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# FEDERAL REGISTER

Vol. 78 Tuesday,
No. 117 June 18, 2013

Pages 36407–36644

OFFICE OF THE FEDERAL REGISTER

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Federal Register

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–0420; Directorate Identifier 2011–NM–284–AD; Amendment 39–17315; AD 2013–01–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD currently requires revising the airplane flight manual, deactivating and removing certain hydraulic accumulators, inspecting for cracks on accumulators and screw caps, and replacing certain accumulators. For certain airplanes, this new AD reduces the compliance time for a certain replacement. This AD was prompted by reports of on-ground hydraulic accumulator screw cap/end cap failure. We are issuing this AD to detect and correct hydraulic accumulator screw cap/end cap failure, which could result in the loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure, and consequent loss of control of the airplane.

**DATES:** This AD becomes effective July 23, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 23, 2013.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of December 22, 2011 (76 FR 71241, November 17, 2011).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 4, 2010 (75 FR 64636, October 20, 2010).

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

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 19, 2012 (77 FR 23420), and proposed to supersede AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011), which superseded AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010). That NPRM proposed to correct an unsafe condition for the specified products. Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–24, dated August 3, 2010 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Seven cases of on-ground hydraulic accumulator screw cap/end cap failure have been experienced on CL–600–2B19 aeroplanes, resulting in the loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. The lowest number of flight cycles accumulated at the time of failure, to date, has been 6991 flight cycles.
>
> The part numbers (P/N) of the accumulators currently installed on CL–600–2B19 aeroplanes are 601R75138–1 (08–60163–001 or 08–60163–002) [Hydraulic System No. 1, Hydraulic System No. 2, Inboard Brake and Outboard Brake accumulators] and 601R75138–3 (08–60164–001 or 08–60164–002) [Hydraulic System No. 3 accumulator].
>
> A detailed analysis of the calculated line of trajectory of a failed screw cap/end cap for each of the accumulators has been conducted, resulting in the identification of several areas where systems and/or structural components could potentially be damaged. Although all of the failures to date have occurred on the ground, an in-flight failure affecting such components could potentially have an adverse effect on the controllability of the aeroplane.
>
> This [Canadian] directive gives instructions to amend the Airplane Flight Manual (AFM), remove two accumulators (Hydraulic System No. 2 and No. 3) from the aeroplane and conduct repetitive ultrasonic inspections [for cracks] of the Hydraulic System No. 1, Inboard Brake and Outboard Brake accumulators that are not identified by the letter ''T'' after the serial number (S/N) on the identification plate for cracks until they are replaced by new accumulators P/N 601R75139–1 (11093–4).
>
> * * * * *

### Comments

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

### Request To Remove Compliance Time

Comair, Inc. requested that we remove paragraph (n)(2) from the NPRM (77 FR 23420, April 19, 2012). The commenter stated its understanding that the main reason for the change to paragraph (n) of the NPRM is to add paragraph (n)(2) with the intent to reduce the compliance schedule. However, Comair, Inc. reasoned that, based on the timeline for issuance of a final rule, the 60-day compliance time that was added to paragraph (n)(2) of the NPRM will likely extend the compliance time by three or more months beyond the existing compliance time for that required action (which is required by AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011)), instead of reducing the compliance time.

We disagree with the request to remove paragraph (n)(2) of the NPRM (77 FR 23420, April 19, 2012) from the final rule. Paragraph (n) of this AD indicates that the required action must be done at the later of the times in paragraphs (n)(1) and (n)(2) of this AD. Paragraph (n)(1) of this AD includes the phrase, ''whichever occurs first,'' which requires operators to perform the action at the earlier of the times specified in

that paragraph. Those times are tied to the effective date of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011), and are restated from that AD. Therefore, we added paragraph (n)(2) in the NPRM as a grace period for operators that may already have exceeded the compliance time in paragraph (n)(1) of this AD.

We find that the reduced compliance time is necessary to address the identified unsafe condition in a timely manner, and that a grace period is necessary to prevent unintentionally grounding airplanes. We have not changed the final rule in this regard.

**Request To Revise Paragraph (l) of the NPRM (77 FR 23420, April 19, 2012)**

Comair, Inc. requested that we revise paragraph (l) of the NPRM (77 FR 23420, April 19, 2012) to remove the phrase, ''with reduced compliance time for paragraph (n).'' Comair, Inc. considered this phrase to be an error and requested that further explanation be provided if the phrase is intended to be included.

We agree with the commenter's request. We note that both paragraphs (l) and (m) of the NPRM (77 FR 23420, April 19, 2012) contained similar phrases. However, since no reference to a reduced compliance time should be included in those paragraphs, we have deleted the phrases from both paragraphs (l) and (m) of this final rule.

**Request To Remove References to a Certain AD**

Air Wisconsin Airlines Corporation (Air Wisconsin) requested that we revise the NPRM (77 FR 23420, April 19, 2012) to remove certain AD references specified in paragraphs (g), (h), (i), (j), and (k) of the NPRM. Air Wisconsin stated that those paragraphs incorrectly refer to a previously superseded AD (AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)), and should instead be replaced with the most recent AD being superseded (that is, AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011)).

We partially agree with the commenter's request. We revised the introductory statement of paragraphs (g), (h), (i), (j), and (k) of this final rule to specify that the requirements of those paragraphs are restated from AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011).

However, we have not changed the compliance times specified (or referenced) in paragraphs (g), (h), (i), (j), and (k) of this AD. The actions required by those paragraphs were required in AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010), and the compliance times for those actions are based on the effective date of that AD. Those restated compliance times have not been changed in this final rule.

**Request To Clarify Service Information Reference**

Air Wisconsin requested that we revise paragraphs (h) and (i) of the NPRM (77 FR 23420, April 19, 2012) to clarify the added reference to revised service information. The commenter noted that those paragraphs state there is revised service information. Air Wisconsin questioned whether the revised service information is from AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010); or AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011).

We agree that clarification is necessary. We inadvertently specified that revised service information is included in paragraphs (h) and (i) of the NPRM (76 FR 71241, November 17, 2011), when, in fact, no revised service information was included. Therefore, we have removed those references from paragraphs (h) and (i) of this final rule.

**Request To Include the Latest Temporary Revision (TR)**

Air Wisconsin requested that we revise the NPRM (77 FR 23420, April 19, 2012) to include the latest TR to the Canadair Regional Jet AFM, CSP A–012. The commenter noted that paragraph (g) of the NPRM pertains to Canadair Regional Jet TR RJ/186–1, dated August 24, 2010. Air Wisconsin requested that we add Canadair Regional Jet TR RJ/186–2, dated July 7, 2011, as an approved method.

We agree with the commenter's request, and have included Canadair Regional Jet TR RJ/186–2, dated July 7, 2011, in paragraph (g) of this final rule and in Note 1 to paragraph (g) of this final rule.

**Explanation of Changes Made to This AD**

We have removed tables 1, 2, 3, 4, and 5 of this final rule. Instead, we have included the information from those tables in the subparagraphs of paragraphs (j)(1), (j)(2), (m), and (o)(3) of this final rule.

**Conclusion**

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously—except for minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 23420, April 19, 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 23420, April 19, 2012).

**Costs of Compliance**

We estimate that this AD will affect about 605 products of U.S. registry.

The actions that are required by AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011), and retained in this AD take about 33 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $3,054 per product. Based on these figures, the estimated cost of the currently required actions is $5,859 per product.

The new requirements of this AD add no additional economic burden.

**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 this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section.

## 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) 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011), and adding the following new AD:

**2013–01–01 Bombardier, Inc.:** Amendment 39–17315. Docket No. FAA–2012–0420; Directorate Identifier 2011–NM–284–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective July 23, 2013.

**(b) Affected ADs**

This AD supersedes AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011).

**(c) Applicability**

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 and subsequent.

**(d) Subject**

Air Transport Association (ATA) of America Code 29, Hydraulic Power; 32, Landing Gear.

**(e) Reason**

This AD was prompted by reports of on-ground hydraulic accumulator screw cap/end cap failure. We are issuing this AD to detect and correct hydraulic accumulator screw cap/end cap failure, which could result in the loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure, and consequent loss of control of the airplane.

**(f) Compliance**

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

**(g) Retained Airplane Flight Manual (AFM) Revision, With Revised Service Information**

This paragraph restates the AFM revision required by paragraph (g) of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011), with revised service information. Within 30 days after November 4, 2010 (the effective date of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)), revise the Limitations section, Normal Procedures section, and Abnormal Procedures section of the Canadair Regional Jet AFM, CSP A–012, by incorporating Canadair Regional Jet Temporary Revision (TR) RJ/186–1, dated August 24, 2010; or Canadair Regional Jet TR RJ/186–2, dated July 7, 2011; into the applicable section of Canadair Regional Jet AFM, CSP A–012. Thereafter, except as provided by paragraph (p) of this AD, no alternative actions specified in Canadair Regional Jet TR RJ/186–1, dated August 24, 2010; or Canadair Regional Jet TR RJ/186–2, dated July 7, 2011; may be approved.

**Note 1 to paragraph (g) of this AD:** The actions required by paragraph (g) of this AD may be done by inserting a copy of Canadair Regional Jet TR RJ/186–1, dated August 24, 2010; or Canadair Regional Jet TR RJ/186–2, dated July 7, 2011; into the applicable section of the Canadair Regional Jet AFM, CSP A–012. When one of these TRs has been included in the general revisions of this AFM, the general revisions may be inserted into this AFM, and the TR removed, provided that the relevant information in the general revision is identical to that in Canadair Regional Jet TR RJ/186–1, dated August 24, 2010; or Canadair Regional Jet TR RJ/186–2, dated July 7, 2011.

**(h) Retained Deactivation of the Hydraulic System No. 3 Accumulator**

This paragraph restates the deactivation required by paragraph (h) of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011). Within 250 flight cycles after November 4, 2010 (the effective date of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)), deactivate the hydraulic system No. 3 accumulator, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–29–031, Revision A, dated March 26, 2009. Doing the removal of the hydraulic system No. 3 accumulator in paragraph (l) of this AD terminates the requirements of this paragraph. The actions in this paragraph apply to all accumulators in hydraulic system No. 3.

**(i) Retained Removal of the Hydraulic System No. 2 Accumulator**

This paragraph restates the removal required by paragraph (i) of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011). Within 500 flight cycles after November 4, 2010 (the effective date of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)), remove the hydraulic system No. 2 accumulator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–29–032, Revision A, dated January 26, 2010. The actions in this paragraph apply to all accumulators in hydraulic system No. 2.

**(j) Retained Initial and Repetitive Ultrasonic Inspections of Hydraulic System No. 1, Inboard Brake and Outboard Brake Accumulators, With Revised Service Information**

This paragraph restates the initial and repetitive ultrasonic inspections required by paragraph (j) of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011), with revised service information. For hydraulic system No. 1, inboard brake and outboard brake accumulators having part number (P/N) 601R75138–1 (08–60163–001 or 08–60163–002): At the applicable compliance times specified in paragraph (k) of this AD, do the inspections required by paragraphs (j)(1) and (j)(2) of this AD. Repeat the inspections for each accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002) thereafter at intervals not to exceed 500 flight cycles until the replacement specified in this paragraph is done, or the replacement specified in paragraph (m) of this AD is done. If any crack is found, before further flight, replace the accumulator with a new accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002) and having the letter ''T'' after the serial number on the identification plate, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraphs (j)(1)(i), (j)(1)(ii), (j)(2)(i), and (j)(2)(ii) of this AD.

**Note 2 to paragraph (j) of this AD:** For any accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002) and the letter ''T'' after the serial number on the identification plate, or for any accumulator having a part number that is not listed in paragraph (j) of this AD, the inspection specified in paragraph (j) of this AD is not required.

(1) Do an ultrasonic inspection for cracks on each accumulator, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this AD.

(i) For the hydraulic system No. 1 accumulator: Bombardier Alert Service Bulletin A601R–29–029, Revision B, dated May 11, 2010, including Appendix A, dated October 18, 2007.

(ii) For the inboard and outboard brake accumulators: Bombardier Alert Service Bulletin A601R–32–103, Revision D, dated May 11, 2010, including Appendix A, Revision A, dated October 18, 2007.

(2) Do an ultrasonic inspection for cracks on the screw cap, in accordance with the Accomplishment Instructions of the

applicable service specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this AD.

(i) For the hydraulic system No. 1 accumulator: Bombardier Service Bulletin 601R–29–033, Revision A, dated May 11, 2010, including Appendix A, dated May 5, 2009.

(ii) For the inboard and outboard brake accumulators: Bombardier Service Bulletin 601R–32–106, including Appendix A, Revision A, dated May 11, 2010.

**(k) Retained Compliance Times for the Ultrasonic Inspections of Hydraulic System No. 1, Inboard Brake and Outboard Brake Accumulators**

This paragraph restates the compliance times required by paragraph (k) of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011). For hydraulic system No. 1 inboard brake, and outboard brake accumulators having P/N 601R75138–1 (08–60163–001 or 08–60163–002): Do the inspections specified in paragraph (j) of this AD at the applicable time in paragraphs (k)(1), (k)(2), and (k)(3) of this AD.

(1) For any accumulator not having the letter ''T'' after the serial number on the identification plate and with more than 4,500 flight cycles on the accumulator as of November 4, 2010 (the effective date of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)): Inspect within 500 flight cycles after November 4, 2010 (the effective date of AD 2010–22–02).

(2) For any accumulator not having the letter ''T'' after the serial number on the identification plate and with 4,500 flight cycles or less on the accumulator as of November 4, 2010 (the effective date of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)): Inspect prior to the accumulation of 5,000 flight cycles on the accumulator.

(3) If it is not possible to determine the flight cycles accumulated for any accumulator not having the letter ''T'' after the serial number on the identification plate: Inspect within 500 flight cycles after November 4, 2010 (the effective date of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)).

**(l) Retained Removal of the Hydraulic System No. 3 Accumulator**

This paragraph restates the removal required by paragraph (o) of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011). Within 1,000 flight cycles after December 22, 2011 (the effective date of AD 2011–23–08), remove the hydraulic system No. 3 accumulator, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–29–031, Revision A, dated March 26, 2009. Doing the action in this paragraph terminates the requirements of paragraph (h) of this AD.

**(m) Retained Replacement of the Hydraulic System No. 1, Inboard Brake and Outboard Brake Accumulators**

This paragraph restates the replacement required by paragraph (p) of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011). Within 4,000 flight cycles or 24 months after December 22, 2011 (the effective date of AD 2011–23–08), whichever occurs first, replace any hydraulic system No. 1, inboard brake or outboard brake accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002), with a new accumulator having P/N 601R75139–1 (11093–4), in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraphs (m)(1) through (m)(4) of this AD. Doing the action in this paragraph terminates the requirement for the inspections in paragraph (j) of this AD for that accumulator. As of December 22, 2011 (the effective date of AD 2011–23–08), use only the applicable service bulletin specified in paragraph (m)(2) or (m)(4) of this AD.

(1) For the hydraulic system No. 1 accumulator: Bombardier Service Bulletin 601R–29–035, dated May 11, 2010.

(2) For the hydraulic system No. 1 accumulator: Bombardier Service Bulletin 601R–29–035, Revision A, dated December 8, 2010.

(3) For the inboard and outboard brake accumulators: Bombardier Service Bulletin 601R–32–107, Revision A, dated June 17, 2010.

(4) For the inboard and outboard brake accumulators: Bombardier Service Bulletin 601R–32–107, Revision B, dated December 8, 2010.

**(n) Retained Action for Airplanes on Which Bombardier Service Bulletin 601R–29–035, Dated May 11, 2010, Is Done and Reducer Having P/N MS21916D8–6 is Installed, With Revised Compliance Time**

This paragraph restates the action required by paragraph (q) of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011), with reduced compliance time. For airplanes on which Bombardier Service Bulletin 601R–29–035, dated May 11, 2010, is done, and on which a reducer having P/N MS21916D8–6 is installed: At the later of the times specified in paragraphs (n)(1) and (n)(2) of this AD, replace the reducer of the hydraulic system No. 1 with a new reducer, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 601R–29–035, Revision A, dated December 8, 2010.

(1) Within 1,200 flight cycles or 8 months after December 22, 2011 (the effective date of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011)), whichever occurs first.

(2) Within 60 days after the effective date of this AD.

**(o) Retained Credit for Previous Actions**

(1) This paragraph provides credit for deactivating the hydraulic system No. 3 accumulator required by paragraph (h) of this AD, if the deactivation was performed before November 4, 2010 (the effective date of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)), using Bombardier Alert Service Bulletin A601R–29–031, dated December 23, 2008, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for removing the hydraulic system No. 2 accumulator required by paragraph (i) of this AD, if the removal was performed before November 4, 2010 (the effective date of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)), using Bombardier Service Bulletin 601R–29–032, dated November 12, 2009, which is not incorporated by reference in this AD.

(3) This paragraph provides credit for an ultrasonic inspection for cracks required by paragraph (j) of this AD, if the ultrasonic inspection was performed before November 4, 2010 (the effective date of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)), using the applicable service bulletin identified in paragraphs (o)(3)(i) through (o)(3)(viii) of this AD; as applicable; which are not incorporated by reference in this AD.

(i) Bombardier Alert Service Bulletin A601R–29–029, dated October 18, 2007.

(ii) Bombardier Alert Service Bulletin A601R–29–029, Revision A, dated November 12, 2009.

(iii) Bombardier Alert Service Bulletin A601R–32–103, dated November 21, 2006.

(iv) Bombardier Alert Service Bulletin A601R–32–103, Revision A, dated March 7, 2007.

(v) Bombardier Alert Service Bulletin A601R–32–103, Revision B, dated October 18, 2007.

(vi) Bombardier Alert Service Bulletin A601R–32–103, Revision C, dated February 26, 2009.

(vii) Bombardier Service Bulletin 601R–29–033, dated May 5, 2009.

(viii) Bombardier Service Bulletin 601R–32–106, dated May 5, 2009.

(4) This paragraph provides credit for removing the hydraulic system No. 3 accumulator required by paragraph (l) of this AD, if the removal was performed before December 22, 2011 (the effective date of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011)), using Bombardier Alert Service Bulletin A601R–29–031, dated December 23, 2008, which is not incorporated by reference in this AD.

(5) This paragraph provides credit for replacing any inboard brake or outboard brake accumulator required by paragraph (m) of this AD, if the replacement was performed before December 22, 2011 (the effective date of AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011)), using Bombardier Service Bulletin 601R–32–107, dated May 11, 2010, which is not incorporated by reference in this AD.

**(p) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office. The AMOC approval letter must specifically reference this AD.

(i) AMOCs approved previously in accordance with AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010), are approved as AMOCs for the corresponding provisions of this AD.

(ii) AMOCs approved previously in accordance with AD 2011–23–08, Amendment 39–16859 (76 FR 71241, November 17, 2011), are approved as AMOCs for the corresponding provisions of 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.

**(q) Related Information**

Refer to MCAI Canadian Airworthiness Directive CF–2010–24, dated August 3, 2010, and the service bulletins specified in paragraphs (q)(1) through (q)(12) of this AD, for related information.

(1) Bombardier Alert Service Bulletin A601R–29–029, Revision B, dated May 11, 2010, including Appendix A, dated October 18, 2007.

(2) Bombardier Alert Service Bulletin A601R–29–031, Revision A, dated March 26, 2009.

(3) Bombardier Alert Service Bulletin A601R–32–103, Revision D, dated May 11, 2010, including Appendix A, Revision A, dated October 18, 2007.

(4) Bombardier Service Bulletin 601R–29–032, Revision A, dated January 26, 2010.

(5) Bombardier Service Bulletin 601R–29–033, Revision A, dated May 11, 2010, including Appendix A, dated May 5, 2009.

(6) Bombardier Service Bulletin 601R–29–035, dated May 11, 2010.

(7) Bombardier Service Bulletin 601R–29–035, Revision A, dated December 8, 2010.

(8) Bombardier Service Bulletin 601R–32–106, Revision A, including Appendix A, dated May 11, 2010.

(9) Bombardier Service Bulletin 601R–32–107, Revision B, dated December 8, 2010.

(10) Bombardier Service Bulletin 601R–32–107, Revision A, dated June 17, 2010.

(11) Canadair Regional Jet Temporary Revision RJ/186–1, dated August 24, 2010, to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.

(12) Canadair Regional Jet TR RJ/186–2, dated July 7, 2011 to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.

**(r) 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 July 23, 2013.

(i) Canadair Regional Jet TR RJ/186–2, dated July 7, 2011, to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.

(ii) Reserved.

(4) The following service information was approved for IBR on December 22, 2011 (76 FR 71241, November 17, 2011)).

(i) Bombardier Service Bulletin 601R–29–035, Revision A, dated December 8, 2010.

(ii) Bombardier Service Bulletin 601R–32–107, Revision B, dated December 8, 2010.

(5) The following service information was approved for IBR on November 4, 2010 (75 FR 64636, October 20, 2010).

(i) Bombardier Alert Service Bulletin A601R–29–029, Revision B, dated May 11, 2010, including Appendix A, dated October 18, 2007.

**Note 3 to paragraphs (r)(5)(i), (r)(5)(iii), (r)(5)(v), and (r)(5)(vii) of this AD:** In Appendix A to these documents, the document number is shown only on page A1 of these appendices.

(ii) Bombardier Alert Service Bulletin A601R–29–031, Revision A, dated March 26, 2009.

(iii) Bombardier Alert Service Bulletin A601R–32–103, Revision D, dated May 11, 2010, including Appendix A, Revision A, dated October 18, 2007.

(iv) Bombardier Service Bulletin 601R–29–032, Revision A, dated January 26, 2010.

(v) Bombardier Service Bulletin 601R–29–033, Revision A, dated May 11, 2010, including Appendix A, dated May 5, 2009.

(vi) Bombardier Service Bulletin 601R 29 035, dated May 11, 2010.

(vii) Bombardier Service Bulletin 601R–32–106, Revision A, including Appendix A, dated May 11, 2010.

(viii) Bombardier Service Bulletin 601R–32–107, Revision A, dated June 17, 2010.

(ix) Canadair Regional Jet Temporary Revision RJ/186–1, dated August 24, 2010, to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.

(6) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(7) 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.

(8) 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 December 28, 2012.

**Ali Bahrami,**

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

[FR Doc. 2013–13524 Filed 6–17–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0158; Airspace Docket No. 13–ASO–5]**

## Amendment of Class E Airspace; Tuskegee, AL

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E Airspace at Tuskegee, AL, as the Tuskegee VOR/DME has been decommissioned and airspace reconfiguration is necessary for the safety and airspace management of Instrument Flight Rules (IFR) operations at Moton Field Municipal Airport. This action also corrects the spelling of the airport.

**DATES:** Effective 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

**SUPPLEMENTARY INFORMATION:**

### History

On March 28, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace at Moton Field Municipal Airport, Tuskegee, AL (78 FR 18928). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication the FAA found that the airport's name was misspelled in the NPRM. This action corrects the misspelling from Moten to Moton. Except for editorial changes and the changes listed above, this rule is the same as published in the NPRM.

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

**The Rule**

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Moton Field Municipal Airport, Tuskegee, AL, formerly called Tuskegee Municipal Airport. Airspace reconfiguration is necessary due to the decommissioning of the Tuskegee VOR/DME and cancellation of the VOR approach, and for the continued safety and management of IFR operations at the airport. Accordingly, the extension of Class E airspace to the northeast of the airport is eliminated.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (Air).

**Adoption of the Amendment**

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

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

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

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO TN E5 Tuskegee, AL [Amended]**

Moton Field Municipal Airport, AL
(Lat. 32°27′38″ N., long. 85°40′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Moton Field Municipal Airport.

Issued in College Park, Georgia, on June 7, 2013.

**Barry A. Knight,**

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

[FR Doc. 2013–14150 Filed 6–17–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Chapter I

**[Docket No. FAA–2011–0012]**

## Notice of Policy Clarification for the Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustors and Beneficiaries

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

**ACTION:** Notice of FAA policy clarification.

**SUMMARY:** Notice is hereby given of the FAA's clarification of its policy regarding the registration of aircraft to U.S. Citizen Trustees in situations involving non-U.S. citizen trustors and beneficiaries.

**DATES:** *Effective Date:* The policy described herein is effective September 16, 2013.

**FOR FURTHER INFORMATION CONTACT:** Joseph Standell at 405–954–3296, Office of Aeronautical Center Counsel, Federal Aviation Administration, 6500 S. MacArthur Blvd., Oklahoma City, Oklahoma 73169.

**SUPPLEMENTARY INFORMATION:**

**Background**

The FAA has been reviewing policies and practices regarding the registration of aircraft in the United States involving U.S. citizen trustees and non-U.S. citizen trustors and beneficiaries. Such arrangements are commonly referred to as non-citizen trusts. The FAA began its review in part because of problems the FAA has experienced in obtaining important operational and maintenance information concerning such aircraft from the registered owners, i.e., the owner trustees. The problems in obtaining such information in turn affected the FAA's ability to conduct fully effective oversight of such aircraft when operated outside the United States, and to provide foreign civil aviation authorities with information on those operations in support of the safety oversight activities of those authorities. The FAA also undertook the review of non-citizen trusts to assure compliance with the FAA regulatory requirements for non-citizen trusts contained in 14 CFR 47.7.

As part of its review of non-citizen trusts, the FAA published a notice of public meeting inviting members of the public to discuss the use of non-citizen trusts to register aircraft in the United States (76 FR 23353, April 26, 2011). In the notice, the FAA set forth several questions in order to elicit a robust discussion of the issues. Among other things, the FAA summarized the requirements in existing U.S. law that only an ''owner'' may register an aircraft, and that generally speaking only citizens of the United States that are owners are eligible to register aircraft. Thus, the FAA Aircraft Registry is an ''owner'' registry; it is not an ''operator'' registry.

The FAA met with interested members of the public on June 1, 2011, in Oklahoma City, Oklahoma.

Representatives of trade associations, law firms, aircraft manufacturers, lenders, lessors, aircraft operators, trustees and others were present. The proceedings of that meeting were transcribed, and the transcript was made available for purchase from the court reporter to members of the public.

The FAA received a number of written comments from members of the public in response to the questions raised in the April 26, 2011, **Federal Register** notice. The FAA also received written comments in response to its request at the conclusion of the public meeting for additional input from the meeting participants and all others who had an interest in the issues surrounding non-citizen trusts. An organization (the Aviation Working Group, or AWG) that represents a wide range of aviation industry participants on aviation regulatory and commercial issues submitted a document on May 26, 2011, in which its members and other supporting entities shared their views concerning the various questions posed by the FAA in its April 26, 2011 **Federal Register** notice. The AWG also participated at the public meeting on June 1, 2011, and submitted additional written comments on June 30, 2011.

After considering the written comments submitted by the public and the information received at the June 1 public meeting, the FAA published a Notice of Proposed Policy Clarification for the Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustors and Beneficiaries in the **Federal Register** on February 9, 2012. (77 FR 6694). That notice contained a detailed discussion of the FAA safety oversight obligations under U.S. and international law, and how those obligations related to the FAA's rules and practices on the use of non-citizen trusts to register aircraft in the name of owner trustees. The FAA's proposed policy clarification in the notice was designed to help the public better understand the FAA's rules and practices on non-citizen trusts. The FAA suggested changes to provisions in trust agreements to ensure consistency of those agreements with FAA rules, policies, and practices, and to enable the FAA to facilitate the registration of aircraft in the future that are owned in trust. An example of a standard trust agreement with FAA-suggested changes incorporated was attached at the end of the February 9 notice. The FAA invited the public to submit written comments on the proposed policy clarification by March 31, 2012.

In response to the initial reaction to the February 9 notice, the FAA decided to hold a second public meeting to allow the public to provide views on the proposed policy clarification. The FAA published a notice of public meeting inviting members of the public to discuss the proposed policy clarification on the use of non-citizen trusts to register aircraft (77 FR 15180, March 14, 2012). The FAA also extended the deadline for written comments on the proposed policy clarifications until July 6, 2012.

The public meeting was held on June 6, 2012, in Oklahoma City, Oklahoma. As with the first public meeting, representatives of trade associations, law firms, aircraft manufacturers, lenders, lessors, aircraft operators, trustees and others were in attendance. The proceedings of the meeting were transcribed and the transcript was made available for purchase from the court reporter to members of the public.

During the meeting, several participants requested an additional extension of time to submit written comments on the proposed policy clarification given the complexity of the issues involved. The FAA agreed to the request, and published a notice extending the deadline for comments until August 17, 2012 (77 FR 40310, July 9, 2012). The FAA received a number of written comments, including those from the AWG.

The FAA considered the information provided at the two public meetings and the written comments received in response to the April 26, 2011 and February 9, 2012 notices as critical in helping it better understand the practices and concerns of the aviation industry regarding the use of non-citizen trusts to register aircraft in the United States. The FAA also now has a more complete understanding of how some view the regulatory obligations on an owner trustee when registering an aircraft in the United States using a non-citizen trust. Importantly, the FAA also believes that the public meetings helped members of the public to better understand the critical safety information that the FAA needs to communicate to aircraft operators, through owner trustees, and the critical information that the FAA needs to receive from them in order for the FAA to meet its safety oversight obligations under U.S. and international law.

## Policy Clarification

This policy clarification is consistent with the FAA's regulations. It is also in accord with the FAA's duties under applicable statutory and treaty obligations with regard to safety oversight functions, safety investigations, and safety rulemaking activities (including the expeditious communication of critical safety rulemaking, e.g. airworthiness directives).

The FAA has carefully considered the information provided during the public meetings and in written comments in developing the following policy clarification on the use of non-citizen trusts to register aircraft in the United States. The FAA believes this policy clarification will ensure that the use of non-citizen trusts to register aircraft is fully consistent with the applicable regulations and supports the FAA's safety oversight interests with regard to aircraft on the U.S. registry. The policy clarification will facilitate the FAA's ability to determine eligibility for registering aircraft to non-U.S. citizen trusts. The FAA does not expect that this policy clarification will discourage the use of non-citizen trusts to register aircraft in the appropriate circumstances.

In presenting this policy clarification, the FAA for the most part will not repeat the detailed legal analysis that it provided in outlining its proposed policy clarification in the February 9 notice. Except as discussed in this Notice, the underlying legal reasons for the policy clarification outlined in this Notice are substantially the same as the legal analysis presented in the February 9 notice. Accompanying this policy clarification is a discussion of the comments received concerning the policy.

### *A. Policy Concerning Trustees as Aircraft Owners*

As discussed extensively in the February 9 notice, a primary area of concern for the FAA is whether the trustees of non-citizen trusts fully understand and are prepared to comply with their regulatory obligations as owners of aircraft on the U.S. registry. The owners of U.S.-registered aircraft have a substantial role in the FAA's system for overseeing the safety of those aircraft and their operation. The owner's role includes the ability to communicate critical safety information to the actual operator of an aircraft, assuming (as is the case in most, if not all, instances) that the trustee in a non-citizen trust is not the operator of the aircraft. When requested, the owner also must be able to provide the FAA with information on the aircraft and its operation.

In the laws and regulations that establish and govern the FAA Aircraft Registry, no distinction is made between types of aircraft owners for purposes of regulatory compliance. All registered owners of aircraft on the FAA Aircraft Registry, whether they are individuals, partnerships, corporations, or

associations, any of which may act in the capacity of owner trustees, have the same obligations to comply with applicable FAA regulations. Once the FAA completes the registration process, the registered owner is the owner for all purposes under the regulations.

The FAA does not consider the status of the trustee as the owner of the aircraft under a trust agreement as having any differing effect on its responsibilities for regulatory compliance issues compared to other owners of a U.S.-registered aircraft. The FAA has determined that there is nothing inherent in the status of a trustee owner of a U.S.-registered aircraft that would affect or limit its responsibilities for ensuring compliance with applicable laws and regulations. The FAA is not aware of any basis for treating one type of owner—such as a trustee under a non-citizen trust—differently from any other owner of a civil aircraft on the U.S. registry when considering issues of regulatory compliance.

Contrary to the suggestion made by some commenters, treating an owner trustee of an aircraft the same as all other owners of aircraft on the U.S. registry does not represent a change either in the status of the owner trustee or in the relationship or responsibilities of trustee as to an aircraft registered under a non-citizen trust under FAA regulations. The regulatory obligations of an owner trustee with regard to an aircraft registered in the U.S. using a non-citizen trust are, and always have been, the same as the regulatory obligations of all owners of U.S. registered aircraft.

Some commenters have suggested that a trustee owner can relieve itself of its regulatory compliance obligations if, in transferring the aircraft to another party for purposes of operating it, the trustee includes a contractual requirement that the operator fully comply with all applicable laws and regulations. The FAA disagrees. No owner of an aircraft on the U.S. registry can avoid a regulatory obligation imposed on it by the FAA simply by entering into a private contract with another party. The FAA in its regulations and policies does not recognize such a right.

Two commenters—the AWG and Airlines for America (A4A)—expressed concern about whether treating an owner trustee the same as all other owners under the FAA's regulations could increase the trustee's tort liability exposure. The FAA takes no position on this issue other than to note that in our view, the regulatory obligations of an owner trustee are not changed or expanded by virtue of this policy clarification. Analyzing the potential tort liability of any owner of an aircraft on the U.S. registry is beyond the purview of the FAA and is not relevant to the discussion of the owner's responsibilities.

The AWG and A4A also raised the issue of whether 49 U.S.C. 44112 [1] affects the regulatory responsibilities of owner trustees. As the FAA noted in the February 9 notice, the plain terms of § 44112 only addresses the tort liability of lessors, owners and secured parties under certain circumstances. Section 44112 does not distinguish between types of owners of aircraft with respect to regulatory obligations, nor does it provide a basis for relieving trustees of the obligation to comply with the applicable regulations.

Flexjet, a fractional ownership program manager, stated in its comments that ''the registration of fractional ownership program aircraft to U.S. citizen trustees in situations involving non-U.S. citizens and beneficiaries should be exempted from the proposed FAA policy'' because of the role of the fractional program manager in receiving notices and the joint liability of the fractional ownership program manager and owner for regulatory compliance. According to Flexjet, these considerations either substantially mitigate or eliminate the FAA's oversight concerns as outlined in the February 9 notice.

The FAA disagrees with the Flexjet position. Without addressing in this Notice the issue of whether an owner trustee can participate as an ''owner'' in a fractional ownership program under 14 CFR part 91, subpart K, the FAA's oversight of fractional ownership operations does include consideration of the role and actions of the owner in such operations. There is no basis in subpart K for the proposition that the actions of a fractional ownership program manager could somehow reduce or eliminate the FAA's oversight concerns as to owners.

*B. Information About the Aircraft and Its Operations*

As noted above, the FAA by law imposes important safety obligations on all owners of aircraft. To meet these obligations, an owner must maintain current information about the identity and whereabouts of the actual operators of an aircraft and location and nature of the operation on an ongoing basis, thereby allowing that owner to provide the operator with safety critical information in a timely manner, and to obtain information responsive to FAA inquiries, including investigations of alleged violations of FAA regulations. Such information is an essential element in the FAA's ability to carry out its oversight obligations under U.S. and international law. Moreover, the FAA believes such obligations are not unduly burdensome or beyond the capabilities of any owner of a U.S.-registered aircraft to meet.

The FAA expects that an owner trustee of aircraft on the U.S. registry, in carrying out the above-described obligations, normally should be able to respond to a request by the FAA for the following information about the aircraft and its operation within two (2) business days:

- The identity of the person normally operating, or managing the operations of, the aircraft;
- Where that person currently resides or has its principal place of business;
- The location of maintenance and other aircraft records; and
- Where the aircraft is normally based and operated.

The FAA further expects that that an owner trustee of aircraft on the U.S. registry normally should be able to respond within five (5) business days to a request by the FAA for more detailed information about the aircraft and its operations, including:

- Information about the operator, crew, and aircraft operations on specific dates;
- Maintenance and other aircraft records; and
- The current airworthiness status of the aircraft.

In the event of an emergency, the FAA may request a trustee to provide information more quickly than the timelines noted above.

The timeline guidance of two and five days referenced above is intended by the FAA to be just that—guidelines. They are not mandatory timelines by which an owner trustee must, in all cases, respond to an FAA request for information or face sanctions. The timelines of two and five days merely represent what the FAA believes are reasonable and attainable goals for providing specific information to the FAA under most circumstances. The FAA understands that there may be occasions where requested information is not readily available, such that the owner trustee cannot provide it to the FAA within the timelines described. In

[1] In its current form, section 44112, entitled ''Limitations on Liability,'' provides in part that a lessor, owner, or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine, or propeller is in the actual possession or control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of the aircraft, engine, or propeller; or the flight of, or an object falling from, the aircraft, engine, or propeller.

those cases, however, the FAA would expect that an owner trustee would be in communication with the FAA about the nature of the delays or difficulties in obtaining requested information, including information on actions by the trustee owner to overcome the delays or difficulties. In a case where an owner trustee is unable to provide much or all of the information requested by the FAA, or does not diligently attempt to provide information in a timely manner when requested by FAA, the facts and circumstances may dictate further action by the FAA.

Several commenters, including AWG, A4A, and Flexjet, argued that in many instances timely information about an aircraft registered to an owner trustee would more readily be available from other sources, including an air carrier or other holder of an air operator certificate in actual possession of an aircraft or from a fractional ownership program manager whose program operation includes an aircraft registered in whole or in part, in the name of an owner trustee. In those cases, the commenters stated that the FAA would obtain needed information more efficiently if it went directly to those other sources.

The FAA agrees that for many aircraft on the FAA Aircraft Registry, including aircraft registered under non-citizen trusts, the FAA may be able to obtain information about the aircraft and its operations by directly contacting the operator of the aircraft when that operator is readily identifiable. Such operators include air carriers and other holders of air operator certificates. They also may include fractional ownership program managers. The FAA, which shares the commenters' interest in efficiency, will in most cases, go directly to the air carrier or similar operator through FAA personnel (e.g., principal operations or maintenance inspectors) to obtain information about the aircraft and its operation. The FAA will, however, always reserve the right to seek information from the registered owner of an aircraft on the U.S. registry.

For aircraft registered on behalf of non-U.S. citizens under trusts that are primarily or exclusively used in general aviation or aerial works operations outside the United States, the FAA has been less successful in obtaining information about the aircraft and their operations. In those cases, the operator is frequently not identifiable by the FAA, and in any case, the FAA records would not necessarily contain contact information for those operators that can be identified. In those cases, the FAA will look to the owner trustee, as the registered owner of the aircraft, for information about the aircraft and its operations when needed to meet the FAA's safety oversight obligations under U.S. and international law.

Comments by the AWG suggest that an owner trustee could meet its obligations to provide information to the FAA by including clauses in operating agreements, leases, bailments and other arrangements requiring operators of a trust-registered aircraft to maintain current contact information with owner trustee and requiring them to provide that information to the FAA upon request. AWG further explained that under this approach, such clauses also would be required elements in any downstream operating agreement, lease, or other arrangement pertaining to the aircraft but not involving the owner trustee as a party. The clauses would address other issues related to the provision of information requested by the FAA, including: the obligation to expeditiously provide the information; liability for a failure to reply; giving the FAA access to inspect the aircraft and its records; [2] and required notices to the owner trustee of transfers of control of the aircraft under an operating agreement, lease, bailment, or other arrangement.

To the extent that these and other contractual mechanisms would be intended to somehow relieve the owner trustee of an obligation to provide the FAA with requested information, the FAA does not agree that this approach represents an acceptable means of complying with the obligations of an owner to provide information. As noted above, an owner of an aircraft on the U.S. registry cannot avoid a regulatory obligation imposed on it by the FAA simply by entering into a private contract with another party. Moreover, the approach suggested by the AWG would make the FAA's ability to obtain information subject to the implementation of contracts to which the FAA is not a party and over which the FAA would have no standing to enforce. Subordinating the oversight interests of the FAA to the interests of private parties in executing a private contract is not acceptable. The FAA needs a more reliable system of obtaining information in order to meet its safety oversight interests.

On the other hand, the FAA agrees that the contractual system described by the AWG may represent a reasonable means by which an owner trustee can ensure that it is able to satisfy FAA requests for information about an aircraft that is in the possession of the trustor, beneficiary, or other downstream operator. There may be other mechanisms that an owner trustee could utilize to achieve that same result. Although the FAA will not require an owner trustee to adopt such specific contractual mechanisms or otherwise specify how the owner trustee should structure arrangements concerning the possession and use of the aircraft in order to ensure its ongoing ability to comply with its regulatory obligations, such contractual mechanisms may be considered favorably by the FAA.[3]

*C. Submission of Operating Agreements With a Registration Application*

The FAA requires that a person holding legal title to an aircraft in trust must, when applying to register that aircraft in the United States, submit a ''copy of each document legally affecting a relationship under the trust . . .'' 14 CFR 47.7(c)(2)(i). The purpose of this requirement is to ensure the FAA has access to all documents relevant to the trust relationship when determining whether a particular non-citizen trust provides an adequate basis for registering an aircraft in accordance with FAA regulations. A fundamental part of the registration process for aircraft held in trust is determining whether the underlying agreements meet and are not in conflict with the applicable requirements and therefore are sufficient to establish the trustee's eligibility to register the aircraft. The failure to submit required documents such as an operating agreement frustrates this objective.

During the course of its review of non-citizen trusts, the FAA reviewed a number of aircraft operating agreements between the trustee owners of aircraft and the trustors or beneficiaries of the trust.[4] In its review, the FAA found that many operating agreements contained clauses that addressed issues not covered in the non-citizen trust agreement or that modified or contradicted provisions in the trust agreement, particularly as to enlarging

[2] With regard to the inspection of the aircraft and its regulations, the FAA notes that U.S. laws and regulations provide the FAA with a right of access to U.S. registered aircraft. A foreign civil aviation authority has a right under international law to inspect a U.S.-registered aircraft and its documents when the aircraft is located in the territory of the country for which the authority oversees aviation safety. Convention on International Civil Aviation, Article 16.

[3] For example, the FAA would view favorably a provision that requires the owner trustee to approve, or be provided with information on, all downstream transfers of the aircraft, such that the trustee has current information on the location and operator of the aircraft.

[4] The FAA notes that it had previously unfavorably opined on whether a trustee could enter into operating agreements that permitted custody and use of the aircraft by the non-U.S. citizen trustor. FAA now recognizes that such transactions are not uncommon.

the degree of control exercised by a non-U.S. citizen over the trustee. The ultimate impact of many operating agreements was to affect the relationship and balance established under the non-citizen trust between the trustor and/or beneficiary on one hand and the trustee on the other.

Based on the information considered in the course of its review of non-citizen trusts, the FAA concludes that a relationship established under a trust agreement is necessarily affected by an operating agreement or similar side agreement or arrangement involving trustee and trustor or beneficiary which allows possession and use of the aircraft at all times to remain with the trustor and/or beneficiary. The operating agreement and the trust agreement are so intertwined that the operating agreement could affect the relationship established under the trust.

To avoid the result where the FAA does not have access to all relevant information for use in determining whether a particular non-citizen trust provides an adequate basis for registering an aircraft in accordance with FAA regulations, the FAA will require that all operating agreements or similar side agreements involving the trustee transferring custody and use of the aircraft held in trust to the trustor or beneficiary be submitted to the FAA along with other documents that affect a relationship under the trust pursuant to 14 CFR 47.7(c)(2)(i).

In cases where a non-citizen trust is used to establish eligibility for registration and no operating agreement or other similar side agreement or arrangement is submitted along with a registration application, the FAA will expect the applicant to provide sufficient assurances that no such operating agreement or other side agreement or arrangement exists between the trustee and the trustor or beneficiary. An adequate assurance might take the form of a declaration by the trustee in an affidavit submitted in support of a non-citizen trust registration that no such operating agreement or other side agreement or arrangement has been entered into by the trustee and the trustor or beneficiary. There may be other means by which the trustee could adequately assure the FAA that no operating agreement or other side agreement or arrangement exists between the trustee and the trustor and/or beneficiary. The FAA will consider alternate approaches. In the end, however, the FAA must be certain that it has the opportunity to review all documents that affect the relationship established under a non-citizen trust in order to insure the integrity of the registration process. Silence by the trustee with regard to this important issue will not be sufficient.

The comments received by the FAA on the required submission of aircraft operating agreements expressed concern over whether the agreements would be accorded confidential treatment because of the sensitivity of the information contained therein, and whether the retention of the agreements in the Registry's files would create a cloud on the title of the aircraft that would impede its subsequent sale. The FAA agrees that those concerns are valid. After further consideration of the issue, the FAA concludes aircraft operating agreements do not have to be retained as part of a trust registration application in the files of the FAA Registry.

Accordingly, if an applicant requests the return of an aircraft operating agreement submitted as part of a trust registration application at the time the application is submitted, the FAA will return the agreement to the applicant once its review of the application package is complete. That review will focus on whether the aircraft operating agreement affects the relationship established under the trust in a way that is contrary to the regulations. If the review establishes that the aircraft operating agreement does not adversely affect the trust relationship, FAA registry counsel will create a brief summary of the review that will be retained in the FAA Registry's ancillary aircraft file and the aircraft operating agreement will be returned. If the review establishes that the aircraft operating agreement does adversely affect the trust relationship, the application may be rejected or the application process suspended until the problem is corrected by the applicant.

The only exception to the policy of returning operating agreements will arise in the event that the review of the operating agreement establishes that the aircraft operating agreement adversely affects the trust relationship, resulting in the rejection of the registration application. In those cases, the FAA will retain the operating agreement for inclusion in the administrative record that the FAA will need to assemble in the event of any litigation that arises out of the rejection.

In the event an applicant does not request return of an aircraft operating agreement at the time a registration application is submitted, the agreement will be retained in the FAA Registry files.[5]

[5] Upon entry of Aircraft Operating Agreements or side agreements in FAA ancillary files, they will not be removed.

The FAA notes that there may be circumstances where after return of an aircraft operating agreement, information contained in the aircraft operating agreement is needed by the agency. The FAA will expect the full cooperation of the registered owner in providing such information.

*D. Trustee Removal*

In order to insure owner trustee independence, in promulgating regulations to permit the use of a non-citizen trust to establish eligibility to register an aircraft in the U.S., the FAA has imposed restrictions on the ability of non-U.S. citizens to remove the trustee. Such restrictions, in the FAA's view, lend more meaningful status and permanence to the trustee as the owner of the aircraft held in trust, thereby ensuring better protection for U.S. interests. Section 47.7(c)(3) of the regulations provides that if persons who are neither U.S. citizens nor resident aliens have the power to direct or remove a trustee, either directly or indirectly through the control of another person, the trust instrument must provide that those persons together may not have more than 25 percent of the aggregate power to direct or remove a trustee. Nothing in § 47.7 prevents those persons from having more than 25 percent of the beneficial interest in the trust. The limitation on the ability of non-U.S. citizens to remove a trustee is in addition to what limitations, if any, exist under the laws of the state in which the trust is established.

In its review of non-citizen trusts, the FAA noted language in trust agreements and related documents suggesting that non-U.S. citizens held more than 25 percent of the power to remove or direct a trustee. To avoid issues of non-compliance with this requirement in the future, the FAA will review all registration applications that rely on non-citizen trusts for evidence of clear compliance with the § 47.7(c)(3) limits on non-U.S. citizens power to direct or remove a trustee. In those cases where a non-U.S. citizen appears to have greater than 25 percent of the power to direct or remove a trustee under a trust agreement or related document,[6] the FAA may request further information on how and why such non-citizens will not be able to exercise aggregate power to direct or remove a trustee in excess of the 25 percent limit. Alternatively, the

[6] The FAA considers that any trust agreement or related document that contains a provision designating a foreign court or body to adjudicate disputes between the trustor and trustee as violating the § 47.7(c)(3) limits on non-U.S. citizens power to direct or remove a trustee. Such designations are not acceptable to the FAA.

FAA may simply reject an application that is based on a trust agreement or other documents that provide a non-U.S. citizen with such power.

In its comments to the February 9 notice and during the June 6 public hearing, the AWG indicated that strict compliance with the § 47.7(c)(3) limitation on the power of a non-U.S. citizen to direct or remove the trustee was not possible as a practical matter. It stated that including U.S. citizens in the process to ensure compliance with the 25 percent limitation does not address FAA issues with non-citizen trusts and ''adds a layer of expense and bureaucracy that will be difficult to bear by transaction parties.'' The AWG also suggested that an Aeronautical Center Counsel opinion of 2002 was inconsistent with the 25 percent limitation contained in § 47.7(c)(3) of the FAA's regulations. The AWG concluded its comments on this issue by suggesting that the FAA use this policy clarification as a vehicle to indicate that it would not strictly enforce the plain language of the regulation moving forward.

The FAA rejects the AWG position on this issue. The language of § 47.7(c)(3) is plain and unambiguous, and has been a part of the regulation on non-citizen trusts since it was adopted in 1979. See (44 FR 61937, October 29, 1979). The FAA believes that there are adequate mechanisms to comply with the § 47.7(c)(3) limitations on non-U.S. citizen power over trustees, to integrate the costs of those mechanisms in the overall cost structure of non-citizen trusts, and to otherwise adjust their business practices to the requirement. For example, the FAA identified instances of non-citizen trusts filed with the FAA in the years immediately after the adoption of § 47.7(c)(3) where non-U.S. citizens had no power to remove a trustee and appropriately limited power to direct the trustee. Those same arrangements, however, did give the interested non-U.S. citizens full power to terminate the non-citizen trust. The FAA sees no reason why a similar mechanism could not be adopted today, or why other innovative approaches to the issue could not be developed by the industry.

With regard to the Aeronautical Center Counsel opinion of 2002, the FAA disagrees that it contains any indication that the FAA would not enforce the 25 percent limitation on non-U.S. citizen power under § 47.7(c)(3). It is stated in the opinion that ''14 CFR 47.7(c) must restrict removal rights to situations involving ''cause''.'' Use of removal for cause provisions in non-citizen trust agreements does not substitute for compliance with the 25 percent limitation imposed by regulation. No change to that requirement could be effected through the 2002 opinion or in this policy clarification.[7]

With regard to removals for cause, the FAA believes that a non-citizen trust agreement must describe with some specificity what would be a sufficient cause for removal of a trustee by a non-U.S. citizen beneficiary. Non-citizen trust agreements reviewed by the FAA frequently allow trustees to be removed for cause without specifying what constitutes a sufficient cause. Notwithstanding any other limitation on a non-U.S. citizen's power to remove a trustee, the FAA's view is that such lack of specificity in the removal for cause provisions gives non-U.S. citizen trustors or beneficiaries virtually unconditional power to remove a trustee, since practically any cause for removal might be interpreted as sufficient. Greater specificity in defining what constitutes sufficient cause will address the FAA's concerns in this regard. Some trust agreements on file with the FAA have defined what constitutes cause to remove consistent with the general law of trusts such as gross negligence and willful misconduct. As a minimum, FAA will expect such examples of specific causes for removal. See, e.g., para 3.02, Removal, in the attached proposed Trust Agreement.[8]

*E. Termination of the Trust and Trustee Resignation*

None of the restrictions on the power of a non-U.S. citizen to direct or remove a trustee affect the ability of a non-U.S. citizen beneficiary or trustor otherwise to terminate a trust in accordance with its terms. With regard to the registration of the aircraft, the FAA expects that the likely effect of a termination, not involving removal of the trustee, would be to end registration or render the registration ineffective under 14 CFR 47.41(a). The aircraft could be re-registered in the United States if ownership were transferred to a person eligible to register it, whether under a non-citizen trust or some other mechanism recognized under the FAA's regulations.

