that constitute "financing" of credit insurance premiums or fees by a creditor are generally equivalent to an extension of credit to a consumer with respect to payment of the credit insurance premiums or fees. Under § 1026.2(a)(14), credit means "the right to defer payment of debt or to incur debt and defer its payment." Accordingly, as discussed above, financing of credit insurance premiums is not limited to addition of a single, lump-sum premium to the loan amount by the creditor at consummation. The Bureau believes that a creditor also finances credit insurance premiums within the meaning of the prohibition when it provides a consumer the right to defer payment of premiums or fees at other times, including when it adds a monthly credit insurance premium to the consumer's principal balance.

Accordingly, the Bureau proposes to add redesignated § 1026.36(i)(2)(ii), which clarifies that a creditor finances credit insurance premiums or fees when it provides a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer. However, the Bureau invites public comment on whether this clarification is appropriate. For example, the Bureau does not believe that a brief delay in receipt of the consumer's premium or fee, such as might happen preceding a death or period of employment that the credit insurance is intended to cover, should cause immediate cancellation of the credit insurance. The Bureau also does not believe that refraining from cancelling or causing cancellation of credit insurance in such circumstances means that a creditor has provided the consumer a right to defer payment of the premium or fee, but the Bureau invites public comment on consequences of defining the term "finances" as proposed. In addition, some creditors have suggested that they may, as a purely mechanical matter, add a monthly credit insurance premium to the principal balance shown on a monthly statement but then subtract the premium from the principal balance immediately or as soon as the premium or fee is paid. Furthermore, under a provision of Regulation X (12 CFR 1024.17(f)(4), a creditor servicing a loan and escrowing credit insurance premiums may permit a consumer to make additional monthly deposits over one or more months to eliminate an escrow deficiency, and if the deficiency is greater than or equal to one month's escrow payment, cannot require elimination of the deficiency faster than through two or more equal monthly payments. Accordingly, the Bureau solicits comment on whether a creditor should instead be considered to have financed credit insurance premiums or fees only if it charges a "finance charge," as defined in § 1026.4(a), on or in connection with the credit insurance premium or fee.

*Calculated and paid in full on a monthly basis.* The Bureau proposes to clarify in § 1026.36(i)(2)(iii) that credit insurance premiums or fees are calculated on a monthly basis if they are determined mathematically by multiplying a rate by the monthly outstanding balance (*e.g.*, the loan balance following the consumer's most recent monthly payment). As discussed above, § 1026.36(i) excludes from the prohibition on a creditor financing credit insurance premiums or fees any "credit insurance for which premiums or fees are calculated and paid in full on a monthly basis." Although it has considered the concerns raised by industry following the issuance of the final rule, the Bureau continues to believe that the more straightforward interpretation of the statutory language regarding a premium or fee that is "calculated . . . on a monthly basis" is a premium or fee that declines as the consumer pays down the outstanding principal balance. Credit insurance with this feature is often referred to as a "monthly outstanding balance," or M.O.B. credit insurance product. Level or levelized premiums or fees that are calculated by multiplying a rate by the initial loan amount or by a fixed monthly principal and interest payment are not calculated "on a monthly basis" in any meaningful way because the factors in the calculation do not change monthly (in contrast to the M.O.B. credit insurance product). Accordingly, under the proposed clarification, credit insurance cannot be categorically excluded from the scope of the prohibition on the ground that it is "calculated and fully paid on a monthly basis" if its premium or fee does not decline as the consumer pays down the outstanding principal balance. The Bureau notes that even if a particular premium calculation and payment arrangement provides for credit insurance premiums to be calculated on a monthly basis within the meaning of the proposed clarification, it must also

[31] 78 FR 32547 (May 31, 2013).

provide for the premiums to be paid in full on a monthly basis (rather than added to principal, for example) to be categorically excluded from § 1026.36(i).

*Financed by the creditor.* The Bureau notes that the scope of the prohibition only extends to credit insurance premiums financed by the creditor. Thus, while a monthly credit insurance premium or fee that does not decline as the consumer pays down the outstanding principal balance may not be categorically excluded from the prohibition's scope as "calculated and fully paid on a monthly basis," a creditor only violates the prohibition if *the creditor* finances the credit insurance premium or fee.

Accordingly, the Bureau's statement implying in the final rule that levelized credit insurance premiums amount to a violation of the prohibition appears to have been overbroad. For example, credit insurance companies have described creditors as acting as passive conduits collecting and transmitting monthly premiums from the consumer to a credit insurer, rather than advancing funds to an insurer and collecting them subsequently from the consumer. Under such a scenario, the Bureau believes that a creditor would not likely be providing a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer within the meaning of the proposal, as discussed above. Similarly, under an alternative interpretation that a creditor "finances" credit insurance only if it charges a "finance charge" on or in connection with the credit insurance premium or fee, as discussed above, a creditor that acts merely as a passive conduit for the payment of credit insurance premiums and fees to a credit insurer would not likely be charging such a finance charge. On the other hand, a creditor that does not act merely as a passive conduit, but instead achieves a levelized premium by deferring payments, or portions of payments, due to a credit insurer for a monthly outstanding balance credit insurance product (or by imposing a finance charge incident to such deferment, under the alternative interpretation discussed above) would likely be considered to be financing the credit insurance premiums or fees.

The Bureau invites public comment on the extent to which creditors act other than as passive conduits in a manner that would constitute financing of credit insurance premiums or fees. The Bureau specifically invites public comment on what actions by a creditor should or should not be considered financing of debt cancellation or suspension contract fees, when the creditor is a party to the debt cancellation or suspension contract and payments for principal, interest, and the debt cancellation or suspension contract are retained by the creditor.

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

### *A. Overview*

In developing the proposed rule, the Bureau has considered the potential benefits, costs, and impacts.[32] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. The Bureau has consulted, or offered to consult with, the prudential regulators, SEC, HUD, FHFA, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

As noted above, the proposed amendments focus primarily on clarifying or revising provisions on (1) Loss mitigation procedures under Regulation X's servicing provisions; (2) amounts counted as loan originator compensation to retailers of manufactured homes and their employees for purposes of applying points and fees thresholds under HOEPA and the qualified mortgage rules in Regulation Z; (3) determination of which creditors operate predominantly in "rural" or "underserved" areas for various purposes under the mortgage regulations; (4) application of the loan originator compensation rules to bank tellers and similar staff; and (5) the prohibition on creditor-financed credit insurance. The Bureau also is proposing to adjust the effective dates for certain provisions adopted by the 2013 Loan Originator Compensation Final Rule and proposing technical and wording changes for clarification purposes to Regulations B, X, and Z.

### *B. Potential Benefits and Costs to Consumers and Covered Persons*

The Bureau believes that, compared to the baseline established by the final rules issued in January 2013,[33] the primary benefit of most of the provisions of the proposed rule to both consumers and covered persons is an increase in clarity and precision of the regulations and an accompanying reduction in compliance costs.

As described above, the proposed modifications to the Regulation X loss mitigation provisions would help servicers by providing clarity as to what is required by certain provisions of the rule, including a servicer's responsibility when it determines that a loss mitigation application that appeared facially complete in fact is lacking information necessary to complete review, how timelines are calculated when a foreclosure sale has not been scheduled or is rescheduled, and the actions prohibited during the pre-foreclosure review period.

In addition, the Bureau proposed modifications to the Regulation X loss mitigation provisions, which include allowing servicers more flexibility regarding the disclosure of a date by which a borrower should complete an incomplete loss mitigation application; allowing servicers to accommodate borrowers in need of immediate, short-term relief by offering short-term payment forbearance based on the evaluation of an incomplete loss mitigation application; the disclosure of certain information in the notices informing borrowers of the decisions of the evaluation of a loss mitigation application; and allowing servicers to foreclose before the 120th day of delinquency when the foreclosure is based on a borrower's violation of a due-on-sale clause or a subordinate lien is foreclosing.

The Bureau believes that servicers and consumers will benefit from these amendments because they will provide increased clarity, in part through reduced implementation costs. Further, the Bureau believes the proposed modifications to the loss mitigation rules would only minimally increase costs to servicers, and in many instances would reduce servicer burden. These modifications would improve the loss mitigation process for servicers by allowing them to provide more practical deadlines for borrowers to complete loss mitigation applications, and by allowing servicers to offer a short-term payment forbearance program based on an incomplete application. Further, the proposal would provide servicers a reasonable mechanism to seek additional information in situations in which a facially complete loss mitigation application is later

[32] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[33] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline.

determined to lack information that is critical to completion of the servicer's review, while providing appropriate protections for consumers to minimize dual tracking and provide strong incentives for servicers to conduct rigorous up-front reviews.

The Bureau believes the proposed modifications to the servicing final rule should generally benefit borrowers by encouraging servicers to disclose to borrowers more useful information regarding the deadline to submit loss mitigation applications and to offer short-term forbearance without requiring borrowers to submit complete loss mitigation applications. The Bureau believes that such modifications could result in some cost to consumers if a servicer's mistake in the § 1024.41(b)(1)(i)(B) notice were to prolong or delay the loss mitigation process. However, the Bureau has sought to minimize this potential cost by providing incentives for servicers to conduct rigorous upfront review and preserving certain of the protections under the rule for borrowers in the event of servicer mistakes. The proposed amendments would impose some costs on consumers by making it easier for servicers to foreclose during the first 120 days of delinquency for certain reasons other than nonpayment of a debt.

The Bureau does not currently have data regarding the incidence of the situations specifically covered by these provisions, e.g. how often servicers make mistakes regarding whether an application is complete or the information necessary to complete an incomplete application, and therefore cannot quantify these benefits. However, the nature of the benefits and costs of specific timelines, procedures and disclosures was considered in detail in the discussion of benefits, costs, and impacts in part VII of the 2013 Mortgage Servicing Final Rules.

Two of the proposed sets of modifications to the Regulation Z provisions involve loan originator compensation. The Bureau is proposing to clarify for retailers of manufactured homes and their employees what compensation can be attributed to a transaction at the time the interest rate is set and must be included in the points and fees thresholds for qualified mortgages and high-cost mortgages under HOEPA. As discussed above, the proposal would exclude from points and fees of loan originator compensation paid by a retailer of manufactured homes to its employees and would clarify that the sales price of a manufactured home does not include loan originator compensation that must be included in points and fees. Both of these proposed changes would reduce the burden for creditors in manufactured home transactions by eliminating the need for them to attempt to determine what, if any, retailer employee compensation and what, if any, part of the sales price would count as loan originator compensation that must be included in points and fees. As a result, this amendment is likely to lower slightly the amount of money counted toward the points and fees thresholds on the covered loans. As a result, keeping all other provisions of a given loan fixed, this will result in a greater number of loans to be eligible to be qualified mortgages. For such loans, the costs of origination may be slightly lower as a result of the slightly decreased liability for the lender and any assignees and for possibly decreased compliance costs. Consumers may benefit from slightly increased access to credit and lower costs on the affected loans, however these consumers will also not have the added consumer protections that accompany loans made under the general ability-to-repay provisions. The lower amount of points and fees may also lead fewer loans to be above the points and fees triggers for high-cost mortgages under HOEPA: This should make these loans both more available and offered at a lower cost to consumers, though consumers will not have the added consumer protections that apply to high-cost mortgages. A more detailed discussion of these effects is contained in the discussion of benefits, costs, and impacts in part VII of the 2013 ATR Final Rule and the 2013 HOEPA Final Rule.

The Bureau also is proposing to revise when employees (or agents or contractors) of a creditor or loan originator in certain administrative or clerical roles (*e.g.*, tellers or greeters) may become "loan originators" under the 2013 Loan Originator Compensation Rule, and therefore subject to that Rule's requirements applicable to loan originators, such as qualification requirements and restrictions on certain compensation practices. As noted above, classifying such individuals as loan originators would subject them to the requirements applicable to loan originators with, in the Bureau's view, little appreciable benefit for consumers. Removing them from this classification should lower compliance costs including those related to SAFE Act training, certification requirements, and compensation restrictions.

The proposed provisions regarding credit insurance would clarify what constitutes financing of such premiums by a creditor, and is therefore generally prohibited under the Dodd-Frank Act. The proposal would also clarify when credit insurance premiums are considered to be calculated and paid on a monthly basis for purposes of a statutory exclusion from the prohibition for certain credit insurance premium calculation and payment arrangements.

As noted earlier, the Bureau believes that language in the preamble to the 2013 Loan Originator Compensation Final Rule led to some confusion among creditors and credit insurance providers regarding whether credit insurance products were prohibited under the rule based on how their premiums are calculated. The Bureau is now proposing to clarify that the prohibition only extends to creditors financing credit insurance premiums, and providing additional guidance on what constitutes creditor financing and what is excluded from the prohibition. The Bureau believes that increased clarity regarding the application of the rule to certain products—particularly to insurance with "level" or "levelized" premiums—should benefit both creditors and providers of credit insurance products.