Likewise, there are no regulatory restrictions on the ability of a trustee to resign without first being replaced by a successor trustee. The FAA does not have any regulation or policy that requires the inclusion of a requirement in the non-citizen trust agreement that a resignation may take effect only upon the appointment of a successor trustee. The FAA allows the parties to the non-citizen trust to address that issue as they see fit. The FAA believes the consequences of a resignation by a trustee without the prior appointment of an eligible successor trustee would be the same as a termination of the trust as described above.

No comments were received on these elements of the FAA policy on non-citizen trusts.

**Changes to a Standard Trust Agreement**

The FAA does not require the use of a particular template in establishing a non-citizen trust. However, the FAA recognizes that the aviation industry has developed a standard non-citizen trust agreement over the years. The FAA continues to believe, as it did when issuing the February 9 notice, that it was useful to offer suggestions to that document. The FAA attached as an exhibit to the February 9 notice an example of a standard trust agreement with FAA-suggested changes incorporated. The FAA also made the revised standard trust agreement showing the FAA's additions and deletions available on the FAA's Web site. For the reasons stated in the February 9 notice, the FAA believes that the revisions made to the standard trust agreement are consistent with the policy clarification set forth in this Notice.

In comments in response to the February 9 notice, the AWG suggest a number of additional changes to the revised standard trust agreement that was attached to the notice. To the extent that the changes suggested by the AWG are consistent with the policy clarification described in this Notice, the FAA has incorporated them into the revised standard trust agreement. Several changes suggested by the AWG were not consistent with the policy clarification described in this Notice, and therefore not adopted by the FAA. The revised standard trust agreement with the incorporated AWG changes is attached to this Notice as an exhibit. A version of the revised standard trust agreement that shows in detail which of the AWG changes were accepted by the FAA and which were rejected is entitled ''Sample NCT Agreement 021012 redline'' and located on the FAA Office

[7] The 25% limitation is based on the language in the applicable statutes. See 49 U.S.C. 40102(A)(15) and 44102(a)(1)(A). Such a requirement cannot be altered by regulation. Moreover, at this time the FAA is not proposing to undertake any rulemaking to address this issue or any of the other issues associated with the use of non-citizen trusts to place aircraft on the U.S. registry.

[8] The grounds for removal listed in the Third Restatement of Trusts at Section 37 are illustrative of possible (but not always relevant) grounds for removing a trustee that might be included in a non-citizen trust agreement.

of Chief Counsel's Web site at the ''Aircraft Registration—Proposed Policy Clarification'' link at *http://www.faa.gov/about/office_org/headquarters_offices/agc.*

Non-citizen trusts that follow the attached standard trust agreement (which includes recommendations from the public) generally will be acceptable to the FAA as a basis for registering the aircraft in the U.S. However, applicants who wish to register an aircraft in the U.S. using a non-citizen trust are not required to use any particular version of a trust agreement. The FAA will review any non-citizen trust agreement, any aircraft operating arrangement and other documents affecting a relationship under the trust, and all other documents required to be filed along with an application for registration that is based on a non-citizen trust, to ensure that they are consistent with U.S. law, the applicable regulations, and the clarified policies set forth in this Notice.

Issued in Washington DC on June 13, 2013.

**Marc L. Warren,**

*Acting Chief Counsel, Federal Aviation Administration.*

**EXHIBIT**

**TRUST AGREEMENT**

THIS TRUST AGREEMENT ( ), dated as of , (the ''Agreement'') by and between , a [corporation organized and existing] [limited liability company formed] [9] under the laws of (''Trustor''), and , a organized and existing under the laws of the (''Owner Trustee'');

**WITNESSETH:**

WHEREAS, Trustor desires to cause title to the Aircraft (as hereinafter defined) to be conveyed to Owner Trustee;

WHEREAS, Trustor desires to create a trust (the ''Trust'') and contribute the Aircraft thereto in order to ensure the eligibility of the Aircraft for United States registration with the Federal Aviation Administration (the ''FAA'');

WHEREAS, this Agreement is designed to create a Trust in order that the Owner Trustee may hold title to the Aircraft until such time as Trustor directs the Owner Trustee to distribute the Aircraft in accordance with Trustor's written instructions; and

WHEREAS, Owner Trustee is willing to accept the trusts as herein provided;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Trustor and Owner Trustee agree as follows:

[9] Choose the appropriate phrase depending on whether Trustor is an LLC or a corporation.

**ARTICLE 1**

***DEFINITIONS***

Capitalized terms used in this Agreement shall have the respective meanings assigned thereto below, unless such terms are otherwise defined herein or the context hereof shall otherwise require. The terms ''hereof'', ''herein'', ''hereunder'' and comparable terms refer to this Agreement, as amended, modified or supplemented from time to time, and not to any particular portion hereof. References in this Agreement to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Agreement unless otherwise indicated.

''*Affidavit*'' means the Affidavit of Owner Trustee pursuant to Section 47.7(c)(2)(iii) of Part 47 of the Federal Aviation Regulations.

''*Aircraft*'' means the Aircraft, serial number , FAA Registration Number N together with the engines, bearing manufacturer's serial numbers and , which are transferred to the Owner Trustee in trust under this Trust Agreement.

''*Aircraft Registration Application*'' means AC Form 8050–1 Aircraft Registration Application by Owner Trustee covering the Aircraft.

''*Citizen of the United States*'' means ''citizen of the United States'' as that term is defined in Section 40102(a)(15) of Title 49 of the United States Code.

''*FAA*'' means the Federal Aviation Administration of the United States or any Government Entity succeeding to the functions of such Federal Aviation Administration.

''*FAA Bill of Sale*'' means an AC Form 8050–2 Bill of Sale for the Aircraft from Trustor to Owner Trustee.

''*Lessee*'' means any counterparty to the Owner Trustee under any Lease. ''*Lease*'' means any agreement (including an Operating Agreement) from time to time entered into by Owner Trustee and Lessee that transfers the right to possess, use and operate the Aircraft to such Lessee.

''*Operating Agreement*'' means any agreement (including a lease) that transfers the right to possess, use and operate the Aircraft from Owner Trustee to Trustor. ''*Trust Estate*'' means all estate, right, title and interest of Owner Trustee in and to the Aircraft, the Lease, the Warranty Bill of Sale and the FAA Bill of Sale, including, without limitation, all amounts of the rentals under any Lease, insurance proceeds (other than insurance proceeds payable to or for the benefit of Owner Trustee, for its own account or in its individual capacity, or Trustor), and requisition, indemnity or other payments of any kind for or with respect to the Aircraft, (other than amounts owing to Owner Trustee, for its own account or in its individual capacity, Trustor or any Lessee of the Aircraft).

''*Warranty Bill of Sale*'' means a full warranty bill of sale for the Aircraft, executed by Trustor in favor of Owner Trustee and specifically referring to each engine installed on the Aircraft.

**ARTICLE 2**

***CREATION OF TRUST***

Section 2.01 *Transfer of Control.* Trustor shall cause title to the Aircraft to be conveyed to Owner Trustee.

Section 2.02 *Acceptance and Declaration of Trust.* Owner Trustee accepts the Trust created hereby, and declares that it will hold the Trust Estate upon the trusts hereinafter set forth for the use and benefit of Trustor, in accordance with and subject to all of the terms and conditions contained in this Agreement, and agrees to perform the same, including without limitation the actions specified in Section 4.01 hereof, and agrees to receive and disburse all moneys constituting part of the Trust Estate, all in accordance with the terms hereof.

**ARTICLE 3**

***THE OWNER TRUSTEE***

Section 3.01 *Status.* Owner Trustee hereby represents and warrants that it is a Citizen of the United States.

Section 3.02 *Removal.* Owner Trustee may be removed at any time, but for cause only, by a written instrument or instruments signed by an authorized person or persons, subject to the regulatory limitation that non-U.S. citizens not hold more than 25 percent of the aggregate power to remove a trustee. For purposes of this Section, ''for cause'', may include willful misconduct or gross negligence, but ''for cause'' will not include the refusal of Owner Trustee to act or refrain from acting in a manner that (1) would violate the laws, regulations, court orders, or lawful directions of a government agency; (2) is outside the scope of Owner Trustee's authority; (3) is contrary to its obligations under the Trust Agreement; or (4) is the subject of a mere disagreement between Owner Trustee and Trustor. Such removal shall take effect immediately upon the appointment of a successor Owner Trustee pursuant to Section 3.04, whereupon all powers, rights and obligations of the removed Owner Trustee under this Agreement (except the rights set forth in Section 3.08) shall cease and terminate. Without any affirmative action by Trustor, any

Owner Trustee shall cease immediately to be an Owner Trustee at such time as it ceases to be a Citizen of the United States or at such time as it for any reason is not free from control by Trustor as described in Article 9, and shall give immediate notice thereof to Trustor. Any Owner Trustee shall also give Trustor notice of a possible change of citizenship at the later of (i) 90 days prior to a change in citizenship and (ii) actual knowledge by Owner Trustee that such a change in citizenship is probable.

Section 3.03 *Resignation.* Owner Trustee may resign at any time upon giving 30 days prior written notice of such resignation to Trustor. Such resignation shall take effect only upon the appointment of a successor Owner Trustee pursuant to Section 3.04, Successor Owner Trustee whereupon all powers, rights and obligations of the resigning Owner Trustee under this Agreement (except the rights set forth in Section 3.08, Fees, Compensation) shall cease and terminate.

Section 3.04 *Successor Owner Trustee.* Promptly upon receipt of a notice of resignation from the Owner Trustee in accordance with Section 3.03, a successor trustee shall be appointed by a written instrument signed by a duly authorized officer of Trustor and the successor trustee shall execute and deliver to the predecessor Owner Trustee an instrument accepting such appointment. Such successor trustee shall be a Citizen of the United States and shall assume all powers, rights and obligations of such Owner Trustee hereunder immediately upon the resignation of such Owner Trustee becoming effective. Such successor, concurrently with such appointment, shall file an Affidavit with the FAA and all other documents then required by law to be filed in connection therewith. If the Trustor shall not have so appointed a successor Owner Trustee within 30 days after such resignation or removal, the Owner Trustee may apply to any court of competent jurisdiction to appoint a successor Owner Trustee to act until such time, if any, as a successor or successors shall have been appointed by the Trustor as above provided. Any successor Owner Trustee so appointed shall immediately and without further act be superseded by any successor Owner Trustee appointed by the Trustor as above provided.

Section 3.05 *Merger.* Any corporation into which Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Owner Trustee shall be a party, or any corporation to which substantially all the corporate trust business of Owner Trustee may be transferred, shall, subject to the terms of Section 3.04, be Owner Trustee without further act.

Section 3.06 *Tax Returns.* The Owner Trustee shall keep all appropriate books and records relating to the receipt and disbursement by it of all monies under this Agreement or any agreement contemplated hereby. The Trustor will prepare all tax returns required to be filed with respect to the trust hereby and the Owner Trustee, upon request, will furnish the Trustor with all such information as may be reasonably required from the Owner Trustee in connection with the preparation of such tax returns. The Owner Trustee will execute and file the tax returns as prepared by the Trustor.

Section 3.07 *Vacancies.* If any vacancy shall occur in the position of Owner Trustee for any reason, including, without limitation, removal, resignation, loss of United States citizenship or the inability or refusal of such Owner Trustee to act as Owner Trustee, the vacancy shall be filled in accordance with Section 3.04.

Section 3.08 *Fees; Compensation.* The Owner Trustee shall receive from the Trustor as compensation for the Owner Trustee's services hereunder such fees as may heretofore and from time to time hereafter be agreed upon by the Owner Trustee and the Trustor and shall be reimbursed by the Trustor for all reasonable costs and expenses incurred or made by it in accordance with any of the provisions of this Agreement. If an event of default under any Lease shall occur, the Owner Trustee shall be entitled to receive reasonable compensation for its additional responsibilities, and payment or reimbursement for its expenses. Owner Trustee shall have a lien on the Trust Estate, prior to any interest therein of the Trustor, to secure payment of such fees and expenses.

Section 3.09 *No Duties.* Owner Trustee shall not have any duty (i) to see to any insurance on the Aircraft or maintain any such insurance, (ii) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, the Aircraft (*provided, however,* that Owner Trustee shall not create, permit or suffer to exist any lien or encumbrance on any part of the Aircraft which results from claims against Owner Trustee unrelated to its capacity as Owner Trustee hereunder), (iii) to confirm or verify any notices or reports, (iv) to inspect the Aircraft at any time or ascertain the performance or observance by either of any Lessee or Trustor of its covenants under any Lease, or (v) except as set forth herein, to see to any recording or see to the maintenance of any such recording or filing with the FAA or other government agency.

Section 3.10 *Status of Moneys Received.* All moneys received by Owner Trustee under or pursuant to any provisions of this Agreement shall constitute trust funds for the purpose for which they are paid or held, and shall be segregated from any other moneys and deposited by Owner Trustee under such conditions as may be prescribed or permitted by law for trust funds.

Section 3.11 *Owner Trustee May Rely.* Owner Trustee shall not incur any liability to anyone in acting or refraining from acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. As to any fact or matter, the manner or ascertainment of which is not specifically described herein, Owner Trustee may for all purposes hereof rely on a certificate, signed by or on behalf of the party executing such certificate, as to such fact or matter, and such certificate shall constitute full protection of Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the Trust, Owner Trustee may, at the reasonable cost and expense of Trustor, seek advice of counsel, accountants and other skilled persons to be selected and employed by them, and Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the actions, advice or opinion of any such counsel, accountants or other skilled persons.

Section 3.12 *Owner Trustee Acts as Trustee.* In accepting the Trust, Owner Trustee acts solely as trustee hereunder and not in any individual capacity (except as otherwise expressly provided in this Agreement or any Lease), and all persons other than Trustor having any claim against the Owner Trustee by reason of the transactions contemplated hereby shall not have any recourse to Owner Trustee in its individual capacity.

Section 3.13 *No Expenses for Owner Trustee.* Owner Trustee shall not have any obligation by virtue of this Agreement to expend or risk any of its own funds, or to take any action which could, in the reasonable opinion of Owner Trustee, result in any cost or expense being incurred by Owner Trustee. Owner Trustee shall not be

required to take any action or refrain from taking any action under this Agreement unless it shall have been indemnified by Trustor in a manner and form satisfactory to Owner Trustee against any liability, cost or expense (including reasonable attorneys' fees) which may be incurred in connection therewith. No provisions of this Agreement shall be deemed to impose any duty on Owner Trustee to take any action if Owner Trustee shall have been advised by counsel that such action would expose it to personal liability, is contrary to the terms hereof or is contrary to law.

Section 3.14 *Notice of Event of Default.* In the event that a responsible officer in the Corporate Trust Department of the Owner Trustee shall have actual knowledge of a default or an event of default under any Lease, the Owner Trustee shall give or cause to be given prompt notice of such default or event of default to the Trustor. The Owner Trustee shall take such action with respect to such default or event of default as shall be specified in written instructions from the Trustor. For all purposes of this Agreement and any Lease, in the absence of actual knowledge of a responsible officer in the Corporate Trust Department of the Owner Trustee, the Owner Trustee shall not be deemed to have knowledge of a default or event of default unless notified in writing by the Trustor.

Section 3.15 *Certain Duties and Responsibilities of Owner Trustee.*

(a) Owner Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and in any Lease or Operating Agreement or as required by law and no implied duties, covenants or obligations shall be read into this Agreement or any Lease or Operating Agreement against Owner Trustee. Owner Trustee agrees that it will deal with the Aircraft or any other part of the Trust Estate in accordance with the terms of this Agreement and any Lease or Operating Agreement or as required by law.

(b) Whether or not herein expressly so provided, every provision of this Trust Agreement [relating to the conduct or] affecting the liability of or affording protection to Owner Trustee shall be subject to the provisions of this Section 3.15.

Section 3.16 *No Representations or Warranties as to the Aircraft or Documents.* OWNER TRUSTEE MAKES (i) NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE AIRCRAFT OR AS TO THE TITLE THERETO, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE AIRCRAFT WHATSOEVER, except that , in its individual capacity warrants that on the date on which the Aircraft is transferred to the Trust contemplated by this TRUST AGREEMENT, Owner Trustee shall have received whatever title was conveyed to it, and (ii) no other representations or warranties are made by the Owner Trustee other than to the extent expressly made herein by Owner Trustee, except that Owner Trustee represents and warrants that it has full right, power and authority to enter into, execute, deliver and perform this Agreement and that this Agreement constitutes the legal, valid and binding obligation of the Owner Trustee.

**ARTICLE 4**

***THE TRUST ESTATE***

Section 4.01 *Authorization and Direction to Owner Trustee.* Trustor hereby authorizes and directs Owner Trustee, not individually but solely as Owner Trustee hereunder, and Owner Trustee covenants and agrees:

(a) to execute and deliver each agreement, instrument or document to which Owner Trustee is a party in the respective forms thereof in which delivered from time to time by Trustor for execution and delivery and, subject to the terms hereof, to exercise its rights and perform its duties under any Lease in accordance with the terms thereof, including without limitation, accepting title to, and delivery of, the Aircraft and leasing the Aircraft to any Lessee or, subject to the provisions of Section 7 hereof, distributing the Aircraft to Trustor pursuant to the specific written instructions of Trustor;

(b) to effect the registration of the Aircraft with the FAA by duly executing and filing or causing to be filed with the FAA (i) the Aircraft Registration Application, (ii) the Affidavit, (iii) the FAA Bill of Sale, (iv) an executed counterpart of this Agreement, and (v) any other document or instrument required therefore including any Operating Agreement, except that the Owner Trustee may request that an Operating Agreement not be filed with the FAA, but only reviewed and returned.

(c) to execute and deliver each other document referred to in any Lease or which Owner Trustee is required to deliver pursuant to any Lease or this Agreement; and

(d) subject to the terms of this Agreement, to perform the obligations and duties and exercise the rights of Owner Trustee under any Lease.

(e) upon request by FAA, and with the cooperation of Trustor, to provide the FAA with the following information in an expeditious manner (generally within 2 business days of the request or immediately in an emergency identified by the FAA): (i) the identity and contact information (address, phone number, email) of person or entity normally operating, or maintaining the operations of the aircraft; (ii) where that person or entity resides or is incorporated and has its principal place of business; (iii) the location of the aircraft maintenance and other records; and; (iv) where the aircraft is normally based and operated.

(f) upon request by FAA, and with the cooperation of Trustor, to provide the FAA with the following information in an expeditious manner (generally within 5 business days of the request or immediately in an emergency identified by the FAA): (i) information about the operator, crew (names and pilot certificate numbers) and aircraft operations on specific dates; (ii) information about where the aircraft will be on a specific date in the future and (iii) maintenance and other aircraft records.

(g) to immediately forward all applicable FAA airworthiness directives to the Trustor, Lessee, and Operator, as applicable, by the most expeditious means available.

(h) to notify the FAA Aircraft Registry by the most expeditious means available of the trustee's resignation under Section 3.03, Resignation, or removal under Section 3.02, Removal, or of the termination of the trust under Section 7.01, Termination Date.

(i) to permit the inspection of the aircraft and/or records by the FAA or any other duly authorized representatives of the U.S. or of the government of the country where it is based or operated, when an appropriate request is made by the FAA or other governmental entity entitled to inspect the aircraft and/or records.

Section 4.02 *Supplier Warranties.* Trustor hereby assigns to Owner Trustee any and all warranties and indemnities of, and other claims against, any supplier relating to the Aircraft.

Section 4.03 *Advances by Trustor.* Trustor shall make advances to Owner Trustee in such amounts and at such times as may be necessary to permit Owner Trustee to satisfy its obligations under any Lease and this Trust Agreement.

Section 4.04 *Trustor's Duties.* Trustor hereby convenants and agrees:

(a) upon a request by the FAA for information related to the Aircraft and

the operation of the Aircraft that the FAA is legally entitled to receive from an owner or operator of an aircraft, which is issued to Owner Trustee (and forwarded by Owner Trustee to Trustor), as the case may be, to provide as expeditiously as reasonably practicable to Owner Trustee or the FAA, as the case may be, with all such requested information to the extent that Trustor has such information or actually receives such information from the operator or from any other source, including, if applicable, (i) information in relation to the operation, maintenance, location or base of operation of the Aircraft, and (ii) contact information of (x) the operator of the Aircraft and (y) any other person to whom the FAA may look to gather information related to crew members for the Aircraft, the Aircraft's operations on specific dates, the location of the Aircraft, and maintenance and other aircraft records for the Aircraft; Trustor (so long as it is not also the operator of the Aircraft) shall not be liable or responsible under this Agreement for any failure by Owner Trustee, the operator or any other source to provide accurate information requested under this Agreement whether in a timely manner or at all;

(b) in connection with any transfer of Trustor's beneficial interest in the Trust (other than a collateral assignment thereof), to provide Owner Trustee the identity and contact information with respect to the new Trustor and to update the operator information provided pursuant to Section 4.04(c) and 4.04(d) to the extent Trustor has such information or actually receives such information from the operator or from any other source;

(c) to provide as expeditiously as possible to Owner Trustee, in response to a request by the Owner Trustee, the identity and contact information for the operator of the Aircraft under any Lease or Operating Agreement or bailment agreement entered into from time to time by Trustor, or any lease, bailment, or other arrangement entered into from time to time by a third party, whether or not at Trustor's direction.

(d) to require that any Lease, Operating Agreement, bailment, or similar arrangement transferring possession and operational control of the Aircraft provide the following or similar provisions to the same effect:

(i) that all further transfers of the rights to possession and operational control of the Aircraft to a transferee must be in writing; provide the identity and contact information about the transferee; and the transferee's assurance that if and when the transferee is notified that the Owner Trustee has made a request, to promptly provide information related to crewmembers of the Aircraft and the Aircraft's operations on specific dates, the location of the Aircraft, and the maintenance and other aircraft records for the Aircraft;

(ii) that each such further transferee or operator (x) shall provide its reasonable cooperation to Owner Trustee, Trustor and the FAA in an expeditious manner with respect to any request from the FAA or other applicable governmental entity for information and access to records of the Aircraft which it is legally entitled to receive, and (y) shall authorize the FAA or any other duly authorized air authority representatives of the U.S. or the government where it is habitually based or operated, upon any request which the FAA or such other governmental entity is legally entitled to make under law applicable to such transferee or operator of the Aircraft, to inspect the Aircraft; and

(iii) that each such further transferee or operator agrees that the above-referenced information and inspection requirements would be made and agreed in all subsequent or downstream leases, operating agreements and bailment agreements thereby requiring each such subsequent transferee or operator to provide such contact information in the event that there has been a transfer of possession and operation to another party, to update such information when any changes occur, and to promptly confirm such information at any time upon request by Owner Trustee or Trustor, to provide its reasonable cooperation to Owner Trustee, Trustor and the FAA in an expeditious manner with respect to any request from the FAA or other applicable governmental entity for information and access to records of the Aircraft which it is legally entitled to receive made pursuant to existing regulations and policies, and (z) to authorize the FAA or such other governmental entity to inspect the Aircraft to the extent that it is legally entitled to make such request under law applicable to Owner Trustee, Trustor, the relevant counterparty to any such subsequent or downstream agreement or the Aircraft.

## ARTICLE 5

## *DISTRIBUTIONS*

Section 5.01 *Receipts.* Except as otherwise provided in this Agreement, any payment received by Owner Trustee for which provision as to the application thereof is made in any Lease shall be applied promptly to the purpose for which such payment shall have been made in accordance with the terms of such Lease; and any payment received by Owner Trustee for which no provision as to the application thereof is made in any Lease or in this Article 5 shall, unless Trustor shall have otherwise instructed Owner Trustee in writing, be distributed promptly to Trustor.

Section 5.02 *Manner of Making Distributions.* Owner Trustee shall make all distributions to Trustor under this Agreement and any Lease promptly upon the receipt of proceeds available for distribution, but shall not be obligated to make any distributions until the funds therefor have been received by Owner Trustee. All distributions to Trustor hereunder shall be made to such account and in such manner as Trustor shall from time to time direct in writing.

## ARTICLE 6

## *INDEMNIFICATION OF OWNER TRUSTEE BY TRUSTOR*

Section 6.01 *Indemnification* Trustor hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and does hereby indemnify, protect, save and keep harmless , in its individual capacity and its successors, assigns, legal representatives, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, taxes (excluding any taxes payable by in its individual capacity on or measured by any compensation received by in its individual capacity for its services hereunder), claims, actions, suits, costs, expenses or disbursements (including, without limitation, reasonable ongoing fees of Owner Trustee and reasonable attorneys' fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against in its individual capacity (whether or not also indemnified against by a Lessee under any Lease or also indemnified against by any other person) in any way relating to or arising out of this Agreement or any Lease or the enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, nonacceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of the Aircraft (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of

the administration of the Trust Estate or the action or inaction of Owner Trustee or in its individual capacity hereunder, except (a) in the case of willful misconduct or gross negligence on the part of Owner Trustee or in its individual capacity in the performance or nonperformance of its duties hereunder, or (b) those resulting from the inaccuracy of any express representation or warranty of in its individual capacity (or from the failure of in its individual capacity to perform any of its covenants) contained in this Agreement or any Lease, or (c) in the case of the failure to use ordinary care on the part of Owner Trustee or in its individual capacity in the disbursement of funds. The indemnities contained in this Article 6 extend to only in its individual capacity and shall not be construed as indemnities of the Trust Estate. The Indemnities contained in this Article 6 shall survive the termination of this Agreement. In addition, and to secure the foregoing indemnities, Owner Trustee shall have a lien on the Trust Estate, which shall be prior to any interest therein of Trustor.

**ARTICLE 7**

***TERMINATION***

Section 7.01 *Termination Date.* The Trust shall terminate without any notice or other action of Owner Trustee upon the earlier of (a) such date as may be directed by Trustor and the sale or other final disposition by the Owner Trustee of all property constituting the Trust Estate or (b) twenty one years less one day after the earliest execution of this Trust Agreement by any party hereto.

Section 7.02 *Distribution of Trust Estate Upon Termination.* Upon any termination of the Trust pursuant to the provisions of Section 7.01 hereof, Owner Trustee shall convey the Trust Estate to Trustor or its nominee.

**ARTICLE 8**

***MISCELLANEOUS***

Section 8.01 *Nature of Title of Trustor.* Trustor shall not have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of the right, title and interest of Trustor in and to the Trust Estate or the trusts hereunder, in accordance with the terms hereof, shall operate to terminate this Agreement or the trusts hereunder or entitle any successor or transferee of Trustor to an accounting or to the transfer of it of legal title to any part of the Trust Estate.

Section 8.02 *Power of Owner Trustee to Convey.* Any assignment, sale, transfer or other conveyance by Owner Trustee of the interest of Owner Trustee in the Aircraft or any part thereof made pursuant to the terms of this Agreement or any Lease shall bind Trustor and shall be effective to transfer or convey all right, title and interest of Owner Trustee and Trustor in and to the Aircraft or such part thereof. No permitted purchaser or other permitted grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such assignment, sale, transfer or conveyance or as to the application of any sale or other proceeds with respect thereto by Owner Trustee.

Section 8.03 *Trust Agreement for Benefit of Certain Parties Only.* Nothing herein, whether expressed or implied, shall be construed to give any person other than Owner Trustee and Trustor any legal or equitable right, remedy or claim under or in respect of this Agreement; but this Agreement shall be held to be for the sole and exclusive benefit of Owner Trustee and Trustor.

Section 8.04 *Notices.* Unless otherwise expressly provided herein, all notices, instructions, demands and other communications hereunder shall be in writing and shall be delivered personally or sent by registered or certified mail, postage prepaid and return receipt requested, or sent by facsimile transmission, with a confirming copy sent by air mail, postage prepaid, and the date of personal delivery or facsimile transmission or 7 business days after the date of mailing (other than in the case of the mailing of a confirming copy of a facsimile transmission), as the case may be, shall be the date of such notice, in each case addressed (i) if to the Owner Trustee, to at its office at , Attention: and (ii) if to the Trustor, to , Attention:

Section 8.05 *Co-Trustee and Separate Trustees.* If at any time it shall be necessary or prudent in order to conform to any law of any jurisdiction in which all or any part of the Trust Estate is located, or Owner Trustee being advised by counsel shall determine that it is so necessary or prudent in the interest of Trustor or Owner Trustee, or Owner Trustee shall have been directed to do so by Trustor, Owner Trustee and Trustor shall execute and deliver an agreement supplemental hereto and all other instruments and agreements necessary or proper to constitute another bank or trust company or one or more persons (any and all of which shall be a Citizen of the United States) approved by Owner Trustee and Trustor, either to act as co-trustee jointly with Owner Trustee, or to act as separate trustee hereunder (any such co-trustee or separate trustee being herein sometimes referred to as ''additional trustee''). In the event Trustor shall not have joined in the execution of such agreements supplemental hereto within 10 days after the receipt of a written request from Owner Trustee so to do, or in case an event of default, as defined in any Lease, shall have occurred and be continuing, Owner Trustee may act under the foregoing provisions of this Section 8.05 without the concurrence of Trustor; and Trustor hereby appoints Owner Trustee its agent and attorney-in-fact to act for it under the foregoing provisions of this Section 8.05 in either of such contingencies.

Every additional trustee hereunder shall, to the extent permitted by law, be appointed and act, and Owner Trustee and its successors shall act, subject to the following provisions and conditions:

(a) all powers, duties, obligations and rights conferred upon Owner Trustee in respect of the custody, control and management of moneys, the Aircraft or documents authorized to be delivered hereunder or under any Lease shall be exercised solely by Owner Trustee;

(b) all other rights, powers, duties and obligations conferred or imposed upon Owner Trustee shall be conferred or imposed upon and exercised or performed by Owner Trustee and such additional trustee (U.S. citizen) jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed (including the holding of title to the Trust Estate) Owner Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such additional trustee;

(c) no power given to, or which it is provided hereby may be exercised by, any such additional trustee shall be exercised hereunder by such additional trustee, except jointly with, or with the consent in writing of, Owner Trustee;

(d) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder;

(e) Trustor, at any time, by an instrument in writing may remove any such additional trustee. In the event that Trustor shall not have executed any such instrument within 10 days after the receipt of a written request from Owner Trustee so to do, Owner Trustee shall have the power to remove any such additional trustee without the concurrence of Trustor; and Trustor hereby appoints Owner Trustee its agent and attorney-in-fact for it in such connection in such contingency; and

(f) no appointment of, or action by, any additional trustee will relieve the Owner Trustee of any of its obligations under, or otherwise affect any of the terms of, this Agreement or any Lease.

Section 8.06 *Situs of Trust; Applicable Law.* The Trust has been accepted by Owner Trustee and will be administered in the State of (State of United States). The validity, construction and enforcement of this Agreement shall be governed by the laws of the State of (State of United States) without giving effect to principles of conflict of law. If any provision of this Agreement shall be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective, provided that such remaining provisions do not increase the obligations or liabilities of Owner Trustee.

Section 8.07 *Amendment.* This Agreement may not be amended, modified, supplemented, or otherwise altered except by an instrument in writing signed by the parties thereto.

Section 8.08 *Successors and Assigns.* In accordance with the terms hereof, this Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and permitted assigns, including any successive holder of all or any part of Trustor's interest in the Trust Estate.

Section 8.09 *Headings.* The headings of the Articles and Sections of this Agreement are inserted for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

Section 8.10 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument.

**ARTICLE 9**

***CERTAIN LIMITATIONS***

Section 9.01 *Limitations on Control, Exceptions,*

(a) *Limitation on Control.* Notwithstanding any other provision of this Agreement, but subject to paragraph (b) of this Section 9.01, the Trustor will have no rights or powers to direct, influence or control the Owner Trustee in the performance of the Owner Trustee's duties under this Agreement, including matters involving the ownership and operation of the Aircraft. The Owner Trustee shall exercise its duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft, as the Owner Trustee, in its discretion, shall deem necessary to protect the interests of the United States, notwithstanding any countervailing interest of any foreign power which, or whose citizens, may have a direct or indirect interest in the Trustor and any such action by the Owner Trustee shall not be considered malfeasance or in breach of any obligation which the Owner Trustee might otherwise have to the Trustor; *provided, however,* that subject to the foregoing limitations, the Owner Trustee shall exercise this discretion in all matters arising under the Agreement, including the ownership and operation of the Aircraft with due regard for the interests of the Trustor. In exercising any of its rights and duties under this Agreement in connection with matters which may arise not relating to the ownership and operation of the Aircraft, the Owner Trustee shall be permitted to seek the advice of the Trustor before taking, or refraining from taking, any action with respect thereto. The Owner Trustee shall notify the Trustor of its exercise of rights and duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft.

(b) *Certain Exceptions.* Subject to the requirements of the preceding paragraph (a), the Owner Trustee agrees that it will not, without the prior written consent of the Trustor, sell, mortgage, pledge or otherwise dispose of the Aircraft or other assets held in the Trust Estate relating thereto, or amend any Lease or other document (other than a document over which the Owner Trustee has the absolute and complete discretion established under Section 9.01(a) Limitation on Control of this Agreement) or give any consents thereunder except as otherwise expressly provided for herein.

(c) *Purpose.* The purpose of this Section 9.01 is to assure that (i) the Aircraft shall be controlled with respect to such matters as are described in Section 9.01(a) of this Agreement by a Citizen of the United States and (ii) the Trustor shall have no power to influence or control the exercise of the Owner Trustee's authority with respect to such matters and (iii) Owner Trustee shall be able to give the affidavit required by Section 47.7 (c) (2) (iii) of the Federal Aviation Regulations, Section 9.01 shall be construed in furtherance of the foregoing purpose.

Section 9.02 *General.* Notwithstanding anything to the contrary in this Agreement, the Owner Trustee and the Trustor hereby agree as follows:

If persons who are neither U.S. citizens or resident aliens have the power to direct or remove the Owner Trustee, either directly or indirectly through the control of another person, those persons together shall not have more than twenty five (25%) percent of the aggregate power to direct or remove the Owner Trustee.

Section 9.03 *Priority.* In creating and accepting the Trust, Trustor and Owner Trustee each acknowledges that in case of conflict, the limitations in Article 9 of this Agreement are paramount and superior to any other terms and conditions in this Agreement; or in any other document or documents including without limitation, under a Lease or an Operating Agreement to which Trustor and Owner Trustee are a party in respect of the Trust.

**ARTICLE 10**

***COMPLIANCE WITH LAWS***

Section 10.1 *Covenant to Comply with Export Restrictions and U.S. Laws.* Trustor acknowledges that the Aircraft may be subject to restrictions involving the export and re-export of the same pursuant to the laws and regulations of the United States, that the laws and regulations of the United States restrict the transfer of any interest in the Aircraft to certain persons (collectively, the ''Export Restrictions'') and that such Export Restrictions may apply to the Aircraft even after the Aircraft has been physically removed or transferred from the United States. Trustor also acknowledges that the Owner Trustee, as a U.S. regulated financial institution, is subject to the laws and regulations of the United States, including, without limitation, those promulgated by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) and the Financial Crimes Enforcement Network (FinCEN) (collectively, the ''U.S. Laws''). Trustor agrees that it will comply with, and will not knowingly permit the Aircraft to be used in a manner that is contrary to, Export Restrictions and U.S. Laws applicable to (1) the Trustor; (2) the Owner Trustee; or (3) the Aircraft, including the acquisition, possession, operation, use, maintenance, leasing, subleasing, or other transfer or disposition thereof.

Section 10.2 *Approval of Transfer.* Trustor agrees that it will not permit the assignment of this Agreement, any transfer of the beneficial interest of the Trustor created by this Agreement, or a lease or sublease of the Aircraft (collectively, a ''Transfer'') without Owner Trustee's prior written approval of such Transfer. Owner Trustee shall not unreasonably delay its decision on a request for approval from Trustor nor shall it unreasonably withhold its approval to such request. To facilitate

Owner Trustee's evaluation of the Transfer, Trustor agrees that it will use reasonable efforts to provide Owner Trustee with any information reasonably requested by the Owner Trustee regarding the Transfer, the proposed transferee and/or the ownership of the proposed transferee. Owner Trustee's decision to approve or disapprove the proposed Transfer shall not be deemed to have been unreasonably delayed if Owner Trustee has not obtained the information it needs to make the decision, and Owner Trustee's approval of the proposed Transfer shall not be deemed to have been unreasonably withheld if Owner Trustee has determined that the Transfer will or may reasonably be expected to put Owner Trustee at risk of violating any laws or regulations applicable to Owner Trustee including, without limitation, the Export Restrictions and/or U.S. Laws. If Owner Trustee withholds approval of a Transfer as set forth herein, then: (i) subject to the terms of this Agreement, Owner Trustee may resign; and (ii) Owner Trustee shall have no obligation to consent to or facilitate a Transfer while Owner Trustee's resignation is pending.

IN WITNESS WHEREOF, Owner Trustee and Trustor have caused this Agreement to be duly executed all as of the date first above written.

TRUSTOR:

By: _____

Title: _____

OWNER TRUSTEE: _____

By: _____

Title: _____

[FR Doc. 2013–14434 Filed 6–17–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket No. USCG–2013–0327]**

**RIN 1625–AA08**

## Special Local Regulations for Summer Events; Captain of the Port Lake Michigan Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for three summer events within the Captain of the Port Lake Michigan Zone. This rule is intended to provide for the safety of life and property on navigable waters immediately prior to, during, and immediately after a triathlon and two dragon-boat races. This rule will establish restrictions upon, and control the movement of, vessels in a portion of the Captain of the Port Lake Michigan Zone.

**DATES:** This rule is effective on June 22, 2013 until July 21, 2013. This rule will be enforced at various times on June 22 and 23; July 12 and 13; and July 20 and 21 of 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013-0327. To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0327) 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 a notice of proposed rulemaking with respect to this temporary rule because doing so would be impracticable and contrary to the public interest. The final details for the three events listed within this temporary rule were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM.

Because each of the events listed within this temporary rule are codified within 33 CFR Part 100, the Coast Guard has taken steps to complete an update of that part. The Coast Guard has written and submitted an NPRM under the same docket number as this TFR; the NPRM addresses changes to six events within 33 CFR part 100 so that the public has opportunity to comment before a Final Rule is published. This temporary rule has been written to address minor changes in three of the events listed within 33 CFR part 100 that will take place in June and July, 2013. Delaying the effective date of this temporary 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 the swim portion of a triathlon and two Dragon-boat races, 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 Special Local Regulations: 33 U.S.C. 1233.

This temporary rule will establish restrictions upon, and control the movement of, vessels in a specified area immediately prior to, during, and immediately after three marine events. The specifics of these three events are as follows:

(1) Harborfest Dragon Boat Race; South Haven, MI. The Harborfest Dragon Boat Race is an annual event involving an estimated 250 participants maneuvering self-propelled vessels within a portion of the Black River in South Haven, MI. The organizer for this event submitted an application showing a date that is different from what is currently codified in 33 CFR 100.903. Therefore, this temporary rule will establish a special local regulation for this event on the waters of the Black River in South Haven, MI on June 22 and 23 from 6 a.m. until 7 p.m.

(2) Chinatown Chamber of Commerce Dragon Boat Race; Chicago, IL. The Chinatown Chamber of Commerce Dragon Boat Race is an annual event involving an estimated 1000 participants maneuvering self-propelled vessels within a portion of the Chicago River in Chicago, IL. The organizer for this event submitted an application showing a date that is different from what is currently codified in 33 CFR 100.909. Therefore, this temporary rule will establish a special local regulation for this event on the waters of the Chicago River in Chicago, IL on July 12 and 13 from 11:30 a.m. until 5 p.m.

(3) Door County Triathlon; Door County, WI. The swim portion of the Door County Triathlon is expected to involve thousands of participants in the waters of Horseshoe Bay—a portion of Green Bay. As this event is currently listed within 33 CFR 100.905, the effective date expired in 2011. The Coast Guard has spoken with the event organizer and confirmed that this Triathlon is expected to occur this year. Therefore, this temporary rule will establish a special regulated area for this event on the waters of Horseshoe Bay near Egg Harbor, Wisconsin on July 20 and 21 from 8 a.m. until 9:30 a.m.

For each of these events, the Captain of the Port, Lake Michigan, has determined that the likely combination of a race involving a large number of competitors, spectators, and transiting commercial craft in a congested area of water presents significant safety risks. These risks include collisions among competitor and spectator vessels, injury to swimmers from transiting water craft, capsizing, and drowning.

## C. Discussion of Rule

This rule is intended to ensure safety of life and property on the navigable waters immediately prior to, during, and immediately after a triathlon and two dragon-boat races. This rule will establish restrictions upon, and control the movement of, vessels in a specified area of the Captain of the Port Lake Michigan zone.

The Captain of the Port, Lake Michigan will notify the public when the special local regulations in this temporary rule are or will be enforced by all appropriate means. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local 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 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. 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 special local regulations established by this rule will be periodic, of short duration, and designed to minimize impact on navigable waters. Thus, restrictions on vessel movement are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the regulated areas when permitted by the Captain of the Port.

### *2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This 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 Horseshoe Bay near Egg Harbor Wisconsin; the Black River in South Haven Michigan; or the Chicago River in Chicago Illinois during the times that this temporary rule is enforced in June and/or July of 2013.

This rule 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 above.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### *3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *4. Collection of Information*

This rule would call 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 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

would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*8. Taking of Private Property*

This rule would 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 From Environmental Health Risks*

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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of special local regulations issued in conjunction with a regatta or marine parade, and, therefore it is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination (CED) 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, Waterways.

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.35T09–0327 to read as follows:

**§ 100.35T09–0327 Special Regulated Areas for summer events; Captain of the Port Lake Michigan Zone.**

(a) *Definition.* The term ''Coast Guard Patrol Commander'' means a Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Lake Michigan to monitor a regatta area, permit entry into the regatta area, give legally enforceable orders to persons or vessels within the regatta area, and take other actions authorized by the Captain of the Port.

(b) The following are designated as regulated areas:

(1) *Harborfest Dragon Boat Race; South Haven, MI.*

(i) *Location.* A regulated area is established on the Black River in South Haven, MI within the following coordinates starting at 42°24′13.6″ N, 086°16′41″ W; then southeast 42°24′12.6″ N, 086°16′40″ W; then northeast to 42°24′19.2″ N, 086°16′26.5″ W; then northwest to 42°24′20.22″ N, 086°16′27.4″ W; then back to point of origin. (NAD 83).

(ii) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(iii) *Effective Date.* These regulations are effective on June 22 and 23, 2013 from 6 a.m. until 7 p.m.

(2) *Chinatown Chamber of Commerce Dragon Boat Race; Chicago, IL.*

(i) *Location.* All waters of the South Branch of the Chicago River from the West 18th Street Bridge at position 41°51′28″ N, 087°38′06″ W to the Amtrak Bridge at position 41°51′20″ N, 087°38′13″ W. (NAD 83).

(ii) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(iii) *Effective Date.* These regulations are effective on July 12 and 13, 2013 from 11:30 a.m. until 5 p.m.

(3) *Door County Triathlon; Door County, WI.*

(i) *Location.* A regulated area is established to include all waters Horseshoe Bay within a 1000-yard radius from a position at 45°00′52.6″ N, 087°20′6.7″ W. (NAD 83).

(ii) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(iii) *Effective Date.* These regulations are effective on July 20 and 21, 2013 from 8 a.m. until 9:30 a.m.

Dated: June 5, 2013.

**M.W. Sibley,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2013–14416 Filed 6–17–13; 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–2013–0463]**

**RIN 1625–AA00**

## Safety Zone; Queen's Cup; Lake Michigan; Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Michigan near Milwaukee Harbor in Milwaukee, Wisconsin. This safety zone is intended to restrict vessels from a portion of Lake Michigan due to the 2013 Queen's Cup Race. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with a race competition involving a gathering of 200 sailboats.

**DATES:** This rule is effective and will be enforced from 2:30 p.m. until 7 p.m. on June 28, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0463. 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 large gathering of sailboats in preparation for a race, 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

On June 28 2013, the South Shore Yacht Club in Milwaukee Wisconsin will be hosting their annual Queen's Cup Regatta. The Queen's Cup Regatta is a race from Milwaukee, WI to Ludington, MI that is expected to involve 200 sailing vessels. The sailing vessels involved in the race will group at their starting point—an estimated 1.7 nautical miles east of Milwaukee Harbor break wall. South Shore Yacht Club informed the Coast Guard that, in previous years, spectator vessels have positioned themselves too close to the racers and the starting point. To avoid collisions during the start of the race, event organizers asked the Coast Guard to provide a safety zone. The Captain of the Port, Lake Michigan, has determined that the start of the Queen's Cup race will pose a significant risk to public safety and property. Such hazards include the collision of race and recreational vessels in a congested area, and capsizing competitors and spectators' 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 persons and vessels during the Queen's Cup race on Lake Michigan. This zone is effective and will be enforced from 2:30 p.m. until 7 p.m. on June 28, 2013.

The safety zone will encompass all waters of Lake Michigan within a rectangle bounded by the points beginning at 43°01′27.74″ N, 087°50′41.38″ W; then east to 43°01′27.74″ N, 087°50′14.61″ W; then south to 43°01′10.7″ N, 087°50′14.5″ W; then west to 43°01′10.7″ N, 087°50′41.38″ W; then north back to the point of origin (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 June. 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 rule on 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. 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 Lake Michigan near Milwaukee Harbor on June 28, 2013.

This safety zone will not have a significant economic impact on a

substantial number of small entities for the following reasons: this safety zone would be effective and thus subject to enforcement, for only one day in June. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, we would issue local 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** 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 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. 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.T09–0463 to read as follows:

**§ 165.T09–0463 Safety Zone; Queen's Cup; Lake Michigan; Milwaukee, WI.**

(a) *Location.* All waters of Lake Michigan within a rectangle bounded by the points beginning at 43°01′27.74″ N, 087°50′41.38″ W; then east to 43°01′27.74″ N, 087°50′14.61″ W; then south to 43°01′10.7″ N, 087°50′14.5″ W; then west to 43°01′10.7″ N, 087°50′41.38″ W; then north back to the point of origin (NAD 83).

(b) *Effective and Enforcement Period.* This zone is effective and will be enforced from 2:30 p.m. until 7 p.m. on June 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 4, 2013.

**M.W. Sibley,**

*Captain, U. S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2013–14414 Filed 6–17–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2013–0462]**

**RIN 1625–AA00**

## Safety Zone; Private Party Fireworks; Lake Michigan, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Michigan in Chicago, Illinois. This safety zone is intended to restrict vessels from a portion of Chicago Harbor 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 10:30 p.m. until 11:30 p.m. on June 29, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0462. 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 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 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.

On June 29, 2013, a private party will host a fireworks display in Chicago Harbor. Fireworks will be launched from a barge in the vicinity of Promontory Point Park in Chicago, IL. The Captain of the Port, Lake Michigan, has determined that this 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 in Chicago Harbor. This rule is effective and will be enforced from 10:30 p.m. until 11:30 p.m. on June 29, 2013.

The safety zone will encompass all waters of Lake Michigan, Chicago Harbor within a 900 foot radius of an approximate launch position at 41°47′59.35″ N and 87°34′33.24″ 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 June. 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 rule on 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. 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 Chicago Harbor on June 29, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be effective and thus subject to enforcement, for only one day in June. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, we would issue local 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** 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 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. 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.T09–0462 to read as follows:

**§ 165.T09–0462 Safety Zone; Private Party fireworks; Lake Michigan, Chicago, IL.**

(a) *Location.* All waters of Lake Michigan, Chicago Harbor within a 900 foot radius of an approximate launch position at 41°47′ 59.35″ N, 87°34′33.24″ W (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective and will be enforced from 10:30 p.m. until 11:30 p.m. on June 29, 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 5, 2013.

**M.W. Sibley,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2013–14415 Filed 6–17–13; 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–2013–0245]**

**RIN 1625–AA00**

## Safety Zone; Inbound Transit of M/V TEAL, Savannah River; Savannah, GA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary moving safety zone around the M/V TEAL during its inbound transit on the Savannah River to the Georgia Ports Authority, Garden City Terminal Container Berth 8 (CB8). This safety zone facilitates the safe transit and offload of four oversized ship to shore (STS) cranes. The moving safety zone will transition to a temporary fixed safety zone when the M/V TEAL moors to CB8. This regulation is necessary to protect life and property on the navigable waters of the Savannah River due to the hazards associated with the transport of these oversized cranes and offloading operations. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Savannah or a designated representative.

**DATES:** This rule will be enforced with actual notice from 5 a.m. on June 5, 2013, until June 18, 2013. This rule is effective in the Code of Federal Regulations from June 18, 2013 until 7:30 p.m. on June 24, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0245. 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 Chief Petty Officer Clayton P. Rennie, Marine Safety Unit Savannah Office of Waterways Management, Coast Guard; telephone (912) 652–4353 ext 200, email *Clayton.P.Rennie@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**

COTP Captain of the Port
CB8 Container Berth 8
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
STS Ship to Shore

### A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive notice of the transit until there was insufficient time remaining to undertake notice and comment. Publishing an NPRM and delaying its effective date would be impracticable because immediate action is needed to protect the M/V TEAL and other vessels and mariners from the hazards associated with the transit and offloading operations of four STS cranes to CB8.

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. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116

Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The Coast Guard is establishing this temporary moving safety zone to facilitate the safe transit of the M/V TEAL and four STS cranes on the Savannah River. The large STS cranes pose a danger to other vessels that may meet or attempt to overtake the M/V TEAL in the narrow waterway of the Savannah River.

The purpose of the rule is to ensure the safety of life and vessels on a navigable waterway of the United States during the M/V TEAL transit and operations.

**C. Discussion of the Final Rule**

The moving safety zone will cover all waters of the Savannah River one nautical mile ahead and astern of the M/V TEAL. During the vessel's inbound transit, no other vessel may meet, pass, or overtake the M/V TEAL, unless authorized by the COTP Savannah or a designated representative.

The moving safety zone will become a fixed safety zone when the M/V TEAL moors to CB8 at approximate position 32°08.23′ N, 81°08.52′ W. The fixed safety zone will extend over the water 500 yards around the M/V TEAL. No person or vessel will be allowed to transit the safety zone during crane offloading operations, unless authorized by the COTP Savannah or a designated representative.

Entry into the safety zone is prohibited for all vessels unless specifically authorized by the COTP Savannah or a designated representative. U.S. Coast Guard assets or designated representatives will enforce this safety zone, and coordinate vessel movements into the zone when safe to minimize the zone's impact on vessel movements. Persons or vessels desiring to enter, transit through, anchor in, or remain within the safety zones may contact the Captain of the Port Savannah by telephone at (912) 652–4353, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative. The Coast Guard will provide notice of the safety zones by Broadcast Notice to Mariners, and on-scene designated representatives.

Due to fluctuations in the M/V TEAL's transit schedule, the time of arrival and 14 to 16 day duration needed to unload the cranes are based upon the best available information known at the time this rule was drafted. Therefore, this rule is effective from 5 a.m. (EST) on June 5, 2013 until 7 p.m. (EST) on June 24, 2013, however it will only be enforced upon the commencement of the M/V TEAL's inbound transit and remain in effect until all cranes have been offloaded. The COTP Savannah or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for this safety zone.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

The economic impact of this rule is not significant for the following reasons: this safety zone will only be enforced during the in-bound transit of the M/V TEAL on the Savannah River and while the M/V TEAL is moored at CB8. Once all STS cranes have been offloaded from the M/V TEAL the safety zone will be terminated. The transit of the M/V TEAL is expected to take 4 to 6 hours.

The Coast Guard has notified the Georgia Ports Authority and Savannah Pilots Association of the needs, conditions, and effective dates and times of the safety zone so that they may schedule arriving and departing vessels that may be affected by this safety zone to minimize shipping delays. The presence of moored vessels is not expected to impede the safe in-bound transit of the M/V TEAL, and sufficient channel width is anticipated while the M/V TEAL is moored so that other vessels may transit through the area. Additionally, there are only two waterfront facilities upriver of CB8 and there are no known vessels scheduled to moor at these facilities while this regulation is in effect.

Notifications of the enforcement periods of this safety zone will be made to the marine community through broadcast notice to mariners. Representatives of the COTP will be on-scene to coordinate the movements of vessels seeking to enter the safety zone. These representatives will authorize vessel transits into the zone to the maximum safely allowable during the M/V TEAL's transit.

*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. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Savannah River while M/V TEAL is transiting in-bound on the Savannah River and while moored at CB8. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The COTP Savannah may consider granting vessels permission to enter into the moving safety zone if conditions allow for such transit to be conducted safely, (2) all vessels may transit through the fixed safety zone when crane offloading operations are not in progress, and (3) the Coast Guard will issue a broadcast notice to mariners informing the public of the safety zone.

*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 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 creation of a temporary safety zone. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.t07–0245 to read as follows:

**§ 165.t07–0245 Safety Zone; Inbound transit of M/V TEAL Savannah River, Savannah, GA.**

(a) *Regulated Area.* The following areas are safety zones:

(1) *Moving Safety Zone.* The moving safety zone will cover all waters of the Savannah River one nautical mile ahead and astern of the M/V TEAL.

(2) *Fixed Safety Zone.* All waters of the Savannah River within 500 yards in all directions around the M/V TEAL while moored at approximate position 32°08.23′ N, 81°08.52′ W.

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

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zones unless authorized by the Captain of the Port Savannah or a designated representative.

(2) Persons or vessels desiring to enter, transit through, anchor in, or remain within the safety zones may contact the Captain of the Port Savannah by telephone at (912) 652–4353, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative.

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

(e) *Effective period.* This rule is effective from 5 a.m. on June 5, 2013 until 7 p.m. on June 24, 2013.

Dated: May 20, 2013.

**J.B. Loring,**

*Commander, U.S. Coast Guard, Captain of the Port Savannah.*

[FR Doc. 2013–14417 Filed 6–17–13; 8:45 am]

**BILLING CODE 9110–04–P**

## POSTAL REGULATORY COMMISSION

## 39 CFR Part 3001

**[Order No. 1742; Docket No. RM2013–1]**

## Revisions to Rules of Practice

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission recently proposed minor changes to its rules of general applicability. The proposed changes involved minor clarifications and corrections. Having reviewed comments on the proposed changes, the Commission is adopting a final set of rules. The final rules reflect statutory and regulatory changes; minor editorial changes; and changes designed to foster clarity and simplicity. They also reflect, in some instances, the suggestions of a commenter. Adoption of the revisions will promote effective and efficient administration of agency business.

**DATES:** *Effective date:* June 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820.

**SUPPLEMENTARY INFORMATION:** *Regulatory history:* 78 FR 22820 (Apr 17, 2013).

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### I. Introduction

On March 19, 2013, the Commission issued a notice of proposed rulemaking concerning minor clarifying amendments to the Commission's rules of practice and procedure in 39 CFR part 3001.[1] The proposed amendments suggested minor changes that would remove obsolete references, adopt new terminology, and make technical edits. Interested persons were provided an opportunity to comment on the proposed amendments. *Id.* at 6. After consideration of the comments submitted, the Commission adopts the proposed amendments with several minor modifications.

### II. Comments

The Public Representative and the Postal Service filed comments on May 17, 2013. No other interested person submitted comments. The Postal Service's comments offer no substantive suggestions and commend ''the Commission for undertaking to prepare these clarifications and improvements. . . .''[2]

The Public Representative states that the ''minor amendments are a step in the right direction'' but ''suggests that the Commission undertake a more comprehensive review of its rules of practice and procedure to address inconsistencies, remove outdated rules, and assure that rules conform with current practice before the Commission.''[3] Suggestions for ''a more comprehensive update of the rules'' include:

—moving all general definitions to part 3001 and removing duplicative definitions and definitions contained in other parts. *Id.* at 1–2.
—clarifying the definitions of the classes of persons that appear before the Commission (*i.e.,* party, participant, complainant) and ensuring that the terms are used as intended. *Id.* at 2–3.
—distinguishing commenters as described in rule 3001.20b with interested persons who file comments at the Commission's invitation. *Id.* at 3, 5.
—proposing a revised definition of ''hearing''. *Id.* at 4.
—clarifying that the Public Representatives are not classified as ''decision-making Commission personnel'' for the purposes of rule 3001.7. *Id.*
—using consistent terminology to describe the filing and acceptance of documents filed online. *Id.*
—removing the requirement that the Postal Service file requests for changes in rate and classifications both online and in hard copy. *Id.* at 4–5.
—allowing the presiding officer to grant late filed motions to intervene. *Id.* at 5.
—removing references to intermediate decisions. *Id.* at 5, 7.
—clarifying the rights of limited participators in discovery matters in rules 3001.26, 3001.27, and 3001.28. *Id.* at 7.
—clarifying the person(s) responsible for prehearing conferences and ruling on motions in cases where a presiding officer is not appointed. *Id.* at 6, 7.
— eliminating the requirement in rule 3001.31(g) that eight copies of all prepared testimony and exhibits be filed. *Id.* at 7.
—revising rule 3001.33 to be consistent with online filings. *Id.* at 8.
—revising rule 3001.39(c) to conform with current Commission practice. *Id.*
—allowing requests to open and close public meetings to be filed electronically. *Id.* at 9.
—removing rule 3001.75. *Id.*

### III. Summary of Changes to the Proposed Rules

As discussed below, the Commission is making the following changes to the rules proposed in Order No. 1677.

In paragraph (j) of rule 3001.5, the proposed rules contained the phrase ''§§ 3001.17 and 3001.18(a) of this section''. ''[O]f this section'' is unnecessary and has been removed from the final rule. In paragraph (o), the phrase ''of this chapter'' has been added following the reference to part 3025 for clarification.

In rule 3001.7, the Commission adopts the Public Representative's suggestion to clarify that individuals assigned to represent the interests of the general public in a particular docket are excluded from the definition of ''decision-making Commission personnel'' for purposes of applying ex parte restrictions. Therefore, a new paragraph 3001.7(a)(2)(iii) is added to refer to the Public Representative and other Commission personnel assigned to represent the interests of the general public pursuant to 39 U.S.C. 505. In addition, Order No. 1677 inadvertently proposed that paragraphs (b)(1) through (b)(5) be deleted from the rule. The final rules leave those paragraphs intact.

In rule 3001.10, the Commission agrees with the Public Representative's suggestion that requests for changes in rates and classifications no longer need to be filed in hard copy. Therefore, paragraph (a)(4) is removed; paragraph (a)(5) is redesignated as paragraph (a)(4); and paragraph (a)(6) is redesignated as paragraph (a)(5).

In rule 3001.12, paragraph (a)(1) is removed to reflect the elimination of current rule 3001.10(a)(4). Paragraph (a)(2) is redesignated as paragraph (a)(1), and paragraph (a)(3) is redesignated as paragraph (a)(2).

In rule 3001.17, paragraph (a)(2) is revised to include a reference to § 3030.30. In rule 3001.25(a), language

[1] Order No. 1677, Notice of Proposed Rulemaking Concerning Minor Amendments to the Rules of Practice, March 19, 2013 (Order No. 1677).

[2] United States Postal Service Comments on Notice of Proposed Rulemaking Regarding Minor Amendments to the Rules of Practice, May 17, 2013, at 1.

[3] Comments of the Public Representative, May 17, at 1 (PR Comments).

has been added to clarify that discovery may occur in cases set for hearing pursuant to part 3030.

In paragraph (j) of rule 3001.31, the Public Representative suggests replacing ''Provided, That'' with ''Provided, that''. The Commission instead revises the paragraph to form two sentences and removes the phrase ''Provided, That'' and the word ''general''.

The proposed rules inadvertently suggested deletion of paragraph (a)(2) in rule 3001.43. The final rules leave that paragraph intact.

The Public Representative suggests deleting rule 3001.75 in its entirety because as proposed, it is unnecessary in light of rule 3001.71. The Commission agrees that rule 3001.75 is unnecessary and removes it.

In all other respects, the Commission adopts the rules as proposed in Order No. 1677.

## IV. Discussion

The final rules adopted by this order make minor clarifications and corrections to the Commission's rules of practice and procedure in 39 CFR part 3001. The amendments largely remove obsolete references, adopt new terminology, and make technical edits to ensure the rules reflect the changes brought on by the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006), and subsequent rulemakings. This docket was not established to consider substantive changes.

In rule 3001.25(a), language has been added to clarify that discovery may occur in cases set for hearing pursuant to part 3030.

The commenters do not object to any of the proposed changes, but the Public Representative appears concerned that the references to 39 U.S.C. 3662 complaint cases were removed from rules 3001.5(j) and 3001.25(a). PR Comments at 4, 6. The references to complaint cases were removed from rules 3001.5(j) and 3001.25(a) because the PAEA removed the requirement that complaint proceedings be adjudicated as formal, on the record hearings pursuant to the Administrative Procedure Act. Thus, there is no longer a statutory obligation to adjudicate 39 U.S.C. 3662 cases formally. Nonetheless, the Commission has decided to adjudicate complaint cases formally if the complaint raises one or more material issues of fact or law. *See* 39 CFR 3030.30(a). The Commission's part 3030 rules clarify when the part 3001 rules are applicable to a complaint proceeding filed under part 3030, as the part 3001 rules are applicable by regulation rather than statute. Therefore, the references to 39 U.S.C. 3662 complaint cases were properly removed from rules 3001.5(j) and 3001.25(a). However, a reference to part 3030 has been added to rule 3001.25(a). In addition, a clarification to rule 3001.17 is necessary to clarify when a complaint filed pursuant to part 3030 is noticed and adjudicated in a formal, on the record proceeding. The change made in this order to rule 3001.17(a)(2) should clear up any residual confusion.

Since this rulemaking endeavored to make minor corrective amendments to the rules of practice and procedure, many of the Public Representative's suggestions were, as he acknowledged, ''suggestions for a more comprehensive update of the rules.'' PR Comments at 1. To the extent the Public Representative's suggestions fell within the narrow scope of this rulemaking, they have been incorporated into the final rules. Other suggestions call for more comprehensive changes that are outside the scope of this rulemaking. In addition, the Public Representative's suggestions include many substantive changes on which interested persons should have the opportunity to comment. Therefore, the Commission will review the Public Representative's suggestions, and if warranted, open a subsequent rulemaking and allow for additional comment on any further changes.

## V. Section-by-Section Analysis

*Rule 3001.5.* The amendments make changes to paragraphs (a), (h), (j), (m), (o), (p), and (q). The changes largely address changes in Commission terminology. For example, ''officer of the Commission who is designated to represent the interests of the general public'' in paragraph (h) and ''Office of the Consumer Advocate'' in paragraph (q) have been replaced with ''Public Representative.'' In paragraphs (a), (j), (m), and (o), statutory and regulatory references that have been changed or repealed are replaced with accurate references. The obsolete definition in paragraph (p) is removed, and the paragraph is reserved for future use.

*Rule 3001.7.* The amendments address changes in Commission terminology and replace obsolete statutory and regulatory references. For example, in paragraph (a)(1)(iii), ''Office of Rates, Analysis and Planning'' is replaced with ''Office of Accountability and Compliance.'' In paragraph (a)(2)(ii), ''Subpart C'' is replaced with ''Subpart B.'' The introductory language of paragraph (b) is amended to encompass proceedings under section 3661 of title 39; any proceeding noticed and set for hearing by the Commission pursuant to §§ 3001.17 and 3001.18; or any proceeding conducted pursuant to part 3025. In addition, a new paragraph (a)(2)(iii) is added to clarify the status of Commission personnel assigned to represent the interests of the general public in specific cases.

*Rule 3001.9.* The amendments to rule 3001.9 address changes in Commission terminology, standardize the Commission's address and internal citation method, and add minor clarifying language. For example, in paragraph (a), ''Office of the Secretary'' is replaced with ''Office of Secretary and Administration,'' and in paragraph (c)(2), ''federal'' is added before ''holiday''.

*Rule 3001.10.* Paragraph (a)(4) is removed; paragraph (a)(5) is redesignated as paragraph (a)(4); and paragraph (a)(6) is redesignated as paragraph (a)(5). Paragraph (c) is amended by deleting the excess ''or'' that follows ''Word.''

*Rule 3001.12.* Paragraph (a)(1) is removed; paragraph (a)(2) is redesignated as paragraph (a)(1); and paragraph (a)(3) is redesignated as paragraph (a)(2).

*Rule 3001.15.* The amendments to rule 3001.15 clarify that the rule applies to federal holidays, make grammatical corrections, and remove the reference to part-day holidays.

*Rule 3001.17.* The amendment to paragraph (a)(2) clarifies language, resolving possible confusion and clarifying that the rule is intended to be read in conjunction with the Commission's rules in part 3030.

*Rule 3001.18.* The amendments to paragraphs (b) and (c) of rule 3001.18 remove obsolete regulatory references and revise the types of decisions issued by the Commission to reflect statutory changes.

*Rule 3001.19.* Rule 3001.19 is amended by removing the word ''involved'' in the third sentence.

*Rule 3001.20a.* Paragraph (c) of rule 3001.20a is amended by removing the obsolete statutory reference to 39 U.S.C. 3622(b)(4) and by replacing ''Limited participants'' with ''Limited participators''.

*Rule 3001.20b.* The amendments to the introductory paragraph of rule 3001.20b correct obsolete and imprecise regulatory references.

*Rule 3001.21.* In paragraph (a), ''initial decision'' is replaced with ''intermediate decision''.

*Rule 3001.23.* In paragraphs (a)(7) and (a)(9), ''initial or recommended decision'' is replaced with ''intermediate decision''.

*Rule 3001.24.* Amendments to paragraphs (a) and (d)(6) remove

obsolete statutory references. In addition, ''recommended decision or'' is deleted from paragraph (a).

*Rule 3001.25.* Paragraph (a) is amended by removing obsolete statutory references.

*Rule 3001.27.* Paragraph (b) is amended by replacing the reference to ''.12'' with ''3001.12''.

*Rule 3001.30.* Paragraph (d) is amended by removing obsolete statutory references and by adding clarifying language at the end of the first sentence. Paragraph (e)(2) is amended by replacing the obsolete reference to ''OCA–T1–17'' with ''PR–T1–17''. Paragraph (h) is amended by replacing references to ''his'' with ''his/her''.

*Rule 3001.31.* Paragraph (j) is revised to improve readability with respect to official notice. Paragraph (k)(3)(i)(*i*) is amended by replacing ''Administrative Office'' with ''Office of Secretary and Administration''.

*Rule 3001.31a.* Paragraph (c) is amended by removing ''and shall be subject to the provisions of § 3001.42 of this chapter''.

*Rule 3001.32.* Paragraph (f) is amended by replacing ''allowed or requested'' with ''certified pursuant to paragraph (b)(1) of this section''; by replacing both references to ''initial decision'' with ''intermediate decision''; and by replacing ''at the conclusion of the proceeding'' with ''in the participants' briefs in accordance with § 3001.34''.

*Rule 3001.34.* Paragraph (a) is amended by replacing ''issuance of recommended decision or advisory opinion to the Postal Service within the contemplation of sections 3641(a) and 3661 of the Act'' with ''issuance of the decision or advisory opinion''. Paragraph (b)(3) is amended by replacing ''the subject matter of the complaint, or recommended decision, advisory opinion, or public report to be issued'' with ''and the advisory opinion or decision to be issued''.

*Rule 3001.36.* Rule 3001.36 is amended by removing references to ''other designated officers'' (including in the rule title) and by replacing references to ''initial or recommended decisions'' with ''intermediate decisions''. It is also amended by replacing ''shall determine the time and place for oral argument. He may specify the issue or issues on which oral argument'' with ''shall determine the time and place for oral argument, and may specify the issue or issues on which oral argument''.

*Rule 3001.39.* Paragraph (c) is amended by removing ''(initial, recommended or tentative)'' and obsolete statutory references, and by updating the terminology used for the various types of decisions issued.

*Rule 3001.40.* Rule 3001.40 is amended by removing the authority citation that follows the rule.

*Rule 3001.41.* Rule 3001.41 is amended by removing the authority citation that follows the rule.

*Rule 3001.43.* Paragraph (a)(1) is amended by removing the reference to how access to documents being considered at Commission meetings shall be obtained. Paragraph (c)(10) is amended by removing the reference to section 3624(a) of title 39 and by clarifying that the type of proceeding referred to is an an appellate proceeding. Paragraph (e)(4)(i) is amended by replacing the reference to the office of the Secretary of the Commission with the reception area of the Postal Regulatory Commission. Paragraphs (g)(1)(iii) and (g)(2)(iii) are amended by making nomenclature changes to replacing references to the office of the Secretary with the Office of Secretary and Administration.

*Rule 3001.72.* Rule 3001.72 is amended by replacing the reference to a recommended decision with a reference to an advisory opinion.

*Rule 3001.75.* Rule 3001.75 is removed.

## VI. Effective Date

Generally, substantive rules become effective not less than 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d). A rule may become effective sooner if it is an interpretative rule, a statement of policy, or if the agency finds good cause to make it effective sooner. *Id.* Since the amendments promulgated by this order are not substantive in nature and are being adopted after public notice and opportunity for comment, the Commission finds that good cause exists to make the amendments promulgated by this order effective on June 28, 2013.

## VII. Ordering Paragraphs

*It is ordered:*

1. The Commission hereby adopts the amendments to part 3001 of title 39, Code of Federal Regulations.

2. These rules shall take effect on June 28, 2013.

3. The Secretary shall arrange for publication of this order in the **Federal Register**.

## List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Freedom of information, Postal Service, Sunshine Act.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

## PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(d); 503; 504; 3661.

### Subpart A—Rules of General Applicability

■ 2. In § 3001.5:

■ a. Revise paragraphs (a), (h), (j), (m), (o), and (q).

■ b. Remove and reserve paragraph (p).

The revisions read as follows:

**§ 3001.5 Definitions.**

(a) *Act* means title 39, United States Code, as amended.

* * * * *

(h) *Participant* means any party to the proceeding, including formal intervenors as described in § 3001.20, and the Public Representative and, for the purposes of §§ 3001.11(e), 3001.12, 3001.21, 3001.23, 3001.24, 3001.29, 3001.30, 3001.31, and 3001.32 only, it also means persons who are limited participators.

* * * * *

(j) *Hearing* means a hearing under sections 556 and 557 of title 5, U.S.C. (80 Stat. 386), as provided by section 3661 of the Act or in any other proceeding noticed by the Commission under §§ 3001.17 and 3001.18(a).

* * * * *

(m) *Petitioner* means a person who is permitted by 39 U.S.C. 404(d)(5) to appeal to the Commission a determination of the Postal Service to close or consolidate a post office.

* * * * *

(o) *Ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all participants and limited participators is not given, but it shall not include requests for status reports on any matter or proceeding covered by subchapter II of chapter 5 of title 5 or a proceeding conducted pursuant to part 3025 of this chapter.

(p) [Reserved]

(q) *Public Representative* or *PR* means an officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

* * * * *

■ 3. In § 3001.7, revise paragraphs (a) and (b) to read as follows:

**§ 3001.7 Ex parte communications.**

(a) *Definitions.* (1) *Decision-making personnel.* Subject to the exception stated in paragraph (a)(2)(ii) of this section, the following categories of persons are designated ''decision-making personnel'':

(i) The Commissioners and their personal office staffs;

(ii) The General Counsel and his/her staff;

(iii) The Director of the Office of Accountability and Compliance and his/her staff;

(iv) Any other employee who may reasonably expected to be involved in the decisional process.

(2) *Non-decision-making Commission personnel.* The following categories of person are designated ''non-decision-making personnel'':

(i) All Commission personnel other than decision-making personnel;

(ii) Decision-making Commission personnel not participating in the decisional process owing to the prohibitions of § 3001.8 or § 3000.735–501 of this chapter.

(iii) The Public Representative and other Commission personnel assigned to represent the interests of the general public pursuant to 39 U.S.C. 505 in the specific case or controversy at issue.

(b) *Prohibition.* In any agency proceeding conducted under section 3661 of the Act; noticed and set for hearing by the Commission pursuant to §§ 3001.17 and 3001.18(a); or any proceeding conducted pursuant to part 3025 of this chapter to the extent required for the disposition of ex parte matters as authorized by law:

* * * * *

■ 4. In § 3001.9, revise paragraphs (a), (c)(2), and (e) to read as follows:

**§ 3001.9 Filing of documents.**

(a) *Filing with the Commission.* The filing of each written document required or authorized by these rules or any applicable statute, rule, regulation, or order of the Commission, or by direction of the presiding officer, shall be made using the Internet (Filing Online) pursuant to § 3001.10(a) at the Commission's Web site (*http://www.prc.gov*), unless a waiver is obtained. If a waiver is obtained, a hard copy document may be filed either by mailing or by hand delivery to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001 during regular business hours on a date no later than that specified for such filing. The requirements of this section do not apply to participants other than the Postal Service in proceedings conducted pursuant to part 3025 of this chapter.

* * * * *

(c) * * *

(2) Any document received after the close of regular business hours or on a Saturday, Sunday, or federal holiday, shall be deemed to be filed on the next regular business day.

* * * * *

(e) *Account holder exemptions.* Notices of intervention and comments solicited by the Commission may be filed under temporary Filing Online accounts. Temporary Filing Online accounts may be obtained without meeting all of the requirements of paragraphs (b) and (c) of this section, and the subscription requirements of § 3001.11(e). Other categories of documents may be filed under temporary Filing Online accounts under extraordinary circumstances, for good cause shown.

■ 5. In § 3001.10, revise paragraphs (a)(4), (a)(5), and (c) to read as follows:

**§ 3001.10 Form and number of copies of documents.**

(a) * * *

(4) Documents filed online must satisfy Filing Online system compatibility requirements specified by the Secretary in the Filing Online User Guide, which may be accessed from the Filing Online page on the Commission's Web site, *http://www.prc.gov.*

(5) Documents requiring privileged or protected treatment shall not be filed online.

* * * * *

(c) *Computer media.* A participant that has obtained a waiver of the online filing requirement of § 3001.9(a) may submit a document on standard PC media, simultaneously with the filing of one printed original and two hard copies, provided that the stored document is a file generated in either Acrobat (pdf), Word, WordPerfect, or Rich Text Format (rtf).

* * * * *

**§ 3001.12 [Amended]**

■ 6. In § 3001.12, remove paragraph (a)(1) and redesignate paragraphs (a)(2) and (a)(3) as paragraphs (a)(1) and (a)(2).

■ 7. Revise § 3001.15 to read as follows:

**§ 3001.15 Computation of time.**

Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule or regulation of the Commission or a presiding officer, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a federal holiday. In computing a period of time which is 5 days or fewer, all Saturdays, Sundays, and federal holidays are to be excluded.

■ 8. In § 3001.17, revise paragraph (a)(2) to read as follows:

**§ 3001.17 Notice of proceeding.**

(a) * * *

(2) The Commission determines that a complaint filed under part 3030 of this chapter raises one or more material issues of fact or law in accordance with § 3030.30 of this chapter; or

* * * * *

■ 9. In § 3001.18, revise paragraphs (b) and (c) to read as follows:

**§ 3001.18 Nature of the proceedings.**

* * * * *

(b) *Procedure in hearing cases.* In proceedings which are to be set for hearing, the Commission shall issue a notice of hearing or prehearing conference pursuant to § 3001.19. After the completion of the hearing, the Commission or the presiding officer shall receive such briefs and hear such oral argument as may be ordered by the Commission or the presiding officer pursuant to §§ 3001.34 to 3001.37. The Commission shall then issue an advisory opinion or final decision, as appropriate.

(c) *Procedure in non-hearing cases.* In any case noticed for a proceeding to be determined on the record in which a hearing is not requested by any party or ordered by the Commission, the Commission or the presiding officer shall issue a notice of the procedure to be followed with regard to the filing of briefs and oral argument. The Commission shall then issue an advisory opinion or final decision, as appropriate. The Commission or presiding officer may, if necessary or desirable, call procedural conferences by issuance of a notice pursuant to § 3001.19.

■ 10. Revise § 3001.19 to read as follows:

**§ 3001.19 Notice of prehearing conference or hearing.**

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17(a), the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of

prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing. Such notice shall be published in the **Federal Register** and served on all participants in the proceeding. Notice of the time and place where a hearing will be reconvened shall be served on all participants in the proceeding unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing.

■ 11. In § 3001.20a, revise paragraph (c) to read as follows:

**§ 3001.20a Limited participation by persons not parties.**

* * * * *

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participators may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Limited participators are not required to respond to discovery requests under §§ 3001.25 through 3001.28 except to the extent that those requests are directed specifically to testimony which the limited participators provided in the proceeding; however, limited participators are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

■ 12. In § 3001.20b, revise the introductory text and paragraph (a) to read as follows:

**§ 3001.20b Informal expression of views by persons not parties or limited participators (commenters).**

Notwithstanding the provisions of §§ 3001.20 and 3001.20a, any person may file with the Commission, in any case that is noticed for a hearing pursuant to § 3001.17(a), an informal statement of views in writing, in accordance with the following provisions:

(a) *Form of statement.* A statement filed pursuant to this section may be submitted as a hardcopy letter mailed to the Secretary or an electronic message entered under the ''Contact Us'' link on the Commission's Web site, *http://www.prc.gov.*

* * * * *

■ 13. In § 3001.21, revise paragraph (a) to read as follows:

**§ 3001.21 Motions.**

(a) *Scope and contents.* An application for an order or ruling not otherwise specifically provided for in this part shall be by motion. Motions shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Secretary and served pursuant to the provisions of §§ 3001.9 to 3001.12. All motions to dismiss proceedings or other motions which involve a final determination of the proceeding shall be addressed to the Commission. After a presiding officer is designated in any proceeding, and before the issuance of an intermediate decision pursuant to § 3001.39 or certification of the record to the Commission pursuant to § 3001.38, all other motions in that proceeding shall be addressed to the presiding officer.

* * * * *

■ 14. In § 3001.23, revise paragraphs (a)(7), (a)(8), (a)(9), and (a)(10) to read as follows:

**§ 3001.23 Presiding officers.**

(a) * * *

(7) To dispose of procedural requests or similar matters but not, before their intermediate decision, to dispose of motions made during hearings to dismiss proceedings or other motions which involve a final determination of the proceeding;

(8) Within their discretion, or upon direction of the Commission, to certify any question to the Commission for its consideration and disposition;

(9) To submit an intermediate decision in accordance with §§ 3001.38 and 3001.39; and

(10) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the Commission functions and with the rules, regulations, and policies of the Commission.

* * * * *

■ 15. In § 3001.24, revise paragraphs (a) and (d)(6) to read as follows:

**§ 3001.24 Prehearing conferences.**

(a) *Initiation and purposes.* In any proceeding the Commission or the presiding officer may, with or without motion, upon due notice as to time and place, direct the participants in a proceeding to appear for a prehearing conference for the purposes of considering all possible ways of expediting the proceeding, including those in paragraph (d) of this section. It is the intent of the Commission to issue its advisory opinion on requests under section 3661 of the Act with the utmost practicable expedition. The Commission directs that these prehearing procedures shall be rigorously pursued by the presiding officer and all participants to that end.

* * * * *

(d) * * *

(6) Disclosure of the number, identity and qualifications of witnesses, and the nature of their testimony, particularly with respect to the policies of the Act and, as applicable according to the nature of the proceeding;

* * * * *

■ 16. In § 3001.25, revise paragraph (a) to read as follows:

**§ 3001.25 Discovery—general policy.**

(a) Sections 3001.26 to 3001.28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3661, or set for hearing under part 3030 of this chapter, when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

* * * * *

■ 17. In § 3001.27, revise paragraph (b) to read as follows:

**§ 3001.27 Requests for production of documents or things for purpose of discovery.**

* * * * *

(b) *Answers.* The participant responding to the request shall file an answer with the Commission in conformance with §§ 3001.9 through 3001.12 within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer. The answer shall state, with respect to each item or category,

that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section.

* * * * *

■ 18. In § 3001.30, revise paragraphs (d), (e)(2), and (h) to read as follows:

**§ 3001.30 Hearings.**

* * * * *

(d) *Order of procedure.* In public hearings before the Commission, the Postal Service shall open and close in proceedings which it has initiated under section 3661 of the Act, and a complainant shall open and close in proceedings on complaints filed under section 3662 of the Act and set for hearing pursuant to § 3001.18(a). With respect to the order of presentation of all other participants, and in all other proceedings, unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of evidence and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e) * * *

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served in accordance with §§ 3001.9 through 3001.12 no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, ''PR–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)).'' When a participant designates written cross-examination, two hard copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

* * * * *

(h) *Rulings on motions.* The presiding officer is authorized to rule upon any such motion not formally acted upon by the Commission prior to the commencement of a prehearing conference or hearing where immediate ruling is essential in order to proceed with the prehearing conference or hearing, and upon any motion to the presiding officer filed or made after the commencement thereof, except that no motion made to the presiding officer, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon affirmatively by the presiding officer except as a part of his/her intermediate decision. This section shall not preclude a presiding officer, within his/her discretion, from referring any motion made in hearing to the Commission for ultimate determination.

* * * * *

■ 19. In § 3001.31, revise paragraphs (j) and (k)(3)(i)(*i*) to read as follows:

**§ 3001.31 Evidence.**

* * * * *

(j) *Official notice of facts.* Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the knowledge of the Commission as an expert body. Any participant shall, on timely request, be afforded an opportunity to show the contrary.

(k) * * *

(3) * * *

(i) * * *

*(i)* An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Office of Secretary and Administration of the Postal Regulatory Commission. Any machine-readable data file or program file so provided must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hardcopy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

* * * * *

■ 20. In § 3001.31a, revise paragraph (c) to read as follows:

**§ 3001.31a In camera orders.**

* * * * *

(c) *Release of in camera information. In camera* documents and testimony shall constitute a part of the confidential records of the Commission. However, the Commission, on its own motion or pursuant to a request, may make *in camera* documents and testimony available for inspection, copying, or use by any other governmental agency. The Commission shall, in such circumstances, give reasonable notice of the impending disclosure to the affected party. However, such notice may be waived in extraordinary circumstances for good cause.

* * * * *

■ 21. In § 3001.32, revise paragraph (f) to read as follows:

**§ 3001.32 Appeals from rulings of the presiding officer.**

* * * * *

(f) *Review at conclusion of proceeding.* If an interlocutory appeal is not certified pursuant to paragraph (b)(1) of this section, objection to the ruling may be raised on review of the presiding officer's intermediate decision, or, if the intermediate decision is omitted, in the participants' briefs in accordance with § 3001.34.

* * * * *

■ 22. In § 3001.34, revise paragraphs (a) and (b)(3) to read as follows:

**§ 3001.34 Briefs.**

(a) *When filed.* At the close of the taking of testimony in any proceeding, the Commission or the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the timely issuance of the decision or advisory opinion. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants involved, the filing of initial and reply briefs, or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper

disposition of the proceeding, the participants may be directed to file more than one brief and at different times rather than a single brief at the same time. The presiding officer or the Commission may also order the filing of briefs during the course of the proceeding.

(b) * * *

(3) A clear, concise and definitive statement of the position of the filing participant as to the proposals of the Postal Service and the advisory opinion or decision to be issued;

* * * * *

■ 23. Revise § 3001.36 to read as follows:

**§ 3001.36 Oral argument before the presiding officer.**

In any case in which the presiding officer is to issue an intermediate decision, such officer may permit the presentation of oral argument when, in his/her opinion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants hearing such argument. The presiding officer shall determine the time and place for oral argument, and may specify the issue or issues on which oral argument is to be presented, the order in which the presentations shall be made, and the amount of time allowed each participant. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

■ 24. In § 3001.39, revise paragraph (c) to read as follows:

**§ 3001.39 Intermediate decisions.**

* * * * *

(c) *Contents.* All intermediate decisions shall include findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and the appropriate intermediate decision pursuant to the Act. An intermediate decision in a proceeding under section 3661 of the Act shall include a determination of the question of whether or not the proposed change in the nature of postal service conforms to the policies established under the Act.

* * * * *

**§ 3001.40 [Amended]**

■ 25. Amend § 3001.40 by removing the authority citation.

**§ 3001.41 [Amended]**

■ 26. Amend § 3001.41 by removing the authority citation.

■ 27. In § 3001.43, revise paragraphs (a)(1), (c)(10), (e)(4)(i), (g)(1)(iii), and (g)(2)(iii) to read as follows:

**§ 3001.43 Public attendance at Commission meetings.**

(a) *Open Commission meetings.* (1) Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in paragraph (c) of this section, every portion of every meeting of the Commission shall be open to public observation.

* * * * *

(c) * * *

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or appellate proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal Commission adjudication pursuant to the procedures in section 554 of title 5 or otherwise involving a determination on the record after opportunity for a hearing.

* * * * *

(e) * * *

(4) * * *

(i) Publicly posting a copy of the document in the reception area of the Postal Regulatory Commission located at 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001;

* * * * *

(g) * * *

(1) * * *

(iii) Ten copies of such requests must be received by the Office of Secretary and Administration no later than three working days after the issuance of the notice of meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the Office of Secretary and Administration 10 working days after the meeting.

(2) * * *

(iii) Ten copies of such requests should be filed with the Office of Secretary and Administration as soon as possible after the issuance of the notice of meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the Office of Secretary and Administration no later than the time scheduled for the meeting to which such a request pertains.

* * * * *

## Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

■ 28. Revise § 3001.72 to read as follows:

**§ 3001.72 Filing of formal requests.**

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.74. Such request shall be filed not less than 90 days in advance of the date on which the Postal Service proposes to make effective the change in the nature of postal services involved. Within 5 days after the Postal Service has filed a formal request for an advisory opinion in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the Federal Register for publication in the **Federal Register**.

**§ 3001.75 [Removed]**

■ 29. Remove § 3001.75.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2013–14221 Filed 6–17–13; 8:45 am]

BILLING CODE 7710–FW–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2012–0582; FRL– 9820–7]**

## Approval and Promulgation of Implementation Plans; Tennessee; 110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve in part, and conditionally approve in part, portions of the State Implementation Plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), to demonstrate that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 2008 Lead national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each

state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. TDEC certified in its submission ((hereafter referred to as ''infrastructure submission) that the Tennessee SIP contains provisions that ensure the 2008 Lead NAAQS are implemented, enforced, and maintained in Tennessee. With the exception of the portion of section 110(a)(2)(E)(ii) respecting the requirements of section 128(a)(1) of the CAA, EPA has made the determination that the applicable portions of the TDEC's October 19, 2009, infrastructure submission which are being approved in this final rulemaking meet the infrastructure requirements for the 2008 Lead NAAQS. In this rulemaking, EPA is also taking final action to conditionally approve the portion of Tennessee's section 110(a)(2)(E)(ii) infrastructure submission that address section 128(a)(1) requirements. Finally, EPA notes that it is not currently taking final action on the portions of Tennessee's infrastructure submission addressing sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) as they relate to prevention of significant deterioration (PSD) requirements. EPA intends to take final action on those portions of Tennessee's infrastructure submission (the portions of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) related to PSD requirements) in a separate rulemaking.

**DATES:** *Effective Date:* This rule will be effective July 18, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0582. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9152. Mr. Farngalo can be reached via electronic mail at *farngalo.zuri@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. 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. In the case of the 2008 Lead NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below [1] and in EPA's October 14, 2011, memorandum entitled'' Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS).''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title 1 of the CAA, and (2) submissions required by section 110(a)(2)(I), which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Accordingly, today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Tennessee consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Tennessee's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, Tennessee's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has promulgated a new rule to address interstate transport. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule''). That rule was recently stayed by the DC Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

On October 5, 1978, EPA promulgated primary and secondary NAAQS for Lead under section 109 of the Act. *See* 43 FR 46246. Both primary and secondary standards were set at a level of 1.5 micrograms per cubic meter (μg/m$^3$), measured as Lead in total suspended particulate matter (Pb-TSP), not to be exceeded by the maximum arithmetic mean concentration averaged over a calendar quarter. On November 12, 2008 (75 FR 81126), EPA issued a final rule to revise the primary and secondary Lead NAAQS. The revised primary and secondary Lead NAAQS were revised to 0.15 μg/m$^3$. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than October 15, 2011, for the 2008 Lead NAAQS. Tennessee provided its infrastructure submission for the 2008 Lead NAAQS on October 19, 2009.

On March 28, 2012, Tennessee submitted a letter of commitment to EPA to adopt specific enforceable measures related to CAA section 128(a)(1) to address the current deficiencies in the Tennessee SIP related to CAA section 110(a)(2)(E)(ii).

On March 20, 2013, EPA proposed to approve the majority of Tennessee's October 19, 2009, infrastructure submission for the 2008 Lead NAAQS, and proposed in the alternative to conditionally approve the portion of the infrastructure submission related to the PSD requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the section 128(a)(1) requirements of section 110(a)(2)(E)(ii). *See* 78 FR 17168.

As noted above, EPA's proposed conditional approval of section 110(a)(2)(E)(ii) as it relates to section 128(a)(1) requirements, was based upon the State's March 28, 2012 commitment letter to address current deficiencies in the Tennessee SIP related to these requirements. Based upon an earlier conditional of approval of these section 110(a)(2)(E)(ii) requirements as part of the infrastructure SIP associated with another NAAQS, Tennessee has already committed to submitting to EPA the necessary revisions to address section 128(a)(1) requirements by July 23, 2013. *See* 77 FR 42997. Accordingly, the proposed conditional approval of section 110(a)(2)(E)(ii) as it relates to the section 128(a)(1) requirements for the 2008 Lead infrastructure SIP was conditioned upon the State's commitment to submit the SIP revision(s) adopting specific enforceable measures to address the 128(a)(1) requirements by July 23, 2013.

EPA did not receive any comments, adverse or otherwise, on the March 20, 2013, proposed rulemaking related to Tennessee's 2008 Lead infrastructure submission.

## II. This Action

Today's rulemaking finalizes approval of Tennessee's infrastructure submission except for the portions of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) pertaining to PSD requirements, and the portion of section 110(a)(2)(E)(ii) related to section 128(a)(1) requirements. Today's rulemaking also finalizes conditional approval of the section 110(a)(2)(E)(ii) portion of Tennessee's infrastructure SIP submission related to section 128(a)(1) requirements.[5] EPA is not today taking any action with respect to the portions of Tennessee's infrastructure submission related to the PSD requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J). EPA intends to act on these remaining portions of Tennessee's infrastructure submission in a separate rulemaking. See EPA's March 20, 2013, proposed rulemaking at 78 FR 17168 for more detail.

As noted above, EPA received no comments, adverse or otherwise, on its March 20, 2013, proposed actions related to Tennessee's October 19, 2009, infrastructure submission for the 2008 Lead NAAQS. For those portions of Tennessee's October 19, 2009, infrastructure submission that EPA is taking final action on today, EPA has determined that the State's infrastructure submission, with the exception of section 110(a)(2)(E)(ii) as it relates to section 128(a)(1) requirements,[6] is consistent with section 110 of the CAA.

EPA is today finalizing a conditional of section 110(a)(2)(E)(ii) as it relates to section 128(a)(1) requirements[7] based upon the State's March 28, 2012, commitment letter to adopt specific enforceable measures related to CAA section 128(a)(1) to address the current deficiencies in the Tennessee SIP related to CAA section 110(a)(2)(E)(ii) by July 23, 2013. As a result of Tennessee's March 28, 2012, commitment letter, EPA has determined that conditional approval, specifically pertaining to the requirements of 128(a)(1), is appropriate because the State has explicitly committed to address current deficiencies in the Tennessee SIP related to sub-element 110(a)(2)(E)(ii) consistent with the requirements of CAA section 110(k)(4).

If the State fails to submit the SIP revision by July 23, 2013, today's conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, today's conditionally approved submittal will also be disapproved at that time. If EPA approves the new submittal, Tennessee's infrastructure SIP will be fully approved in its entirety and replace the conditionally approved element in the SIP.

## III. Final Action

EPA is taking final action to approve Tennessee's October 19, 2009, submission for the 2008 Lead NAAQS, with the exception of the State's submission related to the PSD requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the section 128(a)(1) requirements of section 110(a)(2)(E)(ii). For those sections that EPA is today finalizing approval, EPA has made the determination that TDEC has addressed the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 14, 2011, guidance to ensure that the 2008 Lead NAAQS are implemented, enforced, and maintained in Tennessee. With respect to Tennessee's October 19, 2009, submission for the 2008 Lead

[5] EPA is finalizing approval of section 110(a)(2)(E)(ii) as it relates to section 128(a)(2) requirements and finalizing approval of section 110(a)(2)(E)(i) and (iii).

[6] Section 128(a)(1) requires that the SIP include requirements that any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive any significant portion of their from persons subject to permits or enforcement orders under the CAA.

[7] EPA is finalizing approval of section 110(a)(2)(E)(ii) as it relates to section 128(a)(2) requirements and finalizing approval of section 110(a)(2)(E)(i) and (iii).

NAAQS addressing the section 128(a)(1) requirements of section 110(a)(2)(E)(ii), EPA is conditionally approve the State's submission based on Tennessee's March 28, 2012, commitment to submit a SIP revision to address the section 128(a)(1) requirements.

Finally, in this rulemaking, EPA notes that it is not taking final action related to the PSD portions of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J). EPA intends to take final action on the portions of Tennessee's infrastructure submission related to the PSD portions of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) in a separate rulemaking.

## IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 19, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## List of Subjects in 40 CFR Part 52

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

Dated: May 28, 2013.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart RR—Tennessee

■ 2. Section 52.2219 paragraphs (c) and (d) are revised to read as follows:

### § 52.2219 Conditional approval.

* * * * *

(c) *Conditional Approval*—Submittal from the State of Tennessee, through the Department of Environment and Conservation (TDEC), dated October 19, 2009, to address the Clean Air Act (CAA) sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) for the 2008 Lead National Ambient Air Quality Standards. EPA is conditionally approving TDEC's submittal with respect to the PSD requirements of CAA sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J), specifically related to the adoption of enforceable provisions for PSD increments as detailed in TDEC's October 4, 2012, commitment letter. Tennessee must submit to EPA by March 6, 2014, a SIP revision adopting specific enforceable measures related to PSD increments as described in the State's letter of commitment.

(d) *Conditional Approval*—Submittal from the State of Tennessee, through the Department of Environment and Conservation (TDEC), dated October 19, 2009, to address the Clean Air Act (CAA) section 110(a)(2)(E)(ii) for the 2008 Lead National Ambient Air Quality Standards. With respect to CAA section 110(a)(2)(E)(ii), specifically related to the adoption of enforceable measures contained in CAA section 128(a)(1), EPA published in the **Federal Register** a final rulemaking to conditionally approve TDEC's March 28, 2012, commitment on July 23, 2012. Tennessee must submit to EPA by July 23, 2013, SIP revisions adopting specific enforceable measures related to CAA sections 128(a)(1) as described in the State's letter of commitment.

* * * * *

■ 3. Section 52.2220(e) is amended by adding a new entry ''110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards'' at the end of the table to read as follows:

### § 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

| Name of non-regulatory SIP provision | Applicable geographic or nonattainment area | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * | * | | * * | * * |
| 110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards. | Tennessee ... | 10/19/2009 | 06/18/2013 [Insert citation of publication]. | With the exception of section 110(a)(2)(D)(i)(I) concerning interstate transport; the portions of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) related to PSD, which are being conditionally approved; and section 110(a)(2)(E)(ii) as it relates to section 128(a)(1), which is being conditionally approved. |

[FR Doc. 2013–14068 Filed 6–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 100812345–2142–03]**

**RIN 0648–XC714**

## Snapper-Grouper Fishery of the South Atlantic; 2013 Commercial Accountability Measure and Closure for the South Atlantic Lesser Amberjack, Almaco Jack, and Banded Rudderfish Complex

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures (AMs) for the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex in the South Atlantic for the 2013 fishing year through this temporary rule. Commercial landings for the lesser amberjack, almaco jack, and banded rudderfish complex, as estimated by the Science and Research Director (SRD), have reached their combined commercial annual catch limit (ACL) at this time. Therefore, NMFS closes the commercial sector for this complex on June 18, 2013, through the remainder of the fishing year in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the lesser amberjack, almaco jack, and banded rudderfish resources.

**DATES:** This rule is effective 12:01 a.m., local time, June 18, 2013, until 12:01 a.m., local time, January 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic, which includes the lesser amberjack, almaco jack, and banded rudderfish complex, is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The combined commercial ACL for the lesser amberjack, almaco jack, and banded rudderfish complex is 193,999 lb (87,996 kg), round weight. Under 50 CFR 622.193(l)(1), NMFS is required to close the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex when the commercial ACL has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial sector for this complex has reached the ACL. Therefore, this temporary rule implements an AM to close the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex in the South Atlantic, effective 12:01 a.m., local time June 18, 2013.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having lesser amberjack, almaco jack, or banded rudderfish onboard must have landed and bartered, traded, or sold such species prior to 12:01 a.m., local time, June 18, 2013. During the closure, the bag limit specified in 50 CFR 622.187(b)(8), applies to all harvest or possession of lesser amberjack, almaco jack, or banded rudderfish in or from the South Atlantic EEZ. During the closure, the possession limits specified in 50 CFR 622.187(c), apply to all harvest or possession of lesser amberjack, almaco jack, or banded rudderfish in or from the South Atlantic EEZ. These bag and possession limits apply in the South Atlantic on board a vessel for which a valid Federal commercial or 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. During the closure, the sale or purchase of lesser amberjack, almaco jack, or banded rudderfish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of lesser amberjack, almaco jack, or banded rudderfish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, June 18, 2013, and were held in cold storage by a dealer or processor.

### Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the lesser amberjack, almaco jack, and banded rudderfish complex, a component of the South Atlantic snapper-grouper fishery, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(l)(1) and is exempt from review under Executive Order 12866.

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

This action responds to the best available scientific information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the lesser amberjack, almaco jack, and banded rudderfish complex because the capacity of the fishing fleet allows for rapid harvest of the ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: June 13, 2013.

**Kara Meckley,**

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

[FR Doc. 2013–14476 Filed 6–13–13; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 78, No. 117
Tuesday, June 18, 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.

## INTERNATIONAL TRADE COMMISSION

### 19 CFR Parts 201 and 207

### Proposed Amendments to Rules of Practice and Procedure

**AGENCY:** International Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States International Trade Commission (''Commission'') proposes to amend its Rules of Practice and Procedure concerning rules of general application, and provisions concerning the conduct of antidumping and countervailing duty investigations and reviews. The proposed amendments seek to increase efficiency in processing and reviewing documents filed with the Commission and reduce Commission expenditures.

**DATES:** To be assured of consideration, written comments must be received by 5:15 p.m. on August 19, 2013.

**ADDRESSES:** You may submit comments, identified by docket number MISC–013, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Web site: https://edis.usitc.gov*. Follow the instructions for submitting comments on the Web site.
- *Mail:* For paper submission. U.S. International Trade Commission, 500 E Street SW., Room 112A, Washington, DC 20436.
- *Hand Delivery/Courier:* U.S. International Trade Commission, 500 E Street SW., Room 112A, Washington, DC 20436. From the hours of 8:45 a.m. to 5:15 p.m.

*Instructions:* All submissions received must include the agency name and docket number (MISC–013), along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking. All comments received will be posted without change to *https://edis.usitc.gov,* including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments should be submitted to Lisa R. Barton, Acting Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112A, Washington, DC 20436. Docket: For access to the docket to read background documents or comments received, go to *https://edis.usitc.gov* and/or the U.S. International Trade Commission, 500 E Street SW., Room 112A, Washington, DC 20436.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Acting Secretary, telephone (202) 205–2000, or David Goldfine, Attorney-Advisor, Office of the General Counsel, telephone (202) 708–5452, United States International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*.

**SUPPLEMENTARY INFORMATION:** The preamble below is designed to assist readers in understanding these proposed amendments to the Commission's Rules. This preamble provides background information, a regulatory analysis of the proposed amendments, and a section-by-section explanation of the proposed amendments. The Commission encourages members of the public to comment on the proposed amendments as well as on whether the language of the proposed amendments is sufficiently clear for users to understand.

## Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to improve provisions of the Commission's existing Rules of Practice and Procedure. The Commission proposes amendments to its rules covering proceedings such as investigations and reviews conducted under title VII of the Tariff Act of 1930, and sections 202, 406, 421, 422 of the Trade Act of 1974 and sections 302 and 312 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 2252, 2436, 2451, 2451a, 3352, 3372). The Commission invites the public to comment on all of these proposed rules amendments. In any comments, please consider addressing whether the language of the proposed amendments is sufficiently clear for users to understand. In addition please consider addressing how the proposed rules amendments could be improved, and/or offer specific constructive alternatives where appropriate.

Consistent with its ordinary practice, the Commission is issuing these proposed amendments in accordance with provisions of section 553 of the Administrative Procedure Act (''APA'') (5 U.S.C. 553), although such provisions are not mandatory with respect to this rulemaking. The APA procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

(1) The Commission proposes to require that all paper copies of electronic submissions exceeding fifty (50) pages in length must be securely bound and must have a divider page and an identifying tab preceding each exhibit and/or attachment. The divider page and/or tab must be labeled with a letter or number that corresponds to a more fully descriptive index. Examples of secure binding include spiral binding, velo binding, and stapling for documents close to the 50-page threshold. These new requirements, however, may be waived upon a showing of good cause.

During the course of many proceedings, in particular Title VII investigations and reviews, the Commission receives a significant number of large submissions with associated exhibits and attachments. These amendments will facilitate Commission review of lengthy submissions and will allow the Commission more readily to refer to discrete portions of these documents. Petitions, which are not electronic filings, will also be subject to these requirements, with the exception that one copy of the petition must be filed unbound to facilitate its scanning into the Commission's Electronic Document Information System.

(2) In addition to current information requirements, the Commission proposes to require that petitioners provide the email address, street address, city, state, and 5-digit zip code for each purchaser/contact with respect to each lost sales or lost revenue allegation. Requiring petitioners to provide this specific information should facilitate the Commission's ability to contact purchasers concerning these allegations. Under current practice, the Commission collects this information from non-petitioning U.S. producers in its questionnaires. Requiring petitioners to provide the same information in the petition as non-petitioning U.S. producers are required to provide in questionnaires should allow for the orderly collection and verification of lost sales and lost revenue data by the agency.

(3) The Commission proposes to require that petitioners must file any lost sales or revenue allegation(s) identified in the petition via a separate electronic data entry process in a manner to be specified in the Commission's Handbook on Filing Procedures. The Commission is contemplating various technology options and is soliciting comment prior to developing the specific filing instructions.

Commission staff members currently use facsimile as the primary method for contacting purchasers to verify lost sales and lost revenue allegations. Two significant problems exist with the use of facsimiles for this purpose. First, the process of sending facsimiles to purchasers and verifying their receipt is time-consuming and inefficient. Additionally, obtaining responses from purchasers via facsimile is becoming increasingly difficult as facsimile machines are more often perceived as a ''legacy'' technology that has been superseded by electronic mail or other electronic communication technologies.