The proposal would also make two adjustments to provisions that provide certain exceptions for creditors operating predominantly in "rural" or "underserved" areas during the next two years, while the Bureau reexamines the definition of "rural" or "underserved" as it recently announced in the May 2013 ATR Final Rule. Specifically, the proposal would extend an exception to the general prohibition on balloon features for high-cost mortgages under the 2013 HOEPA Final Rule that is available to certain loans made by small creditors who operate predominantly in rural or underserved areas temporarily to all small creditors, regardless of their geographic operations. The proposal would also amend an exemption from the requirement to maintain escrows for higher-priced mortgage loans under the 2013 Escrow Final Rule that is available to small creditors that extended more than 50 percent of their total covered transactions secured by a first lien in "rural" or "underserved" counties during the preceding calendar year to allow small creditors to qualify for the exemption if they made more than 50 percent of their covered transactions in "rural" or "underserved" counties during any of the previous three calendar years.

As noted above, the Bureau believes expanding the balloon-payment exception for high-cost mortgages to allow certain small creditors operating

in areas that do not qualify as "rural" or "underserved" to continue to originate certain high-cost mortgages with balloon payments during the next two years will benefit creditors who might be unable to convert to offering adjustable rate mortgages by the time the final rules take effect in January 2014. The proposal would also promote consistency between HOEPA requirements and the May 2013 ATR Final Rule, thereby facilitating compliance for creditors. The Bureau believes that the proposal would also benefit consumers by increasing access to credit relative to the 2013 HOEPA Final Rule. Although balloon loans can in some cases increase risks for consumers, the Bureau believes that those risks are appropriately mitigated in these circumstances because the balloon loans must meet the requirements for qualified mortgages in order to qualify for the exception. This includes certain restrictions on the amount of up-front points and fees and various loan features, as well as a requirement that the loans be held on portfolio by the small creditor. These requirements reduce the risk of potentially abusive lending practices and provide strong incentives for the creditor to underwrite the loan appropriately.

The amendment to the qualifications for the exemption from the escrow requirements should minimize the disruptions from any changes in the categorization of certain counties while the Bureau is reevaluating the underlying definitions. This in turn should lower compliance costs for certain creditors during the interim period. Consumers may benefit from greater access to credit and lower costs, but in return would not receive the benefits of an escrow account. A more detailed discussion of these effects is contained in the discussion of benefits, costs, and impacts in part VII of the 2013 Escrows Final Rule.

*C. Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, As Described in Section 1026; the Impact of the Provisions on Consumers in Rural Areas; Impact on Access to Consumer Financial Products and Services*

The proposed rule is generally not expected to have a differential impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026. The exceptions are those provisions related to the definition of rural and underserved which directly impact entities with under $2 billion in total assets. The proposed rule may have some differential impacts on consumers in rural areas. To the extent that manufactured housing loans, higher-priced mortgage loans, high-cost loans or balloon loans are more prevalent in these areas, the relevant provisions may have slightly greater impacts. As discussed above, costs for creditors in these areas should be reduced; consumers should benefit from increased access to credit and lower costs, though they will not have access to the heightened protections afforded by various provisions. Given the nature and limited scope of the changes in the proposed rule, the Bureau does not believe that the proposed rule would reduce consumers' access to consumer products and services.

## VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[34] These analyses must "describe the impact of the proposed rule on small entities."[35] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities,[36] or if the agency considers a series of closely related rules as one rule for purposes of complying with the IRFA or FRFA requirements.[37] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[38]

This rulemaking is part of a series of rules that have revised and expanded the regulatory requirements for entities that originate or service mortgage loans. As noted above, in January, 2013, the Bureau issued the 2013 ATR Final Rule, 2013 Escrows Final Rule, 2013 HOEPA Final Rule, 2013 Mortgage Servicing Final Rules, and the 2013 Loan Originator Compensation Final Rule. Since January 2013, the Bureau also has issued the May 2013 ATR Final Rule, Amendments to the 2013 Escrows Final Rule, and the 2013 Effective Date Final Rule, along with Proposed Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z).[39] The Supplementary Information to each of these rules set forth the Bureau's analyses and determinations under the RFA with respect to those rules. Because these rules qualify as "a series of closely related rules," for purposes of the RFA, the Bureau relies on those analyses and determines that it has met or exceeded the IRFA requirement.

In the alternative, the Bureau also concludes that the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. As noted, the proposal generally clarifies the existing rule and to the extent any changes are substantive, these changes would not have a material impact on small entities. The provisions related to servicing do not apply to many small entities under the small servicer exemption (and to the extent that they do, small entities will benefit from the same increased flexibility under the proposed provisions as other servicers), while the provisions related to loan officer compensation and the "rural" and "underserved" definitions lower the regulatory burden and possible compliance costs for affected entities. Therefore, the undersigned certifies that the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities.

## VIII. Paperwork Reduction Act

This proposed rule would amend 12 CFR Part 1002 (Regulation B) which implements the Equal Credit Opportunity Act, 12 CFR Part 1026 (Regulation Z), which implements the Truth in Lending Act (TILA), and 12 CFR Part 1024 (Regulation X), which implements the Real Estate Settlement Procedures Act (RESPA). Regulations B, Z and X currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation B is 3170–0013, for Regulation Z is 3170–0015 and for Regulation X is 3170–0016. However, the Bureau has determined that this proposed rule would not materially alter these collections of information or

[34] 5 U.S.C. 601 *et. seq.*

[35] 5 U.S.C. 603(a). For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[36] 5 U.S.C. 605(b).

[37] 5 U.S.C. 605(c).

[38] 5 U.S.C. 609.

[39] 78 FR 25638 (May 2, 2013).

impose any new recordkeeping, reporting, or disclosure requirements on the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Comments on this determination may be submitted to the Bureau as instructed in the **ADDRESSES** section of this notice and to the attention of the Paperwork Reduction Act Officer.

**List of Subjects**

*12 CFR Part 1002*

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Credit unions, Discrimination, Fair lending, Marital status discrimination, National banks, National origin discrimination, Penalties, Race discrimination, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination.

*12 CFR Part 1024*

Condominiums, Consumer protection, Housing, Mortgage servicing, Mortgages, Reporting and recordkeeping.

*12 CFR Part 1026*

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

**Authority and Issuance**

For the reasons set forth in the preamble, the Bureau proposes to amend 12 CFR parts 1002, 1024, and 1026 as set forth below:

## PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 1002 continues to read as follows:

**Authority:** 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b.

■ 2. Appendix A to Part 1002 is amended by revising paragraph 2.d to read as follows:

**Appendix A to Part 1002—Federal Agencies To Be Listed in Adverse Action Notices**

* * * * *

2. * * *

d. *Federal Credit Unions:* National Credit Union Administration, Office of Consumer Protection, 1775 Duke Street, Alexandria, VA 22314.

* * * * *

■ 3. In Supplement I to Part 1002, under *Section 1002.14,* under *Paragraph 14(b)(3) Valuation,* as amended January 31, 2013, at 78 FR 6407, effective January 18, 2014, paragraphs 1.i and 3.v are revised to read as follows:

**Supplement I to Part 1002—Official Interpretations**

* * * * *

*Section 1002.14 Rules on Providing Appraisals and Valuations*

* * * * *

*14(b)(3) Valuation.*

1. * * *

i. A report prepared by an appraiser (whether or not licensed or certified) including the appraiser's estimate of the property's value.

* * * * *

3. * * *

v. Reports reflecting property inspections that do not provide an estimate of the value of the property and are not used to develop an estimate of the value of the property.

* * * * *

## PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

■ 4. The authority citation for part 1024 continues to read as follows:

**Authority:** 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5532, 5581.

**Subpart A—General**

■ 5. Section 1024.30, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by revising paragraph (a) to read as follows:

**§ 1024.30 Scope.**

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, this subpart applies to any mortgage loan, as that term is defined in § 1024.31.

* * * * *

■ 6. Section 1024.35, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by revising paragraph (g)(1)(iii)(B) to read as follows:

**§ 1024.35 Error resolution procedures.**

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(B) The mortgage loan is discharged.

* * * * *

■ 7. Section 1024.36, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by revising paragraph (f)(1)(v)(B) to read as follows:

**§ 1024.36 Requests for information.**

* * * * *

(f) * * *

(1) * * *

(v) * * *

(B) The mortgage loan is discharged.

* * * * *

■ 8. Section 1024.39, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by revising paragraphs (b)(1) and (3) to read as follows:

**§ 1024.39 Early intervention requirements for certain borrowers.**

* * * * *

(b) *Written notice.* (1) *Notice required.* Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section not later than the 45th day of the borrower's delinquency. A servicer is not required to provide the written notice more than once during any 180-day period.

* * * * *

(3) *Model clauses.* Model clauses MS–4(A), MS–4(B), and MS–4(C), in appendix MS–4 to this part may be used to comply with the requirements of this paragraph (b).

* * * * *

■ 9. Section 1024.41, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by revising paragraphs (b)(2)(ii), (c)(1)(ii), (c)(2)(i), (d), (f)(1), (h)(4), (j) and adding paragraphs (b)(3), (c)(2)(iii), and (c)(2)(iv) to read as follows:

**§ 1024.41 Loss mitigation procedures.**

* * * * *

(b) * * *

(2) * * *

(ii) *Time period disclosure.* The notice required pursuant to paragraph (b)(2)(i)(B) of this section must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.

(3) *Timelines.* For purposes of this section, timelines based on the proximity of a foreclosure sale to the receipt of a complete loss mitigation application will be determined as of the date a complete loss mitigation application is received.

(c) * * *

(1) * * *

(ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the

borrower has to file such an appeal and any requirements for making an appeal as provided for in paragraph (h) of this section.

(2) * * *

(i) *In general.* Except as set forth in paragraphs (c)(2)(ii) and (iii) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

* * * * *

(iii) *Payment forbearance.* Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application. A servicer offering such a program to a borrower who has submitted an incomplete loss mitigation application must include in the notice of incomplete application required pursuant to paragraph (b)(2)(i)(B) of this section a statement that:

(A) The servicer has received an incomplete loss mitigation application, and on the basis of that application the servicer is offering a payment forbearance program;

(B) Absent further action by the borrower, the servicer will not review the incomplete application for other loss mitigation options; and

(C) If the borrower would like to be considered for other loss mitigation options, the borrower must notify the servicer and submit the missing documents and information required to complete the loss mitigation application.

(iv) *Servicer creates reasonable expectation that a loss mitigation application is complete.* If a servicer creates a reasonable expectation that a loss mitigation application is complete but the servicer later discovers that the application is incomplete, the servicer shall treat the application as complete as of the date the borrower had reason to believe the application was complete for purposes of paragraphs (f)(2) and (g) of this section until the borrower has been given a reasonable opportunity to complete the loss mitigation application.

(d) *Denial of loan modification options.* If a borrower's complete loss mitigation application is denied for any trial or permanent loan modification option available to the borrower pursuant to paragraph (c) of this section, a servicer shall state in the notice sent to the borrower pursuant to paragraph (c)(1)(ii) of this section the specific reason or reasons for the servicer's determination for each such trial or permanent loan modification option, and a notification that the borrower was not evaluated on other criteria (if applicable).

* * * * *

(f) * * *

(1) *Pre-foreclosure review period.* A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) A borrower's mortgage loan obligation is more than 120 days delinquent;

(ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or

(iii) The servicer is joining the foreclosure action of a subordinate lienholder.

* * * * *

(h) * * *

(4) *Appeal determination.* Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal, and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option, as provided for in this paragraph. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.

* * * * *

(j) *Small servicer requirements.* A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

■ 10. Appendix MS–3 to Part 1024, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by:

■ a. Revising the entry for MS–3(D) in the table of contents at the beginning of the appendix, and

■ b. Revising the heading of MS–3(D).

The amendments read as follows:

**Appendix MS–3 to Part 1024**

* * * * *

*MS–3(D)—Model Form for Renewal or Replacement of Force-Placed Insurance Notice Containing Information Required By § 1024.37(e)(2)*

* * * * *

■ 11. In Supplement I to Part 1024, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014,:

■ a. Under *Section* 1024.17 the heading for 17(k)(5)(ii) is revised.

■ b. Under *Section 1024.33*—Mortgage Servicing Transfers:

■ i. Under *Paragraph 33(a) Servicing Disclosure Statement*, paragraph 1 is revised.

■ ii. Under *Paragraph 33(c)(1) Payments not considered late*, paragraph 2 is revised.

■ c. Under *Section 1024.35—Error Resolution Procedures, Paragraph 35(c)*, paragraph 2 is revised.

■ d. Under *Section 1024.36—Request for Information, Paragraph 36(b)*, paragraph 2 is revised.

■ e. The heading for *Section 1024.41* is revised.

■ f. Under *Section 1024.41, Loss Mitigation Procedures;*

■ i. *Paragraphs 41(b)(2), 41(b)(3), 41(c)(2)(iii)*, and *41(c)(2)(iv)* are added.

■ ii. The heading for *paragraphs 41(c) is* revised.