Current options under consideration, for which the Commission is seeking comment, include (1) submission of lost sales and lost revenue data in an electronic spreadsheet document provided by the Commission or (2) direct entry of all allegations into a secure Web-based portal. Additional options may be contemplated based on information received from public comments or as a result of evolving technological capabilities. The Commission intends to develop additional details to be included in the Commission's Handbook on Filing Procedures after receiving and considering comments on the proposed changes, and once the process and system are finalized.

Requiring that all petitioners file lost sales and revenue allegations via a separate electronic data entry process will facilitate the use of email as a vehicle for contacting purchasers. Email communication will only be used to direct purchasers to a secure Web site where they can access the lost sales and/or lost revenue allegations specific to each purchaser, and respond to the allegations. This should provide faster and more efficient dissemination and verification of lost sales and lost revenue information while maintaining current levels of security. Requiring submission of the data via this separate electronic data entry process should not present an undue burden on petitioners since these data are already required to be in the petition.

(4) The Commission proposes to require petitioners to provide email addresses for all U.S. producers and U.S. importers identified in the petition. The current rules specify that petitioners are required to provide contact information for U.S. producers and U.S. importers, including street addresses, phone numbers, and contact person(s). Requiring petitioners also to provide email addresses for U.S. producers and U.S. importers should facilitate the process of contacting these firms, thereby streamlining agency proceedings.

(5) The Commission proposes that all requests for collecting new information should be presented at the draft questionnaire stage in final phase investigations. The intent of the current provision in Commission rule 207.20 was to direct parties to make information requests, particularly concerning domestic like product, domestic industry, and cumulation issues, in questionnaire comments rather than later in the investigation. 61 FR 37818, 37826 (July 22, 1996). Notwithstanding this, the Commission has found that parties occasionally include in briefs information requests that could have been made in questionnaire comments. Commission staff does not have sufficient time or resources during the latter stage of final phase investigations to embark upon major data collection efforts.

Consequently, the current information collection provisions of section 207.63(b) concerning five-year reviews will be incorporated in section 207.20(b). This provision requires that all requests for collecting new information should be presented in comments on draft questionnaires, and states that the Commission will disregard subsequent requests for additional information absent a showing of compelling need and that the information could not have been requested in the comments on draft questionnaires. These provisions pertaining to new information requests have worked effectively in five-year reviews and the Commission believes their adoption in final phase investigations will also be effective.

(6) The Commission proposes to extend the deadlines currently specified in the rule for instituting and completing changed circumstances reviews. The statutory provisions in 19 U.S.C. 1675(b)(1) and (b)(2) do not provide any deadline for the Commission to initiate or complete a changed circumstance review. Moreover, in prior changed circumstance reviews under 19 U.S.C. 1675(b), the Commission has extended the deadlines specified in the rule in a not insubstantial number of instances in order to analyze extensive record data or to collect additional data. The deadline for institution is being extended in order to provide the Commission with additional time to analyze issues pertaining to complex or contested requests. Extension will also provide the agency with greater scheduling flexibility, which is particularly needed because the Commission's antidumping and countervailing duty docket is larger now than when the rule was first promulgated. However, the Commission intends to make its decisions with respect to institution and completion of such reviews expeditiously.

**Regulatory Analysis of Proposed Amendments to the Commission's Rules**

The Commission has determined that the final rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of proposed rulemaking, these proposed regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These proposed rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the

proposed rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The proposed rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), because the amendments would impose no new collection of information under the statute.

**Section-by-Section Analysis**

Section 201.8 generally provides the requirements for filing documents with the Commission. The Commission proposes to amend paragraph (d) of § 201.8 to require that all paper copies of electronic submissions exceeding fifty (50) pages in length must be securely bound and must have a divider page and an identifying tab preceding each exhibit and/or attachment. The divider page and/or tab must be labeled with a letter or number that corresponds to a more fully descriptive index.

Section 207.10 addresses petition filings with the Commission. The Commission proposes to require petitioners to file one unbound copy of petitions.

Section 207.11 addresses the contents of petitions in Title VII proceedings. The Commission proposes to revise the language of § 207.11(b)(2)(ii) and (iii) to require that petitioners provide email addresses for all U.S. producers and U.S. importers identified in the petition. The Commission further proposes to revise the language of § 207.10(b)(2)(v) to specify that petitioners must submit all lost sales and lost revenue allegations in electronic format. The Commission also proposes to revise the language of § 207.10(b)(2)(v) to specify that petitioners also must provide the email address(es), street address(es), city, state, and 5-digit zip code for each purchaser/contact with respect to all lost sales and lost revenue allegations.

Section 207.20 addresses the Commission's investigative activities in final phase investigations. The Commission proposes that all requests for collecting new information should be presented at the draft questionnaire stage in final phase investigations unless there is a compelling showing that a later request is justified.

Section 207.45 addresses the Commission's procedures for initiating and conducting section 751(b) changed circumstances reviews. The Commission proposes to extend the deadlines specified in the rule.

**List of Subjects in 19 CFR Parts 201 and 207**

Administrative practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations.

For the reasons stated in the preamble, the United States International Trade Commission proposes to amend 19 CFR parts 201 and 207 as follows:

## PART 201—RULES OF GENERAL APPLICATION

■ 1. The authority citation for part 201 continues to read as follows:

**Authority:** Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

### Subpart B—Initiation and Conduct of Investigations

■ 2. Amend § 201.8 by revising paragraph (d)(1) to read as follows:

**§ 201.8 Filing of documents.**

* * * * *

(d) * * *

(1) Except as provided in paragraphs (d)(2) through (6) and (f) of this section, all documents filed with the Commission shall be filed electronically. Completion of filing requires the submission of paper copies by 12 noon, eastern time, on the next business day. A paper copy provided for in this section must be a true copy of the electronic version of the document, *i.e.,* a copy that is identical in all possible respects. All paper copies of electronic submissions exceeding fifty (50) pages in length must be securely bound (excluding paper clips, binder clips, or rubber bands) and must have a divider page and an identifying tab preceding each exhibit and/or attachment. The divider page and/or tab must be labeled with a letter or number that corresponds to a more fully descriptive index. All filings shall comply with the procedures set forth in the Commission's Electronic Document Information System Web site at *https://edis.usitc.gov.* Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures that apply to the filing of a document may result in the rejection of the document as improperly filed.

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## PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

■ 3. The authority citation for part 207 continues to read as follows:

**Authority:** 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

■ 4. Amend § 207.10 by revising paragraph (a) to read as follows:

**§ 207.10 Filing of petition with the Commission.**

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition and all exhibits, appendices, and attachments thereto, pursuant to § 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. A paper original and eight (8) true paper copies of a petition shall be filed. One copy of all exhibits, appendices, and attachments to the petition shall be filed in electronic form on CD–ROM, DVD, or other portable electronic format approved by the Secretary. Petitioners also must file one unbound copy of the petition (although the unbound copy of the petition may be stapled or held together by means of a clip). If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary, provided that, if the petition is filed with the Secretary after 12:00 noon, eastern time, the petition shall be deemed filed on the next business day. Notwithstanding § 207.11 of this chapter, a petitioner need not file an entry of appearance in the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance.

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■ 5. Amend § 207.11 by revising paragraphs (b)(2)(ii), (iii), and (v) to read as follows:

**§ 207.11 Contents of petition.**

* * * * *

(b) * * *

(2) * * *

(ii) A listing of all U.S. producers of the proposed domestic like product(s),

including a street address, phone number, and contact person(s) with email address(es) for each producer;

(iii) A listing of all U.S. importers of the subject merchandise, including street addresses, email addresses, and phone numbers for each importer.

* * * * *

(v) A listing of all sales or revenue lost by each petitioning firm by reason of the subject merchandise during the three years preceding filing of the petition. For each named purchaser, petitioners must provide the email address of the specific contact person, street address, city, state, and 5-digit zip code with respect to each lost sales or lost revenue allegation. Petitioners must certify that all lost sales or lost revenue allegations identified in the petition will also be submitted electronically in the manner specified in the Commission's Handbook on Filing Procedures.

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■ 6. Amend § 207.20 by revising paragraph (b) to read as follows:

**§ 207.20 Investigative activity following preliminary determination.**

* * * * *

(b) The Director shall circulate draft questionnaires for the final phase of an investigation to parties to the investigation for comment. Any party desiring to comment on draft questionnaires shall submit such comments in writing to the Commission within a time specified by the Director. All requests for collecting new information shall be presented at this time. The Commission will disregard subsequent requests for collection of new information absent a showing that there is a compelling need for the information and that the information could not have been requested in the comments on the draft questionnaires.

■ 7. Amend § 207.45 by revising paragraph (c) to read as follows:

**§ 207.45 Investigation to review outstanding determination.**

* * * * *

(c) *Institution of an investigation.* Within forty-five (45) days after the close of the period for public comments following publication of the receipt of a request, the Commission shall determine whether the request shows changed circumstances sufficient to warrant a review and, if so, shall institute a review investigation. The Commission may also institute a review investigation on its own initiative. The review investigation shall be instituted by notice published in the **Federal Register** and shall be completed within one hundred eighty (180) days of the date of such publication. If the Commission determines that a request does not show changed circumstances sufficient to warrant a review, the request shall be dismissed and a notice of the dismissal published in the **Federal Register** stating the reasons therefor.

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By order of the Commission.

Issued: June 7, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–14004 Filed 6–17–13; 8:45 am]

BILLING CODE 7020–02–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

### 45 CFR Parts 1321 and 1327

**RIN 0985–AA08**

### State Long-Term Care Ombudsman Program

**AGENCY:** Administration on Aging, Administration for Community Living, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Administration on Aging (AoA) of the Administration for Community Living (ACL) within the Department of Health and Human Services (HHS) is issuing a Notice of Proposed Rulemaking, with request for comments, to implement provisions of the Older Americans Act, the State Long-Term Care Ombudsman program. This proposed rule replaces AoA's 1994 Notice of Proposed Rulemaking.

Since 1992, the functions of this program have been delineated in the Older Americans Act; however, regulations have not been promulgated for any Title VII program. In the absence of regulatory guidance, there has been significant variation in the interpretation and implementation of these provisions among States. Recent inquiries from States and an AoA compliance review in one State have highlighted the difficulty of determining State compliance in carrying out the Long-Term Care Ombudsman program functions. This rulemaking provides the first regulatory guidance for States' Long-Term Care Ombudsman programs to provide clarity about implementation.

HHS estimates that a number of states may need to update their statutes, regulations, policies and/or practices in order to operate the program consistent with federal law and this proposed regulation. The effective date of the rule is anticipated to be one year after publication of any final rule to allow States appropriate time for such changes, if needed. AoA anticipates little or no financial impact on the providers of long-term care ombudsman services, the consumers served by the program, or long-term care providers through implementation of the proposed rules.

AoA believes that consumers (particularly residents of long-term care facilities) and long-term care providers will benefit from the implementation of these proposed rules. Consumers and other complainants across the country will receive services from the Long-Term Care Ombudsman program with less variation in the quality, efficiency, and consistency of service delivery.

Long-term care ombudsmen and States will also benefit from the implementation of these proposed rules in the establishment and operation of the Long-Term Care Ombudsman program at the State and local levels. For years, States and long-term care ombudsmen at every level have reported to AoA that they have found some provisions of the Act confusing to implement. The proposed rule seeks to provide the clarity that program stakeholders have requested.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 19, 2013.

**ADDRESSES:** Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address: Administration for Community Living, Administration on Aging, US Department of Health and Human Services, Attention: Becky Kurtz, Washington, DC 20201.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address: Administration for Community Living, Administration on Aging, US Department of Health and Human Services, Attention: Becky Kurtz, 1 Massachusetts Avenue NW., 5th Floor, Washington, DC 20001.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close

of the comment period to: Administration for Community Living, Administration on Aging, US Department of Health and Human Services, Attention: Becky Kurtz, 1 Massachusetts Avenue NW., 5th Floor, Washington, DC 20001.

If you intend to hand deliver your comments, please call telephone number 202–401–4541 in advance to schedule your arrival with one of our staff members. Comments mailed to the address indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

**FOR FURTHER INFORMATION CONTACT:** Becky Kurtz, Director, Office of Long-Term Care Ombudsman Programs, Administration for Community Living, Administration on Aging, 1 Massachusetts Avenue NW., Washington, DC 20001, 202–357–3586.

**SUPPLEMENTARY INFORMATION:** The preamble to this notice of proposed rulemaking is organized as follows:

I. Program Background
A. AoA Authority
B. Requests for Regulatory Guidance
II. Proposed Changes to 42 CFR Part 1321 and Addition of New Part 1327
A. State Agency Policies
B. Definition of Immediate Family
C. Definition of Office of the State Long-Term Care Ombudsman
D. Definition of Representatives of the Office of the State Long-Term Care Ombudsman
E. Establishment of the Office of the State Long-Term Care Ombudsman
F. Functions and Responsibilities of the State Long-Term Care Ombudsman
G. State Agency Responsibilities Related to the Long-Term Care Ombudsman Program
H. Functions and Duties of the Office of the State Long-Term Care Ombudsman
I. Conflicts of Interest
J. Additional Considerations
III. Required Regulatory Analyses Under Executive Orders 13563 and 12866
IV. Other Administrative Requirements
A. Paperwork Reduction Act of 1995
B. Executive Order 13132
C. Unfunded Mandates Reform Act of 1995
D. Assessment of Federal Regulations and Policies on Families
E. Plain Language in Government Writing

## I. Program Background

State Long-Term Care Ombudsman programs (Ombudsman programs) serve as advocates for residents of nursing homes, board and care homes, assisted living facilities and similar adult care facilities. They work to resolve problems of individual residents and to bring about improvements to residents' care and quality of life at the local, state and national levels.

Begun in 1972 as a demonstration program, Ombudsman programs today exist in all States, the District of Columbia, Puerto Rico and Guam, under the authorization of, and appropriations to implement, the Older Americans Act (the Act). These States and territories have an Office of the State Long-Term Care Ombudsman (the Office), headed by a full-time State Long-Term Care Ombudsman (the Ombudsman). Nationally, in FY 2011 there were nearly 1,200 full-time equivalent staff ombudsmen; more than 9,000 certified volunteer ombudsmen, and more than 3,300 other volunteers working with Ombudsman offices.

### *A. AoA Authority*

This NPRM is proposed under the authority of sections 201(e), 307(a), 712 and 713 of the Older Americans Act (OAA or the Act) (42 U.S.C. 3011(e), 3027, 3058g, and 3058h, respectively). These provisions authorize the Assistant Secretary for Aging to prescribe regulations regarding coordination of elder justice activities, the development of State plans on aging, and Long-Term Care Ombudsman programs.

### *B. Requests for Regulatory Guidance*

In addition to its statutory authority, AoA received a 2011 inquiry from the Senate Special Committee on Aging regarding regulations for Ombudsman programs. AoA responded that regulations for the Older Americans Act were last promulgated in 1988 and are found at 45 CFR Parts 1321, 1326 and 1328. Part 1321 constitutes the regulations for Title III of the Act, which at that time included the Long-Term Care Ombudsman Program. In the 1992 reauthorization of the Older Americans Act, Congress created Title VII, Allotments for Vulnerable Elder Rights Protection Activities. While regulations for Title VII programs, which includes the Long-Term Care Ombudsman program, were proposed and published in the **Federal Register** by the Administration on Aging (AoA) in 1994, final regulations were not adopted. AoA indicated its intent to issue regulations for the Long-Term Care Ombudsman Program in order to provide clear and consistent guidance.

In its evaluation of State Long-Term Care Ombudsman programs, the Institute of Medicine identified the lack of Federal guidance as a challenge for state implementation that contributed to an absence of fully-implemented state programs. The Institute of Medicine recommended that the Assistant Secretary for Aging ''issue clearly stated policy and program guidance that sets forth the federal government's expectations of state long-term care ombudsman programs. . . .'' [1]

In December, 2011, a stakeholder workgroup consisting of long-term care, elder abuse and Ombudsman program experts; national association representatives; and consumer advocates met to discuss issues impacting Ombudsman programs and requested guidance from the Assistant Secretary for Aging in areas related to:

1. The roles, responsibilities and relationship of the State agency on aging and the Office of the State Long-Term Care Ombudsman;
2. Conflicts of interest between a State's Ombudsman program and other programs or services (such as survey and certification) provided by the agency in which Ombudsman program is located at the State or local levels;
3. Conflicts of interest between the individual roles and responsibilities of the Ombudsman (or representatives of the Office) and other personal or professional interests (such as financial interest in a long-term care facility);
4. Ability of the Office to provide public policy recommendations as required by statute;
5. Ombudsman services to residents (including recommendations related to Ombudsman records, resident records, and services to individuals under age sixty); and
6. Training and certification/designation of representatives of the Office.[2]

## II. Proposed Changes to 45 CFR Part 1321 and Addition of New Part 1327

In its 1992 Older Americans Act reauthorization, Congress created Title VII—Allotments for Vulnerable Elder Rights Protection Activities, and incorporated the provisions related to the activities of Long-Term Care Ombudsman programs into Title VII. Previously some of these provisions had been within Title III. Therefore, the rule governing Title III of the Act (i.e. 45 CFR 1321) and last updated in 1988, includes some minimal provisions which govern the Long-Term Care Ombudsman Program. Since its creation in 1992, Title VII has included the provisions related to Ombudsman program activities. These proposed changes update 42 CFR part 1321 to reflect the most recent (2006) reauthorization of the Act.

[1] Institute of Medicine, ''Real People, Real Problems: An Evaluation of the Long-Term Care Ombudsman Programs under the Older Americans Act'' (1995) (IOM Report (1995)).

[2] ''Long-Term Care Ombudsman Strategy Session: Final Report,'' December 2011, National Ombudsman Resource Center. Available at: *http://www.ltcombudsman.org/sites/default/files/norc/ltcop-strategy-session.pdf*.

There has been significant variation in the interpretation and implementation of the provisions of the Act among States. This has resulted in residents of long-term care facilities receiving inconsistent services from Ombudsman programs in some states compared to other states. An example of this inconsistency in approach is the way that various States respond to complaints to the Ombudsman program that a facility has abused a resident:

- In most States, the Ombudsman program is available to assist and resolve the complaint to the satisfaction of the resident, working with the resident to assure his or her well-being. In those States, the Ombudsman program explains to the complainant that another agency represents the State as the official finder of fact, but that the Ombudsman serves as a victim advocate to support the resident through the official investigation process and to assist the resident in voicing and realizing his or her goals.
- However, in some States, the same abuse complaint gets the same response that the Ombudsman program is not the official finder of fact for abuse complaints, and the complainant is immediately referred to another State or local agency. However, in some cases, the resident receives no additional assistance from the Ombudsman program related to the abuse allegation.
- In still other States, the Ombudsman program is designated by the State as the official finder of fact to determine whether the abuse is substantiated. It refers substantiated cases to law enforcement, at times without (or even in violation of) the wishes of the resident.
- In still other States, the Ombudsman is designated by the State as the official finder of fact, but in order to not violate the wishes of the resident or the disclosure provisions of the Act, it does not refer substantiated cases to law enforcement without resident consent.
- The Act requires that Ombudsman programs both assist residents in protecting their health, safety, welfare and rights as well as to provide the resident with the option to consent to disclosure of information about his or her complaint. This proposed rule is intended to provide the clarity and consistency needed to ensure that residents receive needed protections, and, at the same time, that resident choice is honored, regardless of the State in which a resident lives.

Long-Term Care Ombudsman programs were designed by Congress to have several features which are uncharacteristic of other programs created by and funded under the Act. Among those features are independence (a characteristic of any type of ombudsman program), unusually stringent disclosure requirements, a public policy advocacy function, and the Ombudsman responsibility to designate local staff and volunteers to serve as representatives of the Office even if they do not report to the Ombudsman for personnel management purposes. These distinct features often create confusion in implementation which this rule is designed to address.

*Summary of the Provisions of the NPRM*

The State Long-Term Care Ombudsman program was originally created within Title III of the Older Americans Act, and there are regulations affecting this program in Part 1321, Grants to State and Community Programs on Aging. This rule proposes to amend the following section of Part 1321:

Sec. 1321.11 State Agency Policies

In addition, the proposed rule develops new regulations for the Ombudsman program where it currently resides in Subtitle A, Chapter 2, of Title VII of the OAA, Allotments for Vulnerable Elder Rights Protection Activities. AoA proposes a new Part 1327 in order to provide States with clarity regarding the operation of the Ombudsman program.

Topics addressed in the newly proposed Part 1327 include definitions of:

- Immediate family,
- Office of the State Long-Term Care Ombudsman, and
- Representative of the Office of the State Long-Term Care Ombudsman.

Other topics addressed in proposed Part 1327 include:

- Establishment of the Office of the State Long-Term Care Ombudsman,
- Functions and Responsibilities of the State Long-Term Care Ombudsman,
- State Agency Responsibilities Related to the Long-Term Care Ombudsman Program,
- Functions and Duties of the Office of the State Long-Term Care Ombudsman, and
- Conflicts of Interest.

*A. State Agency Policies*

Currently, federal regulations require State agencies to monitor the performance of programs and activities, including, but not limited to, Long-Term Care Ombudsman programs.

With respect to disclosure of Ombudsman program files and records, Section 712(d) of the Act requires that the State agency on aging (also referred to as ''State unit on aging'' and, for purposes of these regulations, ''State agency'') establish procedures for disclosure and indicates that these procedures provide that the files and records ''may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records).'' Further, they must prohibit disclosure of the identity of any complainant or resident with the limited exceptions set forth in the Act. *See* Section 712(d)(2)(B) of the Act. AoA proposes revising section 1321.11 to reflect this provision of the Act.

AoA proposes revising the current regulation with respect to State agency access to the files, records and other information maintained by the Ombudsman program in order to accommodate the increased use of digital information and incorporate information obtained verbally and by other means while maintaining protections for residents. AoA proposes use of the term ''files, records, and other information'' in these regulations rather than ''files'' as used in the current regulation. The term ''files, records, and other information'' more clearly indicates that the disclosure provision of Section 712(d) of the Act is not dependent on any particular format of the files and not limited to information contained in case files. For example, information collected during individual consultation activities which are not part of case files also would be subject to this provision.

AoA proposes replacing the following provisions in the current regulation at 45 CFR 1321.11(b) with the following provision:

''The State Long-Term Care Ombudsman and his or her designee shall be responsible for monitoring the files, records, and other information maintained by the Office, and shall not disclose the identity of any complainant or long-term care facility resident to individuals outside of the Office, except as otherwise specifically provided in section 712(d)(2)(B) of the Act.''

This proposal more closely reflects the provisions of the Act. However, we are aware that State agencies need certain information from the Ombudsman program in order to fulfill their responsibilities related to oversight of Ombudsman program operations and personnel and/or contract management. Aggregate data on Ombudsman program activities and complaint processing may be sufficient for this purpose and do not reveal the identities of any complainants or residents. We invite comments for the final rule that will help us identify an appropriate balance

between Ombudsman protection of confidential information and State oversight responsibilities.

In addition, AoA proposes to omit from 45 CFR 1321.11, the reference to Section 307(a)(12). The provision numbers have changed in subsequent reauthorizations of the Act, and this statutory reference is no longer necessary within the context of the proposed revision.

*B. Definition of Immediate Family*

The term ''immediate family'' is used repeatedly in Section 712(f) of the Act but is not defined in the statute. Absent a definition, this term has created uncertainty and inconsistency among States related to the scope of conflicts that are required to be identified and removed under Section 712(f)(4) of the Act.

AoA proposes to describe relationships that could impair the judgment or give the appearance of bias on the part of an individual who is responsible to objectively designate an individual as the Ombudsman (under Section 712(f)(1) of the Act) or on the part of the Ombudsman or officers, employees or representatives of the Office (under section 712(f)(2) of the Act). Therefore, AoA proposes the definition of ''Immediate family'' pertaining to conflicts of interest as used in section 712 of the Act, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

The proposed regulation is adapted from the federal standards of ethical conduct which prohibit federal executive branch employees from participating in a matter where the circumstances would raise a question regarding the employee's impartiality. Federal regulations indicate that it would be difficult for a federal employee to be impartial regarding ''a person who is a member of the employee's household or who is a relative with whom the employee has a close personal relationship'' or where the matter is likely to have a ''direct and predictable effect on the financial interest of a member of his household.'' 5 CFR Section 2635.502(a),(b).

*C. Definition of Office of the State Long-Term Care Ombudsman*

The Older Americans Act requires that State Offices of the State Long-Term Care Ombudsman make certain determinations. These Offices and their responsibilities are referenced in Section 712, as well as in Sections 207(b)(3)(E) and 307(a)(9), of the Act. Section 711(1) of the Act defines ''Office'' as ''the office established in section 712(a)(1)(A). There is a need for further clarification of the scope of the definition of ''Office of the State Long-Term Care Ombudsman'' due to inconsistencies among States and confusion regarding the interpretation of which individual or individuals constitute the ''Office.'' For example, States would benefit from clarification regarding who is responsible for making determinations specifically required of the Office by the Act.

With respect to several functions, the statute indicates that determinations must be made by the Office. Interference with these determinations could constitute interference with the Office, which is prohibited under Section 712(j) of the Act.

States have repeatedly requested that AoA provide clarification on the question of which individual or individuals constitute the ''Office.'' Some States have interpreted the ''Office'' to mean the Ombudsman and representatives of the Office; others have interpreted ''Office'' to mean the State agency on aging.

A 2011 State compliance review revealed that AoA's provision of technical assistance and education on this question may not have provided sufficient clarity to States regarding the decision-making authority expected of the Office of the State Long-Term Care Ombudsman, and more specifically of the State Long-Term Care Ombudsman, as the head of that Office. Thus, this proposed rule clarifies and codifies the definition.

Section 712(a)(2) of the Act states that the Office of the State Long-Term Care Ombudsman shall be ''headed by an individual, to be known as the State Long-Term Care Ombudsman.'' In addition, under Section 712(a)(5) of the Act, the State Long-Term Care Ombudsman has the authority to designate local Ombudsman entities and employees and/or volunteers to represent these entities. The proposed definition seeks to clarify for States that the State Long-Term Care Ombudsman and his or her representatives shall constitute the ''Office.'' Therefore, AoA proposes the definition of ''Office of the State Long-Term Care Ombudsman'' as set forth at section 1327.1, which includes the organizational unit headed by the State Long-Term Care Ombudsman, including representatives of the Office.

*D. Definition of Representatives of the Office of the State Long-Term Care Ombudsman*

The term ''representatives of the Office of the State Long-Term Care Ombudsman'' is used throughout Section 712 of the Act. For purposes of Subtitle A, Chapter 2, of Title VII, Section 711(5) of the Act. The term 'representative' includes an employee or volunteer who represents an entity designated under section 712(a)(5)(A) and who is individually designated by the Ombudsman.

Section 712(a)(5)(A) of the Act further indicates that the Ombudsman ''may designate an employee or volunteer to represent the [local Ombudsman] entity.'' These provisions of the Act have created confusion in States' operation of the Ombudsman Program because it is unclear whether the ''representatives of the Office'' are to represent the Office of the State Long-Term Care Ombudsman or to represent the local Ombudsman entity or both.

AoA intends to clarify that the representatives of the Office, including local staff and volunteers designated by the Ombudsman, indeed represent the Office (as opposed to the entity by which they may be employed or managed) when they are carrying out duties of the Office. These duties of the representatives of the Office are set forth in Section 712(a)(5)(B) of the statute. For convenience, ACL has included this statutory definition of duties at section 1327.17(a) of the proposed rule. The inclusion of these duties into the proposed rule does not and is not intended to amend the statutory language.

The practical implication of this clarification is that the ''representatives of the Office'' are accountable to the head of the Office, which is the State Long-Term Care Ombudsman under Section 712(a)(2) of the Act, for purposes of Ombudsman program operations. For all programmatic operations, the representative represents the Office (for example, they must follow the policies, procedures and guidance of the Ombudsman regarding complaint processing and other Ombudsman program activities). Simultaneously, representatives represent the entity (i.e. the ''local Ombudsman entity'') that employs or oversees them for personnel management matters (for example, they must follow the entity's personnel policies so long as those policies do not conflict with Ombudsman program law and policy).

Therefore, AoA proposes the definition of ''Representatives of the Office of the State Long-Term Care Ombudsman'' set forth at section 1327.1 to clarify that designated employees and volunteers serve as representatives of the Office.

*E. Establishment of the Office of the State Long-Term Care Ombudsman*

Proposed section 1327.11 governs the establishment of the Office pursuant to Section 712(a)(1) of the Act and as defined in proposed regulation 1327.1. *See* section ''D, Definition of Office of the State Long-Term Care Ombudsman,'' above.

The Act requires that certain determinations be made by the Office. As proposed in section 1327.11(c)(4), AoA clarifies which determinations are the responsibilities of the Office, and by logical extension, by the head of the Office, the Ombudsman, pursuant to Section 712(h) of the Act. Because these determinations are frequently outside the scope of the authority of most State employees (most, though not all, State Ombudsmen are State employees), clarification would assist States in full implementation of the Act.

Specifically, these determinations include:

- Determinations regarding disclosure of information maintained by the program within the limitations as set forth in Section 712(d) of the Act;
- Recommendations to changes in Federal, State and local laws, regulations, policies and actions pertaining to the health, safety, welfare, and rights of residents as set forth in Section 712(h)(2) of the Act; and
- Provision of information to public and private agencies, legislators, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns as set forth in Section 712(h)(3) of the Act.

The Act indicates that the recommendations made by and the information provided by the Office are limited to issues impacting residents of long-term care facilities and services. *See, e.g.,* 712(a)(3)(G), 712(h)(2). In order to reduce confusion at the State level where the recommendations of an Ombudsman might be mistaken for the position of the Governor or the State agency, another agency carrying out the Ombudsman program, or any other State agency, AoA proposes the provision in section 1327.11(c)(4) to indicate determinations are those of the Office of the State Long-Term Care Ombudsman and do not represent other state governmental entities.

*F. Functions and Responsibilities of the State Long-Term Care Ombudsman*

AoA proposes clarification regarding the appropriate role and responsibilities of the Ombudsman, as the ''head of the Office.'' The functions of the Ombudsman are set forth in Section 712(a)(3) of the statute. For convenience, ACL has included this statutory text at section 1327.13(a) of the proposed rule. The inclusion of these functions into the proposed rule does not and is not intended to amend the statutory language.

AoA has indicated in a letter to a State that the State Unit on Aging (SUA) and the Office of the State Long-Term Care Ombudsman are distinct entities within the OAA. Section 305(a) of the OAA, requires the State to designate a single State agency to carry out the requirements of the Act. Whether the Long-Term Care Ombudsman is placed within the single State agency, or by contract with an entity outside the State agency, the OAA is explicit that the Long-Term Care Ombudsman is to be established in, and is to carry out his or her functions in, a separate 'Office.' 42 U.S.C. 3058f(1); 3058g(a)(1)(A).

Ombudsman Responsibility With Respect to Designation and De-designation of Representatives

Some States have indicated the need for more clarification about who has authority to de-designate ombudsman employees and volunteers so that a formerly designated individual is no longer authorized to act as a representative of the Office. Other States have established policies and procedures to clarify that the Ombudsman has the sole authority to designate and, consistent with that authority, also the sole authority to de-designate representatives of the Office.

Since the Ombudsman is the individual solely authorized to designate representatives pursuant to Section 712(a)(5) of the Act, the Ombudsman has sole authorization to de-designate representatives of the Office. Without such authority, the Ombudsman would have significant limitations in his or her ability to determine the individuals qualified to represent the Office and to remove such designation where a representative fails to adhere to program requirements. In order to respond to this inconsistency among States in the understanding of the authority of the Ombudsman to de-designate, AoA proposes to clarify that the Ombudsman has the sole authority both to designate and de-designate in section 1327.13(c). This provision is not intended to limit the authority of the Ombudsman to delegate certification training and examination processes or to receive recommendations of designation or de-designation from representatives of the Office, but clarifies that the Ombudsman is responsible to make the final determination of designation and de-designation of representatives of the Office.

Ombudsman Responsibility With Respect to Area Plans

Although the Ombudsman has statutory authority to designate local Ombudsman entities, the involvement of the Ombudsman in the planning of Ombudsman program operations by such local Ombudsman entities is not directly addressed in the Act. In many States, local Ombudsman entities include area agencies on aging (AAAs) and/or AAAs subcontract to non-profit agencies to serve as local Ombudsman entities. In these States, area plans include fiscal and programmatic provisions related to the operation of the Ombudsman program by the local Ombudsman entity. Those individuals working for the local Ombudsman entity and designated by the Ombudsman serve as representatives of the Ombudsman and, therefore, are within the definition of the ''Office'' as set forth in section 1327.1. AoA proposes that the Ombudsman, as head of the Office, be held responsible to review and approve the portions of area plans, submitted pursuant to section 306 of the Act, which are related to the Ombudsman program so that the work of Office is coordinated by—and the local Ombudsman entities are held accountable to—the Ombudsman. In addition, given the State agency role in reviewing and approving area plans pursuant to section 306 of the Act, the Ombudsman should conduct such review and approval in coordination with the State agency. These requirements are set forth at section 1327.13(d).

Ombudsman Responsibility With Respect to Ombudsman Program Information

Section 712(d)(2)(A) of the Act indicates that ''files and records [maintained by the Ombudsman program] may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records).''

Many of the files, records, and other information maintained by the representatives of the Office are physically maintained at the offices of the designated local Ombudsman entities (including, but not limited to, AAAs). This can create confusion about who has the authority to make determinations about the disclosure and maintenance of the files, records, and other information of the Office even though the Act clearly gives the sole discretion for their disclosure to the Ombudsman or his or her designee.

Therefore, AoA proposes to clarify that the files, records, and other information of the Office shall be controlled by the Ombudsman and are the property of the Office, including when such files, records, and other information are maintained by a local Ombudsman entity or representatives of the Office.

AoA uses the term ''files, records, and other information'' to indicate that the disclosure provision of Section 712(d) of the Act should not be dependent upon any particular format of the files. In addition, because the Act does not limit the disclosure of files, records and other information to paper copies—and since electronic recordkeeping is increasingly the norm—AoA proposes that the requirements related to files, records and other information apply to physical, electronic, or other formats.

AoA proposes the provision regarding the responsibility of the Ombudsman to manage Ombudsman program information at section 1327.13(e).

Ombudsman Responsibility With Respect to Disclosure of Files, Records and Other Information

AoA proposes, at section 1327.13(f), to include within the responsibility of the Ombudsman, decisions related to disclosure of information in the possession of the Office in addition to information contained within case files (for example, information obtained during consultations with individuals or facilities). *See also* section ''A. State Agency Policies,'' above, and section ''H. State Agency Responsibilities Related to the Long-Term Care Ombudsman Program,'' below.

Ombudsman Responsibility With Respect to Determining the Use of the Fiscal Resources

In its evaluation of Long-Term Care Ombudsman programs, the Institute of Medicine recommended to the Assistant Secretary for Aging:

''6.4 The committee recommends that the Assistant Secretary for Aging issue program guidance to states that stresses the importance of delegating to the Office of the State Long-Term Care Ombudsman responsibility for managing all of the human and fiscal resources earmarked for the state ombudsman program within the boundaries of what is permitted by state budget policy and procedures and required by federal mandates for compliance. . . .'' [3].

AoA agrees with the recommendation that the head of the Office should be responsible for managing the fiscal resources of the Office. AoA proposes that the Ombudsman be held responsible for determining the use of fiscal resources appropriated or otherwise designated for the Office, subject to applicable Federal and State laws and policies, as set forth at section 1327.13(i).

Ombudsman Responsibility With Respect To Monitoring Local Ombudsman Entities

The Ombudsman, as head of the Office, has responsibility for designating local Ombudsman entities pursuant to section 712(a)(5) of the Act. So that the work of Office is coordinated by and the local Ombudsman entities are accountable to the Ombudsman, AoA proposes that, where an Ombudsman designates local Ombudsman entities, the Ombudsman be held responsible to monitor the Ombudsman program performance of such entities as set forth in section 1327.13(j).

Ombudsman Responsibility With Respect To Coordination of Ombudsman Activities With Other Elder Rights, Disability Rights, and Elder Justice Entities

The Act requires that the State agency require the Office to coordinate with protection and advocacy systems, legal assistance, State and local law enforcement agencies, and courts of competent jurisdiction. Section 712(h)(6)–(8) of the Act. In another part of the Act, the Ombudsman program is listed among the programs and services which protect elder rights or promote elder justice and for which coordination of efforts is required by the Act. *See* Section 721(d) of the Act.

In section 1327.13(l), AoA proposes a list of the relevant entities covered by the Act, including AAA programs, adult protective services programs, protection and advocacy systems, facility and long-term care provider licensure and certification programs, State Medicaid fraud control units, etc. The proposal also establishes the statewide leadership role of the Ombudsman in coordinating the activities of the Office with those of these elder rights and elder justice programs.

*G. State Agency Responsibilities Related to the Long-Term Care Ombudsman Program*

The proposed rule defines the appropriate role and responsibilities of the State agency on aging (also referred to as ''State unit on aging'' or, for purposes of these regulations, ''State agency'') related to the establishment and operation of the Ombudsman program. A primary responsibility of the State agency related to the operation of the Ombudsman program is to establish the policies and procedures which enable the Ombudsman program to operate in accordance with the Act. The Act requires that the State agency establish, in accordance with the Office, policies and procedures regarding how the Office will fulfill its functions. Section 712(a)(5)(D). AoA proposes consolidating the State agency responsibilities related to the Ombudsman that are included in the Act into section 1327.15.

State Agency Responsibility With Respect to Standards for Complaint Response

In its 1999 report, the HHS Inspector General recommended that AoA work with States to develop guidelines for complaint response and resolution times. . . .'' While numerous States have developed such standards, others have not yet done so. Through section 1327.15(a)(2)(B), AoA proposes that States develop standards related to complaint response times and further requires standards to assure prompt response that prioritize abuse, gross neglect, exploitation and time-sensitive complaints. AoA believes that States are best suited to establish these standards due to the wide variation among States in terms of resources available to the Ombudsman program, density of population centers, geographic distribution of facilities, and similar State-specific factors which would make a national standard difficult to implement.

State Agency Responsibility With Respect to Disclosure of Resident or Complainant Identifying Information

Under Section 712(d) of the Act, States must ensure that the Ombudsman and representatives of the Office are prohibited from disclosing the identity of any complainant or resident, except as specifically authorized in the statute.

This requirement also applies to situations of reporting abuse, gross neglect or exploitation notwithstanding State laws to the contrary. This is consistent with AoA's long-standing position.

The Older Americans Act [Section 712(d)(2)] prohibits disclosure of the identity of any complainant or resident by the ombudsman, unless the complainant or resident, or the resident's legal representative, consents, or a court orders the disclosure. In contrast to, and sometimes in conflict with, the Federal law, a number of States have mandatory reporting requirements for individuals—including ombudsmen—who know of or suspect adult abuse, neglect, or exploitation.

AoA proposes that the disclosure procedures must comply with the

[3] IOM Report (1995) at pp. 199–200.

''Complaint Processing'' provisions of the proposed regulations, section 1327.17(b), in which AoA clarifies exceptions (specifically related to suspected abuse, gross neglect and exploitation complaints), when disclosure of the identity of a resident by the Ombudsman may be permitted to appropriate entities. These include circumstances when the Ombudsman or representative of the Office is processing a complaint related to the resident, and:

(a) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office, has no guardian or other legal representative, and the Ombudsman or representative of the Office has reason to suspect that the resident is a victim of abuse, gross neglect, or exploitation; or

(b) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office, and the resident has a guardian or other legal representative who the Ombudsman or representative of the Office has reasonable cause to believe is a perpetrator of abuse, gross neglect, or exploitation of the resident.

In addition, AoA proposes that the Ombudsman must disclose the identity of a resident where the Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect or exploitation of a resident, so long as (1) the resident at issue does not request the Ombudsman or representative to not make a report of the suspected activity witnessed by the Ombudsman or representative and (2) the Ombudsman determines it to be in the best interest of the resident.

In both of these circumstances, the proposed rule requires that such disclosure only be permitted where the Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral and the representative obtains the approval of the Ombudsman.

AoA intends the proposed regulations to address areas where clarification is needed regarding access to files, records, and other information maintained by the Office. First, this provision addresses questions regarding whether State units on aging, area agencies on aging or any other entities with monitoring responsibility have access to Ombudsman information. See also section ''A. State Agency Policies,'' above. Note that this proposed regulation does not limit the disclosure of aggregate information, performance measures, and similar performance data to monitoring agencies. Instead, it implements the statutory provision that the Ombudsman is prohibited from disclosing the identities of residents or complainants without obtaining appropriate consent or unless required by court order, pursuant to Section 712(d) of the Act.

Second, the proposed regulation clarifies that the requirements related to files, records and information apply regardless of funding source, including funds from Title VII, Chapter 3, of the Act. The provision in Chapter 3 of the Act which has created confusion on this issue states:

> [A]ll information gathered in the course of receiving reports and making referrals shall remain confidential except. . . (ii) if the release of such information is to a law enforcement agency, public protective service agency, licensing or certification agency, ombudsman program, or protection or advocacy system. . . .
> Section 705(a)(6)(C) of the Act.

While Title VII of the Act does provide for an exception which permits the release of otherwise confidential information with respect to the programs funded through Chapter 3, Chapter 2 (the chapter related to the Ombudsman Program) contains no similar exception for the release of confidential information to law enforcement and similar agencies absent appropriate consent or a court order. *See* Section 712 (d)(2) of the Act.

AoA proposes use of the term ''files, records, and other information'' in these regulations rather than ''files and records'' as used in Section 712(d) of the Act. *See* section ''G, Functions and Responsibilities of the State Long-Term Care Ombudsman,'' above. The proposed rule clarifies that the State, in providing for Ombudsman program procedures for appropriate disclosure, shall develop procedures related to at least the following types of files, records, and information (each of which is specifically referenced within Section 712 of the Act): medical and social records of residents; administrative records, policies, and documents of long-term care facilities; licensing and certification records maintained by the State with respect to long-term care facilities; and data collected in the statewide uniform reporting system of the Ombudsman program.

This proposed regulation uses the term ''communication of informed consent'' to describe the manner in which Ombudsmen and representatives of the Office obtain consent from residents (or complainants or legal representatives, where applicable) for purposes of disclosure. The Act prohibits disclosure of the identity of any complainant or resident without appropriate ''consent.'' Section 712(d)(2)(B) of the Act. Since the Ombudsman and representatives of the Office provide an advocacy service, but do not perform clinical assessments or make legal determinations related to ability to consent, the Ombudsman or representatives of the Office must rely on the ability of the individual to communicate consent (whether verbally or written, including through the use of assistive technology). In addition, the Ombudsman and representatives of the Office will want to be assured that the resident (or complainant or legal representative) appears to understand that to which he or she is consenting. Therefore, the proposed rule requires the State agency to maintain the confidentiality and protection of identifying information of residents or complainants and only allow disclosure consistent with the proposed rule.

State Agency Responsibility With Respect to State Lobbying Prohibitions

To be eligible for Older Americans Act funding, the State agency must require that the Office perform certain activities, set forth in section 1327.15(h). These activities are identified in statute and required of entities receiving federal funding under the OAA. They include recommending changes in laws, regulations and policy and providing information to public and private agencies and legislators as the Office determines to be appropriate. These provisions must be carried out notwithstanding any State laws or regulations, such as restrictions on lobbying, which may be in conflict with such provisions. Section 1327.15(a)(2)(E) establishes the State agency's responsibilities with respect to excluding the Ombudsman and representatives of the Ombudsman Office from state lobbying prohibitions.

State Agency Not Prohibited From Consulting on Ombudsman Determinations

Questions have arisen from States regarding whether it is permissible for a State agency to require consultation regarding the determinations of the Office. AoA has long maintained that consultation, so long as it does not interfere with the functions of the Office, is not prohibited and has provided such guidance to States. The OAA does not prohibit States from seeking comments or in-put, including from the State Unit on Aging, provided that in the end the Ombudsman retains the absolute right to decide what finally should be presented by the Office. Such cooperation ensures that the SUA and the Ombudsman's office would not needlessly duplicate their efforts. The

SUA may also have valuable information as well as recommendations to contribute which the Ombudsman might decide to accept. Even where the SUA and Ombudsman's Office ultimately disagree, such advance notice and consultation permit both entities to coordinate their reports to the State legislature, thereby furthering a truly informed debate to the benefit of the legislature and other policy makers.

The Act places the Ombudsman in a unique position within States. To eliminate confusion, the proposed rule seeks to clarify that States may appropriately coordinate with Ombudsman programs while, at the same time, the rule reaffirms that the Office makes independent determinations. Therefore, AoA proposes the provision clarifying that the State agency is not prohibited from consulting on Ombudsman determinations at section 1327.15(a)(2)(E)(ii). The proposed rule further indicates that policies which promote consultation may not limit the ability of the Office to fulfill its functions and duties. Therefore, in circumstances in which advanced communication is impractical or would interfere with the independent determination of the Ombudsman, a State policy could not require advanced communication of the determinations of the Office.

State Agency Responsibility To Provide Ombudsman Access to Training

In response to questions from States regarding appropriate uses of Title III–B and Title VII, Subtitle A, Chapter 2 funds, AoA proposes to clarify that a State agency may appropriately utilize, these funds to meet the State agency responsibility with respect to the training needs of the Ombudsman. In addition, Section 301(c) of the Act requires the Assistant Secretary for Aging (ASA) to provide training and technical assistance to State Ombudsman programs. In some cases, Ombudsmen are prevented from attending training provided by the AoA-funded National Ombudsman Resource Center because of limits on State administrative funds. Representatives of the Office may have difficulty accessing other necessary training to perform their duties without access to these resources.

AoA has previously issued guidance saying that States may use Title III, Part B funds to fund any aspect of the statewide Ombudsman Program, as the program is defined in Section 712 of the Act. It has also said that States may not include any Title VII funding in their calculation of funds available for State plan administration. The programs under Title VII, unlike most of the programs under Title III, are established and operated as direct advocacy services by the State Agency on Aging and/or agencies with which the State Agency contracts or provides grants to operate the programs.[4]

Since the Title III–B and Title VII funds used for the Ombudsman program are considered service dollars, States may use these funds to carry out Ombudsman services. Adequate training in order to provide this service is a reasonable cost of providing the service. Through this proposed rule, AoA clarifies for States that Title III–B and/or Title VII–2 (i.e. Ombudsman service) funds may be used for the purposes of the Ombudsman and representatives of the Office accessing and/or providing service-related training and, in fact, may be used in lieu of ''administrative funds'' provided to States under Title III–A. Therefore, AoA proposes the provision regarding responsibility of the State agency to provide Ombudsman and representatives of the Office access to training at section 1327.15(a)(3).

State Agency Responsibilities With Respect to Personnel Management and Program Monitoring

Where the Ombudsman and any representatives of the Office are employed by the State agency, AoA expects the State agency, as the employer, to provide supervision and management of Ombudsman program personnel, while respecting the limits on access to resident or complainant-identifying information, as included in the proposed rule. In addition, State agencies have a responsibility to establish policies for monitoring the performance of all programs and activities initiated under the Act for quality and effectiveness. Therefore, where the Office is outside of the State agency, the State agency has a responsibility to monitor the contract or other arrangement through which the Ombudsman program is carried out, while respecting the limits on access to information, as included in the proposed rule.

In both its personnel management and program monitoring responsibilities, the State is subject to limits on its access to the files, records and other information of the Ombudsman program. While the State agency may review aggregate data and analyze reports of Ombudsman program performance, it may not have access to information that is prohibited to be shared outside of the Ombudsman program by the Act. The proposed regulation clarifies the State agency responsibility regarding personnel supervision and management and regarding program monitoring, including with respect to prohibitions related to disclosure of files and records in Section 712(d) in the Act. *See also* sections ''A. State Agency Policies,'' and ''G. Functions and Responsibilities of the State Long-Term Care Ombudsman,'' above. Therefore, AoA proposes the provision regarding the responsibilities of the State agency with respect to personnel management and program monitoring at section 1327.15(a)(4),(5).

State Agency Responsibility With Respect to Coordinating Elder Rights, Disability Rights, and Elder Justice Programs

The Act requires the Assistant Secretary to ''provide Federal leadership to support State efforts in carrying out elder justice program and activities.'' Section 201(e)(2)(A)(ii) of the Act. This duty includes ''promoting collaborative efforts and diminishing duplicative efforts in the development and carrying out of elder justice programs at the Federal, State and local levels.'' Section 201(e)(2)(A)(ix) of the Act. In addition, the Act requires State agencies to ''coordinate the programs [to address elder abuse, neglect and exploitation] with other State and local program and services for the protection of vulnerable adults. . . .'' Section 721(d) of the Act. Among the programs specifically listed for coordination, are State Long-Term Care Ombudsman programs. Section 721(d)(3) of the Act.

The proposed rule emphasizes the importance of States' coordinating role being integrated into the State plan process. It also requires coordination of Title VII program activities to promote State-level alignment with the duties of the Assistant Secretary as set forth in Section 201(e)(2) of the Act. Therefore, AoA proposes the provision regarding responsibility of the State agency to coordinate elder rights, disability rights, and elder justice programs at section 1327.15(a)(6)–(7).

State Agency Responsibility With Respect to Non-Interference

States are required by the Act to ensure that willful interference with representatives of the Office in the performance of their official duties shall be unlawful. Section 712(j)(1) of the Act. These duties are set forth in section 1327.17(a). Proposed section 1327.15(a)(8) clarifies that interference is not limited to interference by facilities or other third parties, but that State agencies on aging and local

[4] AoA Program Issuance 94–02; *see also* AoA Fiscal Guide, Older Americans Act, Titles III and VII (May 2004).

Ombudsman entities are also subject to the prohibition on interference. In fulfilling their statutory duty to protect the Ombudsman program from interference, State agencies may not themselves interfere with the Ombudsman program's ability to perform its official duties.

State Agency Responsibility With Respect to Access to Records

The Act requires that the State agency ensure that representatives of the Office have access to facilities, residents, and resident records pursuant to Section 712(b) of the Act. With respect to access to resident records, the Act states:

The State shall ensure that representatives of the Office shall have * * *

(i) appropriate access to review the medical and social records of a resident, if—

(I) The representative has the permission of the resident, or the legal representative of the resident; or

(II) the resident is unable to consent to the review and has no legal representative; or

(ii) Access to the records as is necessary to investigate a complaint if—

(I) A legal guardian of the resident refuses to give the permission;

(II) A representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(III) The representative obtains the approval of the Ombudsman. * * *

Section 712(b)(1)(B) of the Act.

AoA has received reports of long-term care facilities, state government agencies, and other entities denying Ombudsmen or representatives of the Office access to resident records due to concerns that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule does not permit the disclosure. AoA has previously provided program guidance to States that the HIPAA Privacy Rule, 45 CFR Part 160 and Subparts A and E of Part 164, does not preclude release of residents' medical and social records to the Office. AoA Information Memorandum 03–01, February 4, 2003 (available at *http://www.aoa.gov/AOARoot/AoA_Programs/OAA/Aging_Network/im/docs/Info_Memoradum_%20HIPAA.pdf*). Proposed section 1327.15(b)(1) clarifies that the State agency has a responsibility to establish policies and procedures consistent with this HIPAA guidance in order to provide representatives of the Office with appropriate access to resident records.

State Agency Requirements of the Office

The Act sets forth specified activities that States must require of the Office in the administration of the Ombudsman program. Section 712(h) of the Act. For convenience, ACL has included this statutory text at section 1327.15(c) of the proposed rule. The inclusion of these requirements into the proposed rule does not and is not intended to amend the statutory language.

*H. Functions and Duties of the Office of the State Long-Term Care Ombudsman*

Section 1327.17 includes provisions related to both the functions that may be performed by the State Long-Term Care Ombudsman (the ''Ombudsman'') and/or the duties which may be performed by the representatives of the Office, as opposed to solely by the Ombudsman. (The functions which are the sole responsibility of the Ombudsman are found under section ''G, Functions and Responsibilities of the State Long-Term Care Ombudsman,'' above.)

Proposed section 1327.17(a) sets forth the duties of the representatives of the Office as set forth in Section 712(a)(5)(B) of the statute. For convenience, ACL included this statutory text at section 1327.17(a) of the proposed rule. The inclusion of these duties into the proposed rule does not and is not intended to amend the statutory language. The complete list of functions statutorily required of the Ombudsman is found above at section 1327.13(a).

For convenience, AoA proposes compiling regulations which relate to both the functions of Ombudsman and the duties of the Office (i.e. those which may be performed by either the Ombudsman and/or the representatives of the Office) into this section.

Complaint Processing

The requirement to ''identify, investigate, and resolve complaints made by or on behalf of residents'' is a required function of the Ombudsman under Section 712(a)(3)(A) of the Act and a required duty of representatives of the Office under Section 712(a)(5)(B)(iii) of the Act. While facilities, family members, agencies, or other individuals may indirectly benefit from the complaint resolution work of the Office, complaint processing by the Office must focus on seeking an outcome that satisfies the resident. Therefore, section 1327.17(b)(1) of the proposed rule defines the resident as the primary recipient of Ombudsman program services and sets forth the purposes of the Ombudsman program complaint process as follows:

(1) Resolving the complaint to the resident's satisfaction, and

(2) assisting residents in protecting their health, safety, welfare, and rights.

The Act provides that the resolution of complaints made by, or on behalf of, residents is a function of the Ombudsman and a duty of representatives of the Office. Sections 712(a)(3)(A); 712(a)(5)(B)(iii) of the Act. Through its National Ombudsman Reporting System (NORS) [5] instructions, States report on resolved complaints only if they meet the following definition: ''Definition of *resolved* complaint: The complaint/problem was addressed to the satisfaction of the resident or complainant.'' [6]

In proposed section 1327.17(b)(2)(A), AoA describes how this person-centered focus is implemented into complaint processing activities. The proposed rule indicates that, regardless of the source of the complaint, the Ombudsman or representative of the Office shall discuss the complaint with the resident in order to determine the perception of the resident, request consent in order to investigate the complaint, determine the wishes of the resident, advise the resident of his or her rights, work with the resident to develop a plan of action, investigate the complaint, and determine whether the complaint is resolved to the satisfaction of the resident.

The Act also requires as a function of the Ombudsman: ''provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;'' and as a duty of the representatives of the Office: ''provide services to protect the health, safety, welfare, and rights of residents.'' Sections 712(a)(3)(B); 712(a)(5)(B)(i) of the Act.

Minimal new burden will be placed on the States, State agencies on aging, AAAs, Ombudsmen, or the Office because these proposed regulations in section 1327.17(b) are largely consistent with the present practice as set forth in the National Ombudsman Reporting System (NORS) instructions which States currently follow in submitting Ombudsman program performance reports annually to AoA.

Communication of Informed Consent by a Resident

At several places in the Act, the Ombudsman and representatives of the Office must rely on the ''permission''

[5] AoA maintains the National Ombudsman Reporting System in order to receive reports on program activities, characteristics, and funding; complaint resolution; and recommendations for long-term care systems change from State Long-Term Care Ombudsman Programs. OMB No. 0985–0005.

[6] OMB No. 0985–0005 at p. 5

(*see, e.g.,* Section 712(b) of the Act) or ''consent'' (*see, e.g.,* Section 712(d)(2)(B) of the Act) of the resident, (or legal representative, where applicable). Since the Ombudsman and representatives of the Office provide an advocacy service, but do not perform clinical assessments or make legal determinations related to ability to consent, the Ombudsman or representatives of the Office must rely on the ability of the individual to communicate consent (whether verbally or written including through the use of assistive technology).

In addition, the Ombudsman and representatives of the Office will want to be assured that the resident (or legal representative, where applicable) appears to understand to what he or she is consenting. Therefore, throughout the regulations, the term ''communication of informed consent'' is used to describe the interaction between residents (or their legal representative, where applicable) and Ombudsmen and representatives of the Office.

The Ombudsman and representatives of the Office have a duty to ''provide services to protect the health, safety, welfare, and rights of residents.'' Section 712(a)(5)(B)(i); *see also* 712(a)(3)(B) of the Act. This may be impossible for the Ombudsman or representatives of the Office to accomplish where the resident is unable to provide informed consent and where there is no legal representative to provide informed consent on behalf of the resident. Therefore, AoA proposes, at section 1327.17(b)(2)(B), that the Ombudsman or representative of the Office shall determine whether the complaint was resolved ''in a manner that is in the resident's best interest'' in circumstances where the resident is unable to provide informed consent and where there is no legal representative to provide informed consent on behalf of the resident.

The ''resident's best interest'' standard is proposed only in the circumstance where the resident is unable to provide informed consent and where there is no legal representative to provide informed consent on behalf of the resident. In all other circumstances, the current NORS instruction applies, which defines ''resolved complaint'' as ''The complaint/problem was addressed to the satisfaction of the resident or complainant.''[7] AoA seeks comment on this provision, noting that this proposed standard differs from the current NORS instruction in specified circumstances.

As stated above regarding proposed section 1327.15(b)(2)(c), the proposed regulations provide that the State procedures for disclosure under Section 712(d) of the Act must provide that the Ombudsman and representatives of the Office shall not be required to report abuse, neglect or exploitation, despite State laws to the contrary, where such report would constitute disclosure prohibited by the Act. Through proposed section 13271.17(b)(3), AoA seeks to clarify the disclosure requirements of the Act with respect to abuse reporting and provide limited circumstances in which disclosure is permitted, i.e. where an individual may be at risk and unable to indicate his or her wishes related to disclosure.

Communication of Informed Consent by a Representative of a Resident

Where an Ombudsman or representative of the Office is processing a complaint on behalf of a resident, but the resident is unable to communicate informed consent and has an authorized representative, the proposed regulations clarify that the Ombudsman or representative of the Office has the authority to rely on the guidance of a guardian or other legal representative. However, the provision qualifies this reliance ''so long as the Ombudsman or representative of the Office has no reasonable cause to believe that the representative of the resident is not acting in the best interests of the resident.'' The purpose of this limitation is to conform to the principle stated in Section 712(b)(1)(B)(ii) of the Act:

''The State shall ensure that representatives of the Office shall have . . . access to the records access to the records as is necessary to investigate a complaint if—

(I) a legal guardian of the resident refuses to give the permission;

(II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(III) the representative obtains the approval of the Ombudsman. . . .''

Section 712 of the Act at various places uses the terms ''guardian'' (*e.g.,* 712(a)(3)(A)(ii)) and ''legal representative'' (*e.g.,* 712(b)(1)(B)(i)(I), 712(d)(2)(B)(i)). AoA proposes to use the term ''guardian or other legal representative'' throughout the proposed regulations to clarify that the Ombudsman and representatives of the Office may rely, where appropriate, on the communications of a resident's guardian or other legally authorized representative (such as a health care proxy or financial power of attorney authorized by the resident). In many cases, a resident may have previously authorized someone to make decisions on his or her behalf and, therefore, may not need a court-appointed guardian even if he or she meets the standard of incapacity for appointment of a guardian. Therefore, AoA proposes the provision regarding communication of informed consent by the representative of the resident at section 1327.17(b)(5).

Abuse Reporting Where a Resident Is Unable To Communicate Informed Consent to Disclosure

In fiscal year 2011, 9% of the 204,044 complaints investigated, resolved and closed by Ombudsman programs were complaints of abuse, gross neglect or exploitation (represented by A, P–117, and P–121 codes in the National Ombudsman Reporting System (NORS)). NORS Instructions provide guidance and definitions to Ombudsman programs regarding the reporting of complaints related to abuse, gross neglect and exploitation.

Under Sections 712(a)(3)(B) and 712(a)(5)(B)(i) of the Act, the Ombudsman and representatives of the Office have a duty to ''provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents.'' Where a resident is able to consent related to disclosure of his or her identity, the provisions of Section 712(d) of the Act require the Ombudsman and the representatives of the Office to prohibit disclosure absent consent.

The Act requires the Office to ''provide service to protect the health, safety, welfare, and rights of the residents.'' Section 712(a)(5)(B)(i) of the Act. However, this requirement is particularly challenging to meet in situations where a resident is allegedly a victim of abuse, gross neglect or exploitation, and is unable to communicate informed consent to disclose his or her identity.

Therefore, AoA proposes that the State-developed procedures for disclosure by the Ombudsman and representatives of the Office may provide authority to disclose the identity of the resident to appropriate authorities when the Ombudsman or representative of the Office is processing a complaint related to the resident when the disclosure would be in the best interest of the resident and meets at least one of the following criteria:

(1) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office, has no guardian or other legal representative, and the Ombudsman or representative of the Office has reason to suspect that the resident is a victim of abuse, gross neglect, or exploitation (as stated in proposed section 1327.17(b)(6))

[7] OMB No. 0985–0005 at p. 5.

(2) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office, and the resident has a guardian or other legal representative who the Ombudsman or representative of the Office has reasonable cause to believe is a perpetrator of abuse, gross neglect, or exploitation of the resident (as stated in proposed section 1327.17(b)(7)). AoA proposes this provision as it is consistent with the statutory provision requiring that States provide the Office with access to the records of a resident where the representative of the Office has reasonable cause to believe a guardian is not acting in the best interest of the resident. Section 712(b)(1)(B)(ii) of the Act.

AoA seeks comment on this proposed approach.

The proposed rule states that the disclosure procedures may permit the Ombudsman or representative of the Office to ''refer the matter and disclose the identity of the resident'' based on the determination of the best interest of the resident by the Ombudsman or representative of the Office in proposed sections 1327.17(b)(6)–(7). This proposal authorizes, but does not require, procedures related to disclosure to provide this authority in order to be consistent with Section 712(d)(2)(A) of the Act which provides for disclosure ''only at the discretion of the Ombudsman.''

However, AoA proposes that the State-developed procedures for disclosure by the Ombudsman and representatives of the Office must require disclosure of the identity of the resident to appropriate authorities when the Ombudsman or representative of the Office is processing a complaint related to the resident in the narrow circumstance when: (1) The Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect or exploitation of a resident (as stated in proposed section 1327.17(b)(8)) and (2) the representative has reasonable cause to believe that the disclosure would be in the best interest of the resident, and (3) the representative obtains the approval of the Ombudsman.

A representative of the Office who personally witnesses suspected abuse would be required to obtain approval of the Ombudsman before disclosing the identity of the resident to appropriate authorities. This is analogous to the approval required by the Act for representatives seeking access to records to investigate a complaint related to a legal guardian for whom the representative of the Office has reasonable cause to believe is not acting the best interests of the resident. Section 712(b)(1)(B)(ii) of the Act. In this situation of personally witnessing an incident, the Ombudsman or the representative of the Office may be the only person other than the victim with information on the incident.

This is in contrast to the more common occurrence where complaints of suspected abuse, gross neglect or exploitation are brought to the attention of the Ombudsman program from another person with information regarding the incident. Where another person is bringing the information to the attention of the Office, such complainant or reporter is presumably able (and may be mandated under State law) to report to appropriate authorities for an official investigation of the allegations. As background, in fiscal year 2011, Ombudsman program cases (in all complaint categories, not only abuse-related complaints) were generated by the following types of complainants: Residents (38%), relatives or friends of residents (19%), facility staff (17%), Ombudsman program staff and volunteers (13%), and others (12%).[8]

Where the Ombudsman or representative of the Office personally witnesses the incident, and the resident is unable to communicate informed consent, the Ombudsman or representative of the Office may open a complaint with himself or herself as the complainant and work to resolve the issue but may incorrectly conclude that they are prohibited by the Act from disclosing the identity of the resident. AoA believes that the absence of disclosure of the resident's identity in this situation could create a barrier to facility management which may need information to protect the resident and/or to appropriate investigatory agencies which may need information in order to fulfill their protective, regulatory and/or law enforcement duties related to the alleged victim.

Therefore, AoA proposes, at section 1327.17(b)(8) that disclosure of the identity of a resident should be required in the situation where an Ombudsman or representative of the Office personally witnesses the incident, so long as (1) the resident at issue does not request the Ombudsman or representative to not make a report of the suspected activity witnessed by the Ombudsman or representative, (2) the representative has reasonable cause to believe that the disclosure would be in the best interest of the resident, and (3) the representative obtains the approval of the Ombudsman.

Coordination of Ombudsman Activities With Other Elder Rights, Disability Rights, and Elder Justice Entities

The Act requires the State agency to require the Office to coordinate with protection and advocacy systems, legal assistance, and State and local law enforcement agencies and courts of competent jurisdiction. Section 712(h)(6)–(8) of the Act; *see also* Section 721(d) of the Act, and section ''G. Functions and Responsibilities of the State Long-Term Care Ombudsman'' regarding ''Ombudsman Responsibility with respect to Coordination of Ombudsman Activities with Other Elder Rights, Disability Rights, and Elder Justice Entities,'' above.

AoA proposes section 1327.17(c) in order to consolidate the list of the relevant entities covered by the Act into a comprehensive list and to clearly set forth its expectation that all levels of the Office should promote collaborative efforts and diminish duplicative efforts in the development and carrying out of elder rights and elder justice programs. *See* Section 201(e)(2)(A)(ix) of the Act. This provision addresses the duty to coordinate activities by representatives of the Office, including those representatives in a local Ombudsman entity, at the local level, in contrast to proposed rule section 1327.13(l), above, which relates specifically to the responsibility of the State Ombudsman to coordinate with relevant entities at the State level.

Relation of Required Functions and Duties to Federal Lobbying Restrictions

The Act requires the Ombudsman to perform functions that may be considered ''lobbying'' under some state laws, including recommending changes in laws pursuant to Section 712(a)(3)(G)(ii) and providing information to legislators regarding recommendations related to the problems and concerns of residents of long-term care facilities pursuant to Section 712(h)(3) of the Act.

As federal grantees, States are required to make certain certifications regarding lobbying under the 45 CFR Part 93. AoA proposes section 1327.17(d) in order to clarify that the functions and duties required of the Office by the Act do not constitute a violation of this part (see 45 CFR § 93.100).

*I. Conflicts of Interest*

The Act specifically requires the Assistant Secretary to issue regulations related to conflicts of interest at Section

[8] These percentages do not equal 100% due to rounding.

713 of the Act. Freedom from conflicts of interest is critically important to the successful operation of Ombudsman programs. Ombudsman programs are effective only when they can provide credible representation of the interests of residents without conflicts of interest.

In its evaluation of Long-Term Care Ombudsman programs, the Institute of Medicine dedicated a chapter to issues related to conflicts of interest, explaining:

> The Older Americans Act (OAA) mandates that the ombudsman work toward changing government and other institutions for the betterment of the residents of LTC facilities. . . . Thus, by accepting OAA monies, state governments agree to allow one of their own employees (or a contractor of the state) both to criticize openly and publicly their policies and procedures and to work toward implementing improvements. The directive to ''seek administrative, legal, and other remedies'' is broad enough to include the state government itself as a target of ombudsman advocacy. Conflicts of interest can easily occur in such situations.[9]

Organizational conflicts may arise from the organizational location of the Office and/or local Ombudsman entities, in which the work of the Ombudsman is unable to focus primarily on the interests of long-term care residents due to competing functions or priorities. For example, the Office might be located within an agency that makes determinations regarding resident eligibility for benefits or services. A resident who requests the Ombudsman to resolve a complaint related to the eligibility determination, and discovers that the Ombudsman is housed within the same entity, may not trust the Ombudsman to perform credible complaint resolution work on his or her behalf.

Similarly, the Office might be located within an agency that is the official finder of fact regarding abuse allegations (such as adult protective services or the state licensing agency). If an Ombudsman identifies a pattern of inadequate abuse investigation taken by the agency, the agency may have a conflicting interest in protecting its reputation, which may cause it to interfere with the Ombudsman's duty to address the issue systemically (for example, by making recommendations to policymakers outside of the agency).

In some states, individual representatives of the Office have been assigned conflicting roles by a local Ombudsman entity with multiple service responsibilities. For example, the representative may have employment assignments both in the Ombudsman Program and protective services so may be called upon to provide protective services for a resident. But the actions taken to protect the resident and actions to advocate for what the resident desires may conflict with one another. As another example, a representative may be assigned conflicting duties of case management for long-term supports and services for a resident. If the resident wishes to file a complaint related to the service plan developed by the case manager, he or she would be in the position of requesting advocacy assistance of the very individual who made the case management decisions which the resident.

The IOM recommended, among other things, the following:

> 4.2 The committee recommends that the Assistant Secretary for Aging adopt a clear policy that prohibits parties who provide, purchase, or regulate services that are within the purview of the ombudsman program from membership on policy boards having governance over the long-term care ombudsman program. . . .
>
> 4.3 The committee recommends that the Assistant Secretary for Aging establish procedures and resources by which to identify potential conflicts of interest in the areas of loyalty, commitment, and control that are pertinent to the long-term care ombudsman and ombudsman representatives and provide guidance on how to address such conflicts of interest.[10]

While AoA has provided States with technical assistance and education on questions related to conflicts of interest, a recent compliance review and recurring questions raised by States and Ombudsman programs suggest that clear regulations would assist in the effective and efficient determination of compliance with the conflict of interest principles in Section 712 of the Act.

Proposed Process

1. Identification of Conflicts

The proposed regulations require a State agency to examine whether it has conflicts related to either the organizational placement of the Ombudsman program or the individuals selected to serve as Ombudsmen and representatives of the Office. If an organizational or individual conflict exists, the State agency must identify the conflict. *See* Section 712(f)(4) of the Act.

AoA proposes the following process to assist States in complying with the Act. Ombudsmen annually report on program activities, characteristics, and funding; complaint resolution; and recommendations for long-term care systems change through NORS.[11] The proposed regulations would utilize the current reporting process to provide States and Ombudsmen with a mechanism for submitting evidence of compliance with the Act's requirements related to conflicts. It is AoA's intent to include in future NORS Instructions a description of how to appropriately report the identification of any conflicts related to the implementation of the Ombudsman program and describe steps the State has taken to remove or remedy the conflict.

For example, a State agency which houses both adult protective services and the Office of the State Long-Term Care Ombudsman should identify such conflict in NORS and indicate its plans to remove or remedy the conflict so that it does not interfere with the duties of the Office as set forth below.

Section 712(f)(4) of the Act requires that State agencies ''establish, and specify in writing, mechanisms to identify . . . conflicts of interest.'' The proposed regulations provide a comprehensive, though not exhaustive, list of potential conflicts to assist States in this identification process. The list consists of conflicts identified in Section 712 of the Act, as well as others specified in the IOM report.

2. Removal or Remedy of Conflicts

The proposed regulations require a State agency to remove or remedy all identified organizational and individual conflicts. AoA realizes that many State agencies provide multiple programs and services, including adult protective services, guardianship services, licensing and regulation, and home and community-based services in board and care and assisted living settings. Some of these responsibilities create organizational conflicts with the functions and duties of Ombudsman programs. As the IOM reported:

> Since the list of duties for [State Units on Aging], area agencies on aging (AAAs), and ombudsmen has grown in length and specificity . . . , an even greater potential for conflict of interest exists between LTC ombudsman programs and the public agencies that typically house them. . . . The [Act] has clearly designated the LTC ombudsman program as the voice representing the LTC resident to government, yet in most cases the program continues to be housed within state and local governments that are increasingly responsible for service provisions to older persons.
>
> The ombudsman program has a mandate to focus on the individual resident. If the ombudsman finds him or herself in a conflict of interest situation . . . the resident, even

[9] IOM Report (1995), at p. 102.

[10] IOM Report (1995) at pp. 124–125.

[11] OMB No. 0985–0005.

more than the program, may suffer. The resident's problem may not be resolved, certain avenues of resolution may be foreclosed, the resident's voice may not be heard by policy makers, and the resident's interests will be inadequately represented or altogether absent from the table at which public policy is made.[12]

AoA proposes use of NORS reporting for States to describe the steps taken to remove or remedy conflicts of interest. For example, a State agency which houses both adult protective services and the Office of the State Long-Term Care Ombudsman might submit assurances that staff are not assigned conflicting responsibilities and submit policies and procedures demonstrating the distinct public roles and public information related to the respective programs; separate, secure, and confidential data collection systems; separate and confidential record-keeping; and clear referral processes between the programs.

AoA realizes that some States will face challenges in removing or remedying some organizational conflicts of interest. We welcome comments on the anticipated impact of this proposed regulation. In addition, AoA realizes that some of the provisions related to employment of the Ombudsman or representatives of the Office at proposed section 1327.19(d)(5) (i.e., one-year waiting period after serving in a licensing or long-term care provider responsibility) serve as a proxy for avoiding conflicts of interest but do not guarantee the outcome of an Ombudsman or representatives of the Office free of potential conflicts. AoA welcomes suggestions on alternative approaches that promote the conflict-free integrity of the Ombudsman and representatives of the Office, but do not arbitrarily disqualify excellent candidates for the position.

AoA plans to engage with States in the provision of technical assistance, training and resources to assist them in crafting effective solutions to remedy conflicts that may impact the ability of the Ombudsman program to fulfill its duties to residents under the Act. AoA also recognizes that many States have already taken significant steps to avoid, identify and remedy conflicts. For example, in terms of organization, some have moved the Office into a distinctly identifiable and more independent office within the organizational structure of the State agency on aging. Some have moved it into another State agency. Others have moved the Office out of State government entirely. Some States have established laws, regulations, or policies that have clearly delineated an independent identity for the Office, providing the Ombudsman with the ability to represent resident interests to policymakers, the public, and others without interference. Others have implemented clear policies and procedures, within the designation process, for identifying and remedying conflicts of interest for current and potential representatives of the Office.

*J. Additional Considerations*

AoA proposes that this rule become effective one year after the publication of the final rule. This will provide States time to review their relevant laws, regulations, policies, standards, State plan on aging, and practices and to take any steps that might be necessary in order to achieve compliance with the rule.

AoA has proposed regulations on operational issues for which it believes regulatory action is critical to assure successful Ombudsman program operation. AoA acknowledges that guidance in other areas related to Ombudsman program operation may also be beneficial to States but that the statute is sufficiently specific and/or sub-regulatory guidance, training, technical assistance or other types of assistance to the States may be sufficient to meet the need. One such area for which additional guidance may be necessary is the provision of legal counsel to the Ombudsman program.

The Act provides:

LEGAL COUNSEL.—The State agency shall ensure that—

(1)(A) adequate legal counsel is available, and is able, without conflict of interest, to—

(i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and

(ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and

(B) legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative; and

(2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.

Section 712(g) of the Act.

AoA believes that the statute is adequately specific to determine State compliance with regard to adequate legal counsel. In the past, AoA has determined that it has adequate authority under the statute, without a regulation in place, to cite a State agency deficiency in compliance with this provision. AoA Region IV Ombudsman Assessment Report, June 13, 1994. AoA acknowledges that guidance could be helpful in defining competencies of legal counsel that may contribute to its adequacy and the application of the conflict of interest provisions in the proposed regulations to the legal counsel requirement. AoA believes this guidance could be provided to States without the need for regulation. However, AoA welcomes comments on the question of whether regulations are needed by States in order to more fully implement the Act's requirements related to the provision of legal counsel to the Ombudsman program.

## III. Required Regulatory Analyses Under Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, 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 proposed rule has been designated a ''substantive, non-significant regulatory action'' and not economically significant, under Section 3(f) of Executive Order 12866. The proposed rule has been reviewed by the Office of Management and Budget.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. §§ 601 *et seq.*), agencies must consider the impact of regulations on small entities and analyze regulatory options that would minimize a rule's impacts on these entities. Alternatively, the agency head may certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. AoA does not anticipate that this NPRM will have a significant economic impact on a substantial number of small businesses and other small entities.

## IV. Other Administrative Requirements

*A. Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act, before an agency submits a proposed

[12] IOM (1995) at pp. 108–109.

collection of information to the Office of Management and Budget (OMB) for approval, it must publish a document in the **Federal Register** providing notice of the proposed collection of information and a 60-day comment period, and must otherwise consult with members of the public and affected agencies concerning the proposed collection. In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501 *et seq.*), AoA has determined there are limited new information collection requirements in the proposed rule.

Currently, States are required to annually report on program activities, characteristics, and funding; complaint resolution; and recommendations for long-term care systems change of the Office of the State Long-Term Care Ombudsman through the National Ombudsman Reporting System (NORS).[13] The proposed regulations would add one additional question to NORS: the identification of organizational conflicts of interest and a description of steps taken by the State to remove or remedy any identified conflict(s). Prior to the effective date of a final rule, AoA intends to request an amendment to current NORS instructions and to alter existing reporting software to capture data consistent with this requirement.

AoA estimates that the proposed changes would expand the reporting requirement from 8569 hours to 8621 hours.

Title: State Annual Long-Term Care Ombudsman Report.

OMB Control Number: 0985–0005.

Type of Request: Modification of Information Collection Request.

Respondents: 50 States, the District of Columbia and Puerto Rico.

Frequency: Annually

Estimated Annual Burden on Respondents: 52 hours (52 respondents × 1 hour per year).

We invite comments on: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of collection without reducing the quality of the collected information.

In addition, States are already required by Section 712 of the Act to develop policies and procedures for the operation of the Long-Term Care Ombudsman Program. The proposed regulations are intended to clarify this existing requirement without creating any additional burden on States.

[13] OMB No. 0985–0005.

*B. Executive Order 13132*

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either, imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of Section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order.

*C. Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a covered agency must prepare a budgetary impact statement, Section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, Section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. We have determined that this rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

*D. Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation protects the confidentiality of information contained in the records of State child support enforcement agencies. These regulations will not have an adverse impact on family well-being as defined in the legislation.

*E. Plain Language in Government Writing*

Pursuant to Executive Order 13563 of January 18, 2011, and Executive Order 12866 of September 30, 1993, Executive Departments and Agencies are directed to use plain language in all proposed and final rules. AoA believes it has used plain language in drafting of the proposed rule and would welcome any comment from the public in this regard.

**List of Subjects**

*45 CFR Part 1321*

Administrative practice and procedure, Aged, Grant programs—social programs, Reporting and recordkeeping requirements.

*45 CFR Part 1327*

Administrative practice and procedure, Aged, Long-term care.

Dated: January 14, 2013.

**Kathy Greenlee,**

*Administrator, Administration for Community Living, Assistant Secretary for Aging, Administration on Aging.*

Approved: January 25, 2013.

**Kathleen Sebelius,**

*Secretary.*

**Editorial Note:** This document was received in the Office of the Federal Register on June 12, 2013.

For the reasons stated in the preamble, the Administration on Aging, Administration for Community Living, U.S. Department of Health and Human Services, proposes to amend 45 CFR Part 1321 and add Part 1327 as follows:

## PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

■ 1. The authority citation for Part 1321 continues to read as follows:

**Authority:** 42 U.S.C. 3001 *et seq.;* title III of the Older Americans Act, as amended.

■ 2. Section 1321.11 is amended by revising paragraph (b) to read as follows:

**§ 1321.11 State agency policies.**

* * * * *

(b) The policies developed by the State agency shall address the manner in which the State agency will monitor the performance of all programs and activities initiated under this part for quality and effectiveness. The State Long-Term Care Ombudsman or his or her designee shall be responsible for monitoring the files, records and other information maintained by the Office, and shall not disclose the identity of any complainant or long-term care facility resident to individuals outside of the Office, except as otherwise

specifically provided in § 1327.17(b)(2)(C) of this chapter.

* * * * *

■ 3. Part 1327 is added to read as follows:

## PART 1327—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

### Subpart A—State Long-Term Care Ombudsman Program

Sec.
1327.1 Definitions.
1327.11 Establishment of the Office of the State Long-Term Care Ombudsman.
1327.13 Functions and responsibilities of the State Long-Term Care Ombudsman.
1327.15 State agency responsibilities related to the Ombudsman program.
1327.17 Functions and duties of the Office of the State Long-Term Care Ombudsman.
1327.19 Conflicts of interest.

### Subpart B—[Reserved]

**Authority:** 42 U.S.C. 3001 *et seq.;* titles II, III and VII of the Older Americans Act, as amended.

## Subpart A—State Long-Term Care Ombudsman Program

### § 1327.1 Definitions.

The following definitons apply to this part.

*Immediate family,* pertaining to conflicts of interest as used in section 712 of the Act, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

*Office of the State Long-Term Care Ombudsman,* as used in section 712 of the Act, means the organizational unit headed by the State Long-Term Care Ombudsman, including the representatives of the Office.

*Representatives of the Office of the State Long-Term Care Ombudsman,* as used in section 712 of the Act, means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in § 1327.17(a), whether supervised by the Ombudsman or his or her designees or by a local entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act.

### § 1327.11 Establishment of the Office of the State Long-Term Care Ombudsman.

(a) The Office of the State Long-Term Care Ombudsman shall be an entity which shall be headed by the State Long-Term Care Ombudsman and carry out all of the functions and duties set forth in §§ 1327.13 and 1327.17.

(b) The State agency shall establish the Office and, thereby carry out the Long-Term Care Ombudsman program in any of the following ways:

(1) The Office is a distinct entity, separately identifiable, and located within or connected to the State agency; or

(2) The State agency enters into a contract or other arrangement with any public agency or nonprofit organization which shall establish a separately identifiable, distinct entity as the Office.

(c) The State agency and, where applicable, any other agency carrying out the Ombudsman program, shall ensure that the State Long-Term Care Ombudsman, as head of the Office, shall be able to independently make determinations and establish positions of the Office regarding:

(1) Determinations regarding disclosure of information maintained by the program within the limitations set forth in section 712(d) of the Act;

(2) Recommendations to changes in Federal, State and local laws, regulations, policies and actions pertaining to the health, safety, welfare, and rights of residents;

(3) Provision of information to public and private agencies, legislators, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

(4) Such determinations and positions shall be those of the Office and do not necessarily represent the determinations or positions of the State agency, another agency carrying out the Ombudsman program, or any other State agency.

### § 1327.13 Functions and responsibilities of the State Long-Term Care Ombudsman.

The Ombudsman, as head of the Office, shall have responsibility for the leadership and management of the Office in coordination with the State, and, where applicable, the other agency or agencies carrying out the Ombudsman program, as follows.

(a) The Ombudsman shall serve on a fulltime basis, and shall, personally or through representatives of the Office—

(1) Identify, investigate, and resolve complaints that—

(i) Are made by, or on behalf of, residents; and

(ii) Relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of—

(A) Providers, or representatives of providers, of long-term care services;

(B) Public agencies; or

(C) Health and social service agencies;

(2) Provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;

(3) Inform the residents about means of obtaining services provided by providers or agencies described in paragraph (a)(1)(ii) of this section or services described in paragraph (a)(2) of this section;

(4) Ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;

(5) Represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(6) Provide administrative and technical assistance to entities designated under paragraph (a)(5) of this section to assist the entities in participating in the program;

(7)(i) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) Recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) Facilitate public comment on the laws, regulations, policies, and actions;

(8)(i) Provide for training representatives of the Office;

(ii) Promote the development of citizen organizations, to participate in the program; and

(iii) Provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and carry out such other activities as the Assistant Secretary determines to be appropriate.

(b) The Ombudsman shall oversee a unified statewide program in which representatives of the Office report to the Ombudsman regarding Ombudsman program functions and duties as set forth in §§ 1327.13(a) and 1327.17(a).

(c) The Ombudsman shall determine designation and de-designation of local Ombudsman entities and representatives of the Office pursuant to section 712(a)(5) of the Act.

(d) Where local Ombudsman entities are designated, the Ombudsman shall review and approve plans or contracts related to Ombudsman program operations, including, where applicable, through area agency on aging plans (in coordination with the State agency).

(e) The Ombudsman shall manage the files, records, and other information of the Office, whether in physical, electronic, or other formats, including information maintained by representatives of the Office and designated local Ombudsman entities pertaining to the cases and activities of the Ombudsman program. Such records are the property of the Office.

(f) The Ombudsman shall comply with section 712(d) of the Act in responding to requests for disclosure of files, records, and other information, regardless of the format of such file, record, or other information, the source of the request, and the sources of funding to the Ombudsman program.

(g) The Ombudsman shall propose to the State agency policies, procedures and standards for administration of the Ombudsman program.

(h) The Ombudsman shall provide leadership to statewide advocacy efforts of the Office on behalf of long-term care facility residents.

(i) The Ombudsman shall determine the use of the fiscal resources appropriated or otherwise designated for the Office, subject to applicable Federal and State laws and policies.

(j) Where applicable, the Ombudsman shall monitor the Ombudsman program performance of local Ombudsman entities which the Ombudsman has designated to carry out the duties of the Office.

(k) The Ombudsman shall develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act and as otherwise required by the Assistant Secretary.

(l) The Ombudsman shall provide Ombudsman program leadership to statewide coordination efforts between the Office and other entities responsible for the protection of vulnerable adults including, but not limited to:

(1) Area agency on aging programs;

(2) Adult protective services programs;

(3) Protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under subtitle C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000; and the Protection and Advocacy of Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 *et seq.*)

(4) Facility and long-term care provider licensure and certification programs;

(5) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));

(6) Victim assistance programs;

(7) Consumer protection and State and local law enforcement programs; as well as other State and local programs that identify and assist vulnerable adults and services provided by agencies and courts of competent jurisdiction; and

(8) The State legal assistance developer and legal assistance programs, including those provided under section 306(a)(2)(C) of the Act, through adoption of memoranda of understanding and other means.

**§ 1327.15 State agency responsibilities related to the Ombudsman program.**

(a) The State agency shall:

(1) Ensure, through the development of policies and other means, that the Ombudsman and the representatives of the Office are able to fully perform all of the duties specified in section 712 of the Act;

(2) Establish policies and procedures, in consultation with the Office, to carry out the Ombudsman program in accordance with the Act. Where the designated local Ombudsman entities are grantees, and/or the representatives of the Office are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. Such policies and procedures shall include, but not be limited to:

(i) Requirements that the Ombudsman shall monitor the performance of local Ombudsman entities which the Ombudsman has designated to carry out the duties of the Office.

(ii) Standards to assure prompt response which prioritize abuse, gross neglect, exploitation and time-sensitive complaints;

(iii) Confidentiality and protection of identifying information of residents and complainants, including procedures related to the disclosure of files, records, and other information maintained by the Ombudsman program;

(A) Such procedures shall provide that the files, records, and information maintained by the Ombudsman program may be disclosed only at the discretion of the Ombudsman or the person designated by the Ombudsman to disclose the files, records, and information.

(B) Such procedures shall prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains files, records, or information unless:

(*1*) The complainant or resident, or the legal representative of the complainant or resident, communicates informed consent to the disclosure and the consent is given in writing or through the use of assistive technology;

(*2*) The complainant or resident communicates informed consent orally or through the use of assistive technology and such consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such procedures; or

(*3*) The disclosure is required by court order.

(C) Such procedures shall provide that if the Ombudsman or his or her representative has reason to believe that the resident is unable to provide informed consent, disclosure of the resident identity shall be prohibited unless another exception applies.

(D) Such procedures shall provide for procedures for appropriate disclosure of at least the following types of files, records, and information which may be maintained by the Office: medical and social records of residents; administrative records, policies, and documents of long-term care facilities; licensing and certification records maintained by the State with respect to long-term care facilities; and data collected in the statewide uniform reporting system of the Ombudsman program.

(E) Such procedures shall exclude the Ombudsman and representatives of the Office from abuse reporting requirements when such reporting discloses the identity of a complainant or resident without appropriate consent or court order, except as otherwise provided in § 1327.17(b)(5)–(8).

(F) Such procedures shall prohibit disclosure of the identity of a complainant or resident without appropriate consent or court order, except as otherwise provided in § 1327.17(b)(5)–(8), regardless of the source of the request for information or the source of funding for the services of the Ombudsman program; and

(iv) Mechanisms to identify and remove or remedy conflicts of interest pursuant to section 712(f) of the Act; and

(v) Procedures that require the Office to carry out its requirement to analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate.

(A) Such procedures shall exclude the Ombudsman and representatives of the Office from any state lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the Act.

(B) Nothing in this part shall prohibit the State agency or other agency carrying out the Ombudsman program from establishing policies which promote consultation regarding the determinations of the Office or otherwise require that the Ombudsman and representatives of the Office are held accountable to the policies and procedures of their respective employer, subject to applicable federal and state laws and policies. However, such policies may not limit the ability of the Ombudsman and representatives of the Office to fulfill all of the functions and duties set forth in section 712 of the Act and shall be in accordance with the requirement that the Ombudsman and representatives of the Office must remain free of interference in carrying out such functions and duties.

(3) Provide opportunities for training for the Ombudsman and representatives of the Office in order to maintain expertise to serve as effective advocates for residents. The State agency may utilize funds appropriated under Title III and/or Title VII of the Act designated for direct services in order to provide access to such training opportunities.

(4) Provide personnel supervision and management for the Ombudsman and representatives of the Office who are employees of the State agency, but such supervision shall not include review of files, records or other information maintained by the Office which could reveal the identity of any complainant or long-term care facility resident;

(5) Provide monitoring and oversight, including but not limited to fiscal monitoring, where the Ombudsman or representatives of the Office are hired by an agency or entity that is under contract or other arrangement with the State agency, but such monitoring shall not include review of files, records, or other information maintained by the Office which could reveal the identity of any complainant or long-term care facility resident; and

(6) Integrate the goals and objectives of the Office into the State plan; coordinate the goals and objectives of the Office with those of other programs established under Title VII of the Act and other State elder rights, disability rights, and elder justice programs, including legal assistance programs provided under section 306(a)(2)(C) of the Act, to promote collaborative efforts, diminish duplicative efforts, and, where applicable, require inclusion of goals and objectives related to representatives of the Office into area plans;

(7) Require the coordination of Ombudsman program services with the activities of other programs authorized by Title VII of the Act as well as other state and local entities responsible for the protection of vulnerable adults as set forth in § 1327.13(l); and

(8) Ensure that the Office has sufficient authority to perform its functions enumerated at § 1327.13 and duties enumerated at § 1327.17, and to make the determinations enumerated at § 1327.11(c). Failure to do so shall constitute interference as prohibited by section 712(j) of the Act.

(b) State policies, procedures or other mechanisms regarding access to records pursuant to section 712(b)(1) of the Act, shall:

(1) Reaffirm that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR Part 160 and Subparts A and E of Part 164, does not preclude release of residents' medical and social records to the Office, and

(2) Provide for representatives of the Office to have access to resident records, including when residents have guardians or other legal representatives.

(c) The State agency shall require the Office to:

(1) Prepare an annual report—

(i) Describing the activities carried out by the Office in the year for which the report is prepared;

(ii) Containing and analyzing the data collected under this paragraph (c);

(iii) Evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

(iv) Containing recommendations for—

(A) Improving quality of the care and life of the residents; and

(B) Protecting the health, safety, welfare, and rights of the residents;

(v)(A) Analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and

(B) Identifying barriers that prevent the optimal operation of the program; and

(vi) Providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;

(2) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3)(i) Provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding—

(A) The problems and concerns of older individuals residing in long-term care facilities; and

(B) Recommendations related to the problems and concerns; and

(ii) Make available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities, each report prepared under paragraph (c)(1) of this section;

(4)(i) Establish procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs as described in Section 201(d) of the Act, in consultation with representatives of citizen groups, long-term care providers, and the Office, that—

(A) Specify a minimum number of hours of initial training;

(B) Specify the content of the training, including training relating to—

(*1*) Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;

(*2*) Investigative techniques; and

(*3*) Such other matters as the State determines to be appropriate; and

(C) Specify an annual number of hours of in-service training for all designated representatives;

(5) Prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in § 1327.13(a)(1) through (8) unless the representative—

(i) Has received the training required under paragraph (c)(4) of this section; and

(ii) Has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;

(6) Coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under—

(i) Subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000; and

(ii) The Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.);

(7) Coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 306(a)(2)(C) of the Act, through adoption of memoranda of understanding and other means;

(8) Coordinate services with State and local law enforcement agencies and courts of competent jurisdiction; and

(9) Permit any local Ombudsman entity to carry out the responsibilities described in paragraph (c)(1), (2), (3), (6), or (7) of this section.

**§ 1327.17 Functions and duties of the Office of the State Long-Term Care Ombudsman.**

(a) An individual designated as a representative of the Office shall, in accordance with the policies and procedures established by the Office and the State agency:

(1) Provide services to protect the health, safety, welfare, and rights of residents;

(2) Ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;

(3) Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;

(4) Represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(5)(i) Review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and

(ii) Facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

(6) Support the development of resident and family councils; and

(7) Carry out other activities that the Ombudsman determines to be appropriate.

(b) *Complaint processing.* (1) With respect to identifying, investigating and resolving complaints, and regardless of the source of the complaint (i.e. complainant), the Ombudsman and/or the representatives of the Office serve the resident of a long-term care facility. The Ombudsman or representative of the Office shall investigate a complaint, including but not limited to a complaint related to abuse, gross neglect, or exploitation, for the purposes of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident.

(2) Regardless of the complainant who is the source of a complaint—

(i) The Ombudsman or representative of the Office shall personally discuss the complaint with the resident (or, where the resident is unable to communicate informed consent, wishes, or perspective, the resident's guardian or other legal representative) in order to:

(A) Determine the perception of the resident (or resident representative, where applicable) of the complaint,

(B) Request the resident (or resident representative, where applicable) to communicate informed consent in order to investigate the complaint,

(C) Determine the wishes of the resident (or resident representative, where applicable) with respect to resolution of the complaint, including whether allegations are to be reported to other appropriate agencies,

(D) Advise the resident (or resident's representative, where applicable) of the resident's rights,

(E) Work with the resident (or resident representative, where applicable) to develop a plan of action for resolution of the complaint,

(F) Investigate the complaint to determine whether the complaint can be verified, and

(G) Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable).

(ii) Where the resident is unable to communicate his or her perspective on the extent to which the matter has or has not been satisfactorily resolved, and where there is no legal representative, the Ombudsman or representative of the Office shall determine whether the complaint was resolved to the satisfaction of the complainant.

(3) The Ombudsman or representative of the Office may provide information regarding the complaint to another agency in order for such agency to substantiate the facts for regulatory, protective services, law enforcement, or other purposes so long as the Ombudsman or representative of the Office adheres to the disclosure requirements of section 712(d) of the Act and the procedures set forth in § 1327.15(a)(2)(C).

(i) Where the goals of a resident are for regulatory, protective services or law enforcement action, and the Ombudsman or representative of the Office determines that the resident has communicated informed consent to the Office, the Office must assist the resident in contacting the appropriate agency and/or disclose the information for which the resident has provided consent to the appropriate agency for such purposes.

(ii) In order to comply with the wishes of the resident, the Ombudsman and representatives of the Office shall not report suspected abuse, gross neglect or exploitation of a resident when a resident has not communicated informed consent to such report pursuant except as set forth in paragraphs (b)(5)–(7) of this section, notwithstanding state laws to the contrary.

(4) For purposes of paragraphs (b)(1)–(3) of this section, communication of informed consent may be made verbally, (and documented contemporaneously in writing by the representative of the Office) or in writing, including through the use of assistive technology.

(5) For purposes of paragraphs (b)(1)–(3) of this section, if a resident is unable to communicate his or her informed consent, or perspective on the extent to which the matter has or has not been satisfactorily resolved, the Ombudsman or representative of the Office may rely on the informed consent, or perspective on the extent to which the matter has or has not been satisfactorily resolved, of a guardian or other legal representative of the resident so long as the representative of the Office has no reasonable cause to believe that the guardian or other legal representative of the resident is not acting in the best interests of the resident.

(6) For purposes of paragraphs (b)(1)–(3) of this section, the procedures for disclosure may provide that, when the resident is unable to communicate informed consent to the Ombudsman or representative of the Office, has no guardian or other legal representative, and the Ombudsman or representative of the Office has reason to suspect that the resident is a victim of abuse, gross neglect, or exploitation; the Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and the representative obtains the approval of the Ombudsman, then the Ombudsman or representative of the Office may refer the matter and disclose the identity of the resident to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.

(7) For purposes of paragraphs (b)(1)–(3) of this section, the procedures for disclosure may provide that, when the resident is unable to communicate informed consent to the Ombudsman or representative of the Office; the resident has a guardian or other legal representative who the Ombudsman or representative of the Office has reasonable cause to believe is a perpetrator of abuse, gross neglect, or exploitation of the resident; the Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and the

representative obtains the approval of the Ombudsman, then the Ombudsman or representative of the Office may refer the matter and disclose the identity of the resident to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.

(8) The procedures for disclosure shall provide that, if the Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman or representative shall seek communication of informed consent from such resident to disclose the identity of the resident to appropriate agencies;

(i) Where such resident is able to communicate informed consent, or has a representative available to provide informed consent, the Ombudsman shall follow the direction of the resident (or representative, if applicable) as set forth paragraphs (b)(1)–(3) of this section; and

(ii) Where the resident is unable to communicate informed consent, and has no representative available to provide informed consent, the Ombudsman or representative of the Office shall open a case with the Ombudsman or representative of the Office as the complainant, follow the Ombudsman program's complaint resolution procedures, and (so long as the Ombudsman or representative has reasonable cause to believe that disclosure would be in the best interest of the resident and the representative obtains the approval of the Ombudsman) shall refer the matter and disclose the identity of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect or exploitation.

(iii) In addition, the Ombudsman may report the suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.

(c) *Coordination of Ombudsman activities with other elder rights, disability rights, and elder justice entities*—The Ombudsman and representatives of the Office shall coordinate Ombudsman program services with those of other state and local entities responsible for the protection of vulnerable adults for the purpose of promoting collaborative efforts and diminishing duplicative efforts in the development and carrying out of elder rights, disability rights, and elder justice programs. Such entities shall include, but not be limited to:

(1) Area agency on aging programs;

(2) Adult protective services programs;

(3) Protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under subtitle C of Title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000; and the Protection and Advocacy of Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 *et seq.*);

(4) Facility and long-term care provider licensure and certification programs;

(5) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));

(6) Victim assistance programs;

(7) Consumer protection and State and local law enforcement programs; as well as other State and local programs that identify and assist vulnerable adults and services provided by agencies and courts of competent jurisdiction; and

(8) Legal assistance programs provided under section 306(a)(c) of the Act.

(d) *Lobbying activities.* In carrying out the functions and duties of the Office set forth in §§ 1327.13(a) and 1327.17(a) and pursuant to the receipt of grant funds under the Act, the Ombudsman's provision of information, recommendations of changes of laws to legislators, and recommendations of changes of regulations and policies to government agencies, do not constitute lobbying activities as defined by 45 CFR Part 93.

**§ 1327.19 Conflicts of interest.**

The State agency shall consider both the organizational and individual conflicts that may impact the effectiveness and credibility of the work of the Office. In so doing, it shall identify actual and potential conflicts and, where a conflict has been identified, shall remove or remedy such conflict as set forth in paragraphs (b) and (d) of this section.

(a) *Identification of organizational conflicts.* In identifying conflicts of interest pursuant to section 712(f) of the Act, the State agency shall consider the organizational conflicts that may impact the effectiveness and credibility of the work of the Office. Organizational conflicts of interest include, but are not limited to, placement of the Office in an organization that:

(1) Is responsible for licensing, surveying, or certifying long-term care facilities;

(2) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;

(3) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility;

(4) Has governing board members with ownership, investment or employment interest in long-term care facilities;

(5) Provides long-term care services, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;

(6) Provides long-term care coordination or case management;

(7) Sets reimbursement rates for long-term care services;

(8) Provides adult protective services;

(9) Is responsible for Medicaid eligibility determinations;

(10) Conducts preadmission screening for long-term care residential placements;

(11) Makes decisions regarding admission or discharge of individuals to or from long-term care facilities; or

(12) Provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities.

(b) *Removing or remedying organizational conflicts.* The State agency shall identify and remove or remedy conflicts of interest between the Office and the State agency or other agency carrying out the Ombudsman program.

(1) Where the Office is located within or otherwise organizationally attached to the State agency, the State agency shall:

(i) Take reasonable steps to avoid internal conflicts of interest;

(ii) Establish a process for review and identification of internal conflicts;

(iii) Take steps to remove or remedy conflicts;

(iv) Ensure that no individual, or member of the immediate family of an individual involved in the designating, appointing, otherwise selecting or terminating the Ombudsman is subject to a conflict of interest; and

(v) Assure that the Ombudsman has disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.

(2) Where a State agency is unable to adequately remove or remedy a conflict, it shall carry out the Ombudsman program by contract or other arrangement with a public agency or

nonprofit private organization, pursuant to section 712(a)(4) of the Act. The State agency may not operate the Office directly if it:

(i) Is responsible for licensing, surveying, or certifying long-term care facilities;

(ii) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities; or

(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service.

(3) Where the State agency carries out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act, the State agency shall:

(i) Prior to contracting or making another arrangement, take reasonable steps to avoid conflicts of interest in such agency or organization which is to carry out the Ombudsman program;

(ii) Establish a process for periodic review and identification of conflicts in the agency or organization;

(iii) Require that such agency or organization have a process in place to:

(A) Take reasonable steps to avoid conflicts of interest, and

(B) Disclose such conflicts and steps taken to remove or remedy conflicts to the State agency for review and approval; and

(iv) Establish a process for State agency review of and criteria for approval of steps taken to remove or remedy conflicts in such agency or organization; and

(4) Where an agency or organization carrying out the Ombudsman program by contract or other arrangement develops a conflict and is unable to adequately remove or remedy a conflict, the State agency shall either operate the Ombudsman program directly or by contract or other arrangement with another public agency or nonprofit private organization. The State agency may not enter into such contract or other arrangement with an agency or organization which is responsible for licensing or certifying long-term care services in the state or is an association (or affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals.

(5) Where local Ombudsman entities provide Ombudsman services, the Ombudsman shall:

(i) Establish a process for periodic review and identification of conflicts in such entities,

(ii) Require disclosure of conflicts to the Ombudsman by such entities,

(iii) Establish a process for review of and criteria for approval of plans to remove or remedy conflicts in such entities; and

(iv) Prior to designating or renewing designation, take reasonable steps to assure that any conflicts of interest in such entities have been removed or remedied,

(6) Failure of a local Ombudsman entity to disclose a conflict to the Office or inability to adequately remove or remedy a conflict shall constitute grounds for de-designation of a local Ombudsman entity by the Ombudsman.

(c) *Identifying individual conflicts of interest.* (1) In identifying conflicts of interest pursuant to section 712(f) of the Act, the State agency shall consider individual conflicts that may impact the effectiveness and credibility of the work of the Office.

(2) Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate family include, but are not limited to:

(i) Direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(ii) Ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service;

(iii) Employment of an individual by, or participation in the management of, a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area within the previous year;

(iv) Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;

(v) Accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident or a resident representative;

(vi) Accepting money or any other consideration from anyone other than the Office or an entity designated by the Ombudsman for the performance of an act in the regular course of the duties of the Ombudsman or the representatives of the Office without Ombudsman approval;

(vii) Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in the service area;

(viii) Serving residents of a facility in which an immediate family member resides; and

(ix) Participating in activities which negatively impact on the ability of the Ombudsman or the representatives of the Office to serve residents or are likely to create a perception that the primary interest of the Ombudsman or the representatives of the Office is other than as a resident advocate.