■ iii. Under newly designated 41(c), *paragraph (c)(2)(iii)* is added.

■ iv. The heading *Paragraph 41(d)(1)* is removed.

■ v. Under *paragraph 41(d)*, paragraph 3 is redesignated as *Paragraph(c)(1)*, paragraph 4, and paragraph 4 is redesignated as paragraph 3.

■ vii. Under paragraph 41(d), paragraph 4 is added.

■ viii. Under paragraph 41(f), new paragraph 1 is added.

**Supplement I to Part 1024—Official Bureau Interpretations**

* * * * *

**Subpart B—Mortgage Settlement and Escrow Accounts**

* * * * *

*Section 1024.17—Escrow Accounts*

*17(k)(5)(ii) Inability to disburse funds.*

* * * * *

**Subpart C—Mortgage Servicing**

* * * * *

*Section 1024.33—Mortgage Servicing Transfers*

* * * * *

*33(a) Servicing disclosure statement.*

1. *Terminology.* Although the servicing disclosure statement must be clear and conspicuous pursuant to § 1024.32(a), § 1024.33(a) does not set forth any specific

rules for the format of the statement, and the specific language of the servicing disclosure statement in appendix MS–1 is not required to be used. The model format may be supplemented with additional information that clarifies or enhances the model language.

* * * * *

*33(c) Borrower payments during transfer of servicing.*

*33(c)(1) Payments not considered late.*

1. * * *

2. *Compliance with § 1024.39.* A transferee servicer's compliance with § 1024.39 during the 60-day period beginning on the effective date of a servicing transfer does not constitute treating a payment as late for purposes of § 1024.33(c)(1).

*Section 1024.35 Error Resolution Procedures*

* * * * *

*35(c) Contact information for borrowers to assert errors*

* * * * *

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to assert an error may be included with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes an address that a borrower must use to assert an error, a servicer must provide that address to the borrower in any communication in which the servicer provides the borrower with an address for assistance from the servicer.

* * * * *

*Section 1024.36 Requests for Information*

* * * * *

*36(b) Contact information for borrowers to request information.*

1. * * *

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to request information may be included with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes an address that a borrower must use to request information, a servicer must provide that address to the borrower in any communication in which the servicer provides the borrower with an address for assistance from the servicer.

* * * * *

*Section 1024.41—Loss Mitigation Procedures.*

*41(b) Receipt of loss mitigation application*

* * * * *

*41(b)(2) Review of loss mitigation application submission*

*41(b)(2)(i) Requirements*

*Paragraph 41 (b)(2)(i)(B)*

1. *Notification of complete application.* Even if a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information is required, the servicer must request the additional information from a borrower pursuant to the § 1024.41(b)(1) obligation to exercise reasonable diligence in obtaining such documents and information.

2. *Effect on timelines.* Except as provided in § 1024.41(c)(2)(iv), the provisions and timelines triggered by a complete loss mitigation application in § 1024.41 will not be triggered by an incomplete application, regardless of whether a servicer has sent a § 1024.41(b)(2)(i)(B) notification incorrectly informing the borrower that the loss mitigation application is complete or otherwise given the borrower reason to believe the application is complete.

*41(b)(2)(ii) Time period disclosure*

1. *Reasonable date factors.* Section 1024.41(b)(2)(ii) requires that a notice informing a borrower that a loss mitigation application is incomplete must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. In determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under § 1024.41, except when doing so would be impracticable. Thus, in setting a date, the factors listed below should be considered (if the date of a foreclosure sale is not known, a servicer may use a reasonable estimate of when a foreclosure sale may be scheduled):

i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower;

ii. The date that is the 120th day of the borrower's delinquency;

iii. The date that is 90 days before a foreclosure sale;

iv. The date that is 38 days before a foreclosure sale.

*41(b)(3) Timelines*

1. *Foreclosure sale not scheduled.* If no foreclosure sale has been scheduled as of the date that a complete loss mitigation application is received, the application shall be treated as if it were received at least 90 days before a scheduled foreclosure sale.

2. *Foreclosure sale re-scheduled.* These timelines established as of the receipt of a complete loss mitigation application shall remain in effect, even if a foreclosure sale is later re-scheduled to occur earlier or later.

41(c) Evaluation of loss mitigation applications

* * * * *

*41(c)(2) Incomplete loss mitigation application evaluation*

*41(c)(2)(iii) Payment forbearance*

1. *Short-term payment forbearance program.* The exemption in § 1024.41(c)(2)(iii) applies to a short-term payment forbearance program. A payment forbearance program is a loss mitigation option for which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program allows the forbearance of payments due over periods of no more than two months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments. The examples below illustrate how the length of a payment forbearance program is calculated for purposes of § 1024.41(c)(2)(iii).

i. A servicer allows a borrower to forgo payment for January, February and March, and the borrower must make these payments in addition to the April payment at the time the April payment is due. This is a three-month forbearance program and thus would not be considered short-term.

ii. A servicer allows a borrower to forgo payment for January and February, and the borrower must make the January and February payments in addition to the March payment, at the time the March payment is due. This is a two-month forbearance program, and thus would be considered short-term.

iii. A servicer allows a borrower to forgo payment for January and February. These payments are spread over the next six months, and the borrower will make larger payments for March through August. This is a two-month forbearance program, and thus would be considered short-term.

iv. A servicer allows a borrower to forgo payment for January and February. These payments are added to the last monthly payment at the end of the loan obligation. This is a two-month forbearance program, and thus would be considered short-term.

2. *Payment forbearance and incomplete applications.* Section 1024.41(c)(2)(iii) allows a servicer to offer a borrower a short-term payment forbearance program based on an evaluation of an incomplete loss mitigation application. Such an incomplete loss mitigation application is still subject to the other obligations in § 1024.41, including the obligation in § 1024.41(b)(2) to review the application to determine if it is complete, the obligation in § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application, and the obligation to provide the borrower with the § 1024.41(b)(2)(ii) notice that the servicer acknowledges the receipt of the application and has determined the application is incomplete (and any other information required to be in such a notice).

3. *Payment forbearance and complete applications.* Even if a servicer offers a borrower a payment forbearance program after an evaluation of an incomplete loss mitigation application, the servicer must still comply with all other requirements in § 1024.41 on receipt of a borrower's submission of a complete loss mitigation application.

*41(c)(2)(iv) Servicer creates reasonable expectation that a loss mitigation application is complete.*

1. *Reasonable expectation.* A servicer creates a reasonable expectation that a loss mitigation application is complete when:

i. The servicer notifies the borrower in the § 1024.41(b)(2)(i)(B) notice that the servicer has determined the application is complete. The borrower would have a reasonable expectation upon receipt of the notice that the application was complete as of the date the application was submitted.

ii. The servicer notifies the borrower in the § 1024.41(b)(2)(i)(B) notice that the servicer

has determined the application is incomplete and identifies information and documentation necessary to complete the application, and the borrower provides all the documents and information that were listed as missing in that notice within a reasonable time. The borrower would have a reasonable expectation that the application was complete as of the date the borrower submitted all the documents and information that were listed as missing.

2. *Reasonable opportunity.* Section 1024.41(c)(2)(iv) requires a servicer to treat as complete an application that the servicer has created a reasonable expectation is complete until a borrower has been given a reasonable opportunity to complete the loss mitigation application. A reasonable opportunity requires the servicer to notify the borrower of what information and documentation is missing, and afford the borrower sufficient time to gather the information and/or documentation necessary to complete the application and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.

*41(d) Denial of loan modification options*

* * * * *

4. *Reasons listed.* A servicer is required to disclose the actual reason or reasons for the denial. If a servicer's systems establish a hierarchy of eligibility criteria and reach the first criterion that causes a denial but do not evaluate the borrower based on additional criteria, a servicer complies with the rule by providing only the reason or reasons with respect to which the borrower was actually evaluated as well as notification that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a borrower would have been denied on the basis of additional criteria if such criteria were not actually considered.

*41(f) Prohibition on foreclosure referral*

1. *Prohibited activities.* Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances. Whether a document is considered the first notice or filing is determined under applicable State law. Specifically, a document is considered the first notice or filing if it would be used by the servicer as evidence of compliance with foreclosure practices required pursuant to State law, but is not considered the first notice or filing if it is used solely for other purposes. Thus, a servicer is not prohibited from attempting to collect payments, sending periodic statements, sending breach letters, or engaging in any other activity during the pre-foreclosure review period, so long as such documents or activity would not be used as evidence of complying with requirements applicable pursuant to State law in connection with a foreclosure process, and are not banned by other applicable law (e.g., the Fair Debt Collection Practices Act or bankruptcy law).

* * * * *

## PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 12. The authority citation for part 1026 continues to read as follows:

**Authority:** 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

* * * * *

### Subpart C—Closed-End Credit

■ 13. Section 1026.23 is amended by revising paragraph (a)(3)(ii) to read as follows:

**§ 1026.23 Right of rescission.**

(a) * * *

(3) * * *

(ii) For purposes of this paragraph (a)(3), the term "material disclosures" means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§ 1026.32(c) and (d) and 1026.43(g).

* * * * *

### Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 14. Section 1026.31, as amended January 31, 2013, at 78 FR 6856, effective January 10, 2014, is amended by revising paragraphs (h)(1)(iii)(A) and (h)(2)(iii)(A) to read as follows:

**§ 1026.31 General rules.**

* * * * *

(h) * * *

(1) * * *

(iii) * * *

(A) Make the loan or credit plan satisfy the requirements of 15 U.S.C. 1631–1651; or

* * * * *

(2) * * *

(iii) * * *

(A) Make the loan or credit plan satisfy the requirements of 15 U.S.C. 1631–1651; or

* * * * *

■ 15. Section 1026.32 is amended by:

■ a. Revising paragraph (a)(2)(iii), as amended January 31, 2013, at 78 FR 6856, effective January 10, 2014;

■ b. Revising paragraph (b)(1)(ii), as amended June 2, 2013, at 78 FR 35430, effective January 10, 2014;

■ c. Revising paragraph (b)(1)(vi), as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014;

■ d. Revising paragraph (b)(2)(ii), as amended June 12, 2013, at 78 FR 35430, effective January 10, 2014; and

■ e. Revising paragraphs (b)(2)(vi), (b)(6)(ii), and (d)(1)(ii)(C), as amended January 31, 2013, at 78 FR 6856, effective January 10, 2014.

The revisions read as follows:

**§ 1026.32 Requirements for high-cost mortgages.**

(a) * * *

(2) * * *

(iii) A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction; or

(b) * * *

(1) * * *

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set unless:

(A) That compensation is paid by a consumer to a mortgage broker, as defined in § 1026.36(a)(2), and already has been included in points and fees under paragraph (b)(1)(i) of this section;

(B) That compensation is paid by a mortgage broker, as defined in § 1026.36(a)(2), to a loan originator that is an employee of the mortgage broker;

(C) That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or

(D) That compensation is paid by a retailer of manufactured homes to its employee.

* * * * *

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(i) or (ii) of this section, as applicable, incurred by the consumer if the consumer refinances the existing mortgage loan, or terminates an existing open-end credit plan in connection with obtaining a new mortgage loan, with the current holder of the existing loan or plan, a servicer acting on behalf of the current holder, or an affiliate of either.

* * * * *

(b) * * *

(2) * * *

* * * * *

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set unless:

(A) That compensation is paid by a consumer to a mortgage broker, as defined in § 1026.36(a)(2), and already has been included in points and fees under paragraph (b)(2)(i) of this section;

(B) That compensation is paid by a mortgage broker, as defined in § 1026.36(a)(2), to a loan originator that is an employee of the mortgage broker;

(C) That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or

(D) That compensation is paid by a retailer of manufactured homes to its employee.

* * * * *

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(i) or (ii) of this section, as applicable, incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new open-end credit plan, with the current holder of the existing transaction or plan, a servicer acting on behalf of the current holder, or an affiliate of either;

* * * * *

(6) * * *

(ii) *Open-end credit.* For an open-end credit plan, *prepayment penalty* means a charge imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term, other than a waived, bona fide third-party charge that the creditor imposes if the consumer terminates the open-end credit plan sooner than 36 months after account opening.

* * * * *

(d) *Limitations.* A high-cost mortgage shall not include the following terms:

(1) * * *

(ii) * * *

(C) A loan that meets the criteria set forth in §§ 1026.43(f)(1)(i) through (vi) and 1026.43(f)(2), or the conditions set forth in § 1026.43(e)(6).

* * * * *

■ 16. Section 1026.35 is amended by revising paragraphs (b)(2)(i)(D), (b)(2)(iii)(A), and (b)(2)(iii)(D)(*1*) to read as follows:

**§ 1026.35 Requirements for higher-priced mortgage loans.**

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) A reverse mortgage transaction subject to § 1026.33.

* * * * *

(iii) * * *

(A) During any of the three preceding calendar years, the creditor extended more than 50 percent of its total covered transactions, as defined by § 1026.43(b)(1), secured by a first lien, on properties that are located in counties that are either "rural" or "underserved," as set forth in paragraph (b)(2)(iv) of this section;

* * * * *

(D) * * *

(*1*) Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before January 1, 2014; or

* * * * *

■ 17. Section 1026.36, as amended February 15, 2013, at 78 FR 11280, effective January 10, 2014, is amended by revising paragraphs (a)(1)(i)(A) and (B), adding paragraph (a)(6), and revising paragraphs (b), (f)(3)(i) introductory text, (f)(3)(ii), (i), and (j)(2) to read as follows:

**§ 1026.36 Prohibited acts or practices and certain requirements for credit secured by a dwelling.**

(a) * * *

(1) * * *

(i) * * *

(A) A person who does not take a consumer credit application or offer or negotiate credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics, but who performs purely administrative or clerical tasks on behalf of a person who does engage in such activities.

(B) An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics, or advise a consumer on particular credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics.

* * * * *

(6) *Credit terms.* For purposes of this section, the term "credit terms" includes rates, fees, and other costs.

* * * * *

(b) *Scope.* Paragraphs (c)(1) and (2) of this section apply to closed-end consumer credit transactions secured by a consumer's principal dwelling. Paragraph (c)(3) of this section applies to a consumer credit transaction secured by a dwelling. Paragraphs (d) through (i) of this section apply to closed-end consumer credit transactions secured by a dwelling. This section does not apply to a home equity line of credit subject to § 1026.40, except that paragraphs (h) and (i) of this section apply to such credit when secured by the consumer's principal dwelling and paragraph (c)(3) applies to such credit when secured by a dwelling. Paragraphs (d) through (i) of this section do not apply to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

* * * * *

(f) * * *

(3) * * *

(i) Obtain for any individual whom the loan originator organization hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under § 1026.36(f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling:

* * * * *

(ii) Determine on the basis of the information obtained pursuant to paragraph (f)(3)(i) of this section and any other information reasonably available to the loan originator organization, for any individual whom the loan originator organization hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under this paragraph (f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling, that the individual loan originator:

* * * * *

(i) *Prohibition on financing credit insurance.* (1) A creditor may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling). This prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.

(2) For purposes of this paragraph (i):

(i) "Credit insurance":

(A) Means credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, but

(B) Excludes credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance

premiums are paid pursuant to a separate insurance contract and are not paid to an affiliate of the creditor;

(ii) A creditor finances premiums or fees for credit insurance if it provides a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer; and

(iii) Credit insurance premiums or fees are calculated on a monthly basis if they are determined mathematically by multiplying a rate by the actual monthly outstanding balance.

* * * * *

(j) * * *

(2) For purposes of this paragraph (j), "depository institution" has the meaning in section 1503(3) of the SAFE Act, 12 U.S.C. 5102(3). For purposes of this paragraph (j), "subsidiary" has the meaning in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

* * * * *

■ 18. Appendix H to Part 1026, as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, is amended by:

■ a. Revising the entry for H–30(C) in the table of contents at the beginning of the appendix, and

■ b. Revising the heading of H–30(C).

The revision reads as follows:

**Appendix H to Part 1026—Closed-End Model Forms and Clauses**

* * * * *

H–30(C) Sample Form of Periodic Statement for a Payment-Option Loan

* * * * *

■ 19. In Supplement I to Part 1026:

■ a. Under *Section 1026.25—Record Retention*, under *Paragraph 25(c)(2) Records related to requirements for loan originator compensation*, as amended February 15, 2013, at 78 FR 11280, effective January 10, 2014, paragraph 1 is revised.

■ b. Under *Section 1026.32 Requirements for High Cost Mortgages:*

■ i. Under *Paragraph 32(b)(1)*, as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, paragraph 2 is added.

■ ii. Under *Paragraph 32(b)(1)(ii)*, as amended June 12, 2013, at 78 FR 35430, effective January 10, 2014, paragraph 5 is added.

■ iii. *Paragraph 32(b)(2)*, as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, and paragraph 1 are added.

■ iv. Under *Paragraph 32(b)(2)(i)*, as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, paragraph 1 is revised.

■ v. Under *Paragraph 32(b)(2)(i)(D)*, as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, paragraph 1 is revised.

■ vi. Under *Paragraph 32(d)(8)(ii)*, as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, paragraph 1 is revised.

■ c. Under *Section 1026.34—Prohibited Acts or Practices in Connection with High—Cost Mortgages*, under *Paragraph 34(a)(5)(v)*, as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, paragraph 1 is revised.

■ d. Under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans*

■ i. Under *Paragraph 35(b)(2)(iii)*, paragraph 1 is revised.

■ ii. Under *Paragraph 35(b)(2)(iii)(D(1)*, paragraph 1 is revised.

■ e. Under *Section 1026.36—Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling*

■ i. Under *Paragraph 36(a)*, as amended February 14, 2013, at 78 FR 11280, effective January 10, 2014, paragraphs 1, 4, and 5 are revised.

■ ii. Under *Paragraph 36(b)*, as amended February 14, 2013, at 78 FR 11280, effective January 10, 2014, paragraph 1 is revised.

■ iii. Under *Paragraph 36(d)(1)*, as amended February 14, 2013, at 78 FR 11280, effective January 10, 2014, paragraphs 1, 3, and 6 are revised.

■ iv. Under *Paragraph 36(f)(3)(i)*, as amended February 14, 2013, at 78 FR 11280, effective January 10, 2014, paragraphs 1 and 2 are revised.

■ v. Under *Paragraph 36(f)(3)(ii)*, as amended February 14, 2013, at 78 FR 11280, effective January 10, 2014, paragraphs 1and 2 are revised.

■ f. Under *Section 1026.41—Periodic Statements for Residential Mortgage Loans*

■ i. Under *Paragraph 41(b)*, as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, paragraph 1 is revised.

■ ii. Under *Paragraph 41(d)*, as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, paragraph 3 is revised.

■ iii. Under *Paragraph 41(d)(4)*, as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, paragraph 1 is revised.

■ iv. Under *Paragraph 41(e)(3)*, as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, paragraph 1 is revised.

■ v. Under *Paragraph 41(e)(4)(iii)*, as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, paragraph 1 is revised.

The revisions read as follows:

**Supplement I to Part 1026—Official Interpretations**

* * * * *

**Subpart D—Miscellaneous**

*Section 1026.25 Record Retention*

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*25(c) Records related to certain requirements for mortgage loans.*

*25(c)(2) Records related to requirements for loan originator compensation.*

1. * * *

i. Records sufficient to evidence payment and receipt of compensation. Records are sufficient to evidence payment and receipt of compensation if they demonstrate the following facts: The nature and amount of the compensation; that the compensation was paid, and by whom; that the compensation was received, and by whom; and when the payment and receipt of compensation occurred. The compensation agreements themselves are to be retained in all circumstances consistent with § 1026.25(c)(2)(i). The additional records that are sufficient necessarily will vary on a case-by-case basis depending on the facts and circumstances, particularly with regard to the nature of the compensation. For example, if the compensation is in the form of a salary, records to be retained might include copies of required filings under the Internal Revenue Code that demonstrate the amount of the salary. If the compensation is in the form of a contribution to or a benefit under a designated tax-advantaged plan, records to be maintained might include copies of required filings under the Internal Revenue Code or other applicable Federal law relating to the plan, copies of the plan and amendments thereto in which individual loan originators participate and the names of any loan originators covered by the plan, or determination letters from the Internal Revenue Service regarding the plan. If the compensation is in the nature of a commission or bonus, records to be retained might include a settlement agent "flow of funds" worksheet or other written record or a creditor closing instructions letter directing disbursement of fees at consummation. Where a loan originator is a mortgage broker, a disclosure of compensation or broker agreement required by applicable State law that recites the broker's total compensation for a transaction is a record of the amount actually paid to the loan originator in connection with the transaction, unless actual compensation deviates from the amount in the disclosure or agreement. Where compensation has been decreased to defray the cost, in whole or part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA (or omitted from that disclosure), records to be maintained are those documenting the decrease in compensation and reasons for it.

ii. Compensation agreement. For purposes of § 1026.25(c)(2), a compensation agreement includes any agreement, whether oral, written, or based on a course of conduct that establishes a compensation arrangement between the parties (e.g., a brokerage agreement between a creditor and a mortgage broker or provisions of employment contracts between a creditor and an individual loan originator employee addressing payment of

compensation). Where a compensation agreement is oral or based on a course of conduct and cannot itself be maintained, the records to be maintained are those, if any, evidencing the existence or terms of the oral or course of conduct compensation agreement. Creditors and loan originators are free to specify what transactions are governed by a particular compensation agreement as they see fit. For example, they may provide, by the terms of the agreement, that the agreement governs compensation payable on transactions consummated on or after some future effective date (in which case, a prior agreement governs transactions consummated in the meantime). For purposes of applying the record retention requirement to transaction-specific commissions, the relevant compensation agreement for a given transaction is the agreement pursuant to which compensation for that transaction is determined.

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**Subpart E—Special Rules for Certain Home Mortgage Transactions**

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*Section 1026.32 Requirements for High-Cost Mortgages*

* * * * *

*32(b) Definitions.*

* * * * *

Paragraph 32(b)(1)

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2. *Charges paid by parties other than the consumer.* Under § 1026.32(b)(1), points and fees may include charges paid by third parties in addition to charges paid by the consumer. Specifically, charges paid by third parties that fall within the definition of points and fees set forth in § 1026.32(b)(1)(i) through (vi) are included in points and fees.

i. *Examples—included in points and fees.* A creditor's origination charge paid by a consumer's employer on the consumer's behalf that is included in the finance charge as defined in § 1026.4(a) or (b), must be included in points and fees under § 1026.32(b)(1)(i), unless other exclusions under § 1026.4 or § 1026.32(b)(1)(i)(A) through (F) apply. In addition, consistent with comment 32(b)(1)(i)–1, a third-party payment of an item excluded from the finance charge under a provision of § 1026.4, while not included in the total points and fees under § 1026.32(b)(1)(i), may be included under § 1026.32(b)(1)(ii) through (vi). For example, a payment by a third party of a creditor-imposed fee for an appraisal performed by an employee of the creditor is included in points and fees under § 1026.32(b)(1)(iii). *See* comment 32(b)(1)(i).

ii. *Examples—not included in points and fees.* A charge paid by a third party is not included in points and fees under § 1026.32(b)(1)(i) if the exclusions to points and fees in § 1026.32(b)(1)(i)(A) through (F) apply. For example, certain bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either are excluded from points and fees under § 1026.32(b)(1)(i)(D), regardless of whether those charges are paid by a third party or the consumer.

iii. *Seller's points.* Seller's points, as described in § 1026.4(c)(5) and commentary, are excluded from the finance charge and thus are not included in points and fees under § 1026.32(b)(1)(i). However, charges paid by the seller for items listed in § 1026.32(b)(1)(ii) through (vi) are included in points and fees.

iv. *Creditor-paid charges.* Charges that are paid by the creditor, other than loan originator compensation paid by the creditor that is required to be included in points and fees under § 1026.32(b)(1)(ii), are excluded from points and fees. *See* § 1026.32(b)(1)(i)(A).

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*Paragraph 32(b)(1)(ii)*

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5. *Loan originator compensation—calculating loan originator compensation in manufactured home transactions.* i. If a manufactured home retailer qualifies as a loan originator under § 1026.36(a)(1), then compensation that is paid by a consumer or creditor to the retailer for loan origination activities and that can be attributed to the transaction at the time the interest rate is set must be included in points and fees. For example, assume a manufactured home retailer takes a residential mortgage loan application and is entitled to receive at consummation a $1,000 commission from the creditor for taking the mortgage loan application. The $1,000 commission is loan originator compensation that must be included in points and fees.

ii. The sales price of the manufactured home does not include loan originator compensation that can be attributed to the transaction at the time the interest rate is set and therefore is not included in points and fees under § 1026.32(b)(1)(ii).

iii. As provided in § 1026.32(b)(1)(ii)(D), compensation paid by a manufactured home retailer to its employees is not included in points and fees under § 1026.32(b)(1)(ii).

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Paragraph 32(b)(2)

1. See comment 32(b)(1)–2 for guidance concerning the inclusion in points and fees of charges paid by parties other than the consumer.

* * * * *

*Paragraph 32(b)(2)(i).*

1. *Finance charge.* The points and fees calculation under § 1026.32(b)(2) generally does not include items that are included in the finance charge but that are not known until after account opening, such as minimum monthly finance charges or charges based on account activity or inactivity. Transaction fees also generally are not included in the points and fees calculation, except as provided in § 1026.32(b)(2)(vi). See comments 32(b)(1)–1 and 32(b)(1)(i)–1 for additional guidance concerning the calculation of points and fees.