(d) *Removing or remedying individual conflicts.* (1)The State agency shall develop and implement policies and procedures to ensure that no Ombudsman, representatives of the Office, or officer of the Office, are required to perform duties that would constitute a conflict of interest as set forth in § 1327.19(c).

(2) When the State agency is considering the employment of an individual as the Ombudsman or a representative of the Office the State agency shall:

(i) Take reasonable steps to avoid hiring an individual who has a conflict of interest or who has a member of the immediate family with a conflict of interest;

(ii) Establish a process for periodic review and identification of conflicts of the Ombudsman and representatives of the Office, and

(iii) Take steps to remove or remedy conflicts.

(3) Where the candidate for Ombudsman or representative of the Office has a conflict that cannot be adequately removed or remedied, the State agency may not employ such candidate.

(4) Where the Office is operated by another public agency or a nonprofit private organization, and/or where local Ombudsman entities employ representatives of the Office, the State agency shall ensure that the agency organization, or entity has policies in place to prohibit hiring of an Ombudsman or representatives of the Office with a conflict that cannot be adequately removed or remedied.

(5) In no circumstance may the State agency; where applicable, the public agency or non-profit private organization which carries out the program; or a local Ombudsman entity employ an individual as the Ombudsman or representative of the Office who:

(i) Has had direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service within the previous year;

(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service. Divestment within a reasonable

period may be considered an adequate remedy to this conflict;

(iii) Has been employed by, or participating in the management of, a long-term care facility within the previous year; or

(iv) Receives, or has the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility.

(6) Where the Ombudsman or representative of the Office acquires a conflict that cannot be adequately removed or remedied, the State agency; where applicable, the public agency or non-profit private organization which carries out the program; or a local Ombudsman entity, may not continue to employ the individual as the Ombudsman or representative of the Office.

(7) The State agency shall ensure that policies and procedures are in place so that, in designating representatives of the Office, the Ombudsman shall:

(i) Take reasonable steps to avoid designation of an individual who has a conflict of interest or who has a member of the immediate family with a conflict of interest;

(ii) Establish a process for periodic review and identification of conflicts of the representatives; and

(iii) Take steps which remove or remedy individual conflicts.

## Subpart B—[Reserved]

[FR Doc. 2013–14325 Filed 6–14–13; 11:15 am]

BILLING CODE 4150–04–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 1 and 20

**[GN Docket No. 13–111; RM–11430; ET Docket No. 08–73; WT Docket No. 10–4; PRM09WT; PRM11WT; FCC 13–58]**

## Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission proposes rules to encourage the development of multiple technological solutions to combat the use of contraband wireless devices in correctional facilities nationwide. Specifically, the Commission proposes rule modifications to facilitate spectrum lease agreements between wireless providers and providers or operators of managed access systems. The Commission further proposes to require wireless providers to terminate service to a contraband wireless device if an authorized correctional facility official notifies the provider of the presence of the contraband wireless device within the correctional facility. The Commission seeks comment on these proposals as well as other technological approaches for addressing the problem of contraband wireless device usage in correctional facilities.

**DATES:** Interested parties may file comments on or before July 18, 2013, and reply comments on or before August 2, 2013.

**ADDRESSES:** You may submit comments, identified by GN Docket No. 13–111, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and GN Docket No. 13–111.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Generally 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. Note that while multiple dockets are listed in the caption, commenters are only required to file copies in GN Docket No. 13–111.

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 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.
- In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com.*

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Melissa Conway, *Melissa.Conway@fcc.gov* or (202) 418–2887, of the Wireless Telecommunications Bureau, Mobility Division.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking (*NPRM*), FCC 13–58, adopted on April 29, 2013, and released on May 1, 2013, in GN Docket No. 13–111; RM–11430; ET Docket No. 08–73; WT Docket No. 10–4; PRM09WT; PRM11WT; and FCC 13–58. The full text of the *NPRM* and copies of any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplication contractor at its Web site, *www.bcpiweb.com,* or by calling (202) 488–5300. Document can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill.*

Pursuant to 47 CFR 1.1200 *through 1.1216,* this matter 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 section 1.1206(b) of the Commission's rules. In proceedings governed by section 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.

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 Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

**Initial Paperwork Reduction Act of 1995**

The *NPRM* seeks comment on potential new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

**Synopsis**

1. In the *NPRM,* the Commission proposes measures to facilitate the development of multiple technological solutions to combat the use of contraband wireless devices in correctional facilities nationwide. Prisoners' use of contraband wireless devices to engage in criminal activity is a serious threat to the safety of prison employees, other prisoners, and the general public. The Commission proposes a series of modifications to its rules to facilitate spectrum lease agreements between wireless providers and providers or operators of managed access systems used to combat contraband wireless devices. The *NPRM* also seeks comment on the Commission's proposal to require wireless providers to terminate service, if technically feasible, to a contraband wireless device if an authorized correctional facility official notifies the wireless provider of the presence of the contraband wireless device within the correctional facility. While the Commission is limiting its proposals to managed access and detection solutions, the Commission nevertheless invites comment on other technological approaches for addressing the problem of contraband wireless device use in correctional facilities. For each proposal, the Commission requests specific comment regarding costs and benefits.

**Streamlining Authorization of Leases for Managed Access Systems for Use in Correctional Facilities**

2. Managed access systems are micro-cellular, private networks that analyze transmissions to and from wireless devices to determine whether the device is authorized or unauthorized for purposes of accessing public carrier networks. Authorized devices are allowed to communicate normally with the commercial wireless network, while transmissions to or from unauthorized devices are terminated. To date, wireless providers and managed access providers have used spectrum lease agreements to negotiate the transfer of rights for such systems and have sought approval or provided notification of such agreements under the Commission's spectrum leasing rules. Additionally, the managed access lessee typically seeks to modify its regulatory status from commercial mobile radio service (CMRS) to private mobile radio service (PMRS), which requires additional filings and results in processing delays. The Commission proposes rule and procedural changes to facilitate a streamlined application process for spectrum leases entered into exclusively to combat the use of unauthorized wireless devices in correctional facilities.

3. The Commission proposes to modify its rules and procedures to make qualifying leases for managed access systems in correctional facilities subject to immediate processing and approval. The Commission proposes to immediately process long-term *de facto* lease applications and spectrum manager notifications for managed access systems, even in cases where grant of multiple lease applications would result in the lessee holding geographically overlapping spectrum rights or where the license involves spectrum subject to designated entity unjust enrichment provisions or entrepreneur transfer restrictions. Pursuant to this proposal, grant or acceptance of qualifying managed access leases would be indicated the following business day on the Commission's Universal Licensing System. The accepted lease would then be effective upon the date set forth by the licensee and lessee in the lease application or notification. The Commission seeks comment on the rule changes necessary to implement this proposal.

4. Specifically, the Commission seeks comment on its proposal to require applications or notifications for managed access leases to meet the completeness standards set forth in its existing spectrum leasing rules. Licensees and lessees would continue to file Form 608, and would be required to complete all relevant fields and certifications on the form. If an application or notification is sufficiently complete but the responses or certifications raise questions regarding the lessee's eligibility or qualification to hold spectrum, the Commission proposes that the application or notification will not be eligible for immediate approval or processing consistent with the Commission's current processes. The Commission proposes to modify Form 608 to allow managed access providers and CMRS licensees to identify that a proposed lease is a managed access lease exclusively for a system in a correctional facility, and to require managed access providers to attach a written certification explaining the nature of the managed access system, including the location of the correctional facility, the provider's relationship to the facility, and the exact proposed coordinates of the leased spectrum boundaries. Regarding enforcement mechanisms, the Commission seeks comment on its proposal to continue to apply existing spectrum leasing rules to managed access leases, and whether these protections are sufficient to ensure rule compliance in the context of Commission authorization of managed

access systems deployed to combat contraband phone use, and whether any additional conditions or alternative mechanisms are required to further the public interest. The Commission also seeks comment on whether managed access operators should be encouraged or required to provide notification to households and businesses in the vicinity of the correctional facility in which a managed access system is installed and how such a process would be implemented.

5. The Commission proposes to amend section 20.9 of its rules to establish that managed access services in correctional facilities provided on spectrum leased from CMRS providers will be presumptively treated as PMRS. The Commission proposes to require the lessee to certify on the application or notification that the leased spectrum will be used solely for the operation of a managed access system at a correctional facility. However, a managed access lessee would retain the option of applying for CMRS status by including an exhibit to Form 608 demonstrating that the service meets the CMRS definition or is the functional equivalent of CMRS. The Commission seeks comment on this proposal, and also whether it should apply the Commission's 911 and enhanced 911 (E911) rules to managed access services that provide access to 911 and E911.

6. The Commission seeks comment on its proposal to exercise forbearance in order to immediately process *de facto* leases for managed access systems in correctional facilities that do not raise concerns with use and eligibility restrictions, that do not require a waiver or declaratory ruling with respect to a Commission rule, but that do involve leases of spectrum in the same geographic area or involve designated entity unjust enrichment provisions and transfer restrictions. Specifically, the Commission proposes to forbear from the applicable prior public notice requirements and individualized review requirements of sections 308, 309, and 310(d) of the Communications Act (''the Act''). The Commission also seeks comment on a proposal to streamline the process for a managed access provider to obtain special temporary authority to operate a managed access system in a correctional facility prior to obtaining a more permanent authorization.

7. The Commission also seeks comment generally on proposals submitted by Global Tel*Link Corp. (filed July 20, 2011), the Mississippi Department of Corrections (filed Aug. 21, 2009), and Tecore Networks (comments filed in GN Docket No. 12–52 on Apr. 30, 2012) and the extent to which they may be incorporated into the *NPRM*'s lease processing and approval proposals.

**Detection**

8. In addition to the Commission's proposals regarding streamlining the lease application process for managed access systems, the Commission seeks comment on proposals to facilitate the deployment of detection systems. Detection systems generally identify the location of a contraband wireless device through triangulation, and then correctional facility employees search for and physically confiscate the identified contraband device to terminate operations. Detection system operators do not require a FCC license or authorization. The Commission seeks comment on a proposal submitted by CellAntenna (filed Sept. 2, 2011) that consists of a three step plan: first, the correctional facility identifies unauthorized wireless devices within the facility; second, the warden transmits the identifying information of the contraband device to the appropriate CMRS provider via email or fax; and third, the CMRS provider sends a message to the unauthorized device notifying the user that the device is unauthorized and suspends service to the device.

9. Consistent with CellAntenna's proposal, the Commission proposes to require CMRS licensees to terminate service to contraband devices within correctional facilities pursuant to a qualifying request from an authorized party. The Commission seeks comment on the specific information that the correctional facility must transmit to the provider to effectuate termination, timing for carrier termination, methods of authenticating a termination request, and other issues. The Commission also seeks specific comment on the cost burdens that a carrier would face in establishing the reporting mechanisms, technical upgrades, if any, operational enhancements, and personnel training necessary to handle requests for termination. In addition, to the extent that carriers incur such costs to support requests for termination, the Commission seeks comment on mechanisms by which carriers could recoup the initial and ongoing expense of complying with a requirement to terminate service to contraband devices.

10. With regard to identifying contraband devices, according to CellAntenna, when a variety of unique identifying information about the device is transmitted to the device's CMRS provider, the CMRS provider can identify the device in its systems and terminate service to the device. The Commission seeks comment on CellAntenna's technical analysis and on any safeguards that may be necessary to protect against the unlikely event that an authorized device outside of the correctional facility is detected.

11. Additionally, the Commission seeks comment on whether contraband wireless devices identified by CellAntenna's technology and other technologies, including managed access systems, have the requisite characteristics, including accuracy, to identify contraband wireless devices for purposes of service termination while avoiding incorrect identification of legitimate devices. Should the Commission establish minimum performance standards for detection systems or encourage voluntary commitments? How would the Commission verify that an entity meets such a standard? Alternatively, to the extent that detection equipment requires FCC certification, the Commission could impose technical accuracy standards through the equipment certification process. The Commission seeks comment on these alternatives, and on their costs and benefits.

12. The Commission seeks comment on a number of issues surrounding the process of requesting termination of service to contraband devices. Specifically, would correctional facilities have greater operational flexibility if an authorized agent were able to make the formal termination request? What criteria should be used to determine the authorized correctional facility personnel? Would such criteria be an adequate safeguard against the transmission of inaccurate information to a carrier? Do different carriers and different wireless technologies require different information to identify and terminate service to a device? Do the requirements differ for resellers or small wireless providers relative to large wireless providers? Are all types of detection equipment and systems capable of capturing the identical suite of information? The Commission seeks comment on any electronic or other means in addition to email and fax that would be an acceptable way for a correctional facility to transmit a termination request.

13. With regard to the process of terminating service to contraband devices, the Commission seeks comment on a variety of issues. Should the Commission establish set intervals or times at which a correctional facility or detection provider can transmit batch termination requests to a carrier? Is it relevant if both the carrier and correctional facility have automated

systems for requesting termination and terminating service to contraband wireless devices? Are there specific issues to consider with respect to processing termination requests by small or rural CMRS providers? What role could the database being developed by the wireless industry to identify and terminate service to stolen smartphones play in this process? Could participating wireless providers reduce implementation costs by relying on existing technologies and processes? The Commission seeks comment on ways that a correctional facility with a detection system will be able to identify the appropriate individual or group within a carrier to transmit termination requests. Alternatively, is there a common interface that could be used to automate the transmission and processing of the termination request? The Commission also seeks comment on the best means for a carrier to acknowledge receipt of a termination request. Could confirmation that termination occurred within any set timeframe be sufficient?

14. The Commission seeks comment on the processes and costs for a carrier to terminate service to unauthorized devices, and the costs for a carrier, correctional facility, or third party detection provider to implement procedures and technologies to ensure that disruption of service to legitimate wireless users is minimized or prevented. If the Commission requires the carrier to send a message as CellAntenna proposes, would it be necessary or feasible to provide a vehicle through which the user of the alleged contraband device could demonstrate that the pending termination is in error? Are there other intermediary steps a carrier could take to attempt to confirm that service is being terminated to a contraband device and not a legal device? Are there any costs associated with sending such notification and, if so, who should bear them? CellAntenna proposes to require the carrier to suspend service to the device within one hour after receipt of notification. The Commission seeks comment on whether this interval is appropriate. Would some carriers, for example small or rural providers, require additional time relative to larger carriers? Does the time period affect the cost of compliance with these proposals?

15. The Commission seeks comment on its belief that is has authority pursuant to section 303 of the Act to require CMRS providers to terminate service to contraband wireless devices. The Commission also seeks comment on the possible effectiveness of voluntary carrier participation in an industry wide effort to terminate service to contraband wireless devices.

**Applicability of Prohibitions on Intercepting and Publishing Communications and on the Use of Pen Register and Trap and Trace Devices**

16. The Commission seeks comment on the extent to which providers or operators of managed access or detection systems comply with section 705 of the Act if they divulge or publish the existence of a communication for the purpose of operating the system, and whether such providers or operators are entitled to receive communications under section 705 of the Act. The Commission also seeks comment on whether any of the proposals regarding detection and managed access systems would implicate the pen registers and trap and trace devices chapter of Title 18 of the U.S.C. and, to the extent that a proposal would implicate that chapter, could the consent exception nevertheless permit operation of a device?

**Other Technological Solutions**

17. Although the Commission does not propose any measures beyond those designed to facilitate the use and improve the efficacy of managed access and detection systems for addressing the problem of contraband wireless devices in correctional facilities, the Commission invites comment on other technological solutions, whether discussed in previously filed documents summarized in the *NPRM,* or set out in comments filed in response to the *NPRM.*

**Initial Regulatory Flexibility Act Analysis**

18. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines indicated in the **DATES** section of this document. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**Need for, and Objectives of, the Proposed Rules**

19. The rules proposed in the *NPRM* are necessary to improve the viability of different technologies used to combat contraband wireless devices in correctional facilities. Prisoners can use contraband wireless devices to engage in criminal activity such as arranging the delivery of contraband drugs or other goods, transmitting information on prison staff to or from non-inmates, and harassing witnesses or other individuals. These activities threaten the safety of prison employees, other prisoners, and the general public.

20. The proposed rules seek to improve the viability of technologies that detect wireless devices in correctional facilities and that can block transmissions to or from unauthorized wireless devices in correctional facilities. First, the Commission proposes to streamline the process for approving or accepting spectrum lease applications or notifications for spectrum leases entered into for managed access systems used in correctional facilities under its leasing procedures in part 1 of its rules. Second, the Commission proposes to require CMRS providers to terminate service to contraband wireless devices in correctional facilities that have been identified by a detection system. While not proposing any rule or process changes with respect to other possible wireless device interdiction technologies, the Commission seeks comment on other possible solutions.

**Legal Basis**

21. The legal basis for any action that may be taken pursuant to the *NPRM* is contained in sections 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332.

**Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

22. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term ''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. Under the Small Business Act, a ''small business concern'' is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) meets any additional criteria established by the SBA.

23. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

24. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

25. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the *NPRM.*

26. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the *NPRM.*

27. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the *NPRM.*

28. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the *NPRM.*

29. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to the Commission's data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

30. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

31. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In

2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

32. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (AWS) licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (AWS–1). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

33. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

34. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

35. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

36. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses, identified as ''entrepreneur'' and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

37. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order,* at 72 FR 48814, Aug. 24, 2007. The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with

attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

38. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

39. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

40. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point 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.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the *NPRM.*

41. The second category of Other Telecommunications ''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 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by the *NPRM.*

42. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category to include: ''establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).'' In this category, the SBA deems a business manufacturing other communications equipment to be small if it has 750 or fewer employees. For this category of manufacturers, Census data for 2007 show that there were 452 establishments that operated that year. Of the 452 establishments, 4 had 500 or greater employees. Accordingly, the Commission estimates that a substantial majority of the manufacturers of equipment used to provide interoperable and other video-conferencing services are small.

43. *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 a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 17 had 1,000 or more employees and 27 had 500 or more employees. Thus, under this size standard, the majority of firms can be considered small.

44. *Engineering Services.* The Census Bureau defines this category to include: ''establishments primarily engaged in applying physical laws and principles of engineering in the design, development, and utilization of machines, materials, instruments, structures, process, and systems.'' The SBA deems engineering services firms to be small if they have $4.5 million or less in annual receipts, except military and aerospace equipment and military weapons engineering establishments are deemed small if they have $27 million or less an annual receipts. According to Census Bureau data for 2007, there were 58,391 establishments in this category that operated the full year. Of the 58,391 establishments, 5,943 had $5 million or greater in receipts and 2,892 had $10 million or more in annual receipts. Accordingly, the Commission estimates that a majority of engineering service firms are small.

45. *Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System Instrument Manufacturing.* The Census Bureau defines this category to include ''establishments primarily engaged in manufacturing direction, navigation, guidance, aeronautical, and nautical systems and instruments.'' The SBA deems Search, Detection, Navigation, Guidance, Aeronautical, and Nautical and Instrument Manufacturing firms to be small if they have 750 or fewer employees. According to Census Bureau data for 2007, there were 647 establishments in operation in that year. Of the 647 establishments, 36 had 1,000 or more employees, and 50 had 500 or more employees. Accordingly, the Commission estimates that a majority of firms in this category are small.

46. *Security Guards and Patrol Services.* The Census Bureau defines this category to include ''establishments primarily engaged in providing guard and patrol services.'' The SBA deems security guards and patrol services firms to be small if they have $18.5 million or less in annual receipts. According to

Census Bureau data for 2007, there were 9,198 establishments in operation the full year. Of the 9,198 establishments, 355 had greater than $10 million in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.

47. *All Other Support Services.* The Census Bureau defines this category to include ''establishments primarily engaged in providing day-to-day business and other organizations support services.'' The SBA deems all other support services firms to be small if they have $7 million or less in annual receipts. According to Census Bureau data for 2007, there were 14,539 establishments in operation the full year. Of the 14,539 establishments, 273 had $10 million or more in annual receipts, and 639 had $5 million or greater in annual receipts. Accordingly, the Commission estimates that a majority of firms in this category are small.

**Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

48. In the *NPRM,* the Commission seeks comment regarding rule changes to improve the viability of technologies used to combat contraband wireless devices in correctional facilities. The rules are prospective in that they only apply if an entity avails itself of managed access or detection technologies. There are two classes of small entities that may be impacted; providers of wireless services, and providers or operators of managed access or detection systems used in correctional facilities.

49. The proposed rules streamline the process for leasing spectrum to be used in a managed access system in correctional facilities, and require CMRS providers to terminate service to identified contraband wireless devices. With respect to rule changes to streamline the spectrum leasing process for managed access systems, the proposed rules do not directly impose any new recordkeeping requirements. To the extent that filing a form seeking approval or providing notification of a lease entered into for a managed access system is a reporting requirement, the proposed rules streamline reporting requirements.

50. Under current rules, the licensee and lessee of spectrum must file Form 608 seeking approval or providing notification of a lease. Due to existing leasing rules intended to protect competition, any lease notification or application for a managed access system filed after the first will likely result in a protracted application or notification review, because subsequent applications or notifications will be for spectrum covering identical geographic areas that could be used to provide an interconnected mobile service.

51. The Commission's proposed rule changes streamline the application review process by allowing entities to certify that the application or notification is for a managed access system in a state or local correctional facility. The proposed rules will require entities to attach a new certification explaining the nature of the managed access system, including the location of the correctional facility, the lessee's relationship to the correctional facility, and the exact coordinates of the leased spectrum boundaries. While this may qualify as a reporting requirement, absent the rule lessees would still be required to identify the specific coordinates of the leased spectrum area in an attachment to Form 608. Therefore, to the extent this qualifies as a reporting requirement, the impact is neutral, if not positive.

52. The proposed rules will streamline the filing requirements for managed access providers that seek to modify the lease to indicate that the service offering is a PMRS. Under current processes, the lessee is presumed to be offering the same services as the licensee, and in managed access leases, the lessor likely provides a CMRS. Therefore, to modify the service offering to PMRS, the lessee must first file a lease application, and once the lease application is approved, it has to file to modify the lease to establish that the service is PMRS. Under the proposal in the *NPRM,* managed access leases would presumptively be PMRS, thereby eliminating the need to file a modification.

53. The *NPRM* also seeks comment on whether to require the managed access provider to provide notice to the households or businesses surrounding a correctional facility prior to activating the system. If the Commission adopts this requirement, it would be a new obligation that would consume some level of resources to identify the relevant households or businesses, generate a notice letter, mail the letter, and provide staff for any possible responses to the letter.

54. The proposed rules governing detection systems may impose new recordkeeping requirements and will impose new compliance requirements for CMRS providers and operators of detection systems. The proposed rules will require CMRS providers to terminate service to identified contraband wireless devices in correctional facilities. To the extent that any correctional facility installs and operates a system that can identify the relevant information necessary to terminate service to an identified contraband wireless device—therefore triggering CMRS providers' obligations—CMRS providers would have to implement some type of internal process to terminate service to the contraband devices. This will likely require the allocation of resources to create the system, including some level of additional staffing necessary to meet the obligations under this requirement.

55. Additionally, the Commission seeks comment on the process for transmitting termination requests, including how the information that must be included in a termination request. It is possible that an outgrowth of the questions asked and responses received could result in specific requirements for the form in which the request is transmitted, including the type of information that is required. This may also require some level of recordkeeping to ensure that service to contraband devices, and not to legitimate devices, is terminated. To the extent the rules do impose these requirements, they will be necessary to ensure that legitimate wireless users are not impacted by operation of the system, which should be the minimum performance objective for any detection system. Therefore, while a specific form in which the termination request must be transmitted may impose some compliance or recordkeeping obligations, they are a necessary predicate for the operation of a detection system.

**Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

56. 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.

57. The proposed rules govern systems and technologies that are not widely deployed in the marketplace. To date, only two managed access system that have received Commission

authorization or approval are operational. Similarly, while there are detection systems in active use in correctional facilities, there are no current rules that require CMRS providers to terminate service to contraband devices identified by detection systems.

58. The Commission seeks comment on the impact of some of its proposals, specifically with respect to the proposal to require CMRS providers to terminate service to identified contraband wireless devices, on small businesses. Commenters are asked whether small entities face any special or unique issues with respect to terminating service to devices, and whether they would require additional time to take such action.

59. Historically, the Commission's license applications are not modified for small entities, and the Commission does not propose to do so in the *NPRM* for the proposed modification of Form 608 for managed access leases. Sections 308, 309, and 310(d) of the Act require the Commission to determine whether licensing transactions are in the public interest. This analysis requires the same type of information regardless of the size of the entity.

60. The *NPRM,* while it discusses at length the general design of managed access and detection systems, does not directly require or propose to require any specific design standard. However, the *NPRM* does ask whether a specific performance standard may be necessary to ensure the accuracy of detection systems. The *NPRM* asks whether the standard should differ between rural and urban areas, or between large and small detection system providers or operators.

61. The *NPRM* does not propose any exemption for small entities. The Commission finds an overriding public interest in preventing the illicit use of contraband wireless devices by prisoners to perpetuate criminal enterprises, and a strong public interest obligation for the transfer of spectrum rights. Managed access providers must meet the necessary filing requirements for the Commission to meet its obligations under the Act. Further, to the extent that a small entity could be exempt from the proposed service termination requirement, it would reduce the overall effectiveness of a detection system. If inmates discover that a wireless provider whose service area includes the correctional facility does not terminate service to found devices within the facility, inmates will accordingly use only that service.

**Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules**

62. The *NPRM* seeks comment on the application and relevance of section 705 of the Act and Title 18 of the U.S. Code.

**Ordering Clauses**

63. Pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332, the *NPRM* IS ADOPTED.

64. Pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 303, and sections 1.2 and 1.407 of the Commission's rules, 47 CFR 1.2, 1.407, the petitions listed in the caption of the *NPRM* are *granted* to the extent indicated herein, and otherwise *denied.*

65. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Parts 1 and 20**

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications, Commercial mobile radio service.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 20 as follows:

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, Cable Landing License Act of 1921, 47 U.S.C. 35–39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96.

■ 2. Amend § 1.931 by revising paragraph (a)(1) and adding paragraph (a)(2)(v) to read as follows:

**§ 1.931 Application for special temporary authority.**

(a) *Wireless Telecommunications Services.* (1) In circumstances requiring immediate or temporary use of station in the Wireless Telecommunications Services, carriers may request special temporary authority (STA) to operate new or modified equipment. Such requests must be filed electronically using FCC Form 601 and must contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA. Such requests should be filed in time to be received by the Commission at least 10 days prior to the date of proposed operation or, where an extension is sought, 10 days prior to the expiration date of the existing STA. Requests received less than 10 days prior to the desired date of operation may be given expedited consideration only if compelling reasons are given for the delay in submitting the request. Otherwise, such late-filed requests are considered in turn, but action might not be taken prior to the desired date of operation. Requests for STA for operation of a station used in a managed access system, as defined in § 1.9003 (47 CFR 1.9003), may be received one day prior to the desired date of operation. Requests for STA must be accompanied by the proper filing fee.

(2) * * *

(v) The STA is for operation of a station used in a managed access system, as defined in § 1.9003.

■ 3. Amend § 1.9003 by adding the definition *Managed access system* in alphabetical order to read as follows:

**§ 1.9003 Definitions.**

* * * * *

*Managed access system.* A managed access system is a system comprised of one or more stations operating under a license, or lease arrangement entered into exclusively for the operation of such system, and is used in a correctional facility exclusively to prevent transmissions to or from unauthorized wireless devices within the boundaries of the facility.

* * * * *

■ 4. Amend § 1.9020 by revising paragraph (e)(2) introductory text, redesignating paragraphs (e)(2)(ii) and (e)(2)(iii) as paragraphs (e)(2)(iii) and (e)(2)(iv), respectively, and adding new paragraph (e)(2)(ii) to read as follows:

**§ 1.9020 Spectrum manager leasing arrangements.**

* * * * *

(e) * * *

(2) *Immediate processing procedures.* Notifications that meet the requirements of paragraph (e)(2)(i) of this section, and notifications for managed access systems as defined in § 1.9003 that meet the requirements of paragraph (e)(2)(ii)

of this section, qualify for the immediate processing procedures.

* * * * *

(ii) A lessee of spectrum used in a managed access system qualifies for these immediate processing procedures if the notification is sufficiently complete and contains all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for notifications processed under the general notification procedures set forth in paragraph (e)(1)(i) of this section, and must not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

* * * * *

■ 5. Amend § 1.9030 by revising paragraph (e)(2) introductory text, redesignating paragraphs (e)(2)(ii) and (e)(2)(iii) as paragraphs (e)(2)(iii) and (e)(2)(iv), respectively, and adding new paragraph (e)(2)(ii) to read as follows:

**§ 1.9030 Long-term *de facto* transfer leasing arrangements.**

* * * * *

(e) * * *

(2) *Immediate processing procedures.* Applications that meet the requirements of paragraph (e)(2)(i) of this section, and notifications for managed access systems as defined in § 1.9003 that meet the requirements of paragraph (e)(2)(ii) of this section, qualify for the immediate approval procedures.

* * * * *

(ii) A lessee of spectrum used in a managed access system qualifies for these immediate approval procedures if the notification is sufficiently complete and contains all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for notifications processed under the general notification procedures set forth in paragraph (e)(1)(i) of this section, and must not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

* * * * *

## PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 6. The authority citation for part 20 continues to read as follows:

**Authority:** 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316 and 332 unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302.

■ 7. Amend § 20.9 by revising paragraph (b) introductory text, and adding paragraph (d), to read as follows:

**§ 20.9 Commercial mobile radio service.**

* * * * *

(b) Except as set forth in paragraph (d) of this section, licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and VHF Public Coast Station geographic area licensees or applicants, and Automated Maritime Telecommunications System (AMTS) licensees or applicants, proposing to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service, VHF Public Coast, and AMTS Stations are commercial mobile radio services.

* * * * *

(d)(1) A service provided over a managed access system, as defined in § 1.9003 of this chapter, is presumed to be a private mobile radio service;

(2) A party providing service over a managed access system, as defined in § 1.9003 of this chapter, may seek to overcome the presumption that such service is a private mobile radio service by attaching a certification to a lease application or notification certifying that the mobile service in question meets the definition of commercial mobile radio service, or the mobile service in question is the functional equivalent of a service that meets the definition of a commercial mobile radio service. The party may also seek to overcome the presumption through the process set forth in paragraph (a)(14)(ii) of this section.

■ 8. Add § 20.22 to read as follows:

**§ 20.22 Service termination upon notice of an unauthorized user.**

CMRS providers are required to terminate service to any device identified by a qualifying authority as unauthorized within the confines of a correctional facility.

[FR Doc. 2013–14405 Filed 6–17–13; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 79

**[MB Docket No. 12–108; FCC 13–77]**

## Accessibility of User Interfaces, and Video Programming Guides and Menus

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, we propose new rules to ensure that user interfaces, and video programming guides, and menus provided by digital apparatus and navigation devices are accessible to people who are blind or visually impaired. We also propose new rules to require activation of closed captioning and accessibility features via a mechanism that is reasonably comparable to a button, key, or icon. Finally, we propose to modernize our apparatus rules by eliminating the outdated requirement that manufacturers label analog television sets based on whether they include a closed-caption decoder and by renaming our rules.

**DATES:** Submit comments on or before July 15, 2013. Submit reply comments on or before August 7, 2013.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov,* or Adam Copeland, *Adam.Copeland@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking,* FCC 13–77, adopted on May 30, 2013 and released on May 30, 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., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, 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. To request these documents in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

### Summary of the Notice of Proposed Rulemaking

1. With this Notice of Proposed Rulemaking (''NPRM''), we begin our implementation of sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act (''CVAA''). These sections generally require that user interfaces on digital apparatus and navigation devices used to view video programming be accessible to and usable by individuals who are blind or visually impaired. Both of these sections

also require that these devices provide a mechanism that is ''reasonably comparable to a button, key, or icon designated for activating'' certain accessibility features. As set forth below, we seek comment on whether to interpret section 205 of the CVAA to apply to navigation devices supplied by multichannel video programming distributors (''MVPDs'') and section 204 of the CVAA to apply to all other ''digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound.'' Alternatively, we seek comment on whether to interpret section 205 to apply to navigation devices, as that term is defined in § 76.1200 of the Commission's rules, and section 204 to apply to all other digital apparatus. Consistent with our statutory mandate, we tentatively conclude that the requirement for the appropriate functions of the digital apparatus or navigation device to be accessible covers all ''user functions'' of such apparatus and devices, and that such functions do not include the debugging and diagnostic functions. In addition, in accordance with the statute, we do not propose to specify the technical standards for making those user functions accessible. Consistent with the report of the Video Programming Accessibility Advisory Committee (''VPAAC'') that examined this topic, we propose to require that the 11 essential functions of an apparatus identified by the VPAAC are representative, but not an exhaustive list, of the user functions that must be made accessible to and usable by individuals who are blind or visually impaired. We also seek comment on whether the most effective way to implement the requirement that certain accessibility features be activated through a mechanism reasonably comparable to a button, key, or icon is to require those features to be activated (and deactivated) in a single step. We tentatively conclude that we should handle alternate means of compliance and enforcement matters in the same way that we implemented those matters in other CVAA contexts. We propose deadlines consistent with those that the VPAAC proposed. Finally, in addition to our implementation of the CVAA, we take this opportunity to modernize our apparatus rules by proposing to eliminate the outdated requirement that manufacturers label analog television sets based on whether they include a closed-caption decoder and rename part 79 of our rules.

2. *Background.* Section 204 of the CVAA, entitled ''User Interfaces on Digital Apparatus,'' directs the Commission to require ''if achievable (as defined in section 716) that digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound'' be built in a way that makes them ''accessible to and useable by individuals who are blind or visually impaired.'' Section 204 also directs the Commission to require those apparatus to ''buil[d] in access to those closed captioning and video description features through a mechanism that is reasonably comparable to a button, key, or icon designated for activating the closed captioning or accessibility features.'' Section 204 also states that ''in applying this subsection the term 'apparatus' does not include a navigation device, as such term is defined in § 76.1200 of the Commission's rules.''

3. Section 205 of the CVAA, entitled ''Access to Video Programming Guides and Menus Provided on Navigation Devices,'' imposes requirements relating to navigation devices. It directs the Commission to require, ''if achievable (as defined in section 716), that the on-screen text menus and guides provided by navigation devices (as such term is defined in § 76.1200 of title 47, Code of Federal Regulations) for the display or selection of multichannel video programming are audibly accessible in real-time upon request by individuals who are blind or visually impaired.'' Section 205 also directs the Commission to require, ''for navigation devices with built-in closed captioning capability, that access to that capability through a mechanism is reasonably comparable to a button, key, or icon designated for activating the closed captioning, or accessibility features.''

4. On April 9, 2012, the Video Programming Accessibility Advisory Committee (''VPAAC'') released the VPAAC Second Report: User Interfaces as directed by section 201(e)(2) of the CVAA. In it, VPAAC Working Group 4, which was the working group assigned to recommend ways to implement sections 204 and 205 of the CVAA, defined the functional requirements needed to carry out those sections. Among other things, the VPAAC Second Report: User Interfaces lists 11 criteria that it deems essential to make digital apparatus and navigation devices accessible. Working Group 4 stated that it sought to develop the criteria without hindering innovation or product differentiation, and that ''the consumer marketplace [will] identify the optimal technologies and implementations.'' The VPAAC Second Report: User Interfaces offers some examples of how to achieve the criteria, but stated that the examples ''are only meant to clarify the intent of the associated functional requirement.'' The VPAAC Second Report: User Interfaces also lists ''open issues'' about which Working Group 4 could not develop consensus; significantly, the members could not achieve consensus on a recommendation for the method of turning closed captioning on and off. On April 24, 2012, the Commission released a Public Notice seeking comment on the VPAAC Second Report: User Interfaces.

5. *Discussion.* We organize our discussion of sections 204 and 205 of the CVAA into the following sections: (A) Scope of Sections 204 and 205; (B) Functions That Must Be Made Accessible; (C) Activating Accessibility Features; (D) Making Navigation Devices Available ''Upon Request''; (E) Alternate Means of Compliance; (F) Enforcement; (G) Exemption for Small Cable Operators; and (H) Timing. In addition, we tentatively conclude that we should eliminate outdated closed captioning labeling rules that apply to analog television receivers and rename part 79 of our rules.

6. *Scope of Sections 204 and 205.* As stated above, sections 204 and 205 of the CVAA require that accessible user interfaces be included in two categories of equipment: ''digital apparatus'' and ''navigation devices.'' Specifically, section 204 applies to ''digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol.'' Section 204 states that the ''term 'apparatus' does not include a navigation device'' as that term is defined in § 76.1200 of the Commission's rules. Instead, accessibility requirements for ''navigation devices'' are governed by the provisions of section 205. Section 76.1200(c) defines ''navigation devices'' as devices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems. Congress' intended meaning of the terms ''digital apparatus'' and ''navigation devices,'' as used in the context of sections 204 and 205, however, is not entirely clear. We discuss below the appropriate scope of sections 204 and 205 and the interrelationship between these sections. Our goal is to interpret these

sections in a manner that best effectuates Congressional intent.

7. *Categories of Devices Covered Under Sections 204 and 205.* We seek comment on whether we should interpret section 205 of the CVAA to apply only to navigation devices that are supplied to subscribers by their MVPDs and section 204 of the CVAA to apply more broadly, covering all other digital apparatus that receive or play back video programming. Under this interpretation, equipment provided to MVPD subscribers by MVPDs would be covered under section 205, while all other digital apparatus, including equipment purchased at retail by a consumer to access video programming, would be covered under section 204. We seek comment on this interpretation.

8. We note that the statutory language of section 205 could be read to apply to navigation devices provided by MVPDs. Significantly, section 205 contains numerous provisions that appear to presume a preexisting relationship between the individual requesting or using the device, menu and/or guide and the entity providing it. For example, section 205(b)(3) states that an ''entity shall only be responsible for compliance with the requirements [of section 205(a)] with respect to navigation devices that it provides to a requesting blind or visually impaired individual.'' Likewise, sections 205(b)(4) and (b)(5) discuss the obligations of ''the entity providing the navigation device.'' We believe that section 205's references to an ''entity'' ''providing'' the device, menu or guide in these provisions could reasonably be interpreted to mean an MVPD, because in contrast to a consumer electronics retailer that offers consumers devices for purchase, an MVPD provides devices (typically for lease) to its customers upon request. Accordingly, we believe that the Commission could reasonably conclude that MVPDs are the entities ''responsible for compliance'' with section 205, and the equipment, menus and guides these entities provide to their subscribers are what Congress intended to cover under section 205.

9. In addition, section 205(b)(4)(B) states that the entity providing the navigation device to the requesting blind or visually impaired individual ''shall provide any such software, peripheral device, equipment, service, or solution at no additional charge and within a reasonable time to such individual.'' This language also appears to be directed at MVPDs because the obligations identified in this provision—responding to a ''requesting individual'' ''within a reasonable time'' and providing a device ''at no additional charge''—presupposes an existing relationship between the provider and the consumer. A consumer enters a retail store or visits a retailer's Web site and expects to be able to purchase the products offered immediately, and does not expect to get them for free. In contrast, when an MVPD subscriber contacts the MVPD to request an accessible device, the MVPD must either ship the device or schedule an appointment to install it in the subscriber's home. Either of these actions would take some amount of time, and Congress could reasonably be understood to have sought, through this provision, to ensure that MVPDs would fulfill these requests promptly and without greater expense to the consumer than if the MVPD were providing inaccessible equipment to the consumer.

10. Moreover, section 205(b)(6), which sets out phase-in periods for compliance with these rules, states that the Commission must provide ''affected entities'' with at least 3 years ''to begin placing in service devices that comply with'' accessibility requirements related to on-screen text menus and guides. The phrase ''placing in service'' makes sense with respect to devices offered by MVPDs to their subscribers; it does not appear to have any applicability to devices sold at retail.

11. Interpreting section 205 to apply only to MVPD-supplied navigation devices, menus and guides appears further supported by section 205(b)(2), which allows the Commission to ''provide an exemption from the regulations [implementing section 205(a)] for cable systems serving 20,000 or fewer subscribers.'' Inclusion of this specific exemption for cable operators seems to suggest that the ''affected entities'' referred to in section 205 are MVPDs. That is, if this section did not otherwise apply to MVPDs, there would be no need for Congress to exempt cable operators from our regulations.

12. As demonstrated, the statutory language of section 205 could reasonably be understood that Congress's aim in this section was to apply a specialized set of regulations to navigation devices, menus and guides provided by MVPDs to their subscribers. We seek comment on the above interpretations of the cited provisions.

13. We ask that commenters address potential drawbacks associated with this interpretation. For example, given that no language in section 205 explicitly limits the provision's scope to navigation devices supplied by MVPDs, is it permissible for us to interpret the statue in this manner? If we do so, how do we give meaning to terms of the statute that refer more broadly to ''navigation devices (as such term is defined in § 76.1200 of title 47, Code of Federal Regulations) for the display or selection of multichannel video programming''? Similarly, if we interpret section 205 to only cover navigation devices supplied by MVPDs, how do we explain the provisions that apply certain requirements set forth in the statute to manufacturers of hardware and software?

14. Moving to section 204, this provision could be reasonably read to be directed towards equipment manufacturers. For example, section 204(a) amends section 303 of the Communications Act by adding language requiring that ''Digital apparatus . . . be designed, developed, and fabricated'' to be accessible, all terms that would apply to manufacturers. In addition, section 204 indicates an intent by Congress to cover a broad array of devices: ''Digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol.'' In the IP Closed Captioning Order, the Commission interpreted virtually identical statutory language contained in section 203 of the CVAA (codified in 47 U.S.C. 303(u)(1)), to cover a wide array of physical devices such as set-top boxes, PCs, smartphones and tablets, as well as integrated software. As noted below, we believe the Commission could reasonably conclude that Congress intended the same broad meaning to apply in the context of section 204, and we seek comment on that interpretation.

15. The intended scope of sections 204 is muddied, however, by a reference in that section to the term ''navigation devices'' as that term is defined by § 76.1200 of the Commission's rules. Specifically, section 204 states that the ''digital apparatus'' covered under that section ''does not include a navigation device, as such term is defined in § 76.1200 of the Commission's rules.'' In contrast, section 205's requirements expressly apply to ''on-screen text menus and guides provided by navigation devices (as such term is defined in § 76.1200 of title 47, Code of Federal Regulations).'' Section 76.1200(c) defines ''navigation devices'' as devices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems. The Commission has

interpreted this term to encompass a broad array of ''equipment used to access multichannel video programming or services.'' For example, televisions, personal computers, cable modems, and VCRs all fall under the Commission's navigation devices definition.

16. Given the broad scope of the term, however, interpreting the ''navigation devices'' exception in section 204 literally could largely nullify section 204. Specifically, nearly all section 204 digital apparatus ''designed to receive or play back video programming transmitted in digital format'' would also be classified as navigation devices under § 76.1200(c) because they can be used ''to access multichannel video programming and other services offered over multichannel video programming systems.'' If we were to interpret the section 204 exemption to exempt all ''navigation devices'' and not just those provided by MVPDs, it is possible that the only devices that would be covered by section 204 would be removable media players, such as DVD and Blu-ray players. This is because any device that has a tuner, an audiovisual input, or IP connectivity could be considered a navigation device. We seek comment on whether any other digital apparatus would be covered by section 204 if we literally applied the navigation devices exception contained in that section to all navigation devices.

17. We believe that references in sections 204 and 205 to ''navigation devices'' can be reasonably interpreted as language designed to prevent overlap in coverage between sections 204 and 205; that is, a device can be a section 204 device or a section 205 device, but not both. We request comment on whether we should interpret section 205 to cover navigation devices provided by MVPDs and section 204 to exclude such devices, but otherwise to broadly cover all ''apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound'' as that term is broadly described in section 204(a)(1). We believe that this interpretation is a reasonable one under the tenet of statutory construction that requires statutory language be read in the context of the larger statutory scheme. As the DC Circuit has observed, ''[c]ontext serves an especially important role in textual analysis of a statute when Congress has not expressed itself as unequivocally as might be wished. Where, as here, we are charged with understanding the relationship between two different provisions within the same statute, we must analyze the language of each to make sense of the whole.'' We could conclude that Congress intended to carve out of section 204 a subset of devices—MVPD-provided navigation devices covered by section 205—from the section 204 provision that applies generally to all digital apparatus that receives or plays back video. Moreover, interpreting the section 204 exception for navigation devices broadly would appear to render virtually meaningless section 204's statement that digital apparatus include ''apparatus designed to receive or display video programming transmitted in digital format using Internet protocol.'' This is because we believe that nearly any device that can display video programming using Internet protocol could use the Internet protocol to access MVPD programming or other services, thereby making that device a navigation device under the broad reading of that term. We seek comment on this interpretation.

18. We also find it notable that the National Cable & Telecommunications Association (''NCTA''), which is comprised of cable operators, presumes that section 205 applies to its members. NCTA notes that ''Congress granted cable operators 'maximum flexibility' to determine the manner of compliance'' with the obligations of section 205, and NCTA makes no suggestion that this section applies to any other entities beyond MVPDs. In recognizing that section 205 applies to its members, NCTA acknowledges that cable operators must provide accessible equipment for ''blind or visually impaired customers who request such a feature or function'' and that ''cable operators must provide it free of charge.''

19. The legislative history on this provision is scant, and offers no additional insight into Congress's intent as to the scope of sections 204 and 205. Neither does the VPAAC Second Report: User Interfaces provide us any guidance on how best to interpret the scope of sections 204 and 205. We note, however, that the VPAAC Second Report: User Interfaces refers to devices covered by section 205 as ''set-top boxes,'' suggesting that, at a minimum, they presumed Congress did not intend section 205 to cover the broad universe of devices covered by § 76.1200 of our rules. We seek comment on our analysis. Could section 205 alternatively be interpreted more broadly to apply not just to MVPD-provided equipment but also to retail set-top boxes such as TiVos? If we were to interpret section 205 to apply also to those retail set-top boxes, how would we apply to that equipment the many provisions in section 205, analyzed above, that presume the complying entity is an MVPD?

20. Section 205 also includes a provision stating that, with respect to navigation device features and functions delivered in software, the requirements of section 205 ''shall apply to the manufacturer of such software,'' and with respect to navigation device features and functions delivered in hardware, the requirements of section 205 ''shall apply to the manufacturer of such hardware.'' We seek comment on why Congress might have included this provision, how this provision should be interpreted, and the applicability of section 205 to hardware and software manufacturers of navigation device features and functions. Does the inclusion of this provision indicate that Congress intended that manufacturers of hardware and software supplied to MVPDs for subscriber use share responsibility with MVPDs for compliance under section 205? If such manufacturers do share liability with MVPDs, would such liability be joint and several? Should the provision be read only as Congress' recognition that the manufacturer of the hardware and/or developer of the software for MVPD-supplied equipment are often different parties?

21. Alternatively, we seek comment on whether we should interpret the term ''navigation device'' for purposes of sections 204 and 205 literally. Under a literal interpretation, the term would encompass the full array of equipment used to access multichannel video programming or services as defined under the Commission's rules regardless of whether such equipment is provided by an MVPD. Under this interpretation, we would give literal effect to the language of the provision contained in section 204 stating that ''the term 'apparatus' does not include a navigation device, as such term is defined in § 76.1200 of the Commission's rules'' as well as the language of the provision in section 205 defining navigation devices by reference to § 76.1200 of the Commission's rules. We note that nowhere in the statute does it say that the navigation device carve-out contained in section 204 or the term ''navigation devices'' in section 205 applies only to navigation devices supplied by MVPDs. Given the potentially conflicting interpretations of sections 204 and 205 that we have discussed herein, do these statutory provisions have a ''plain'' meaning as the courts have used that term?

22. If we adopted this interpretation, would section 204 apply only to small subset of devices-specifically, removable media players, such as DVD

and Blu-ray players? Under this alternative interpretation, would all other devices used to view video programming be covered under section 205? Would a literal reading of the navigation devices exemption in section 204 render meaningless other provisions of that section? For example, would literally interpreting the section 204 exception for navigation devices render meaningless section 204's statement that digital apparatus include ''apparatus designed to receive or display video programming transmitted in digital format using Internet protocol'' because every device with Internet connectivity is a navigation device under Commission precedent? In the alternative, should we interpret the conjunction ''and'' in § 76.1200(c) to require that ''navigation devices'' be used by consumers to access both multichannel video programming and other services offered over multichannel video programming systems? See 47 CFR 76.1200(c) (defining navigation devices to mean devices used by consumers to access multichannel video programming and other services offered over multichannel video programming systems). Under that interpretation, would a cable modem or a device that streams Internet video, but cannot be used to access multichannel video programming, be a ''navigation device''? How would we reconcile this interpretation with Commission precedent?

23. In addition, we seek comment on what functions, if any, would need to be made accessible under section 205 if section 205 applies to navigation devices purchased at retail. For example, do smartphones, personal computers, and similar equipment that would be covered under this section under a broad reading of navigation devices provide on-screen text menus and guides for the display of multichannel video programming? If not, would such devices escape the accessibility requirements of sections 204 and 205 altogether? We seek comment on this alternative interpretation of the statute. We also seek comment on whether the text of the CVAA would permit the Commission to amend its definition of ''navigation devices'' so that, for this specific purpose, the definition would cover only MVPD-supplied navigation devices? In addition, we invite commenters to suggest any other interpretation of the statute which would effectuate Congressional intent and be consistent with the language contained in sections 204 and 205 of the CVAA.

24. *Coverage of MVPD-Provided Applications and Other Software.* We also seek comment on whether the requirements of section 205 apply to applications and other software developed by MVPDs to enable their subscribers to access their services on third-party devices such as tablets, laptops, smartphones, or computers. For example, at least one MVPD currently permits subscribers to access its entire package of video programming via an application that subscribers can download to personal computers, tablets, smartphones, and similar devices. In this example, would the MVPD's application qualify as a navigation device subject to the requirements of section 205? If not, would it qualify as a digital apparatus under section 204? Should the applicability of section 205 (or 204) to an MVPD application be impacted by that application's ability to fully replicate a subscriber's MVPD service versus providing only a subset of programming offerings? We recognize that some MVPDs currently enable subscribers to access video programming both inside and outside the home (e.g., TV Everywhere offerings). Should it matter to our analysis whether the MVPD application can be used outside the home? Does it matter whether the video programming is being delivered over the MVPD's IP network or through a different Internet Service Provider? If we interpret the term ''navigation devices'' to include retail devices in addition to MVPD-provided navigation devices, how would we determine which party is responsible when a consumer uses an MVPD-provided application on a device purchased at retail? What responsibility do manufacturers of digital apparatus and navigation devices covered by sections 204 and 205 have to make such MVPD services accessible?

25. *Definition of Digital Apparatus Under Section 204.* Regarding section 204, we tentatively conclude that the term ''digital apparatus'' as used in that section should be defined similarly to how the Commission defined the term ''apparatus'' when implementing the closed captioning apparatus requirements of section 203, but excluding the navigation devices that are subject to section 205. The descriptive language used in sections 203 and 204 is largely parallel. In the IP Closed Captioning Order, the Commission concluded that the scope of apparatus covered by section 203 should be defined to include ''the physical device and the video players that manufacturers install into the devices they manufacture (whether in the form of hardware, software, or a combination of both) before sale, as well as any video players that manufacturers direct consumers to install.'' The Commission explained further that ''apparatus'' includes video players that manufacturers embed in their devices (''integrated video players''), video players designed by third parties but installed by manufacturers in their devices before sale, and video players that manufacturers require consumers to add to the device after sale in order to enable the device to play video.