* * * * *

Paragraph 32(b)(2)(i)(D)

1. For purposes of § 1026.32(b)(2)(i)(D), the term *loan originator* means a loan originator as that term is defined in § 1026.36(a)(1), without regard to § 1026.36(a)(2). See comments 32(b)(1)(i)(D)–1 through –4 for further guidance concerning the exclusion of bona fide third-party charges from points and fees.

* * * * *

*Paragraph 32(d)(8)(ii).*

1. *Failure to meet repayment terms.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance when the consumer fails to meet the repayment terms resulting in a default in payment under the agreement; a creditor may do so, however, only if the consumer actually fails to make payments resulting in a default in the agreement. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under § 1026.32(d)(8)(ii) if the consumer fails to meet the repayment terms resulting in a default of the agreement. Section 1026.32(d)(8)(ii) does not override any State or other law that requires a creditor to notify a consumer of a right to cure, or otherwise places a duty on the creditor before it can terminate a

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*Section 1026.34 Prohibited Acts or Practices in Connection With High-Cost Mortgages*

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34(a)(5) Pre-Loan Counseling

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*Paragraph 34(a)(5)(v) Counseling fees.*

1. *Financing.* Section 1026.34(a)(5)(v) does not prohibit a creditor from financing the counseling fee as part of the transaction for a high-cost mortgage, if the fee is a bona fide third-party charge as provided by § 1026.32(b)(1)(i)(D) and (b)(2)(i)(D).

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*Section 1026.35 Requirements for Higher-Priced Mortgage Loans*

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*35(b) Escrow accounts.*

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*35(b)(2) Exemptions.*

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Paragraph 35(b)(2)(iii)

1. *Requirements for exemption.* Under § 1026.35(b)(2)(iii), except as provided in § 1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During any of the three preceding calendar years, more than 50 percent of the creditor's total first-lien covered transactions, as defined in § 1026.43(b)(1), are secured by properties located in counties that are either "rural" or "underserved," as set forth in § 1026.35(b)(2)(iv). Pursuant to that section, a creditor may rely as a safe harbor on a list of counties published by the Bureau to determine whether counties in the United States are rural or underserved for a particular calendar year. Thus, for example, if a creditor originated 90 covered transactions, as defined by § 1026.43(b)(1),

secured by a first lien, during 2011, 2012, or 2013, the creditor meets this condition for an exemption in 2014 if at least 46 of those transactions in one of those three calendar years are secured by first liens on properties that are located in such counties.

* * * * *

Paragraph 35(b)(2)(iii)(D)(1)

1. *Exception for certain accounts.* Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before January 1, 2014, are not counted for purposes of § 1026.35(b)(2)(iii)(D). On and after January 1, 2014, creditors, together with their affiliates, that establish new escrow accounts, other than those described in § 1026.35(b)(2)(iii)(D)(*2*), do not qualify for the exemption provided under § 1026.35(b)(2)(iii). Creditors, together with their affiliates, that continue to maintain escrow accounts established between April 1, 2010, and January 1, 2014, still qualify for the exemption provided under § 1026.35(b)(2)(iii) so long as they do not establish new escrow accounts for transactions consummated on or after January 1, 2014, other than those described in § 1026.35(b)(2)(iii)(D)(*2*), and they otherwise qualify under § 1026.35(b)(2)(iii).

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*Section 1026.36—Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling*

*36(a) Definitions.*

1. *Meaning of loan originator.* i. *General.* A. Section 1026.36(a) defines the set of activities or services any one of which, if done for or in the expectation of compensation or gain, makes the person doing such activities or performing such services a loan originator, unless otherwise excluded. The scope of activities covered by the term loan originator includes:

*1.* Referring a consumer to any person who participates in the origination process as a loan originator. Referring includes any oral or written action directed to a consumer that can affirmatively influence the consumer to select a particular loan originator or creditor to obtain an extension of credit when the consumer will pay for such credit. See comment 36(a)–4 with respect to certain activities that do not constitute referring.

*2.* Arranging a credit transaction, including initially contacting and orienting the consumer to a particular loan originator's or creditor's origination process or particular credit terms that are or may be available to that consumer selected based on the consumer's financial characteristics, assisting the consumer to apply for credit, taking an application, offering particular credit terms to the consumer selected based on the consumer's financial characteristics, negotiating credit terms, or otherwise obtaining or making an extension of credit.

*3.* Assisting a consumer in obtaining or applying for consumer credit by advising on particular credit terms that are or may be available to that consumer based on the consumer's financial characteristics, filling out an application form, preparing application packages (such as a credit application or pre-approval application or supporting documentation), or collecting application and supporting information on behalf of the consumer to submit to a loan originator or creditor. A person who, acting on behalf of a loan originator or creditor, collects information or verifies information provided by the consumer, such as by asking the consumer for documentation to support the information the consumer provided or for the consumer's authorization to obtain supporting documents from third parties, is not collecting information on behalf of the consumer. See also comment 36(a)–4.i through iv with respect to application-related administrative and clerical tasks and comment 36(a)–1.v with respect to third-party advisors.

*4.* Presenting particular credit terms for the consumer's consideration that are selected based on the consumer's financial characteristics, or communicating with a consumer for the purpose of reaching a mutual understanding about prospective credit terms.

* * * * *

4. * * *

i. *Application-related administrative and clerical tasks.* The definition of loan originator does not include a loan originator's or creditor's employee (or agent or contractor) who provides a credit application form from the entity for which the person works to the consumer for the consumer to complete or, without assisting the consumer in completing the credit application, processing or analyzing the information, or discussing particular credit terms or particular credit products available from a creditor to that consumer selected based on the consumer's financial characteristics, deliver the credit application from a consumer to a loan originator or creditor. A person does not assist the consumer in completing the application if the person explains to the consumer filling out the application the contents of the application or where particular consumer information is to be provided, or generally describes the credit application process to a consumer without discussion of particular credit terms or particular products available from a creditor to that consumer selected based on the consumer's financial characteristics.

ii. *Responding to consumer inquiries and providing general information.* The definition of loan originator does not include persons who:

A. * * *

B. As employees (or agents or contractors) of a creditor or loan originator, provide loan originator or creditor contact information to a consumer, provided that the person does not discuss particular credit terms that are or may be available from a creditor to that consumer selected based on the consumer's financial characteristics and does not direct the consumer, based on his or her assessment of the consumer's financial characteristics, to a particular loan originator or particular creditor seeking to originate credit transactions to consumers with those financial characteristics;

C. Describe other product-related services (for example, persons who describe optional monthly payment methods via telephone or via automatic account withdrawals, the availability and features of online account access, the availability of 24-hour customer support, or free mobile applications to access account information); or

D. * * *

iii. *Loan processing.* The definition of loan originator does not include persons who, acting on behalf of a loan originator or a creditor:

A. * * *

B. * * *

C. Coordinate consummation of the credit transaction or other aspects of the credit transaction process, including by communicating with a consumer about process deadlines and documents needed at consummation, provided that any communication that includes a discussion about credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics only confirms credit terms already agreed to by the consumer;

iv. *Underwriting, credit approval, and credit pricing.* The definition of loan originator does not include persons who:

A. * * *

B. Approve particular credit terms or set particular credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics in offer or counter-offer situations, provided that only a loan originator communicates to or with the consumer regarding these credit terms, an offer, or provides or engages in negotiation, a counter-offer, or approval conditions; or

* * * * *

5. *Compensation.*

* * * * *

iv. *Amounts for charges for services that are not loan origination activities.* A. * * *

B. Compensation includes any salaries, commissions, and any financial or similar incentive to an individual loan originator, regardless of whether it is labeled as payment for services that are not loan origination activities.

* * * * *

*36(b) Scope.*

1. *Scope of coverage.* Section 1026.36(c)(1) and (c)(2) applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. Section 1026.36(c)(3) applies to a consumer credit transaction, including home equity lines of credit under § 1026.40, secured by a consumer's dwelling. Paragraphs (h) and (i) of § 1026.36 apply to home equity lines of credit under § 1026.40 secured by a consumer's principal dwelling. Paragraphs (d), (e), (f), (g), (h), and (i) of § 1026.36 apply to closed-end consumer credit transactions secured by a dwelling. Closed-end consumer credit transactions include transactions secured by first or subordinate liens, and reverse mortgages that are not home equity lines of credit under § 1026.40. See § 1026.36(b) for additional restrictions on the scope of § 1026.36, and §§ 1026.1(c) and 1026.3(a) and corresponding commentary for further discussion of extensions of credit subject to Regulation Z.

* * * * *

*36(d) Prohibited payments to loan originators.*

* * * * *

*36(d)(1) Payments based on a term of a transaction.*

1. * * *

ii. *Single or multiple transactions.* The prohibition on payment and receipt of compensation under § 1026.36(d)(1)(i) encompasses compensation that directly or indirectly is based on the terms of a single transaction of a single individual loan originator, the terms of multiple transactions by that single individual loan originator, or the terms of multiple transactions by multiple individual loan originators. Compensation to an individual loan originator that is based upon profits determined with reference to a mortgage-related business is considered compensation that is based on the terms of multiple transactions by multiple individual loan originators. For clarification about the exceptions permitting compensation based upon profits determined with reference to mortgage-related business pursuant to either a designated tax-advantaged plan or a non-deferred profits-based compensation plan, see comment 36(d)(1)–3. For clarification about "mortgage-related business," see comments 36(d)(1)–3.v.B and –3.v.E.

A. Assume that a creditor pays a bonus to an individual loan originator out of a bonus pool established with reference to the creditor's profits and the profits are determined with reference to the creditor's revenue from origination of closed-end consumer credit transactions secured by a dwelling. In such instance, the bonus is considered compensation that is based on the terms of multiple transactions by multiple individual loan originators. Therefore, the bonus is prohibited under § 1026.36(d)(1)(i), unless it is otherwise permitted under § 1026.36(d)(1)(iv).

B. Assume that an individual loan originator's employment contract with a creditor guarantees a quarterly bonus in a specified amount conditioned upon the individual loan originator meeting certain performance benchmarks (*e.g.*, volume of originations monthly). A bonus paid following the satisfaction of those contractual conditions is not directly or indirectly based on the terms of a transaction by an individual loan originator, the terms of multiple transactions by that individual loan originator, or the terms of multiple transactions by multiple individual loan originators under § 1026.36(d)(1)(i) as clarified by this comment 36(d)(1)–1.ii, because the creditor is obligated to pay the bonus, in the specified amount, regardless of the terms of transactions of the individual loan originator or multiple individual loan originators and the effect of those terms of multiple transactions on the creditor's profits. Because this type of bonus is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators, as described in § 1026.36(d)(1)(i) (as clarified by this comment 36(d)(1)–1.ii), it is not subject to the 10-percent total compensation limit described in § 1026.36(d)(1)(iv)(B)(*1*).

iii. * * *

* * * * *

D. The fees and charges described above in paragraphs B and C can only be a term of a transaction if the fees or charges are required to be disclosed in the Good Faith Estimate, the HUD–1, or the HUD–1A (and subsequently in any integrated disclosures promulgated by the Bureau under TILA section 105(b) (15 U.S.C. 1604(b)) and RESPA section 4 (12 U.S.C. 2603) as amended by sections 1098 and 1100A of the Dodd-Frank Act).