26. We seek comment on our tentative conclusion to interpret ''digital apparatus'' similarly for purposes of section 204. Does the terminology or purpose of sections 203 and 204 differ in any material respects for the purpose of determining to what extent we should interpret the term ''digital apparatus'' to apply to hardware and associated software, as described above? Should the fact that section 204 uses the term ''digital'' to modify apparatus (a modifier not present in section 203) have any significance for our analysis? How, as a practical matter, does this modifier affect the scope of apparatus subject to section 204? For example, are there any devices currently being manufactured or marketed that are subject to section 203 but should not be subject to section 204 because such devices do not receive or display video programming transmitted in a ''digital format''?

27. The VPAAC points out that, in contrast to the ''[s]et-top boxes'' covered by section 205, digital apparatus subject to section 204 ''may have no native capability to decode and display [audiovisual] content, but with a suitable downloaded application, such capability may be enabled.'' If a digital apparatus requires a downloaded application to enable the decoding and display of audiovisual content how should that impact our analysis of whether the device is covered by section 204?

28. We tentatively conclude that the inclusion of the phrase ''including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol'' is merely meant to clarify that this provision should not be limited to more traditional video-programming apparatus without IP functionality such as non-IP enabled televisions, and that the fact that this language appears in section 204 but not section 203 should not result in a different interpretation of the scope of section 204. We seek comment on this tentative conclusion.

29. We also tentatively conclude that we should interpret the term ''designed to'' as used in section 204 the same way that the Commission interpreted it in the IP Closed Captioning Order. There, the Commission rejected the argument that we should evaluate whether a device is covered by focusing on the original design or intent of the manufacturer of the apparatus. The Commission concluded instead that ''to determine whether a device is designed to receive or play back video programming, and therefore covered by the statute, we should look to the device's functionality, i.e. whether it is capable of receiving or playing back video programming.'' The Commission stated that this bright-line standard, based on the device's capability, will provide more certainty for manufacturers. It also stated that, ''to the extent a device is built with a video player, it would be reasonable to conclude that viewing video programming is one of the intended uses of the device,'' and that ''[f]rom a consumer perspective, it would also be reasonable to expect that a device with a video player would be capable of displaying captions.'' We seek comment on our proposal. In addition, although section 204 does not contain the limitation in section 203 to apparatus ''manufactured in the United States or imported for use in the United States,'' we propose applying that same limitation for purposes of our regulations. We seek comment on this proposal as well.

30. *Functions That Must Be Made Accessible: Functions Required by Section 204.* Section 204 directs the Commission to require that digital apparatus ''be designed, developed, and fabricated so that control of appropriate built-in apparatus functions'' is ''accessible to and usable by individuals who are blind or visually impaired,'' and ''that if on-screen text menus or other visual indicators built into the digital apparatus are used to access the [appropriate built-in apparatus functions], such functions shall be accompanied by audio output . . . so that such menus or indicators are accessible to and usable by individuals who are blind or visually impaired in real-time.'' We tentatively conclude that the ''appropriate'' functions that must be made accessible under section 204 include all user functions of the device, but that such user functions do not include the debugging/diagnostic functions. We exclude the debugging/diagnostic functions as it is our understanding those functions are typically accessed by technicians and repair specialists and are not intended for consumer use. We seek comment on whether our understanding is correct or whether debugging/diagnostic functions should also be made accessible.

31. As to which functions constitute the user functions of the apparatus other than debugging/diagnostic functions, we look to the VPAAC Second Report: User Interfaces. This report identified 11 ''essential functions,'' which VPAAC Working Group 4 defined as ''the set of appropriate built-in apparatus functions'' referred to in section 204. The 11 essential functions identified in the VPAAC Second Report: User Interfaces are: (1) Power on/off; (2) volume adjust and mute; (3) channel and program selection; (4) channel and program information; (5) configuration—setup; (6) configuration—closed captioning control; (7) configuration—closed captioning options; (8) configuration—video description control; (9) display configuration info; (10) playback functions; and (11) input selection. Most of these are fairly self-evident, and the VPAAC Second Report: User Interfaces provides additional information to describe them. The VPAAC explains that each of these functions requires ''user input'' and ''user feedback.'' User input refers to how the user would activate the function (for example, the power button for a device). User feedback refers to how the user can surmise that the device or apparatus recognized and carried out the command. The VPAAC Second Report: User Interfaces recommends that user input be readily identifiable, and that user feedback be readily accessible. We seek comment on the list and the VPAAC's explanations of these functions. We specifically seek comment on the meaning of the ninth essential function, ''display configuration info.'' How does this essential function differ from ''Configuration—setup''? We also invite commenters to define these terms more specifically if they believe that the VPAAC Second Report: User Interfaces's descriptions do not provide adequate guidance to manufacturers.

32. We tentatively conclude that the VPAAC Second Report: User Interfaces's 11 essential functions are representative, but not an exhaustive list, of the categories of user functions of an apparatus, and therefore are examples of ''appropriate built-in apparatus functions'' as that term is used in section 204 of the CVAA. We do not believe that Congress intended to limit the accessibility of digital apparatus and navigation devices to the ''essential'' features and functions, or to some but not to all features and functions that are typically accessed by and readily made available for consumers to use. In other words, we believe that the term ''appropriate'' can be interpreted to distinguish between the diagnostic, debugging, ''service mode'' functions and the user functions that consumers can access and use. We seek comment on our tentative conclusion. At the same time, we seek comment on whether there are any other functions that are not included in the 11 essential functions listed in the VPAAC Second Report: User Interfaces, such as V-Chip and other parental controls, that may provide additional guidance to manufacturers. If any commenter believes that any of the 11 essential functions do not represent appropriate functions that must be accessible, that commenter should identify and provide specific examples of those inappropriate functions. Is there a mechanism that we can establish in this proceeding to ensure that as new digital apparatus functions become available to consumers, they are also made accessible? Should we assume that any newly developed non-debugging/diagnostic functions are ''appropriate'' under the statute and should be made accessible unless a manufacturer receives a finding from the Commission to the contrary, or should we allow manufacturers to argue in defense to a complaint that a function was not made accessible because it was not an ''appropriate function'' under the statute?

33. Section 204 applies to apparatus ''designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol.'' We seek comment on the extent to which apparatus manufacturers will need channel and program information (or other information necessary to select programming) from third-party video programming distributors (''VPDs'') to meet section 204's requirement that ''on-screen text menus or other visual indicators built in to the digital apparatus'' be ''accompanied by audio that is either integrated or peripheral to the apparatus.'' That is, if the apparatus is built to display visual information provided by a third party, does the apparatus need to make that information accessible? For example, if an Internet-connected TV includes a Netflix application, should we require that application to be accessible? Should we require that third-party applications that

a consumer might download and install be accessible? Who is responsible for that accessibility? In implementing other sections of the CVAA, the Commission applied its rules to integrated software and to third-party applications that the manufacturer requires to be downloaded, but not other third-party applications that a customer downloads and installs. We tentatively conclude that we should take the same approach here, and we seek comment on that tentative conclusion. If commenters disagree, they should explain how the manufacturer can obtain the necessary information, such as guide data, from the VPD to make such information accessible to a user who is blind or visually impaired and whether the Commission has the authority to require a VPD to make this information accessible or pass through the necessary information to an apparatus. With respect to apparatus that are not provided by the MVPD but access MVPD services, does 47 U.S.C. 303(bb)(3) or any other provision of the Communications Act provide the Commission with the authority to require channel and program information to be made available to apparatus? As we discuss above in section III.A.2, we seek comment on whether MVPDs are responsible for the applications that they develop; what responsibilities does an MVPD have to make channel and program information available to a third-party application (for example, on a retail CableCARD device)?

34. In addition to the requirements related to accessibility of ''on-screen text menus or other visual indicators,'' section 204 also directs us to adopt regulations requiring that digital apparatus ''be designed, developed, and fabricated so that control of appropriate built-in apparatus functions are accessible'' to people who are blind or visually impaired. Of the 11 functions identified in the VPAAC Second Report: User Interfaces, only ''power on/off'' seems to be accessed other than through on-screen guides and menus, and we believe that other buttons on an apparatus that are not on-screen text menus or other visual indicators must also be made accessible. We seek comment on any other meaning of this phrase; that is, what functions of digital apparatus do people access in a manner other than through on-screen guides and menus? Does the inclusion of this provision in section 204, but not in section 205, suggest that digital apparatus are subject to additional requirements not applicable to navigation devices?

35. *Functions Required by Section 205.* Section 205 of the CVAA directs the Commission to require that ''on-screen text menus and guides provided by navigation devices . . . for the display or selection of multichannel video programming are audibly accessible in real-time upon request.'' We seek comment on whether, as a legal or policy matter, there should be any substantive differences between the specific functions of apparatus that are required to be made accessible under section 204 as opposed to the specific functions of navigation devices that are required to be accessible under section 205. We tentatively conclude that all of the user functions that are offered via on-screen text menus and guides should be accessible for navigation devices. Although we recognize that sections 204 and 205 use slightly different language (section 205's accessibility requirement applies to on-screen text menus and guides only), we believe that all of a navigation device's user functions are activated via text menus and guides for the display or selection of multichannel video programming. We seek comment on our tentative conclusion.

36. We tentatively conclude that the VPAAC Second Report: User Interfaces's 11 essential functions are representative, but not an exhaustive list, of the categories of functions that a navigation device must make accessible. The VPAAC Second Report: User Interfaces stated that the ''essential functions,'' are ''applicable to devices covered under CVAA section 204 and CVAA section 205.'' We seek comment on whether requiring navigation devices to make the 11 essential functions identified by the VPAAC accessible would achieve section 205's requirement that ''on-screen text menus and guides provided by navigation devices . . . for the display or selection of multichannel video programming are audibly accessible in real-time upon request.'' We seek comment on whether there are any other on-screen text menus or guides provided for the display or selection of programming that are not included in the 11 listed in the VPAAC Second Report: User Interfaces, such as V-Chip and other parental controls, that may provide additional guidance to covered entities. As we asked in the section 204 discussion above, if any commenter believes that any of the 11 essential functions do not represent on-screen text menus or guides that must be accessible, that commenter should identify and provide specific examples of those inappropriate functions. Is there a mechanism that we can establish in the proceeding to ensure that as new methods used to display or select multichannel video programming become available, they are also made accessible? Should we assume that any newly developed ''on-screen text menus and guides provided by navigation devices'' are covered under the statute and should be made accessible unless the Commission finds to the contrary, or should we allow covered entities to argue in defense to a complaint that a menu or guide was not made accessible because it was not ''for the display or selection of multichannel video programming'' under the statute? Does section 205 provide us authority to require that MVPDs provide programming description information in programming guides for local programs and channels for the purpose of promoting accessibility?

37. *User Input and Feedback.* The VPAAC Second Report: User Interfaces suggests that user input and feedback should be both visual and non-visual for all essential functions. We agree that this is a vital aspect of making essential functions accessible to individuals who are blind or visually impaired, and note that a device can accept input and provide non-visual feedback audibly or through touch. Sections 204 and 205 require, respectively, that ''on-screen text menus'' (and guides, in the case of section 205) be ''accompanied by audio output'' and ''audibly accessible in real-time.'' We tentatively conclude that those feedback requirements are self-implementing. With respect to other functions of an apparatus, we seek comment on whether we should apply the guidance contained in § 6.3(a) of our rules (which implements sections 255 and 716 of the CVAA), to explain that ''accessible'' means: (a) Input, control, and mechanical functions shall be locatable, identifiable, and operable in accordance with each of the following, assessed independently: Operable without vision. Provide at least one mode that does not require user vision, operable with low vision and limited or no hearing. Provide at least one mode that permits operation by users with visual acuity between 20/70 and 20/200, without relying on audio output, and operable with little or no color perception. Provide at least one mode that does not require user color perception; and (b) all information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cues, comply with each of the following, assessed independently: Availability of visual information. Provide visual information through at least one mode

in auditory form, and availability of visual information for low vision users. Provide visual information through at least one mode to users with visual acuity between 20/70 and 20/200 without relying on audio.

Do we need to specify how a device accepts input or provides feedback to individuals who are blind or visually impaired with respect to the other functions of an apparatus, or will applying this guidance make the device accessible? We seek comment on whether the functions other than ''on-screen text menus'' can be made accessible in any way; that is, if the functions of the remote are made accessible in some way, does the remote itself need to be accessible? We also seek comment on any other user input and feedback suggestions.

38. *Technical Standards.* The CVAA states that the ''Commission may not specify the technical standards, protocols, procedures, and other technical requirements for meeting'' the requirement to make appropriate digital apparatus functions accessible to individuals who are blind or visually impaired. Given this limitation on our authority, we seek comment on how the Commission can ensure that the rules it adopts in this proceeding are properly implemented. We seek comment on specific metrics that the Commission can use to evaluate accessibility and compliance with our implementation of sections 204 and 205 of the CVAA. Are there performance objectives or functional criteria that covered entities can look to voluntarily as an aid in meeting these obligations? We also seek comment on any other steps the Commission can take to promote accessibility in light of the statutory limitations.

39. *Achievability.* Both sections 204 and 205 of the CVAA state that we should make our rules regarding the accessibility of user interfaces, guides, and menus effective only ''if achievable (as defined in section 716).'' According to section 716(g) of the Communications Act, ''achievable'' means:

with reasonable effort or expense, as determined by the Commission. In determining whether the requirements of a provision are achievable, the Commission shall consider the following factors:

(1) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question.

(2) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies.

(3) The type of operations of the manufacturer or provider.

(4) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

As the Commission has done in other contexts implementing the CVAA, we tentatively conclude that we will weigh each of the four factors equally and evaluate achievability on a case-by-case basis. In the event of a complaint over a possible violation of our rules under sections 204 or 205, a covered entity may raise as a defense that a particular apparatus or navigation device does not comply with the rules because compliance was not achievable under the statutory factors. Alternatively, a covered entity may seek a determination from the Commission before manufacturing or importing the apparatus or navigation device as to whether compliance with all of our rules is achievable. In evaluating evidence offered to prove that compliance was not achievable, the Commission will be informed by the analysis in the ACS Order. We seek comment on our tentative conclusion.

40. *Separate Equipment or Software.* We seek comment on the directive in section 205 that our regulations ''shall permit but not require the entity providing the navigation device to the requesting blind or visually impaired individual to comply with [the on-screen text menu and guide accessibility requirements] through that entity's use of software, a peripheral device, specialized consumer premises equipment, a network-based service or other solution, and shall provide the maximum flexibility to select the manner of compliance.'' Section 205 provides further that ''the entity providing the navigation device to the requesting blind or visually impaired individual shall provide any such software, peripheral device, equipment, service, or solution at no additional charge and within a reasonable time to such individual and shall ensure that such software, device, equipment, service, or solution provides the access required by such regulations.'' We tentatively conclude that this solution must achieve the same functions as a built-in accessibility solution and must be provided by the entity providing the navigation device, rather than requiring the customer to seek out such a solution from a third party. We seek comment on these tentative conclusions. We also seek comment on how to define what is ''a reasonable time'' to give a requesting subscriber accessible equipment. We tentatively conclude that the other requirements in this provision are self-implementing, and we seek comment on our tentative conclusion.

41. *Activating Accessibility Features (Comparable to a Button, Key, or Icon).* In this section, we seek comment on the mechanism that the Commission must establish for consumers to activate the accessibility features of an apparatus or navigation device.

42. *Activating Closed Captioning and Video Description Features: Closed Captioning.* Sections 204 and 205 both direct the Commission to require certain apparatus and navigation devices with built-in closed captioning capability to provide access to closed captioning features ''through a mechanism that is reasonably comparable to a button, key, or icon designated for activating the closed captioning or accessibility features.'' Working Group 4 did not reach consensus on what the phrase ''reasonably comparable to a button, key, or icon'' means, but it provided the different language proposed by ''consumer representatives'' and ''proposed by NCTA (and endorsed by CEA and its member companies).'' Consumer representatives proposed that the VPAAC Second Report: User Interfaces recommend a closed captioning button when a dedicated physical button was used to control volume and/or channel selection, while NCTA, with CEA, proposed requiring only a mechanism ''reasonably comparable to physical buttons'' in those situations.

43. We seek comment on whether the most effective way to implement the requirement in sections 204 and 205 that closed captioning be activated through a mechanism reasonably comparable to a button, key, or icon would be to require the closed captioning feature to be activated in a single step. That is, users would be able to activate closed captioning features on an MVPD-provided navigation device or other digital apparatus immediately in a single step just as a button, key, or icon can be pressed or clicked in a single step. We believe that this single-step proposal is consistent with section 204 and 205's language describing ''a mechanism that is reasonably comparable to a button, key, or icon,'' and consistent with Congress's intent ''to ensure ready access to these features by persons with disabilities.'' In addition, a single-step requirement is future-proofed in that it does not require that any particular technology be used

to enable accessibility, providing entities subject to section 204 and 205 the flexibility to continue to develop innovative compliance solutions. We seek comment on this concept, and on what constitutes a single step. Alternatively, is the best solution to require that ''[w]hen dedicated physical buttons are used to control volume and/or channel selection, the controls for access to closed captions (or video description) must also be dedicated physical buttons, comparable in location to those provided for control of volume or channel selection,'' as mentioned in the VPAAC Second Report: User Interfaces? For example, if volume on a particular device is controlled through the use of a dedicated button, should we require that closed captioning on that device be activated through the use of a dedicated button as well because it is a comparable function? What if the device does not have volume control through the use of a dedicated button or has no volume control at all? How would the proposal by consumer representatives mentioned in the VPAAC Second Report: User Interfaces operate in this context? Should the Commission impose different activation mechanisms on different types of apparatus? Should the Commission require that the closed captioning feature also be deactivated in a single step?

44. We ask commenters to set forth the costs and benefits of our proposal as well as the costs and benefits of any other proposals. Commenters should describe with specificity how their proposals would be considered ''reasonably comparable to a button, key or icon.'' Further, we seek comment on whether we should require covered entities to seek a Commission finding that a mechanism other than button, key, or icon is reasonably comparable to those mechanisms before building it into an apparatus or navigation device, or could they make that showing as a defense to a complaint? How should our regulations apply with respect to programmable universal remotes that can be programmed with different features?

45. *Video Description.* Section 204 explicitly requires certain apparatus to provide access to closed captioning and video description features through a mechanism reasonably comparable to a button, key or icon. Section 205 includes a similar requirement for a mechanism reasonably comparable to a button, key, or icon, but explicitly references only closed captioning capability; video description is not mentioned. Section 205 does state, however, that the mechanism ''should be reasonably comparable to a button, key, or icon designated for activating the closed captioning, or accessibility features.'' Despite the fact that section 205 does not use the term ''video description'' is it reasonable for us to interpret ''accessibility features'' in section 205 to encompass video description? For example, does the phrase ''accessibility features'' in section 205 reference capabilities that the mechanism required by section 205 must be able to access? Or is the term merely descriptive of the mechanism to which the mandated mechanism must be reasonably comparable? Video description is an essential accessibility feature. Therefore, would it be incongruous to require other digital apparatus to offer an activation mechanism for video description, but not navigation devices? We note in this regard that our video description rules currently apply to broadcasters and MVPDs. Thus, if accessibility requirements did not extend to video description in navigation devices then the requirements will not apply to devices used to access a large portion of video described programming. Given this, may we interpret the term ''accessibility features'' as used in section 205(b)(5) to include, at a minimum, video description? How, if at all, is such an interpretation impacted by the heading in section 205 that is titled ''User Controls for Closed Captioning''?

46. We also seek comment on whether sections 204 and 205 require single-step activation of video description as we propose to require for closed captioning. We seek comment on whether a solution may be different for closed captioning and video description. We believe that the single-step approach is particularly appropriate for video description, given that following screen prompts (even on a device compliant with the accessibility rules we propose in this NPRM) can be challenging for individuals who are blind or visually impaired. We seek comment on whether sections 204 and 205 require single-step activation of video description. We also seek comment on whether the fact that video description is not specifically mentioned in section 205 means that there should be a different activation mechanism for video description for navigation devices.

47. *Activating Other Accessibility Features.* We seek comment on the phrase ''accessibility features.'' Are there additional ''accessibility features'' besides closed captioning and video description that sections 204 and 205 require be activated via a mechanism similar to a button, key, or icon? Or is the term merely descriptive of the mechanism to which the mandated mechanism must be reasonably comparable and does not outline the capabilities that the mandated mechanism must itself access? To the extent that Congress contemplated additional ''accessibility features,'' did it intend to include access to secondary audio programming for accessible emergency information as well as video description? In addition, should ''accessibility features'' include the activation of the audible output of on-screen text menus or guides required by sections 204 and 205? If so, should we adopt the same single-step mechanism requirement to make these features accessible, or would it be permissible under the statute to use different methods depending on the feature involved?

48. We also seek comment on whether the term ''accessibility features'' in sections 204 and 205 includes accessibility settings (such as font, color, and size of captions or, in the case of audible output of on-screen text menus or guides, settings such as volume, speed, and verbosity) as these settings enable consumers to make practical use of the closed captioning and audible output. We seek comment on how these settings must be made available. The NAD criticizes devices that require ''the user [to] navigate a maze of many choices before reaching the closed captioning settings.'' Would a requirement that accessibility settings be in the first level of a menu of a digital apparatus or navigation device address this concern? By ''first level of a menu,'' we mean that ''accessibility features,'' such as closed captions, video description and emergency information made available on the secondary audio stream, and audible output of on-screen text menus or guides, would be one of the choices on an initial menu screen; consumers would not need to navigate through a sub-menu to gain access to the menu of accessibility features and settings. Would that concept still achieve accessibility for video description given that screen prompts (even on a device compliant with the visual impairment accessibility rules we propose in this NPRM) can be challenging for individuals who are blind or visually impaired? We invite any other proposals that would make access to accessibility features easier for consumers and ask commenters to set forth the costs and benefits of any such proposals. We also seek comment on any other issues related to the activation of accessibility features, including how any adopted regulations should apply

with respect to programmable universal remotes.

49. *Maximum Flexibility.* Section 205 also states that the Commission's rules should permit the entity providing the navigation device ''maximum flexibility in the selection of means for compliance'' with the mechanism for making accessibility features accessible. In its comments, NCTA asserts that ''the plain language [of the CVAA] shows that Congress did not require cable operators and other MVPDs to include closed captioning buttons on their remote controls.'' It is unclear from NCTA's comments, however, how it proposes that MVPDs comply with the requirement that accessibility features be made accessible. Although we recognize that Congress intended to afford covered entities ''maximum flexibility'' in complying with our rules, we do not interpret this term to mean that covered entities have unlimited discretion in determining how to fulfill the purposes of the statute. To interpret their ''flexibility'' in such a manner could potentially undermine the very intent of section 205, which is to ensure that navigation devices are accessible to individuals with disabilities. In any event, we seek comment on whether our single-step activation proposal with regard to closed captioning and video description provides the flexibility contemplated by the statute. What other mechanism is reasonably comparable to a button, key, or icon that would satisfy this requirement where a navigation device is provided with a remote control? We seek comment on how the Commission can interpret ''maximum flexibility'' with regard to activation mechanisms and yet still effectuate the goals of the statute.

50. *Making Accessible Devices Available ''Upon Request''.* Section 205 directs us to require that guides and menus be made accessible ''upon request,'' and states that, ''[a]n entity shall only be responsible for compliance with the requirements added by this section with respect to navigation devices that it provides to a requesting blind or visually impaired individual.'' We interpret this section to require covered entities to provide accessible navigation devices to requesting subscribers ''within a reasonable time.'' We also interpret section 205's ''upon request'' language to apply to on-screen text menu and guide accessibility. Does this language also apply to the requirement that closed captioning and other accessibility features be activated via a mechanism that is reasonably comparable to a button, key, or icon?

51. We note that section 205(b)(3) states that an ''entity shall only be responsible for compliance with the requirements added by this section with respect to the navigation devices that it provides to a requesting blind or visually impaired individual.'' We seek comment on how this provision should be read in conjunction with the requirement in section 303(bb)(2) that pertains to accessing closed captioning capabilities. Does section 205(b)(3) of the CVAA apply to section 303(bb)(2) of the Communications Act? A literal interpretation of section 205(b)(3) would require that compliant closed captioning mechanisms need only be made available to requesting individuals who are blind or visually impaired. However, we note that this interpretation would lead to anomalous results as it is individuals who are deaf or hard of hearing who typically use closed captioning rather than individuals who are blind or visually impaired. Moreover, both section 205(a), creating the requirement for on-screen text menus and guides for the display or selection of multichannel video programming to be audibly accessible, as well as section 205(b)(4)(B), describing the provision of software and other solutions for making navigation devices accessible, only make reference to people who are blind and visually impaired with respect to requests that will be made under this section. Does the fact that these two sections focus on making navigation devices accessible to people with vision disabilities and do not reference people who are deaf and hard of hearing provide permissible justification for not making requests a pre-requisite to providing ''a mechanism [that is] reasonably comparable to a button, key, or icon designated for activating the closed captioning, or accessibility features'' required under section 303(bb)(2) of the Communications Act? In other words, was it Congress's intent for responsible entities to include the closed captioning mechanism on all applicable devices?

52. Alternatively, does the word ''responsibility'' in section 205(b)(3) of the CVAA mean liability for money damages? Under that reading, could the Commission order a covered entity to comply with section 205(b)(3) but only impose a forfeiture if a blind or visually impaired individual has requested access to the closed-captioning capability? Or is section 205(b)(3) of the CVAA designed to shield an entity from liability for equipment they did not distribute (e.g., if a consumer purchases a navigation device at retail, the consumer's MVPD is not responsible for the accessibility of that device)?

53. We also seek comment on whether a ''request'' could take any form (e.g., a phone call, an email, or a request made in-person). How can we ensure that MVPDs have a sufficient supply of accessible equipment in inventory to meet anticipated demand for accessible devices? We also seek comment on whether we should require MVPDs to notify their subscribers in braille or other accessible format that accessible devices are available upon request, and if so, how MVPDs should notify their subscribers (e.g., bill inserts). In addition to, or instead of, requiring MVPDs to notify subscribers, what other procedures could we adopt to ensure that individuals who are blind or visually impaired know that they can request an accessible navigation device? We further seek comment on whether section 205 requires MVPDs to provide accessible versions of all the classes of navigation devices they make available to subscribers, so that subscribers seeking accessibility features can choose among various price points and features. How would this provision apply to retail navigation devices if we conclude that retail navigation devices fall under the scope of section 205? Finally, to the extent that section 205 applies more broadly to other entities besides MVPDs, we seek comment on how these requirements should be implemented.

54. *Alternate Means of Compliance.* Section 204 of the CVAA states that an entity may meet the requirements of section 204(a) ''through alternate means than those prescribed by'' the regulations that we adopt. In implementing a similar provision in section 203 of the CVAA, the Commission has allowed parties either to (i) request a Commission determination that the proposed alternate means satisfies the statutory requirements through a request pursuant to § 1.41 of our rules; or (ii) claim in defense to a complaint or enforcement action that the Commission should determine that the party's actions were permissible alternate means of compliance. We tentatively conclude to adopt this approach in the instant proceeding. In addition, as the Commission has done in other contexts, rather than specify what may constitute a permissible ''alternate means,'' we tentatively conclude that we will address any specific requests from manufacturers when they are presented to us.

55. *Enforcement.* We tentatively conclude that we should adopt the same complaint filing procedures that the Commission adopted in the IP-closed captioning context. Those procedures (i) require complainants to file within 60 days after experiencing a problem; (ii) allow complainants to file their

complaints either with the Commission or with the entity responsible for the problem; (iii) provide the entity 30 days to respond to the complaint; (iv) do not specify a time frame within which the Commission must act on complaints; (v) follow the Commission's flexible, case-by-case forfeiture approach governed by § 1.80(b)(6) of our rules; (vi) specify the information that the complaints must include as set forth below; and (vii) require covered entities to make contact information available to end users for the receipt and handling of written complaints. Such complaints should include: (a) The complainant's name, postal address, and other contact information, such as telephone number or email address; (b) the name and contact information, such as postal address, of the apparatus or navigation device manufacturer or provider; (c) information sufficient to identify the software or device used; (d) the date or dates on which the complainant purchased, acquired, or used, or tried to purchase, acquire, or use the apparatus or navigation device; (e) a statement of facts sufficient to show that the manufacturer or provider has violated or is violating the Commission's rules; (f) the specific relief or satisfaction sought by the complainant; (g) the complainant's preferred format or method of response to the complaint; and (h) if a section 205 complaint, the date that the complainant made an accessibility request and the person or entity to whom that request was directed. We also propose that a complaint alleging a violation of the apparatus or navigation device rules that we adopt in this proceeding may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the complainant's disability. Because our rules are intended to make apparatus and guides accessible to individuals who are blind or visually impaired, we propose that if a complainant calls the Commission for assistance in preparing a complaint, Commission staff will document the complaint in writing for the consumer and such communication will be deemed to be a written complaint. We also propose that the Commission will forward such complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that Commission staff determines may be involved, and that the Commission be permitted to request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violations of Commission rules. Finally, we seek comment on whether any revisions to FCC Form 2000C, the disability access complaint form are necessary, and if so, what revisions are needed?

56. *Exemption for Small Cable Operators.* Section 205 states that the Commission ''may provide an exemption from the regulations for cable systems serving 20,000 or fewer subscribers.'' We note that the use of ''may'' suggests that adoption of such an exemption is discretionary. Should the Commission adopt such an exemption? What would be the costs and benefits of permitting this exemption? Commenters should address the factors the Commission should consider in determining whether this exemption is appropriate. To the extent we do adopt such an exemption, what alternatives would subscribers with disabilities have in the areas that are served by MVPDs that are subject to the exemption? Instead of exempting such small cable systems completely, would it be appropriate to provide them more time with which to comply with the regulations? How should we interpret this provision if we require entities besides MVPDs to comply with the requirements of section 205?

57. *Timing.* Section 205 of the CVAA provides that with respect to the navigation device rules we adopt that require a mechanism comparable to a button, key, or icon, ''[t]he Commission shall provide affected entities with not less than 2 years after the adoption of such regulations to begin placing in service devices that comply with the requirements.'' The CVAA also provides that with respect to the navigation device accessibility rules that we adopt, we shall provide affected entities with ''not less than 3 years after the adoption of such regulations to begin placing in service devices that comply with the requirements.'' The VPAAC recommends that we adopt these minimum phase-in periods, but that they run from the date of publication of the regulations in the **Federal Register**, rather than from the date of adoption. We tentatively conclude that we should adopt the VPAAC's recommendation because the recommendation was developed via consensus with support from the industry that should have an understanding of how long the development process for these devices will take. If commenters advocate a longer phase-in period, they should provide a detailed justification for why more time is necessary.

58. Section 204 does not provide a phased-in requirement with respect to digital apparatus, other than that a ''digital apparatus designed and manufactured to receive or play back the Advanced Television System Committee's Mobile DTV Standards A/153 shall not be required to meet the requirements of the regulations'' adopted under section 204 until at least two years after the date the final rules are published in the **Federal Register**. The VPAAC Second Report: User Interfaces suggests that the Commission make its rules regarding digital apparatus effective two years after publication of final rules in the **Federal Register**, consistent with the time frame given for compliance with both the ACS and IP closed captioning rules adopted pursuant to the CVAA. We tentatively conclude that we should adopt this recommendation because the recommendation was developed via consensus with support from the industry that should have an understanding of how long the development process for these devices will take. Commenters advocating longer phase-in periods for the various components of the section 204 rules or for any class of apparatus should provide a detailed justification for why more time is necessary.

59. *Elimination of Analog Closed Captioning Labeling Requirement and Renaming Part 79.* Finally, although this is not mandated by the CVAA, we take the opportunity to seek comment on a proposal to update our closed captioning apparatus rules. We tentatively conclude that we should remove the requirement that manufacturers label analog television receivers based on whether they contain an analog closed captioning decoder, as well as the requirement that manufacturers include information in the television's user manual if the receiver implements only a subset of the analog closed captioning functionality. We find that this rule is no longer necessary. Our regulations required that by March 1, 2007, all televisions contain a digital television receiver and, by extension, a digital closed captioning decoder. Thus, all television receivers being sold today are required to implement the features of digital closed captioning, which are more extensive than the features required for analog closed captioning. We believe that there are no televisions being manufactured in or imported into the United States today that implement only a subset of the analog closed captioning functionality. Therefore, we do not see

the need to require the labeling of television receivers that include analog tuners, nor do we see the need to maintain the requirement that user manuals indicate if a device does not support all of the aspects of the analog closed captioning standard. We seek comment on this analysis and on our proposal to eliminate the analog labeling requirement.

60. Second, we propose to rename part 79 of the Commission's rules to better organize our rules. With the proposed addition of the user interface rules outlined above, part 79 has expanded in scope beyond closed captioning and video description of broadcast and MVPD programming to more broadly encompass the accessibility of video programming, of which closed captioning and video description are a part. Therefore, we propose to rename part 79 to the more general, ''Accessibility of Video Programming.'' Additionally, we believe that dividing part 79 into two subparts-one that includes rules that apply to video programming owners, providers, and distributors, and one that includes rules that apply to apparatus-will help readers browse our rules. Therefore, we propose to establish a subpart A, entitled ''Video Programming Owners, Distributors, and Providers,'' to contain those rules regarding the provision of various services, and a subpart B, ''Apparatus,'' to contain those rules pertaining to devices and other equipment used to receive, play back, or record video programming. We seek comment on these proposed changes.

61. *Procedural Matters.* The proceeding this Notice initiates 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 § 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.

62. *Initial Regulatory Flexibility Analysis.* The Regulatory Flexibility Act of 1980, as amended (''RFA''), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''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).

63. With respect to this Notice, an Initial Regulatory Flexibility Analysis (''IRFA'') is below. Written public comments are requested in the IFRA, and must be filed in accordance with the same filing deadlines as comments on the Notice, with a distinct heading designating them as responses to the IRFA. The Commission will send a copy of this Notice, including the IRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, a copy of this Notice and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

64. *Paperwork Reduction Act Analysis.* This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

65. *Comment Filing Procedures.* 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 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. 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

Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

66. Additional Information: For additional information on this proceeding, please contact Brendan Murray of the Media Bureau, Policy Division, *Brendan.Murray@fcc.gov,* (202) 418–1573, or Adam Copeland of the Media Bureau, Policy Division, *Adam.Copeland@fcc.gov,* (202) 418–1037.

67. *Ordering Clause.* Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 303(r), 303(aa), and 303(bb) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 303(aa), and 303(bb), and sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act, Pub. L. 111–260, sections 204 and 205, this Notice of Proposed Rulemaking IS ADOPTED.

68. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), 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 Notice of Proposed Rulemaking (''NPRM''). 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 NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

69. *Need for, and Objectives of, the Proposed Rule Changes.* The Federal Communications Commission (''Commission'') seeks comment in this NPRM on how to implement sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''). These sections generally require the Commission to adopt rules to require digital apparatus and navigation device user interfaces used to view video programming be accessible to and usable by individuals who are blind or visually impaired. Specifically, section 204 directs the Commission to require that ''appropriate built-in apparatus functions'' be made accessible to blind people. Section 205 directs the Commission to require that ''on-screen text menus and guides provided by navigation devices'' be made accessible. The Commission seeks comment on the types of devices covered by sections 204 and 205. Both of these sections also require that these devices provide a mechanism that is ''reasonably comparable to a button, key, or icon designated for activating'' closed captioning, video description, and accessibility features. The NPRM tentatively concludes that: (1) The requirement for the appropriate functions of the digital apparatus or navigation device to be accessible covers all ''user functions'' of such apparatus and devices, and that such functions do not include the debugging and diagnostic functions; (2) The Commission should not specify the technical standards for making those user functions accessible, consistent with the statute; (3) The Commission should handle alternate means of compliance and enforcement matters in the same way that the Commission implemented those matters in other CVAA contexts; and (4) The deadlines for compliance with these rules should be consistent with those proposed by a working group that focused on this topic. The Commission also seeks comment the most effective way to implement the requirement that closed captioning, video description, and accessibility features be activated through a mechanism reasonably comparable to a button, key, or icon is to require those features to be activated (and deactivated) in a single step; on how to interpret section 205's direction that accessible navigation devices shall be provided ''upon request;'' on how to handle complaints and enforce the rules adopted pursuant to sections 204 and 205 of the CVAA; and on whether to adopt an exemption from regulations adopted under section 205 with respect to cable systems that serve 20,000 or fewer subscribers. Finally, in addition to the implementation of the CVAA, the NPRM proposes to modernize the Commission's apparatus rules by eliminating the outdated requirement that manufacturers label analog television sets based on whether they include a closed-caption decoder and rename part 79 of the Commission's rules. The Commission seeks comment on all of these tentative conclusions and issues.

70. Our goal in this proceeding is to enable disabled people to use their digital video devices more easily. The proposed revisions to our rules will help fulfill the purpose of the CVAA to ''update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.''

71. *Legal Basis.* 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(u) and (z), 330(b), and 713(g), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(u) and (z), 330(b), and 613(g).

72. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* 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. The RFA generally defines the term ''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 SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

73. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of ''Wired Telecommunications Carriers,'' which 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 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.

74. *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, of 1,076 cable operators nationwide, all but eleven 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 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

75. *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.

76. *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.

77. 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.

78. 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.

79. *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.

80. *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.

81. 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.

82. 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 data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year. Of those 2,639 establishments, 2,333 operated with annual receipts of less than $10 million and 306 with annual receipts of $10 million or more. Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by our action.

83. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and

commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are 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.

84. *Home Satellite Dish (''HSD'') Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of ''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.

85. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

86. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, ''Wired Telecommunications Carriers'' have been 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.'' Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. For these services, the Commission uses the SBA small business size standard for Wired Telecommunications Carriers, which is 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 to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses. The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

87. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of ''Wireless Telecommunications Carriers (except Satellite),'' Census data for 2007 show

that there were 11,163 firms that operated for the entire year. Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

88. *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.

89. *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. 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.

90. *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.

91. *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.

92. *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.

93. *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.

94. *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.

95. *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.

96. *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.

97. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* One proposed rule change discussed in the NPRM would affect reporting, recordkeeping, or other compliance requirements. This proposed rule change would eliminate the outdated requirement that manufacturers of analog television sets label devices with a notice about closed captioning features.

98. *Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered.* 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.

99. We emphasize at the outset that, although alternatives to minimize economic impact on small businesses (such as the possible exemption from section 205 regulations for cable systems that serve 20,000 or fewer subscribers) have been and are being considered as part of this proceeding, our proposals are governed by the congressional mandate contained in sections 204 and 205 of the CVAA. The NPRM seeks comment on whether any alternatives to the proposed rules exist, and gives small entities wide latitude in the specific steps it will use to meet the rules-in other words, the proposed rules are entirely performance, rather than design, focused. Individual entities, including smaller entities, may benefit from this provision because our proposed rules will do not specify how any entity must achieve accessibility, but rather encourage all entities (include small entities) to be creative and develop cost-effective methods to achieve accessibility.

100. Overall, in proposing rules governing accessible digital apparatus and navigation devices, we believe that we have appropriately considered both the interests of individuals who are blind, visually impaired, deaf, or hard of hearing and the interests of the entities who will be subject to the rules, including those that are smaller entities. Our proposed rules are consistent with Congress' goal of ''updat[ing] the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.'' In seeking to achieve that Congressional goal, our proposed rules will not require small businesses to conform to any standard, and allow them to use any less expensive ''alternative means of compliance'' for cost savings. Moreover, elimination of the labeling requirement is another step that the Commission proposes to reduce costs for small businesses.

101. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule.* None.

**List of Subjects in 47 CFR Part 79**

Television, Individuals with disabilities.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 79 as follows:

## PART 79—ACCESSIBILITY 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. Revise the part heading for part 79 to read as set forth above.

■ 3. Designate §§ 79.1 through 79.4 as subpart A to part 79, and add a heading for subpart A to read as follows:

### Subpart A—Video Programming Owners, Providers, and Distributors

■ 4. Designate §§ 79.100 through 79.106 as subpart B to part 79, and add a heading for subpart B to read as follows:

### Subpart B—Apparatus

■ 5. Remove and reserve paragraph (m) in § 79.101.

■ 6. Add §§ 79.107 through 79.109 to subpart B to part 79 to read as follows:

**§ 79.107. User interfaces and guides on digital apparatus.**

(a) Effective [DATE TO BE DETERMINED IN FINAL RULE], manufacturers of digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive

or display video programming transmitted in digital format using Internet protocol, shall design, develop, and fabricate those digital apparatus so that control of appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually impaired. For the purpose of this section, the term apparatus does not include a navigation device, as such term is defined in § 76.1200 of this chapter [that is provided by an MVPD to a subscriber].

(b) This section shall be effective for any apparatus manufactured after the effective date in the United States or outside of the United States and imported for use in the United States, except that apparatus must only do so if it is achievable as defined in § 79.105(c).

(c)(1) *Achievable.* Manufacturers of apparatus may petition the Commission for a full or partial exemption from the user interface requirements of this section pursuant to § 1.41 of this chapter, which the Commission may grant upon a finding that the requirements of this section are not achievable, or may assert that such apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable.

(2) The petitioner or respondent must support a petition for exemption or a response to a complaint with sufficient evidence to demonstrate that compliance with the requirements of this section is not ''achievable'' where ''achievable'' means with reasonable effort or expense. The Commission will consider the following factors when determining whether the requirements of this section are not ''achievable:''

(i) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question;

(ii) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;

(iii) The type of operations of the manufacturer or provider; and

(iv) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

**§ 79.108. User interfaces and guides on navigation devices.**

(a)(1) Effective [DATE TO BE DETERMINED IN FINAL RULE], manufacturers of navigation devices (as defined by § 76.1200 of this chapter) [provided by MVPDs to their subscribers] and the MVPDs that provide those devices shall ensure that the on-screen text menus and guides provided for the display or selection of multichannel video programming are audibly accessible in real-time upon request by individuals who are blind or visually impaired. MVPDs [and other covered entities] may comply with this requirement through the use of software, a peripheral device, specialized consumer premises equipment, a network-based service or other solution, and shall have maximum flexibility to select the manner of compliance.

(2) With respect to navigation device features and functions

(i) Delivered in software, the requirements set forth in this rule shall apply to the manufacturer of such software; and

(ii) Delivered in hardware, the requirements set forth in this rule shall apply to the manufacturer of such hardware.

(b) This section shall be effective for any apparatus manufactured after the effective date in the United States or outside of the United States and imported for use in the United States, except that the navigation device must only do so if it is achievable as defined in § 79.108(c)(2).

(c)(1) *Achievable.* Manufacturers of navigation devices may petition the Commission for a full or partial exemption from the accessibility requirements of this section pursuant to § 1.41 of this chapter, which the Commission may grant upon a finding that the requirements of this section are not achievable, or may assert that such navigation device is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable.

(2) The petitioner or respondent must support a petition for exemption or a response to a complaint with sufficient evidence to demonstrate that compliance with the requirements of this section is not ''achievable'' where ''achievable'' means with reasonable effort or expense. The Commission will consider the following factors when determining whether the requirements of this section are not ''achievable:''

(i) The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question;

(ii) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;

(iii) The type of operations of the manufacturer or provider; and

(iv) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

**§ 79.109 Activating accessibility features.**

(a) Effective [DATE TO BE DETERMINED IN FINAL RULE], manufacturers of digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound (including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol) and navigation devices (as defined by § 76.1200 of this chapter) with built-in closed-captioning capability shall ensure that closed captioning features are available through a method that is reasonably comparable to a button, key, or icon.

(b) Effective [DATE TO BE DETERMINED IN FINAL RULE], manufacturers of digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound (including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol) with built-in video description capability shall ensure that video description features are available through a method that is reasonably comparable to a button, key, or icon.

(c) This section shall be effective for any apparatus manufactured after the effective date in the United States or outside of the United States and imported for use in the United States.

Federal Communications Commission.

Marlene H. Dortch,

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–13740 Filed 6–17–13; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**[Docket No. 130104012–3012–01]**

**RIN 0648–BC88**

## International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Bigeye Tuna Catch Limit in Longline Fisheries for 2013 and 2014

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

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

**SUMMARY:** NMFS proposes regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to establish a catch limit of 3,763 metric tons (mt) of bigeye tuna (*Thunnus obesus*) for vessels in the U.S. pelagic longline fisheries operating in the western and central Pacific Ocean (WCPO) for each of the calendar years 2013 and 2014. The limit would not apply to vessels in the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI). Once the limit of 3,763 mt is reached in 2013 or 2014, retaining, transshipping, or landing bigeye tuna caught in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), which comprises the majority of the WCPO, would be prohibited for the remainder of the calendar year, with certain exceptions. This action is necessary for the United States to satisfy its obligations under the Convention, to which it is a Contracting Party.

**DATES:** Comments must be submitted in writing by July 18, 2013.

**ADDRESSES:** You may submit comments on this proposed rule, identified by NOAA–NMFS–2013–0090, and the regulatory impact review (RIR) prepared for this proposed rule, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0090,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might 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 and address), 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.

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

Copies of the RIR and the Supplemental Information Report (SIR) prepared for National Environmental Policy Act (NEPA) purposes are available at www.regulations.gov or may be obtained from Michael D. Tosatto, NMFS PIRO (see address above). The SIR is described in more detail below in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Rini Ghosh, NMFS PIRO, 808–944–2273.

**SUPPLEMENTARY INFORMATION:**

### Background on the Convention

A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC Web site at: *www.wcpfc.int/doc/convention-area-map.* The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention establishes the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The WCPFC includes Members, Cooperating Non-members, and Participating Territories (collectively, CCMs). The United States is a Member. American Samoa, Guam, and the CNMI are Participating Territories.

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations to NMFS.

### WCPFC Decisions Regarding Bigeye Tuna Catch Limits in Longline Fisheries

At its Ninth Regular Session, in Manila, Philippines, in December 2012, the WCPFC adopted ''Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean'' (CMM 2012–01). The CMM's stated general objective is to ensure that the stocks of bigeye tuna, yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO are, at a minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. The CMM includes specific objectives for each of the three stocks: For each, the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield. The requirements of the CMM, identified as ''interim'' measures, are for calendar year 2013. The CMM also calls for the WCPFC to establish, at its regular annual session in December 2013, a multi-year management program for 2014–2017 for the three stocks. Given the stock status of bigeye tuna in the WCPO and the general positions of CCMs regarding their longline fisheries,

it is highly likely that the multi-year management program will result in a CMM with the same catch limits for longline fisheries as those included in CMM 2012–01. NMFS proposes to implement the longline provisions of CMM 2012–01 for 2014 as well as 2013, and to implement changes as necessary following the regular session of the WCPFC in December 2013. In this manner, NMFS will avoid any gaps in regulatory oversight of the fisheries that otherwise might result. Implementing this proposed rule for 2013 and 2014 also would serve to provide advance notice to the public that the catch limit would continue, pending implementation of any new measure adopted by the WCPFC, allowing fishers to adjust their fishing practices accordingly. Once the WCPFC adopts a new CMM, NMFS will take the steps necessary to implement that CMM.

CMM 2012–01 is the successor to CMM 2011–01, adopted in March 2012 (most provisions of which were applicable in 2012), and to CMM 2008–01, adopted in December 2008 (most provisions of which were applicable in 2009–2011). These and other CMMs adopted by the WCPFC are available at *www.wcpfc.int/conservation-and-management-measures.*

Among other provisions, CMM 2012–01 requires that CCMs limit catches of bigeye tuna by their longline vessels to specified levels in 2013. The catch limit for the United States longline fisheries is 3,763 mt. This is the same as the catch limit for the United States established in CMMs 2008–01 and 2011–01 that NMFS implemented for 2009–2012 (final rule published 74 FR 63999 (2009 rule) and interim final rule published 77 FR 51709 (2012 rule)). As in the 2009 rule and the 2012 rule, this proposed rule would establish a limit on retained catches (as a proxy for catches) of bigeye tuna. Under CMM 2012–01 and its Attachment F, the longline fisheries of American Samoa, Guam, and the CNMI are not subject to longline bigeye tuna catch limits.

**Proposed Action**

This proposed rule would implement the longline bigeye tuna catch limit of CMM 2012–01 for the United States. The proposed limit and associated restrictions would apply to U.S. longline fisheries in the WCPO other than those of American Samoa, Guam, and the CNMI.

*Establishment of the Limit*

For the purpose of this proposed rule, the longline fisheries of the three U.S. Participating Territories would be distinguished from the other longline fisheries of the United States (all of which are U.S.-flagged vessels) based on a combination of three factors: (1) Where the bigeye tuna are landed; (2) the types of Federal longline fishing permits registered to the fishing vessel; and (3) whether the fishing vessel is included in an arrangement under authorization of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.,* the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Pub. L. 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013). Hereafter, this law is referred to as the ''Section 113 authorization''; the original law, enacted for 2011 and 2012, is referred to as ''prior Section 113(a)''; and, arrangements authorized under either of these laws are referred to as ''Section 113(a) arrangements.''

The Section 113 authorization remains in effect until the earlier of December 31, 2013, or such time as the Western Pacific Fishery Management Council (WPFMC) recommends, and the Secretary approves, an amendment to the Fishery Ecosystem Plan for the Pacific Pelagic Fisheries of the Western Pacific Region (Pelagics FEP) that would authorize U.S. Participating Territories to use, assign, allocate, and manage catch limits of highly migratory fish stocks, or fishing effort limits, established by the WCPFC, and the amendment is implemented via regulations. The WPFMC at its 154th meeting took final action to amend the Pelagics FEP accordingly; however, the amendment has not yet been approved or implemented by NMFS. It is possible the amendment will apply in 2013 or 2014, in which case the provisions of this proposed rule that take into consideration the Section 113 authorization would cease to apply, as the amendment would effectively replace it. The Section 113 authorization may also cease to apply on its own in 2014, if the effective date is not further extended beyond December 31, 2013; therefore, the provisions of this proposed rule that take into consideration the Section 113 authorization would similarly cease to apply. Thus, this proposed rule provides notice to the public that the provisions in the rule for Section 113(a) arrangements may be applicable in 2014, if the Section 113 authorization is further continued, but the regulatory text would only implement the provisions for Section 113(a) arrangements for 2013. NMFS would take appropriate action to amend the regulatory text if Section 113(a) arrangements are applicable in 2014.

With respect to the first factor, bigeye tuna landed by U.S. vessels in any of the three U.S. Participating Territories, with certain provisos, would be attributed to the longline fishery of that Participating Territory. The provisos are that: (1) The bigeye tuna must not be captured in the portion of the U.S. exclusive economic zone (EEZ) surrounding the Hawaiian Archipelago; and (2) the bigeye tuna must be landed by a U.S. fishing vessel operated in compliance with one of the permits required under the regulations implementing the Pelagics FEP developed by the WPFMC or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (West Coast HMS FMP) developed by the Pacific Fishery Management Council (i.e., a permit issued under 50 CFR 665.801 or 660.707).

With respect to the second factor, bigeye tuna that are caught by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit would, subject to the provisos mentioned above, be attributed to the longline fishery of American Samoa, regardless of where that catch is landed. This distinction is made because American Samoa Longline Limited Access Permits are issued only to people that have demonstrated participation in the American Samoa pelagic fisheries, such that the catch may properly be attributed to that territory. The 2009 rule and the 2012 rule included these two above factors as well as the related provisos.