* * * * *

3. *Interpretation of § 1026.36(d)(1)(iii) and (iv).* Subject to certain restrictions, § 1026.36(d)(1)(iii) and § 1026.36(d)(1)(iv) permit contributions to or benefits under designated tax-advantaged plans and compensation under a non-deferred profits-based compensation plan even if the contributions, benefits, or compensation, respectively, are based on the terms of multiple transactions by multiple individual loan originators.

i. *Designated tax-advantaged plans.* Section 1026.36(d)(1)(iii) permits an individual loan originator to receive, and a person to pay, compensation in the form of contributions to a defined contribution plan or benefits under a defined benefit plan provided the plan is a designated tax-advantaged plan (as defined in § 1026.36(d)(1)(iii)), even if contributions to or benefits under such plans are directly or indirectly based on the terms of multiple transactions by multiple individual loan originators. In the case of a designated tax-advantaged plan that is a defined contribution plan, § 1026.36(d)(1)(iii) does not permit the contribution to be directly or indirectly based on the terms of that individual loan originator's transactions. A defined contribution plan has the meaning set forth in Internal Revenue Code section 414(i), 26 U.S.C. 414(i). A defined benefit plan has the meaning set forth in Internal Revenue Code section 414(j), 26 U.S.C. 414(j).

ii. *Non-deferred profits-based compensation plans.* As used in § 1026.36(d)(1)(iv), a "non-deferred profits-based compensation plan" is any compensation arrangement where an individual loan originator may be paid variable, additional compensation based in whole or in part on the mortgage-related business profits of the person paying the compensation, any affiliate, or a business unit within the organizational structure of the person or the affiliate, as applicable (*i.e.*, depending on the level within the person's or affiliate's organization at which the non-deferred profits-based compensation plan is established). A non-deferred profits-based compensation plan does not include a designated tax-advantaged plan or other forms of deferred compensation that are not designated tax-advantaged plans, such as those created pursuant to Internal Revenue Code section 409A, 26 U.S.C. 409A. Thus, if contributions to or benefits under a designated tax-advantaged plan or compensation under another form of deferred compensation plan are determined with reference to the mortgage-related business profits of the person making the contribution, then the contribution, benefits, or other compensation, as applicable, are not permitted by § 1026.36(d)(1)(iv) (although, in the case of contributions to or benefits under a designated tax-advantaged plan, the benefits or contributions may be permitted by § 1026.36(d)(1)(iii)). Under a non-deferred profits-based compensation plan, the individual loan originator may, for example, be paid directly in cash, stock, or other non-deferred compensation, and the compensation under the non-deferred profits-based compensation plan may be determined by a fixed formula or may be at the discretion of the person (*e.g.*, the person may elect not to pay compensation under a non-deferred profits-based compensation plan in a given year), provided the compensation is not directly or indirectly based on the terms of the individual loan originator's transactions. As used in § 1026.36(d)(1)(iv) and this commentary, non-deferred profits-based compensation plans include, without limitation, bonus pools, profits pools, bonus plans, and profit-sharing plans. Compensation under a non-deferred profits-based compensation plan could include, without limitation, annual or periodic bonuses, or awards of merchandise, services, trips, or similar prizes or incentives where the bonuses, contributions, or awards are determined with reference to the profitability of the person, business unit, or affiliate, as applicable. As used in § 1026.36(d)(1)(iv) and this commentary, a business unit is a division, department, or segment within the overall organizational structure of the person or the person's affiliate that performs discrete business functions and that the person or the affiliate treats separately for accounting or other organizational purposes. For example, a creditor that pays its individual loan originators bonuses at the end of a calendar year based on the creditor's average net return on assets for the calendar year is operating a non-deferred profits-based compensation plan under § 1026.36(d)(1)(iv). A bonus that is paid to an individual loan originator from a source other than a non-deferred profits-based compensation plan (or a deferred compensation plan where the bonus is determined with reference to mortgage-related business profits), such as a retention bonus budgeted for in advance or a performance bonus paid out of a bonus pool set aside at the beginning of the company's annual accounting period as part of the company's operating budget, does not violate the prohibition on payment of compensation based on the terms of multiple transactions by multiple individual loan originators under § 1026.36(d)(1)(i), as clarified by comment 36(d)(1)–1.ii; therefore, § 1026.36(d)(1)(iv) does not apply to such bonuses.

iii. *Compensation that is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators.* The compensation arrangements addressed in § 1026.36(d)(1)(iii) and (iv) are permitted even if they are directly or indirectly based on the terms of multiple transactions by multiple individual loan originators. See comment 36(d)(1)–1 for additional interpretation. If a loan originator organization's revenues are exclusively

derived from transactions subject to § 1026.36(d) (whether paid by creditors, consumers, or both) and that loan originator organization pays its individual loan originators a bonus under a non-deferred profits-based compensation plan, the bonus is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators if § 1026.36(d)(1)(i) is otherwise complied with.

iv. *Compensation based on terms of an individual loan originator's transactions.* Under both § 1026.36(d)(1)(iii), with regard to contributions made to a defined contribution plan that is a designated tax-advantaged plan, and § 1026.36(d)(1)(iv)(A), with regard to compensation under a non-deferred profits-based compensation plan, the payment of compensation to an individual loan originator may not be directly or indirectly based on the terms of that individual loan originator's transaction or transactions. Consequently, for example, where an individual loan originator makes loans that vary in their interest rate spread, the compensation payment may not take into account the average interest rate spread on the individual loan originator's transactions during the relevant calendar year.

v. *Compensation under non-deferred profits-based compensation plans.* Assuming that the conditions in § 1026.36(d)(1)(iv)(A) are met, § 1026.36(d)(1)(iv)(B)(*1*) permits certain compensation to an individual loan originator under a non-deferred profits-based compensation plan. Specifically, if the compensation is determined with reference to the profits of the person from mortgage-related business, compensation under a non-deferred profits-based compensation plan is permitted provided the compensation does not, in the aggregate, exceed more than 10 percent of the individual loan originator's total compensation corresponding to the time period for which compensation under the non-deferred profits-based compensation plan is paid. The compensation restrictions under § 1026.36(d)(1)(iv)(B)(*1*) are sometimes referred to in this commentary as the "10-percent total compensation limit or the "10-percent limit."

A. *Total compensation.* For purposes of § 1026.36(d)(1)(iv)(B)(*1*), the individual loan originator's total compensation consists of the sum total of: (1) All wages and tips reportable for Medicare tax purposes in box 5 on IRS form W–2 (or, if the individual loan originator is an independent contractor, reportable compensation on IRS form 1099–MISC) that are actually paid during the relevant time period (regardless of when the wages and tips are earned), except for any compensation under a non-deferred profits-based compensation plan that is earned during a different time period (see comment 36(d)(1)–3.v.C); (2) at the election of the person paying the compensation, all contributions that are actually made during the relevant time period by the creditor or loan originator organization to the individual loan originator's accounts in designated tax-advantaged plans that are defined contribution plans (regardless of when the contributions are earned); and (3) at the election of the person paying the compensation, all compensation under a non-deferred profits-based compensation plan that is earned during the relevant time period, regardless of whether the compensation is actually paid during that time period (see comment 36(d)(1)–3.v.C). If an individual loan originator has some compensation that is reportable on the W–2 and some that is reportable on the 1099–MISC, the total compensation is the sum total of what is reportable on each of the two forms.

B. *Profits of the Person.* Under § 1026.36(d)(1)(iv), a plan is a non-deferred profits-based compensation plan if compensation is paid, based in whole or in part, on the profits of the person paying the compensation. As used in § 1026.36(d)(1)(iv), "profits of the person" include, as applicable depending on where the non-deferred profits-based compensation plan is set, the profits of the person, the business unit to which the individual loan originators are assigned for accounting or other organizational purposes, or any affiliate of the person. Profits from mortgage-related business are profits determined with reference to revenue generated from transactions subject to § 1026.36(d). Pursuant to § 1026.36(b) and comment 36(b)–1, § 1026.36(d) applies to closed-end consumer credit transactions secured by dwellings. This revenue includes, without limitation, and as applicable based on the particular sources of revenue of the person, business unit, or affiliate, origination fees and interest associated with dwelling-secured transactions for which individual loan originators working for the person were loan originators, income from servicing of such transactions, and proceeds of secondary market sales of such transactions. If the amount of the individual loan originator's compensation under non-deferred profits-based compensation plans paid for a time period does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the same time period, compensation under non-deferred profits-based compensation plans may be paid under § 1026.36(d)(1)(iv)(B)(*1*) regardless of whether or not it was determined with reference to the profits of the person from mortgage-related business.

C. *Time period for which the compensation under the non-deferred profits-based compensation plan is paid and to which the total compensation corresponds.* Under § 1026.36(d)(1)(iv)(B)(*1*), determination of whether payment of compensation under a non-deferred profits-based compensation plan complies with the 10-percent limit requires a calculation of the ratio of the compensation under the non-deferred profits-based compensation plan (*i.e.*, the compensation subject to the 10-percent limit) and the total compensation corresponding to the relevant time period. For compensation subject to the 10-percent limit, the relevant time period is the time period for which a person makes reference to profits in determining the compensation (*i.e.*, when the compensation was earned). It does not matter whether the compensation is actually paid during that particular time period. For total compensation, the relevant time period is the same time period, but only certain types of compensation may be included in the total compensation amount for that time period (see comment 36(d)(1)–3.v.A). For example, assume that during calendar year 2014 a creditor pays an individual loan originator compensation in the following amounts: $80,000 in commissions based on the individual loan originator's performance and volume of loans generated during the calendar year; and $10,000 in an employer contribution to a designated tax-advantaged defined contribution plan on behalf of the individual loan originator. The creditor desires to pay the individual loan originator a year-end bonus of $10,000 under a non-deferred profits-based compensation plan. The commissions are paid and employer contributions to the designated tax-advantaged defined contribution plan are made during calendar year 2014, but the year-end bonus will be paid in January 2015. For purposes of the 10-percent total compensation limit, the year-end bonus is counted toward the 10-percent limit for calendar year 2014, even though it is not actually paid until 2015. Therefore, for calendar year 2014 the individual loan originator's compensation that is subject to the 10-percent limit would be $10,000 (*i.e.*, the year-end bonus) and the total compensation would be $100,000 (*i.e.*, the sum of the commissions, the designated tax-advantaged plan contribution (assuming the creditor elects to include it in total compensation for calendar year 2014), and the bonus (assuming the creditor elects to include it in total compensation for calendar year 2014)); the bonus would be permissible under § 1026.36(d)(1)(iv) because it does not exceed 10 percent of total compensation. The determination of total compensation corresponding to 2014 also would not take into account any compensation subject to the 10-percent limit that is actually paid in 2014 but is earned during a different calendar year (*e.g.*, an annual bonus determined with reference to mortgage-related business profits for calendar year 2013 that is paid in January 2014). If the employer contribution to the designated tax-advantaged plan is earned in 2014 but actually made in 2015, however, it may not be included in total compensation for 2014. A company, business unit, or affiliate, as applicable, may pay compensation subject to the 10-percent limit during different time periods falling within its annual accounting period for keeping records and reporting income and expenses, which may be a calendar year or a fiscal year depending on the annual accounting period. In such instances, however, the 10-percent limit applies both as to each time period and cumulatively as to the annual accounting period. For example, assume that a creditor uses a calendar-year accounting period. If the creditor pays an individual loan originator a bonus at the end of each quarter under a non-deferred profits-based compensation plan, the payment of each quarterly bonus is subject to the 10-percent limit measured with respect to each quarter. The creditor can also pay an annual bonus under the non-deferred profits-based compensation plan that does not exceed the difference of 10 percent of the individual loan originator's total compensation corresponding to the calendar year and the aggregate amount of the quarterly bonuses.

D. *Awards of merchandise, services, trips, or similar prizes or incentives.* If any compensation paid to an individual loan originator under § 1026.36(d)(1)(iv) consists of an award of merchandise, services, trips, or similar prize or incentive, the cash value of the award is factored into the calculation of the 10-percent total compensation limit. For example, during a given calendar year, individual loan originator A and individual loan originator B are each employed by a creditor and paid $40,000 in salary, and $45,000 in commissions. The creditor also contributes $5,000 to a designated tax-advantaged defined contribution plan for each individual loan originator during that calendar year, which the creditor elects to include in the total compensation amount. Neither individual loan originator is paid any other form of compensation by the creditor. In December of the calendar year, the creditor rewards both individual loan originators for their performance during the calendar year out of a bonus pool established with reference to the profits of the mortgage origination business unit. Individual loan originator A is paid a $10,000 cash bonus, meaning that individual loan originator A's total compensation is $100,000 (assuming the creditor elects to include the bonus in the total compensation amount). Individual loan originator B is paid a $7,500 cash bonus and awarded a vacation package with a cash value of $3,000, meaning that individual loan originator B's total compensation is $100,500 (assuming the creditor elects to include the reward in the total compensation amount). Under § 1026.36(d)(1)(iv)(B)(*1*), individual loan originator A's $10,000 bonus is permissible because the bonus would not constitute more than 10 percent of the individual loan originator A's total compensation for the calendar year. The creditor may not pay individual loan originator B the $7,500 bonus and award the vacation package, however, because the total value of the bonus and the vacation package would be $10,500, which is greater than 10 percent (10.45 percent) of individual loan originator B's total compensation for the calendar year. One way to comply with § 1026.36(d)(1)(iv)(B)(*1*) would be if the amount of the bonus were reduced to $7,000 or less or the vacation package were structured such that its cash value would be $2,500 or less.

E. *Compensation determined only with reference to non-mortgage-related business profits.* Compensation under a non-deferred profits-based compensation plan is not subject to the 10-percent total compensation limit under § 1026.36(d)(1)(iv)(B)(*1*) if the non-deferred profits-based compensation plan is determined with reference only to profits from business other than mortgage-related business, as determined in accordance with reasonable accounting principles. Reasonable accounting principles reflect an accurate allocation of revenues, expenses, profits, and losses among the person, any affiliate of the person, and any business units within the person or affiliates, and are consistent with the accounting principles applied by the person, the affiliate, or the business unit with respect to, as applicable, its internal budgeting and auditing functions and external reporting requirements. Examples of external reporting and filing requirements that may be applicable to creditors and loan originator organizations are Federal income tax filings, Federal securities law filings, or quarterly reporting of income, expenses, loan origination activity, and other information required by government-sponsored enterprises. As used in § 1026.36(d)(1)(iv)(B)(*1*), profits means positive profits or losses avoided or mitigated.

F. *Additional examples. 1.* Assume that, during a given calendar year, a loan originator organization pays an individual loan originator employee $40,000 in salary and $125,000 in commissions, and makes a contribution of $15,000 to the individual loan originator's 401(k) plan. At the end of the year, the loan originator organization wishes to pay the individual loan originator a bonus based on a formula involving a number of performance metrics, to be paid out of a profit pool established at the level of the company but that is determined in part with reference to the profits of the company's mortgage origination unit. Assume that the loan originator organization derives revenues from sources other than transactions covered by § 1026.36(d). In this example, the performance bonus would be directly or indirectly based on the terms of multiple individual loan originators' transactions as described in § 1026.36(d)(1)(i), because it is being determined with reference to profits from mortgage-related business. Assume, furthermore, that the loan originator organization elects to include the bonus in the total compensation amount for the calendar year. Thus, the bonus is permissible under § 1026.36(d)(1)(iv)(B)(*1*) if it does not exceed 10 percent of the loan originator's total compensation, which in this example consists of the individual loan originator's salary, commissions, contribution to the 401(k) plan (if the loan originator organization elects to include the contribution in the total compensation amount), and the performance bonus. Therefore, if the loan originator organization elects to include the 401(k) contribution in total compensation for these purposes, the loan originator organization may pay the individual loan originator a performance bonus of up to $20,000 (*i.e.*, 10 percent of $200,000 in total compensation). If the loan originator organization does not include the 401(k) contribution in calculating total compensation, or the 401(k) contribution is actually made in January of the following calendar year (in which case it cannot be included in total compensation for the initial calendar year), the bonus may be up to $18,333.33. If the loan originator organization includes neither the 401(k) contribution nor the performance bonus in the total compensation amount, the bonus may not exceed $16,500.

*2.* Assume that the compensation during a given calendar year of an individual loan originator employed by a creditor consists of only salary and commissions, and the individual loan originator does not participate in a designated tax-advantaged defined contribution plan. Assume further that the creditor uses a calendar-year accounting period. At the end of the calendar year, the creditor pays the individual loan originator two bonuses: A "performance" bonus based on the individual loan originator's aggregate loan volume for a calendar year that is paid out of a bonus pool determined with reference to the profitability of the mortgage origination business unit, and a year-end "holiday" bonus in the same amount to all company employees that is paid out of a company-wide bonus pool. Because the performance bonus is paid out of a bonus pool that is determined with reference to the profitability of the mortgage origination business unit, it is compensation that is determined with reference to mortgage-related business profits, and the bonus is therefore subject to the 10-percent total compensation limit. If the company-wide bonus pool from which the "holiday" bonus is paid is derived in part from profits of the creditor's mortgage origination business unit, then the combination of the "holiday" bonus and the performance bonus is subject to the 10-percent total compensation limit. The "holiday" bonus is not subject to the 10-percent total compensation limit if the bonus pool is determined with reference only to the profits of business units other than the mortgage origination business unit, as determined in accordance with reasonable accounting principles. If the "performance" bonus and the "holiday" bonus in the aggregate do not exceed 10 percent of the individual loan originator's total compensation, the bonuses may be paid under § 1026.36(d)(1)(iv)(B)(*1*) without the necessity of determining from which bonus pool they were paid or whether they were determined with reference to the profits of the creditor's mortgage origination business unit.

G. *Reasonable reliance by individual loan originator on accounting or statement by person paying compensation.* An individual loan originator is deemed to comply with its obligations regarding receipt of compensation under § 1026.36(d)(1)(iv)(B)(*1*) if the individual loan originator relies in good faith on an accounting or a statement provided by the person who determined the individual loan originator's compensation under a non-deferred profits-based compensation plan pursuant to § 1026.36(d)(1)(iv)(B)(*1*) and where the statement or accounting is provided within a reasonable time period following the person's determination.

vi. *Individual loan originators who originate ten or fewer transactions.* Assuming that the conditions in § 1026.36(d)(1)(iv)(A) are met, § 1026.36(d)(1)(iv)(B)(*2*) permits compensation to an individual loan originator under a non-deferred profits-based compensation plan even if the payment or contribution is directly or indirectly based on the terms of multiple individual loan originators' transactions if the individual is a loan originator (as defined in § 1026.36(a)(1)(i)) for ten or fewer consummated transactions during the 12-month period preceding the compensation determination. For example, assume a loan originator organization employs two individual loan originators who originate transactions subject to § 1026.36 during a

given calendar year. Both employees are individual loan originators under § 1026.36(a)(1)(ii), but only one of them (individual loan originator B) acts as a loan originator in the normal course of business, while the other (individual loan originator A) is called upon to do so only occasionally and regularly performs other duties (such as serving as a manager). In January of the following calendar year, the loan originator organization formally determines the financial performance of its mortgage business for the prior calendar year. Based on that determination, the loan originator organization on February 1 decides to pay a bonus to the individual loan originators out of a company bonus pool. Assume that, between February 1 of the prior calendar year and January 31 of the current calendar year, individual loan originator A was the loan originator for eight consummated transactions, and individual loan originator B was the loan originator for 15 consummated transactions. The loan originator organization may award the bonus to individual loan originator A under § 1026.36(d)(1)(iv)(B)(*2*). The loan originator organization may not award the bonus to individual loan originator B relying on the exception under § 1026.36(d)(1)(iv)(B)(*2*) because it would not apply, although it could award a bonus pursuant to the 10-percent total compensation limit under § 1026.36(d)(1)(iv)(B)(*1*) if the requirements of that provision are complied with.

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6. *Periodic changes in loan originator compensation and terms of transactions.* Section 1026.36 does not limit a creditor or other person from periodically revising the compensation it agrees to pay a loan originator. However, the revised compensation arrangement must not result in payments to the loan originator that are based on the terms of a credit transaction. A creditor or other person might periodically review factors such as loan performance, transaction volume, as well as current market conditions for originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first six months of the year, a creditor pays $3,000 to a particular loan originator for each loan delivered, regardless of the terms of the transaction. After considering the volume of business produced by that originator, the creditor could decide that as of July 1, it will pay $3,250 for each loan delivered by that particular originator, regardless of the terms of the transaction. No violation occurs even if the loans made by the creditor after July 1 generally carry a higher interest rate than loans made before that date, to reflect the higher compensation.

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*36(f) Loan originator qualification requirements.*

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*Paragraph 36(f)(3).*

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*Paragraph 36(f)(3)(i).*

1. *Criminal and credit histories.* Section 1026.36(f)(3)(i) requires the loan originator organization to obtain, for any of its individual loan originator employees who is not required to be licensed and is not licensed as a loan originator pursuant to the SAFE Act, a criminal background check, a credit report, and information related to any administrative, civil, or criminal determinations by any government jurisdiction. The requirement applies to individual loan originator employees who were hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual). A credit report may be obtained directly from a consumer reporting agency or through a commercial service. A loan originator organization with access to the NMLSR can meet the requirement for the criminal background check by reviewing any criminal background check it receives upon compliance with the requirement in 12 CFR 1007.103(d)(1) and can meet the requirement to obtain information related to any administrative, civil, or criminal determinations by any government jurisdiction by obtaining the information through the NMLSR. Loan originator organizations that do not have access to these items through the NMLSR may obtain them by other means. For example, a criminal background check may be obtained from a law enforcement agency or commercial service. Information on any past administrative, civil, or criminal findings (such as from disciplinary or enforcement actions) may be obtained from the individual loan originator.

2. *Retroactive obtaining of information not required.* Section 1026.36(f)(3)(i) does not require the loan originator organization to obtain the covered information for an individual whom the loan originator organization hired as a loan originator before January 1, 2014, and screened under applicable statutory or regulatory background standards in effect at the time of hire. However, if the individual subsequently ceases to be employed as a loan originator by that loan originator organization, and later resumes employment as a loan originator by that loan originator organization (or any other loan originator organization), the loan originator organization is subject to the requirements of § 1026.36(f)(3)(i).

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*Paragraph 36(f)(3)(ii).*

1. *Scope of review.* Section 1026.36(f)(3)(ii) requires the loan originator organization to review the information that it obtains under § 1026.36(f)(3)(i) and other reasonably available information to determine whether the individual loan originator meets the standards in § 1026.36(f)(3)(ii). Other reasonably available information includes any information the loan originator organization has obtained or would obtain as part of a reasonably prudent hiring process, including information obtained from application forms, candidate interviews, other reliable information and evidence provided by a candidate, and reference checks. The requirement applies to individual loan originator employees who were hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual).

2. *Retroactive determinations not required.* Section 1026.36(f)(3)(ii) does not require the loan originator organization to review the covered information and make the required determinations for an individual whom the loan originator organization hired as a loan originator on or before January 1, 2014 and screened under applicable statutory or regulatory background standards in effect at the time of hire. However, if the individual subsequently ceases to be employed as a loan originator by that loan originator organization, and later resumes employment as a loan originator by that loan originator organization (or any other loan originator organization), the loan originator organization employing the individual is subject to the requirements of § 1026.36(f)(3)(ii).

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*Section 1026.41—Periodic Statements for Residential Mortgage Loans*

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*41(b) Timing of the periodic statement.*

1. *Reasonably prompt time.* Section 1026.41(b) requires that the periodic statement be delivered or placed in the mail no later than a reasonably prompt time after the payment due date or the end of any courtesy period. Delivering, emailing or placing the periodic statement in the mail within four days of the close of the courtesy period of the previous billing cycle generally would be considered reasonably prompt.

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*41(d) Content and layout of the periodic statement.*

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3. *Terminology.* A servicer may use terminology other than that found on the sample periodic statements in appendix H–30, so long as the new terminology is commonly understood. For example, servicers may take into consideration regional differences in terminology and refer to the account for the collection of taxes and insurance, referred to in § 1026.41(d) as the "escrow account," as an "impound account."

* * * * *

*41(d)(4) Transaction Activity.*

1. *Meaning.* Transaction activity includes any transaction that credits or debits the amount currently due. This is the same amount that is required to be disclosed under § 1026.41(d)(1)(iii). Examples of such transactions include, without limitation:

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*41(e)(3) Coupon book exemption.*

1. *Fixed rate.* For guidance on the meaning of "fixed rate" for purpose of § 1026.41(e)(3), see § 1026.18(s)(7)(iii) and its commentary.

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*41(e)(4) Small servicers.*

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*41(e)(4)(iii) Small servicer determination.*

1. *Loans obtained by merger or acquisition.* Any mortgage loans obtained by a servicer or

an affiliate as part of a merger or acquisition, or as part of the acquisition of all of the assets or liabilities of a branch office of a creditor, should be considered mortgage loans for which the servicer or an affiliate is the creditor to which the mortgage loan is initially payable. A branch office means either an office of a depository institution that is approved as a branch by a Federal or State supervisory agency or an office of a for-profit mortgage lending institution (other than a depository institution) that takes applications from the public for mortgage loans.

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Dated: June 24, 2013.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

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Part V

## The President

Proclamation 8997—To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

Federal Register
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# Presidential Documents

Title 3—

The President

**Proclamation 8997 of June 27, 2013**

## To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

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

**A Proclamation**

1. Section 502(b)(2)(G) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2462(b)(2)(G)), provides that the President shall not designate any country a beneficiary developing country under the Generalized System of Preferences (GSP) if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country). Section 502(d)(2) of the 1974 Act (19 U.S.C. 2462(d)(2)) provides that, after complying with the requirements of section 502(f)(2) of the 1974 Act (19 U.S.C. 2462(f)(2)), the President shall withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b)(2) of the 1974 Act. Section 502(f)(2) of the 1974 Act requires the President to notify the Congress and the country concerned at least 60 days before terminating its designation as a beneficiary developing country for purposes of the GSP.

2. Having considered the factors set forth in section 502(b)(2)(G) and providing the notification called for in section 502(f)(2), I have determined pursuant to section 502(d) of the 1974 Act, that it is appropriate to suspend Bangladesh's designation as a GSP beneficiary developing country because it has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country. In order to reflect the suspension of Bangladesh's status as a beneficiary developing country under the GSP, I have determined that it is appropriate to modify general notes 4(a) and 4(b)(i) of the Harmonized Tariff Schedule of the United States (HTS).

3. Section 503(c)(2)(A) of the 1974 Act provides that beneficiary developing countries, except those designated as least-developed beneficiary developing countries or beneficiary sub-Saharan African countries as provided in section 503(c)(2)(D) of the 1974 Act (19 U.S.C. 2463(c)(2)(D)), are subject to competitive need limitations on the preferential treatment afforded under the GSP to eligible articles.

4. Pursuant to section 503(c)(2)(A) of the 1974 Act, I have determined that in 2012 certain beneficiary developing countries exported eligible articles in quantities exceeding the applicable competitive need limitations, and I therefore terminate the duty-free treatment for such articles from such beneficiary developing countries.

5. Section 503(c)(2)(F)(i) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(i)) provides that the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article from any beneficiary developing country, if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed an amount set forth in section 503(c)(2)(F)(ii) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(ii)).

6. Pursuant to section 503(c)(2)(F)(i) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act should be disregarded with respect to certain eligible articles from certain beneficiary developing countries.

7. Section 503(d)(1) of the 1974 Act (19 U.S.C. 2463(d)(1)) provides that the President may waive the application of the competitive need limitations in section 503(c)(2) of the 1974 Act with respect to any eligible article from any beneficiary developing country if certain conditions are met.

8. Pursuant to section 503(d)(1) of the 1974 Act, I have received the advice of the United States International Trade Commission on whether any industry in the United States is likely to be adversely affected by waivers of the competitive need limitations provided in section 503(c)(2), and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2462(c)) and after giving great weight to the considerations in section 503(d)(2) of the 1974 Act (19 U.S.C. 2463(d)(2)), that such waivers are in the national economic interest of the United States. Accordingly, I have determined that the competitive need limitations of section 503(c)(2) of the 1974 Act should be waived with respect to certain eligible articles from certain beneficiary developing countries.

9. Section 503(d)(4)(B)(ii) of the 1974 Act (19 U.S.C. 2463(d)(4)(B)(ii)) provides that the President should revoke any waiver of the application of the competitive need limitations that has been in effect with respect to an article for 5 years or more if the beneficiary developing country has exported to the United States during the preceding calendar year an amount that exceeds the quantity set forth in section 503(d)(4)(B)(ii)(I) or section 503(d)(4)(B)(ii)(II) of the 1974 Act (19 U.S.C. 2463(d)(4)(B)(ii)(I) and 19 U.S.C. 2463(d)(4)(B)(ii)(II)).

10. Pursuant to section 503(d)(4)(B)(ii) of the 1974 Act, I have determined that in 2012 certain beneficiary developing countries exported eligible articles for which a waiver has been in effect for 5 years or more in quantities exceeding the applicable limitation set forth in section 503(d)(4)(B)(ii)(I) or section 503(d)(4)(B)(ii)(II) of the 1974 Act, and I therefore revoke said waivers.

11. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

12. Presidential Proclamation 6763 of December 23, 1994, implemented the trade agreements resulting from the Uruguay Round of multilateral negotiations, including Schedule XX—United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (Schedule XX). In order to maintain the intended tariff treatment for certain products covered in Schedule XX, I have determined that technical corrections to the HTS are necessary.

13. Presidential Proclamation 7011 of June 30, 1997, implemented modifications of the World Trade Organization Ministerial Declaration on Trade in Information Technology Products (the "ITA") for the United States. Products included in Attachment B to the ITA are entitled to duty-free treatment wherever classified. Presidential Proclamation 8840 of June 29, 2012, implemented certain technical corrections are necessary to the HTS in order to maintain the intended tariff treatment for certain products covered in Attachment B. I have determined that certain additional technical corrections are necessary to conform the HTS to the changes made by Presidential Proclamation 8840.

14. Presidential Proclamation 8818 of May 14, 2012, implemented U.S. tariff commitments under the United States-Colombia Trade Promotion Agreement

and incorporated by reference Publication 4320 of the United States International Trade Commission, entitled "Modifications to the Harmonized Tariff Schedule of the United States to Implement the United States-Colombia Trade Promotion Agreement." Presidential Proclamation 8894 of October 29, 2012, made modifications to the HTS to correct technical errors and omissions in Annexes I and II to Publication 4320. I have determined that a modification is necessary to correct an additional omission.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) The designation of Bangladesh as a beneficiary developing country under the GSP is suspended on the date that is 60 days after the date this proclamation is published in the *Federal Register.*

(2) In order to reflect the suspension of benefits under the GSP with respect to Bangladesh, general notes 4(a) and 4(b)(i) of the HTS are modified as set forth in section A of Annex I to this proclamation by deleting "Bangladesh" from the list of independent countries and least developed countries, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 60 days after the date this proclamation is published in the *Federal Register.*

(3) In order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to one or more eligible articles for purposes of the GSP, the Rates of Duty 1—Special subcolumn for the corresponding HTS subheadings and general note 4(d) of the HTS are modified as set forth in sections B and C of Annex I to this proclamation.

(4) The modifications to the HTS set forth in sections B and C of Annex I to this proclamation shall be effective with respect to the articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the relevant sections of Annex I.

(5) The competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act is disregarded with respect to the eligible articles in the HTS subheadings and to the beneficiary developing countries listed in Annex II to this proclamation.

(6) A waiver of the application of section 503(c)(2) of the 1974 Act shall apply to the articles in the HTS subheadings and to the beneficiary developing countries set forth in Annex III to this proclamation.

(7) In order to provide the intended tariff treatment to certain products as set out in Schedule XX, the HTS is modified as set forth in section A of Annex IV to this proclamation.

(8) In order to conform the HTS to certain technical corrections made to provide the intended tariff treatment to certain products as set out in the ITA, the HTS is modified as set forth in section B of Annex IV to this proclamation.

(9) In order to provide the intended tariff treatment to certain goods from Colombia, the HTS is modified as set forth in section C of Annex IV to this proclamation.

(10) The modifications to the HTS set forth in Annex IV to this proclamation shall be effective with respect to the articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the relevant sections of Annex IV.

(11) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of June, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

Billing code 3295–F2–P

## ANNEX I

## MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Section A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 60 days after the date this publication is published in the *Federal Register*, the Harmonized Tariff Schedule of the United States (HTS) is modified by:

(1) deleting "Bangladesh" from the list entitled "Independent Countries" in general note 4(a); and

(2) deleting "Bangladesh" from general note 4(b)(i).

Section B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2013, the HTS is modified by:

(1) for the following subheading, the Rates of Duty 1-Special column is modified by deleting the symbol "A" and inserting the symbol "A*" in lieu thereof:

1005.90.40

(2) adding to general note 4(d), in numerical sequence, the following subheading number and the country set out opposite such subheading number:

1005.90.40 Brazil

Section C. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2013, general note 4(d) to the HTS is modified by adding, in alphabetical order, the following country opposite the following subheading number:

4011.10.10 Indonesia

## ANNEX II

### HTS Subheadings and Countries for Which the Competitive Need Limitation Provided in Section 503(c)(2)(A)(i)(II) is Disregarded

| | | | |
|---|---|---|---|
| 0302.79.11 | Suriname | 2915.50.20 | India |
| 0304.95.90 | Indonesia | 2921.42.15 | India |
| 0410.00.00 | Indonesia | 2921.42.21 | India |
| 0603.13.00 | Thailand | 2922.29.26 | India |
| 0711.40.00 | India | 2924.21.04 | Brazil |
| 0713.60.80 | Bolivia | 2927.00.30 | India |
| 0713.90.81 | Bolivia | 2933.99.06 | India |
| 0802.52.00 | Turkey | 3815.90.10 | Brazil |
| 0802.80.10 | India | 3824.90.32 | Brazil |

| | | | |
|---|---|---|---|
| 0810.60.00 | Thailand | 3912.11.00 | India |
| 0813.40.10 | Thailand | 4010.36.41 | India |
| 0813.40.80 | Thailand | 4101.20.40 | Brazil |
| 1102.90.30 | India | 4101.20.70 | Brazil |
| 1604.13.90 | Ecuador | 4101.50.35 | India |
| 1702.90.52 | India | 4101.50.40 | Brazil |
| 1703.90.50 | Ukraine | 4101.50.70 | Brazil |
| 1806.10.22 | Brazil | 4101.90.40 | Brazil |
| 1901.20.45 | Turkey | 4104.11.30 | India |
| 2001.90.45 | India | 4104.19.30 | Pakistan |
| 2004.90.10 | Ecuador | 4106.21.90 | India |
| 2005.80.00 | Thailand | 4106.22.00 | Pakistan |
| 2005.91.97 | India | 4107.11.40 | Brazil |
| 2008.30.96 | Ecuador | 4107.11.60 | Turkey |
| 2008.99.50 | Thailand | 4107.12.40 | India |
| 2103.90.72 | India | 4107.19.40 | India |
| 2401.20.57 | Jordan | 4107.91.40 | India |
| 2516.12.00 | India | 4107.92.40 | India |
| 2813.90.50 | India | 4107.99.40 | Pakistan |
| 2827.39.25 | India | 4412.94.90 | Indonesia |
| 2827.39.45 | India | 4412.99.80 | Brazil |
| 2830.90.20 | Russia | 4602.12.05 | Indonesia |
| 2831.90.00 | India | 5208.31.20 | India |
| 2833.29.10 | India | 5209.31.30 | India |
| 2833.29.40 | Turkey | 5209.41.30 | India |
| 2834.10.10 | India | 5607.90.35 | Philippines |
| 2840.11.00 | Turkey | 5702.92.10 | India |
| 2841.61.00 | India | 6216.00.35 | Indonesia |
| 2844.30.10 | India | 6913.10.20 | Thailand |
| 2904.90.15 | India | 7113.20.25 | India |
| 2905.19.10 | Brazil | 7325.91.00 | India |
| 2905.44.00 | Indonesia | 7505.11.30 | Brazil |
| 2907.29.25 | India | 8112.12.00 | Kazakhstan |
| 2908.19.20 | India | 8112.19.00 | Kazakhstan |
| 2909.11.00 | India | 8112.59.00 | Russia |
| 2912.49.10 | India | 8406.10.10 | Brazil |
| 2913.00.50 | India | 8507.20.40 | Ecuador |
| 2914.29.10 | India | 9010.90.40 | India |
| 2914.40.10 | Brazil | 9027.50.10 | Philippines |
| 2914.40.20 | India | 9205.90.14 | India |
| 2915.39.20 | India | 9303.30.40 | Russia |

## ANNEX III

### HTS Subheadings and Countries Granted a Waiver of the Application of Section 503(c)(2)(A) of the 1974 Act

7202.99.20 Brazil

## ANNEX IV
### Technical Corrections to the HTS

Section A. The HTS is modified as provided in this section, with bracketed material included to assist in the understanding of proclaimed modifications, on or after July 1, 2013:

The following provisions supersede matter now in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

Subheading 8526.92.00 is superseded and the following provisions inserted in numerical sequence, with the superior text inserted at the same level of indentation as the description in subheading 8526.91.00:

| | | | | | |
|---|---|---|---|---|---|
| | [Radar apparatus . . ] | | | | |
| | [Other . . . ] | | | | |
| "8526.92 | Radio remote control apparatus: | | | | |
| 8526.92.10 | Radio remote control apparatus for video game consoles . . . . . | Free | | | 35% |
| 8526.92.50 | Other . . . . . | 4.9% | Free (A,AU,BH, C,CA,CL,CO,E, IL,J,JO,KR,MA, MX,OM,P,PA,PE, SG) | | 35%" |

Any staged reduction of a rate of duty set forth in the Rates of Duty 1-Special column for HTS subheading 8526.92.00 that was proclaimed by the President before the effective date of this proclamation for such subheading shall apply to the corresponding rate of duty set forth in subheadings 8526.92.50.

Section B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2013, the HTS is modified by:

(1) for subheading 8528.59.33, inserting "D," after "CO," in the column "Rates of Duty 1 Special"; and

(2) for subheading 8529.90.53, deleting numbers "8528.59.20," and "8528.59.30," and inserting numbers "8528.59.21", "8528.59.23", "8528.59.31", and "8528.59.33" in numerical sequence in the column "Article Description".

Section C. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2013, the HTS is modified by, for subheadings 9901.00.50 and 9901.00.52, inserting "CO," before "PE" in the column "Rates of Duty 1-Special".

[FR Doc. 2013–16104
Filed 7–1–13; 11:15 am]
Billing code 7020–02–C

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Tuesday, July 2, 2013

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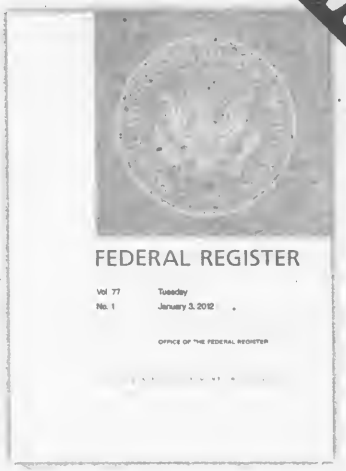


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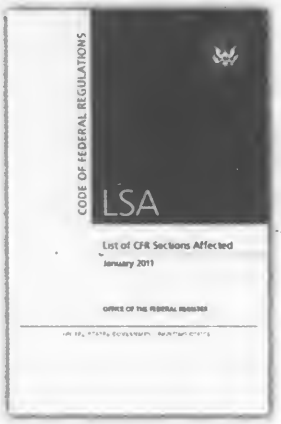


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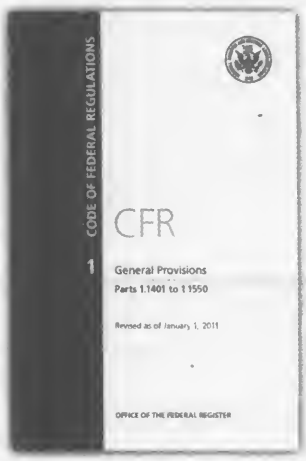


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