The 2012 rule also included a third factor for the attribution of catch to the U.S. Participating Territories, to take into consideration the provisions of prior Section 113(a). This proposed rule takes into consideration these same provisions, which are included in the Section 113 authorization. These provisions authorize the U.S. Participating Territories of the WCPFC to use, assign, allocate, and manage catch limits or fishing effort limits agreed to by the WCPFC through arrangements with U.S. vessels with permits issued under the Pelagics FEP. They also further direct the Secretary of Commerce, for the purposes of annual reporting to the WCPFC, to attribute catches made by vessels operating under Section 113(a) arrangements to the U.S. Participating Territories. The provisions also establish specific eligibility criteria for these arrangements. The 2012 rule established additional requirements and conditions for catches to be attributed to the U.S. Participating Territories. This proposed rule includes these same eligibility criteria, requirements, and conditions, which are described in more detail below.

The longline fisheries of the United States and its territories operating in the WCPO are managed as discrete fisheries, with separate compilations of catch and effort statistics and separate management measures for each fishery. In order to allow for the orderly administration of these fisheries and a consistent manner of attributing catches to the fisheries of the U.S. Participating Territories under eligible Section 113(a) arrangements, NMFS would wait to attribute catches under eligible Section 113(a) arrangements until the date the catch limit would be reached can be forecasted with a fairly high degree of probability. Thereafter, NMFS would attribute catches to the fisheries of the U.S. Participating Territories under eligible Section 113(a) arrangements starting seven days before the date the U.S. catch limit is forecasted to be reached. This procedure would allow NMFS to properly administer and enforce the specific management requirements for each fishery throughout the year, consistent with the approved Pelagics FEP.

As in 2012, NMFS would prepare forecasts during 2013 and 2014 of the date that the bigeye tuna catch limit would be reached and periodically make these forecasts available to the public, such as by posting on a Web site. All the forecasts prepared up until the time that catch attribution to the U.S. Participating Territories under Section 113(a) arrangements actually begins would assume that there would be no such catch attribution to the U.S. Participating Territories. Those forecasts would be subject to change as new information becomes available. Because of these potential changes, it is necessary to identify a particular forecast for the purpose of determining when catch attribution to the U.S. Participating Territories under eligible Section 113(a) arrangements would begin. For this purpose, NMFS would use the first forecast that indicates the catch limit would be reached within 28 days of the date of preparation of that forecast. The projected catch limit date in this forecast would be called, for the purpose of this proposed rule, the pre-Section 113(a) attribution forecast date. As soon as NMFS determines the pre-Section 113(a) attribution forecast date, NMFS would evaluate all Section 113(a) arrangements that it has received to date, based on the eligibility criteria specified below, and calculate a new forecast date for the catch limit, this time not counting as part of the tally any U.S. catches to be attributed to the U.S. Participating Territories under eligible Section 113(a) arrangements. In order to allow NMFS a reasonable amount of time to complete this process, NMFS would begin attributing catches to the U.S. Participating Territories under eligible Section 113(a) arrangements seven days before the pre-Section 113(a) attribution forecast date and the new forecast date for the catch limit would be calculated based on this attribution start date. At that time, NMFS would also make publicly available a new forecast date on a Web site—the post-Section 113(a) attribution forecast date—and would update that forecast date as appropriate throughout 2013 and 2014 (if Section 113(a) arrangements are applicable in 2014).

There would be no official due date for the receipt by NMFS of potentially eligible Section 113(a) arrangements. However, NMFS would need 14 days to process arrangements that it receives, so for an arrangement received after the date that NMFS determines the pre-Section 113(a) attribution forecast date, attribution to the appropriate U.S. Participating Territory would start 14 days after NMFS has received the arrangement or seven days before the pre-Section 113(a) attribution forecast date, whichever date is later.

NMFS considered starting catch attribution to the U.S. Participating Territories under eligible Section 113(a) arrangements only after the 3,763 mt catch limit is reached, in order to be consistent with past administration of the longline fisheries in the WCPO. However, given the time needed to process Section 113(a) arrangements and the time needed to put into effect the prohibitions once the 3,763 mt catch limit is reached, waiting until the catch limit is reached to begin attribution under arrangements with the U.S. Participating Territories would likely cause public confusion and result in unnecessary costs in the fishery if there is an eligible Section 113(a) arrangement. For example, should attribution begin only after the catch limit is reached and the prohibitions go into effect, a vessel owner providing NMFS with a copy of an eligible arrangement a few days before the catch limit is reached would be subject to the prohibitions for a number of days while the arrangement is reviewed, even though the prohibitions would be later found not to apply to the vessel. Beginning attribution to the U.S. Participating Territories a short period before the pre-Section 113(a) attribution forecast date would help minimize confusion and costs associated with such a situation. It would also have the advantage of avoiding, in certain circumstances, the administrative and other costs associated with putting the prohibitions into effect.

The proposed rule would also include certain requirements that must be met in order for NMFS to attribute bigeye tuna caught by a particular vessel included in a Section 113(a) arrangement to the longline fishery of a U.S. Participating Territory. First, with the exception of existing arrangements received by NMFS prior to the effective date of the proposed rule, NMFS would need to receive from the vessel owner or designated representative a copy of the arrangement at least 14 days prior to the date the bigeye tuna were caught. In addition, the arrangement would need to satisfy specific criteria, discussed in detail in the section below.

Any bigeye tuna attributed to the longline fisheries of American Samoa, Guam, or the CNMI as specified in the proposed rule would not be counted against the U.S. limit. All other bigeye tuna captured by longline gear in the Convention Area by U.S. longline vessels and retained would be counted against the U.S. limit of 3,763 mt.

*Eligible Arrangements*

Under the proposed rule, an arrangement would not be eligible for the attribution of bigeye tuna to the U.S. Participating Territories under the terms of the Section 113 authorization, unless each of the following five criteria were met: (1) The arrangement would need to include vessels registered for use with valid permits issued under the Pelagics FEP; (2) the arrangement could not impose requirements regarding where the vessels fish or land their catch; (3) the arrangement would need to be signed by all the owners of the vessels included in the arrangement, or by their designated representative(s); (4) the arrangement would need to be signed by an authorized official of the U.S. Participating Territory(ies) or his or her designated representative(s); and (5) the arrangement would need to be funded by deposits to the Western Pacific Sustainable Fisheries Fund in support of fisheries development projects identified in a territory's Marine Conservation Plan adopted pursuant to section 204 of the MSA. If NMFS determined that an arrangement did not meet the criteria for eligibility, NMFS would notify the parties to the arrangement or their designated representative(s) of its determination within 14 days of receiving a copy of the arrangement.

*Announcement of the Limit Being Reached*

Under the proposed rule, should NMFS determine that the limit is

expected to be reached before the end of 2013 or 2014, NMFS would publish a notice in the **Federal Register** to announce specific fishing restrictions that would be effective from the date the limit is expected to be reached until the end of the 2013 or 2014 calendar year. NMFS would publish the notice of the restrictions at least seven calendar days before the effective date to provide vessel operators with advance notice. Periodic forecasts of the date the limit is expected to be reached would be made available to the public, such as by posting on a Web site, to help vessel operators plan for the possibility of the limit being reached.

*Restrictions After the Limit Is Reached*

*(1) Retain on board, transship, or land bigeye tuna:* Starting on the effective date of the restrictions and extending through December 31 of that calendar year, it would be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear, except as follows:

First, any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions could be retained on board, transshipped, and/or landed, provided that they were landed within 14 days after the restrictions become effective. A vessel that had declared to NMFS pursuant to 50 CFR 665.803(a) that the current trip type is shallow-setting would not be subject to this 14-day landing restriction, so these vessels would be able to land fish more than 14 days after the restrictions become effective.

Second, bigeye tuna captured by longline gear could be retained on board, transshipped, and/or landed if they were caught by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit, or if they were landed in American Samoa, Guam, or the CNMI, with the following provisos: The bigeye tuna must not have been caught in the portion of the U.S. EEZ surrounding the Hawaiian Archipelago and must have been landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

Third, bigeye tuna captured by longline gear could be retained on board, transshipped, and/or landed if they were caught by a vessel that is included in an eligible Section 113(a) arrangement, as specified above, and the bigeye tuna were subject to attribution to the longline fishery of American Samoa, Guam, or the CNMI in accordance with the terms of the arrangement, and to the extent consistent with the requirements and procedures set forth in the proposed rule, with the following proviso: NMFS would need to have received from the vessel owner or designated representative a copy of the arrangement at least 14 days prior to the activity (i.e., the retention on board, transshipment, or landing). The advance notification provision would not apply to existing arrangements received by NMFS prior to the effective date of the proposed rule.

*(2) Transshipment of bigeye tuna to certain vessels:* Starting on the effective date of the restrictions and extending through December 31 of that calendar year, it would be prohibited to transship bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

*(3) Fishing inside and outside the Convention Area:* To help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, the proposed rule would establish two additional, related prohibitions that would be in effect starting on the effective date of the restrictions and extending through December 31 of that calendar year. First, it would be prohibited to fish with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel would still be required to land any bigeye tuna taken in the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a vessel is used to fish using longline gear outside the Convention Area and enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel would be required to be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area. These two prohibitions would not apply to the following vessels: (1) Vessels on declared shallow-setting trips pursuant to 50 CFR 665.803(a); and (2) vessels operating for the purposes of this rule as part of the longline fisheries of American Samoa, Guam, or the CNMI (including vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in one of the three U.S. Participating Territories, so long as these vessels conduct fishing activities in accordance with the provisos described above; and vessels included in an eligible Section 113(a) arrangement, as specified above, provided that their catches of bigeye tuna are subject to attribution to the longline fishery of American Samoa, Guam, or the CNMI at the time of the activity).

**Classification**

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

*National Environmental Policy Act*

For implementation of the 2009 rule, NMFS prepared an Environmental Assessment (EA) and a Supplemental EA (hereafter, 2009 EA and 2009 SEA, respectively). For implementation of the 2012 rule, NMFS prepared a Supplemental EA (hereafter, 2012 EA). NMFS has prepared a Supplemental Information Report (SIR) to examine whether additional NEPA analysis is needed to assess the impacts of the proposed rule on the human environment. The SIR includes the following sections: (1) The criteria for supplementing NEPA analysis; (2) summary of existing NEPA documents; (3) evaluation of the proposed action; (4) evaluation of new information available since preparation of the existing NEPA analysis; (5) analysis of the need for additional NEPA analysis; and (6) conclusions. In the SIR, NMFS concludes that no supplemental NEPA analysis is required to implement by regulation the 3,763 mt bigeye tuna catch limit for U.S. longline fisheries for 2013 and 2014 for the following reasons: (1) The proposed action is substantially the same as the 2009 rule and the 2012 rule; (2) the potential impacts from the proposed action on the human environment were addressed in the 2009 EA, 2009 SEA, and 2012 SEA; (3) the resources potentially affected by the proposed action were adequately described and evaluated in the 2009 EA, 2009 SEA, and 2012 SEA; and (4) there is no new significant information or circumstances affecting the action area that were not taken into consideration in the 2009 EA, 2009 SEA, and 2012 SEA.

*Executive Order 12866*

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

*Regulatory Flexibility Act*

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this

proposed rule would have on affected small entities, if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

**Estimated Number of Small Entities Affected**

The proposed rule would apply to owners and operators of U.S. vessels fishing with longline gear in the Convention Area, except those that are part of the longline fisheries of American Samoa, Guam, and the CNMI. The total number of affected entities is approximated by the number of Hawaii Longline Limited Access Permits (issued under 50 CFR 665.13) that are assigned to vessels (permitted vessels). Under the limited access program, no more than 164 permits may be issued. During 2006–2012 the number of permitted vessels ranged from 130 to 145 (these figures and some other estimates in the remainder of this IRFA differ slightly from previously published estimates because of subsequent updates to the data and/or methods that were used for the estimates). The current number of permitted vessels (as of May 2013) is 129. Traditionally, most of the Hawaii fleet's fishing effort has been in the Convention Area, with the remainder of the effort to the east of the Convention Area, as described below. Owners and operators of U.S. longline vessels based on the U.S. west coast also could be affected by this proposed rule. However, based on the complete lack of fishing by that fleet in the Convention Area since 2005, it is expected that very few, if any, U.S. west coast vessels would be affected.

Most of the Hawaii longline fleet targets bigeye tuna using deep sets, and during certain parts of the year, portions of the fleet target swordfish using shallow sets. In the years 2005 through 2012, the estimated numbers of Hawaii longline vessels that actually fished ranged from 124 to 129. Of the vessels that fished, the number of vessels that engaged in deep-setting in the years 2005 through 2012 ranged from 122 to 129, and the number of vessels that engaged in shallow-setting ranged from 18 to 35. The number of vessels that engaged in both deep-setting and shallow-setting ranged from 17 to 35. The number of vessels that engaged exclusively in shallow-setting ranged from zero to two. As an indication of the size of businesses in the fishery, average annual ex-vessel revenue for the fleet during 2005–2010 was about $71 million (in 2012 dollars). Virtually all of those revenues are believed to come from shallow-set and deep-set longlining. Based on an average of 127 active vessels during that period, the mean annual per-vessel revenue was about $0.6 million (in 2012 dollars). NMFS has determined that most or all vessels in the affected fisheries are likely to be small entities based on the average annual per-vessel revenue and the Small Business Administration's definition of a small fish harvester (i.e., gross annual receipts of less than $4.0 million).

**Recordkeeping, Reporting, and Other Compliance Requirements**

The proposed rule would not establish any new reporting or recordkeeping requirements. The new compliance requirement would be for affected vessel owners and operators to cease retaining, landing, and transshipping bigeye tuna caught with longline gear in the Convention Area if and when the catch limit is reached in 2013 or 2014, for the remainder of the calendar year, with the exceptions and provisos described in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. (Although the restrictions that would come into effect in the event the catch limit is reached would not prohibit longline fishing, *per se,* they are sometimes referred to in this analysis as constituting a ''fishery closure.'') Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with this requirement are described below to the extent possible.

Complying with the proposed rule could cause foregone fishing opportunities and result in associated economic losses in the event that the bigeye tuna catch limit is reached in 2013 or 2014 and the restrictions on retaining, landing, and transshipping bigeye tuna are imposed for portions of either or both of those years. These costs cannot be projected with any quantitative certainty. For the purpose of projecting baseline conditions under no action, this analysis relies primarily on fishery performance from 2005 through 2008. The years prior to 2005 are excluded because the regulatory environment underwent major changes (the swordfish-directed shallow-set longline fishery was closed in 2001 and reopened in 2004 with limits on fishing effort and turtle interactions). The years 2009–2012 are excluded because bigeye tuna catch limits similar to the limits proposed here were in place. The proposed limit, by prescription, is 10 percent less than catches in 2004 (here and in the remainder of this IRFA, ''catches'' means fish that are caught and retained on board). The proposed annual limit of 3,763 mt is less than the amount caught in any of the years 2005–2008, and it is 20 percent less than the annual average amount caught in that period. Thus, if catches in 2013 and 2014 are similar to those in 2005–2008, there would be a fairly high likelihood of the proposed limit being reached in both years.

If the bigeye tuna limit is reached before the end of 2013 or 2014 and the Convention Area bigeye fishery is consequently closed for the remainder of the calendar year, it can be expected that affected vessels would shift to the next most profitable fishing opportunity (which might be not fishing at all). Revenues from that ''next best'' alternative activity reflect the opportunity costs associated with longline fishing for bigeye tuna in the Convention Area. The economic cost of the proposed rule would not be the nominal direct losses in revenues that would result from not being able to fish for bigeye tuna in the Convention Area, but rather the difference in benefits derived from that activity and those derived from the next best activity. The economic cost of the proposed rule on affected entities is examined here by first estimating the direct losses in revenues that would result from not being able to fish for bigeye tuna in the Convention Area as a result of the catch limit being reached. Those losses represent the upper bound of the economic cost of the proposed rule on affected entities. Potential next-best alternative activities that affected entities could undertake are then identified in order to provide a (mostly qualitative) description of the degree to which actual costs would be lower than that upper bound.

Upper bounds on potential economic costs can be estimated by examining the projected value of longline landings from the Convention Area that would not be made as a result of reaching the limit. For this purpose, it is assumed that, absent this proposed rule, fishing patterns in 2013 and 2014 would be about the same as those in 2005–2008. In the IRFA for the 2009 rule, two no-action scenarios were considered—one in which future catches would be equal to the average during 2005–2008, and a second in which the increasing trend in the fleet's catches in 2005–2008 would continue in future years. The second scenario is not considered in this analysis because if catches in 2011—a year in which a bigeye tuna catch limit was in place but was not reached—are

considered, there was no clear upward trend (in 2009 and 2010, the limit was reached and the restrictions went into effect). Based on the numbers of fish caught from vessel logbook data, and average fish weights derived from landings data, the average annual fleet catch of bigeye tuna in 2005–2008 was 4,718 mt. Thus, if catches in 2013 and 2014 would be 4,718 mt per year without a limit in place, imposition of a catch limit of 3,763 mt would be expected to result in 20 percent less bigeye tuna being caught in 2013–2014 than under no action. In the deep-set fishery, catches of marketable species other than bigeye tuna would likely be affected in a similar way (if vessels do not shift to alternative activities). Assuming for the moment that ex-vessel prices would not be affected by a fishery closure, under the proposed rule, revenues in 2013 and 2014 to entities that participate exclusively in the deep-set fishery would be approximately 20 percent less than under no action. If average annual ex-vessel revenues during 2005–2008 (about $0.6 million per active vessel, in 2012 dollars) are a good indicator of future revenues under no action, per-vessel annual revenues under the proposed rule would be as much as $0.1 million less, on average, than under no action.

In the shallow-set fishery, affected entities would bear limited cost in the event of the limit being reached (but most affected entities also participate in the deep-set fishery and might bear costs in that fishery, as described below). The cost would be approximately equal to the revenues lost from not being able to retain or land bigeye tuna captured while shallow-setting in the Convention Area, or the cost of shifting to shallow-setting in the eastern Pacific Ocean (EPO), which is to the east of 150 degrees W. longitude, whichever is less. In the fourth calendar quarters of 2005–2008, almost all shallow-setting effort took place in the EPO, and 97 percent of bigeye tuna catches were made there, so the cost of a bigeye tuna fishery closure would appear to be very limited. During 2005–2008, the shallow-set fishery caught an average of 54 mt of bigeye tuna per year from the Convention Area. If the proposed bigeye tuna catch limit is reached even as early as July 31 in 2013 or 2014, the Convention Area shallow-set fishery would have caught at that point, based on 2005–2008 data, on average, 99 percent of its average annual bigeye tuna catches. Thus, imposition of the landings restriction at that point in 2013 or 2014 would result in the loss of revenues from approximately 0.5 mt (1 percent of 54 mt) of bigeye tuna, which, based on recent ex-vessel prices, would be worth no more than $5,000. Thus, expecting about 27 vessels to engage in the shallow-set fishery (the annual average in 2005–2012), the average of those potentially lost annual revenues would be no more than $200 per vessel.

The remainder of this analysis focuses on the potential costs of compliance in the deep-set fishery. Again, the estimates of potentially lost revenues given above are for the purpose of estimating upper bounds on potential economic losses on affected entities and do not account for revenues from alternative activities, some of which are discussed further below.

It should be noted that impacts on affected entities' profits would be less than impacts on revenues, because costs would be lower if a vessel ceases fishing after the catch limit is reached. Variable costs can be expected to be affected roughly in proportion to revenues, as both would stop accruing once a vessel stops fishing. But affected entities' costs also include fixed costs, which are borne regardless of whether a vessel is used to fish—e.g., if it is tied up at the dock during a fishery closure. Thus, profits would likely be adversely impacted proportionately more than revenues.

As stated previously, actual compliance costs for a given entity might be less than the upper bounds described above because ceasing fishing would not necessarily be the most profitable opportunity in the event of the catch limit being reached. Two alternative opportunities that are expected to be attractive to affected entities include: (1) Deep-set longline fishing for bigeye tuna in the Convention Area in a manner such that the vessel is considered part of the longline fishery of American Samoa, Guam, or the CNMI; and (2) deep-set longline fishing for bigeye tuna and other species in the EPO. These two opportunities are discussed in detail below. Three additional opportunities, which were examined in economic analyses prepared for the 2009 rule are: (3) Shallow-set longline fishing for swordfish (for deep-setting vessels that would not otherwise do so), (4) deep-set longline fishing in the Convention Area for species other than bigeye tuna, and (5) working in cooperation with vessels operating as part of the longline fisheries of the Participating Territories—specifically, receiving transshipments at sea from them and delivering the fish to the Hawaii market. Vessel repair and maintenance is another possibility. A study by NMFS of the effects of the WCPO bigeye tuna longline fishery closure in 2010 (Richmond, L., D. Kotowicz, J. Hospital and S. Allen, 2012, Adaptations in a Fishing Community: Monitoring Socioeconomic Impacts of Hawai'i's 2010 Bigeye Tuna Closure, PIFSC Internal Report IR–12–019, Honolulu, United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Pacific Islands Fisheries Science Center) did not identify any alternative activities that vessels engaged in during the closure other than deep-setting for bigeye tuna in the EPO, vessel maintenance and repairs, and granting lengthy vacations to employees. Thus, alternative opportunities (3), (4) and (5) are probably relatively unattractive relative to the first two, and they are not discussed here in any further detail.

Before examining in detail the two potential alternative opportunities that would appear to be the most attractive to affected entities, it is important to note that under the proposed rule, once the limit is reached and the WCPO bigeye tuna fishery is closed, it would be prohibited to fish with longline gear both inside and outside the Convention Area during the same trip (with the exception of a fishing trip that is in progress when the limit is reached and the restrictions go into effect). For example, after the restrictions go into effect, during a given fishing trip, a vessel could be used for longline fishing for bigeye tuna in the EPO or for longline fishing for species other than bigeye tuna in the Convention Area, but not both. This reduced operational flexibility would bring costs, since it would constrain the potential profits from alternative opportunities collectively. Those costs cannot be quantified.

With respect to alternative opportunity (1), deep-setting for bigeye tuna in a manner such that the vessel is considered part of the longline fishery of one of the three U.S. Participating Territories, there would be three such ways to do so: (a) landing the bigeye tuna in one of the three Participating Territories; (b) having an American Samoa Longline Limited Access Permit; or (c) entering into an arrangement with one or more of the three Participating Territories under the Section 113 authorization, such that the vessel is considered part of the Participating Territory's longline fishery. In the first two circumstances, the vessel would be considered part of the longline fishery of the Participating Territory only if the bigeye tuna were not caught in the portion of the U.S. EEZ around the Hawaiian Islands and they are landed

by a U.S. vessel operated in compliance with a permit issued under the Pelagics FEP or the West Coast HMS FMP.

With respect to alternative opportunity (1)(a), landing the bigeye tuna in one of the Participating Territories, there are three potentially important constraints. First, whether the fish are landed by the vessel that caught the fish or by a vessel to which the fish were transshipped, the costs of a vessel transiting from the traditional fishing grounds in the vicinity of the Hawaiian Archipelago to one of the Participating Territories would be substantial. Second, none of these three locales has large local consumer markets to absorb substantial additional landings of fresh sashimi-grade bigeye tuna. Third, transporting the bigeye tuna from these locales to larger markets, such as in Hawaii, the U.S. west coast, or Japan, would bring substantial additional costs and risks. These cost constraints suggest that this opportunity has limited potential to mitigate the economic impacts of the proposed rule on affected small entities.

Opportunity (1)(b), having an American Samoa Longline Limited Access Permit, would be available only to the subset of the Hawaii longline fleet that has both Hawaii and American Samoa longline permits (''dual permit vessels''). Vessels that do not currently have both permits could obtain them if they meet the eligibility requirements and pay the required costs. For example, the number of dual permit vessels increased from 12 in 2009, when the first WCPO bigeye tuna catch limit was established, to 20 in 2011, where it remained in 2012. The previously cited NMFS study of the 2010 fishery closure (Richmond *et al.* 2012) found that bigeye tuna landings of dual permit vessels increased substantially after the start of the closure on November 22, 2010, indicating that this was an attractive opportunity for dual permit vessels, and suggesting that those entities might have benefitted from the catch limit and the closure.

Opportunity (1)(c), entering into a Section 113(a) arrangement with a U.S. Participating Territory, would be available to all affected entities in 2013; it is not known whether it would be available in 2014. This is the same opportunity that was available in 2011 and 2012 when prior Section 113(a) was in effect. In those two years, the vessels of the members of the Hawaii Longline Association (HLA) were included in a Section 113(a) arrangement with American Samoa, and as a result, the catch limit was not reached in either year, and no longline vessels were subject to the restrictions that would have gone into effect had the limit been reached. This option would likely not come without cost—at least one of the three Participating Territories would have to agree to the arrangement. As an indication of the possible cost, the terms of the arrangement between American Samoa and the members of the HLA that applied in 2011 and 2012 included payments totaling $250,000 from the HLA to the Western Pacific Sustainable Fisheries Fund, equal to $2,000 per vessel in the arrangement (it is not known how the total cost was allocated among the members of the HLA, so it is possible that the owners of particular vessels paid substantially more than or less than $2,000).

With respect to alternative opportunity (2), deep-set fishing for bigeye tuna in the EPO, this would be an option for affected entities only if it is allowed under regulations implementing the decisions of the Inter-American Tropical Tuna Commission (IATTC). Currently there is a bigeye tuna catch limit of 500 mt for 2013 that applies to U.S. longline vessels greater than 24 meters (m) in length. It is presently not known whether the limit will be reached in 2013. Annual longline bigeye tuna catch limits have been in place for the EPO in most years since 2004, but since 2009, when the limit was 500 mt and applicable only to vessels longer than 24 m in length, the limits have not been reached. The IATTC is scheduled to consider needed management measures for 2014 and beyond for the tropical tuna stocks at its annual meeting in June 2013, but it is not known whether it will maintain or modify its current bigeye tuna longline catch limit provisions, which are in effect through 2013.

Historical fishing patterns can provide an indication of the likelihood of affected entities making use of the opportunity of deep-setting in the EPO in the event of a closure in the WCPO. The proportion of the U.S. fishery's annual bigeye tuna catches that were captured in the EPO from 2005 through 2008 ranged from 2 percent to 22 percent, and averaged 11 percent. In 2005–2007, that proportion, which ranged from 2 percent to 11 percent, may have been constrained by the bigeye tuna catch limits established by NMFS to implement the decisions of the IATTC.

Prior to 2009, most of the U.S. annual bigeye tuna catch by longline vessels in the EPO typically was made in the second and third quarters of the year: in 2005–2008 the percentages caught in the first, second, third, and fourth quarters were 14, 33, 50, and 3 percent, respectively. These two historical patterns—that relatively little of the bigeye tuna catch in the longline fishery was typically taken in the EPO (11 percent in 2005–2008, on average) and that most EPO bigeye tuna catches were made in the second and third quarters, with relatively few catches in the fourth quarter, when the proposed catch limit would most likely be reached, suggest that there could be substantial costs for at least some affected entities to shift to deep-set fishing in the EPO in the event of a closure in the WCPO. On the other hand, fishing patterns in 2009–2012, when annual bigeye tuna catch limits were in effect in the WCPO, suggest that a substantial shift in deep-set fishing effort to the EPO could occur. In 2009, 2010, 2011, and 2012, the proportions of the fishery's annual bigeye tuna catches that were captured in the EPO were about 16, 27, 22, and 19 percent, respectively. And during that three-year period, on average, the proportions caught in the first, second, third, and fourth quarters were 7, 14, 41, and 37 percent, respectively. Thus, a substantial amount of fishing occurred in the EPO in the fourth quarters of 2009–2012, when WCPO catch limits were in place (the limits were reached in 2009 and 2010). However, the NMFS study of the 2010 closure (Richmond *et al.* 2012) found that some businesses—particularly those with smaller vessels—were less inclined than others to fish in the EPO during the closure because of the relatively long distances that would need to be travelled in the relatively rough winter ocean conditions. The study identified a number of factors that likely made fishing in the EPO less lucrative than fishing in the WCPO during that part of the year, including fuel costs and the need to limit trip length in order to maintain fish quality and because of limited fuel storage capacity.

In addition to affecting the volume of landings of bigeye tuna and other species, the proposed catch limit could affect fish prices, particularly during a fishery closure. Both increases and decreases appear possible. After the limit is reached and landings from the WCPO are prohibited, ex-vessel prices of bigeye tuna (e.g., that are caught in the EPO or by vessels in the longline fisheries of the three U.S. Participating Territories), as well as of other species landed by the fleet, could increase as a result of the constricted supply. This would mitigate economic losses for vessels that are able to continue fishing and landing bigeye tuna during the closure. For example, the NMFS study of the 2010 closure (Richmond *et al.* 2012) found that ex-vessel prices during

the closure in December were 50 percent greater than the average during the previous five Decembers (it is emphasized that because it was an observational study, neither this nor other observations of what occurred during the closure can be affirmatively linked as effects of the fishery closure). Conversely, a WCPO bigeye tuna fishery closure could cause a decrease in ex-vessel prices of bigeye tuna and other products landed by affected entities if the interruption in the local supply prompts the Hawaii market to shift to alternative (e.g., imported) sources of bigeye tuna. Such a shift could be temporary—that is, limited to 2013 and/or 2014, or it could lead to a more permanent change in the market (e.g., as a result of wholesale and retail buyers wanting to mitigate the uncertainty in the continuity of supply from the Hawaii longline fisheries). In the latter case, if locally caught bigeye tuna fetches lower prices because of stiffer competition with imported bigeye tuna, then ex-vessel prices of local product could be depressed indefinitely. The NMFS study of the 2010 closure (Richmond *et al.* 2012) found that a common concern in the Hawaii fishing community prior to the closure in November 2010 was retailers having to rely more heavily on imported tuna, causing imports to gain a greater market share in local markets. The study found this not to have been borne out, at least not in 2010, when the evidence gathered in the study suggested that few buyers adapted to the closure by increasing their reliance on imports, and no reports or indications were found of a dramatic increase in the use of imported bigeye tuna during the closure. The study concluded, however, that the 2010 closure caused buyers to give increased consideration to imports as part of their business model, and it was predicted that tuna imports could increase during any future closure. To the extent that ex-vessel prices would be reduced by this action, revenues earned by affected entities would be affected accordingly, and these impacts could occur both before and after the limit is reached, and as described above, possibly after 2014.

The potential economic effects identified above would vary among individual business entities, but it is not possible to predict the range of variation. Furthermore, the impacts on a particular entity would depend both on that entity's response to the proposed rule and to the behavior of other vessels in the fleet, both before and after the catch limit is reached. For example, the greater the number of vessels that take advantage—before the limit is reached—of opportunity (1), fishing as part of one of the Participating Territory's fisheries, the lower the likelihood that the limit would be reached. The fleet's behavior in 2011 and 2012 is illustrative. In both those years, most vessels in the Hawaii fleet were included in a Section 113(a) arrangement with American Samoa, and as a consequence, the catch limit was not reached in either year. Thus, none of the vessels in the fleet, including those not included in the Section 113(a) arrangement, were prohibited from fishing for bigeye tuna in the Convention Area at any time during those two years. The fleet's experience in 2010 (before opportunities under prior Section 113(a) were available) provides another example of how economic impacts could be distributed among different entities. In 2010 the limit was reached and the WCPO bigeye tuna fishery was closed on November 22. As described above, dual permit vessels were able to continue fishing (outside the U.S. EEZ around the Hawaiian Archipelago) and benefit from the relatively high ex-vessel prices that bigeye tuna fetched during the closure.

In summary, NMFS has estimated upper bounds on the potential economic impacts of the proposed rule on affected entities, but the actual impacts to most entities are likely to be substantially less than those upper bounds, and for some entities the impacts could be neutral or positive.

**Disproportionate Impacts**

As indicated above, most or all affected entities are believed to be small entities, in which case small entities would not be disproportionately affected relative to large entities. However, as described above, there could be disproportionate impacts according to vessel size. The 500 mt EPO bigeye catch limit for 2013 applies only to vessels greater than 24 m in length, so in the event that the WCPO bigeye tuna fishery is closed and the 500 mt limit is reached in the EPO, only vessels 24 m or less in length would be able to take advantage of the alternative opportunity of deep-setting for bigeye tuna in the EPO. On the other hand, smaller vessels can be expected to find it more difficult, risky, and/or costly to fish in the EPO during the relatively rough winter months than larger vessels. If there are any large entities among the affected entities, and if the vessels of the large entities are larger than those of small entities, then it is possible that small entities could be disproportionately affected relative to large entities. All the affected entities are longline fishing businesses, so there would be no disproportionate economic impacts based on fishing gear. No disproportionate economic impacts based on home port would be expected.

**Duplicating, Overlapping, and Conflicting Federal Regulations**

NMFS has not identified any Federal rules that duplicate, overlap or conflict with the proposed rule.

**Alternatives to the Proposed Rule**

NMFS has not identified any significant alternatives to the proposed rule, other than the no-action alternative. Taking no action could result in lesser adverse economic impacts than the proposed action for many affected entities (but as described above, for some affected entities, the proposed rule could be more economically beneficial than no-action), but NMFS has determined that the no-action alternative would fail to accomplish the objectives of the WCPFC Implementation Act, including satisfying the international obligations of the United States as a Contracting Party to the Convention.

**List of Subjects in 50 CFR Part 300**

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: June 11, 2013.

**Samuel D. Rauch III,**

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

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

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

**Authority:** 16 U.S.C. 6901 *et seq.*

■ 2. Section 300.224 is revised to read as follows:

**§ 300.224 Longline fishing restrictions.**

(a) *Establishment of bigeye tuna catch limit.* There is a limit of 3,763 metric tons of bigeye tuna that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States during each of the calendar years 2013 and 2014.

(b) *Exception for bigeye tuna landed in territories.* Bigeye tuna landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands will be attributed to the longline fishery of the territory in which it is

landed and will not be counted against the limit established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(c) *Exception for bigeye tuna caught by vessels with American Samoa Longline Limited Access Permits.* Bigeye tuna caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title will be attributed to the longline fishery of American Samoa and will not be counted against the limit established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(d) *Exception for bigeye tuna caught by vessels included in Section 113(a) arrangements.* Bigeye tuna caught in 2013 by a vessel that is included in an arrangement under the authorization of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.,* the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), will be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, according to the terms of the arrangement to the extent they are consistent with this section and applicable law, and will not be counted against the limit, provided that:

(1) NMFS has received a copy of the arrangement from the vessel owner or a designated representative at least 14 days prior to the date the bigeye tuna was caught, except that this requirement shall not apply to any arrangement provided to NMFS prior to the effective date of this paragraph;

(2) The bigeye tuna was caught on or after the ''start date'' specified in paragraph (g)(2) of this section; and

(3) NMFS has determined that the arrangement satisfies the requirements of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.,* the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), in accordance with the criteria specified in paragraph (g)(3) of this section.

(e) *Announcement of catch limit being reached and fishing prohibitions.* NMFS will monitor retained catches of bigeye tuna with respect to the limit established under paragraph (a) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit is expected to be reached by a specific future date, and at least seven calendar days in advance of that specific future date, NMFS will publish a notice in the **Federal Register** announcing that specific prohibitions will be in effect starting on that specific future date and ending December 31 of that calendar year.

(f) *Prohibitions after catch limit is reached.* Once an announcement is made pursuant to paragraph (e) of this section, the following restrictions will apply during the period specified in the announcement:

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

(i) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. The 14-day landing requirement does not apply to a vessel that has declared to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting.

(ii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(iii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(iv) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed in 2013 if they were caught by a vessel that is included in an arrangement under the authorization of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.,* the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), if the arrangement provides for the bigeye tuna when caught to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) NMFS has received a copy of the arrangement at least 14 days prior to the activity (i.e., the retention on board, transshipment, or landing), unless NMFS has received a copy of the arrangement prior to the effective date of this section;

(B) The ''start date'' specified in paragraph (g)(2) of this section has occurred or passed; and

(C) NMFS has determined that the arrangement satisfies the requirements of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.,* the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Pub. L. 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), in accordance with the criteria specified in paragraph (g)(3) of this section.

(2) Bigeye tuna caught by longline gear in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(3) A fishing vessel of the United States may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (e) of this section, in which case the bigeye tuna on board the vessel may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. This prohibition does not apply to a vessel

that catches bigeye tuna that is to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands in accordance with paragraphs (b), (c), or (d) of this section, or to a vessel for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting.

(4) If a fishing vessel of the United States, other than a vessel that catches bigeye tuna that is to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, in accordance with paragraphs (b), (c), and (d) of this section, or a vessel for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting, is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must, while it is in the Convention Area, be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

(g) *Procedures and conditions for Section 113(a) arrangements.* This paragraph establishes procedures to be followed and conditions that must be met in 2013 with respect to arrangements authorized under Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.,* the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013). These procedures and conditions apply to paragraphs (d), (f)(1)(iv), (f)(3), and (f)(4) of this section.

(1) For the purpose of this section, the ''pre-Section 113(a) attribution forecast date'' is the date the catch limit established under paragraph (a) of this section is forecast by NMFS to be reached in the calendar year, assuming that no catches would be attributed to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands under arrangements authorized under Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.,* the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013). Since forecasts are subject to change as new information becomes available, NMFS will use for this purpose the first forecast it prepares that indicates that the date of the limit being reached is less than 28 days after the date the forecast is prepared.

(2) For the purpose of this section, the ''start date'' for attribution of catches to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands for a particular arrangement is:

(i) Seven days before the pre-Section 113(a) attribution forecast date, for arrangements copies of which are received by NMFS no later than the date NMFS determines the pre-Section 113(a) attribution forecast date; and

(ii) Seven days before the pre-Section 113(a) attribution forecast date or 14 days after the date that NMFS receives a copy of the arrangement, whichever is later, for arrangements copies of which are received by NMFS after the date NMFS determines the pre-Section 113(a) attribution forecast date.

(3) NMFS will determine whether an arrangement satisfies the requirements of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.,* the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Pub. L. 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), for the attribution of bigeye tuna to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands according to the following criteria:

(i) Vessels included under the arrangement must be registered for use with valid permits issued under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region;

(ii) The arrangement must not impose any requirements regarding where the vessels included in the arrangement must fish or land their catch;

(iii) The arrangement must be signed by the owners of all the vessels included in the arrangement or their designated representative(s);

(iv) The arrangement must be signed by an authorized official of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands or his or her designated representative(s); and

(v) The arrangement must be funded by deposits to the Western Pacific Sustainable Fisheries Fund in support of fisheries development projects identified in the Marine Conservation Plan of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands adopted pursuant to section 204 of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) NMFS will notify the parties to the arrangement or their designated representative(s) within 14 days of receiving a copy of the arrangement, if the arrangement does not meet the criteria specified in paragraph (g)(3) of this section.

[FR Doc. 2013–14337 Filed 6–17–13; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 78, No. 117

Tuesday, June 18, 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

### Submission for OMB Review; Comment Request

June 12, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 18, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Animal and Plant Health Inspection Service

*Title:* Importation of Fruits and Vegetables.

*OMB Control Number:* 0579–0316.

*Summary of Collection:* Under the Plant Protection Act (7 U.S.C. 7701 et. seq.), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pest not known to be widely distributed throughout the United States. The regulations contained in Title 7 of the Code of Federal Regulations, Part 319 (Subpart Fruits and Vegetables), Sections 319.56 through 319.56–48 implement the intent of the Act by prohibiting or restricting the importation of certain fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to the United States or not widely distributed within the United States.

*Need and Use of the Information:* The Animal and Plant Health Inspection Service (APHIS) will collect information using PPQ form 587, ''Permit Application,'' Phytosanitary Certificate, Inspections, Records, Labeling and Trapping. If APHIS did not collect this information, the effectiveness of its Import Regulations would be severely compromised, likely resulting in the introduction of a number of destructive agricultural pests into the United States.

*Description of Respondents:* Business or other for-profit; Federal Government.

*Number of Respondents:* 2,959.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 124,779.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2013–14396 Filed 6–17–13; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2013–0035]**

### Notice of Request for Extension of Approval of an Information Collection; Importation of Plants for Planting

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of plants for planting.

**DATES:** We will consider all comments that we receive on or before August 19, 2013.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0035-0001.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2013–0035, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0035* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the regulations for the importation of plants for planting, contact Mr. Arnold Tschanz, Senior Regulatory Policy Specialist, PPIP, PHP, PPQ, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2179. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS'

Information Collection Coordinator, at (301) 851–2908.

**SUPPLEMENTARY INFORMATION:**

*Title:* Importation of Plants for Planting.

*OMB Number:* 0579–0279.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS).

APHIS regulations contained in ''Subpart–Plants for Planting'' (7 CFR 319.37 through 319.37–14) prohibit or restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for planting or propagation. In accordance with these regulations, plants for planting from certain parts of the world may be imported into the United States only under certain conditions to prevent the introduction of plant pests into the United States.

Paragraph (u) of § 319.37–5 provides the requirements for the importation of *Pelargonium* spp. plants from the Canary Islands, and paragraph (v) provides the requirements for the importation of plants from Israel, except bulbs, dormant perennials, and seeds. These requirements involve the use of information collection activities, including phytosanitary certificates with additional declaration statements, grower registration and agreements, and production site registration for the export program.

These information collection activities were previously approved by the Office of Management and Budget (OMB) under the title ''Importation of Nursery Stock.'' However, on May 27, 2011, we published in the **Federal Register** (76 FR 31172–31210, Docket No. APHIS–2006–0011) a final rule that changed the nursery stock regulations (7 CFR 319.37 through 319.37–14) to refer instead to ''plants for planting.'' As a result, we have revised the title of this information collection to ''Importation of Plants for Planting.''

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.11 hours per response.

*Respondents:* Importers, nurseries, and the national plant protection organizations of Spain and Israel.

*Estimated annual number of respondents:* 60.

*Estimated annual number of responses per respondent:* 86.07.

*Estimated annual number of responses:* 5,164.

*Estimated total annual burden on respondents:* 559 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of June 2013.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2013–14466 Filed 6–17–13; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2013–0007]**

### Notice of Availability of a Treatment Evaluation Document; Methyl Bromide Fumigation of Blueberries

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** We are advising the public that we have determined that it is necessary to immediately add to the Plant Protection and Quarantine Treatment Manual an additional treatment schedule for methyl bromide fumigation of blueberries for Mediterranean fruit fly and South American fruit fly. We have prepared a treatment evaluation document that describes the new treatment schedule and explains why we have determined that it is effective at neutralizing these fruit flies. We are making the treatment evaluation document available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before August 19, 2013.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0007-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0007, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0007* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Inder P.S. Gadh, Senior Risk Manager—Treatments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2018.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 7 CFR chapter III are intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. Under the regulations, certain plants, fruits, vegetables, and other articles must be treated before they may be moved into the United States or interstate. The phytosanitary treatments regulations contained in part 305 of 7 CFR chapter III (referred to below as the regulations) set out standards for treatments required in parts 301, 318, and 319 of 7 CFR chapter III for fruits, vegetables, and other articles.

In § 305.2, paragraph (b) states that approved treatment schedules are set out in the Plant Protection and

Quarantine (PPQ) Treatment Manual.[1] Section 305.3 sets out a process for adding, revising, or removing treatment schedules in the PPQ Treatment Manual. In that section, paragraph (b) sets out the process for adding, revising, or removing treatment schedules when there is an immediate need to make a change. The circumstances in which an immediate need exists are described in § 305.3(b)(1). They are:

- PPQ has determined that an approved treatment schedule is ineffective at neutralizing the targeted plant pest(s).
- PPQ has determined that, in order to neutralize the targeted plant pest(s), the treatment schedule must be administered using a different process than was previously used.
- PPQ has determined that a new treatment schedule is effective, based on efficacy data, and that ongoing trade in a commodity or commodities may be adversely impacted unless the new treatment schedule is approved for use.
- The use of a treatment schedule is no longer authorized by the U.S. Environmental Protection Agency or by any other Federal entity.

A treatment schedule currently listed in the PPQ Treatment Manual (T101–i–1–1) requires blueberries to be treated with methyl bromide at 70 °F or above using 2 lbs gas/1,000 $ft^3$ for 3.5 hours at normal atmospheric pressure whether in chambers or under tarpaulin to mitigate risk from two fruit fly species, *Ceratitis capitata* (Mediterranean fruit fly, or Medfly) and *Anastrepha fraterculus* (South American fruit fly). Because the 70 °F-or-above requirement has presented an undue economic hardship for the exporters, in 2009 Argentina requested and subsequently provided the supporting efficacy data for the Animal and Plant Health Inspection Service (APHIS) to approve a new methyl bromide treatment to be applied in chambers at a lower temperature (59 °F or above) for control of Medfly and South American fruit fly. After reviewing the data provided, APHIS found the results to be acceptable with a slight modification of temperature.

In accordance with § 305.3(a)(1), we are providing notice that we have determined that it is necessary to add treatment schedule T101-i-1–2, which provides for a methyl bromide treatment schedule for blueberries at a temperature of 60 °F at a dosage rate of 2 lbs gas/1,000 $ft^3$ for an exposure period of 3.5 hours in a chamber. In order to have minimum adverse impact on the on-going trade of blueberries and using the immediate process as provided in § 305.3(b), this change is effective immediately upon publication of this notice. This treatment schedule will be listed in a separate section of the PPQ Treatment Manual, which will indicate that T101-i-1–2 was added through the immediate process described in paragraph (b) of § 305.3 and that it is subject to change or removal based on public comment.

The reasons for the addition of this treatment schedule are described in detail in a treatment evaluation document we have prepared to support this action. The treatment evaluation document may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the treatment evaluation document by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the subject of the treatment evaluation document when requesting copies.

After reviewing the comments we receive, we will announce our decision regarding the new treatment schedule that is described in the treatment evaluation document in a subsequent notice, in accordance with paragraph (b)(3) of § 305.3. If we do not receive any comments, or the comments we receive do not change our determination that the treatment is effective, we will affirm the treatment schedule's addition to the PPQ Treatment Manual and make available a new version of the PPQ Treatment Manual in which T101-i-1–2 is listed in the main body of the PPQ Treatment Manual. If we receive comments that cause us to determine that T101-i-1–2 needs to be changed or removed, we will make available a new version of the PPQ Treatment Manual that reflects changes to or the removal of T101-i-1–2.

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 12th day of June 2013.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2013–14468 Filed 6–17–13; 8:45 am]

**BILLING CODE 3410–34–P**

[1] The Treatment Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/index.shtml* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Office of the Secretary

## Notice of Sugar Purchase and Exchange for Re-Export Program Credits; and Notice of Re-Export Program Time Period Extension

**AGENCY:** Commodity Credit Corporation and Office of the Secretary, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice concerns two separate actions. First, the Commodity Credit Corporation (CCC) announces the intent to purchase sugar to be offered in exchange for Refined Sugar Re-export Program credits. CCC will purchase sugar from domestic sugarcane processors or beet processors under the Cost Reduction Options of the Food Security Act of 1985, and concurrently exchange such sugar for credits under the Refined Sugar Re-export Program. Second, USDA announces a waiver to provide an extension of the time period from 90 days to 270 days in which licensed refiners must export or transfer sugar under the Refined Sugar Re-export Program.

**DATES:** *Effective date:* June 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** For current market conditions, eligibility, and criteria for evaluation information contact Daniel Colacicco; telephone (202) 690–0734. For sugar purchase and general exchange information contact Pamela McKenzie; telephone (202) 260–8906. For Refined Sugar Re-export Program waiver information contact Ron Lord; telephone (202) 720–6939. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

### USDA's Sugar Program and the Domestic Sugar Market Conditions

Under the Sugar Program, domestic sugar beet or sugarcane processors may borrow from CCC, pledging their sugar as collateral, and then satisfy their loans either by repaying the loan on or before loan maturity or by transferring the collateral to CCC immediately following loan maturity, also known as ''forfeiture'' of collateral (as specified in 7 CFR 1435.105). The Farm Service Agency (FSA) administers the Sugar Program for CCC. Under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, as amended (Pub. L. 104–127; 7 U.S.C. 7272), the U.S. Department of Agriculture (USDA)

is required to operate the Sugar Program, to the maximum extent practicable, at no cost to the Federal government by avoiding forfeitures of sugar loan collateral to CCC. Due to current market conditions, if no actions are taken by CCC, the cost to CCC of acquiring sugar by forfeiture later this year is projected to range from $110 million to $320 million.

The Louisiana cane sugar and the U.S. beet sugar crops are setting production records for fiscal year (FY) 2013. The U.S. FY 2013 ending stocks-to-use ratio for sugar was projected at 18.5 percent in the May 2013 USDA World Agricultural Supply and Demand Estimates (WASDE) report, well above its historic average. In the past, an ending stocks-to-use ratio at or above 18 percent has been strongly correlated with low U.S. sugar prices, and with forfeiture of sugar loan collateral to CCC. Record FY 2013 sugar production has caused domestic sugar prices to fall below the support level established by USDA's Sugar Program.

**Refined Sugar Re-Export Program**

The Refined Sugar Re-export Program (7 CFR part 1530) permits licensed refiners to import low duty or duty-free raw cane sugar outside of World Trade Organization or bilateral trade agreement tariff-rate quota limits and requires the licensee to offset the quantity imported by exporting refined sugar, or transferring refined sugar to licensed sugar-containing product (for export) or polyhydric alcohol manufacturers. A participating refiner must maintain a license balance within certain limits. Sugar exported or transferred is subtracted from the license balance, resulting in a license ''credit;'' sugar imported is added to the balance, resulting in a license ''debit.'' The maximum amount of permitted net debits—that is, the maximum positive license balance—is 50,000 metric tons (MT) raw value. Refiners are not required to have a negative license balance to offer or to exchange credits for sugar offered by CCC. However, refiners will only be permitted to exchange an amount of credits that maintains their license balance at the maximum amount of permitted net debits, 50,000 MT raw value.

**CCC Sugar Purchase and Exchange**

To reduce the cost of the Sugar Program to the Federal government, prior to the maturity of loans to sugar processors, CCC intends to purchase sugar from the U.S. domestic market and conduct voluntary exchanges of the purchased sugar in return for credits from Refined Sugar Re-export Program licensees under the Refined Sugar Re-export Program. These exchanges are expected to remove sugar from the market at a lower cost to the Federal government than the cost of acquiring sugar through loan collateral forfeiture.

CCC will invite domestic sugarcane and sugar beet processors to offer sugar to CCC, as authorized by the Cost Reduction Options of the Food Security Act of 1985, as amended (7 U.S.C. 1308a(c)), which permits CCC to purchase sugar provided that the price paid is below the comparable regional or State costs of later acquiring the sugar through loan forfeiture under the Sugar Program. The purchase invitation will describe the information needed from sugar sellers, such as sugar type, amount, storage location, and CCC warehouse code. The purchase invitation will also specify additional details, such as the opening and closing dates for offers and other terms of CCC's sugar purchase. CCC will then post a catalog listing the available sugar quantities. The purchase invitation and catalog will be placed on the FSA Commodity Operations Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=landing.* In order to allow for timely market pricing, CCC will permit sugarcane and sugar beet processors to provide price offers to the catalog to coincide with the timing of the exchange announcement's closing bid date.

Subsequently, approximately 10 calendar days later an exchange announcement will be made in which CCC will offer available sugar to Refined Sugar Re-export Program licensees in exchange for credits. The exchange announcement will specify a minimum bid ratio of credits per MT of CCC sugar. The exchange announcement is available on the FSA Commodity Operations Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=landing.*

**Eligibility**

To be eligible to sell sugar to CCC for the exchange, the processor must have sugar under the CCC Sugar Loan Program. The quantity of sugar offered by a processor cannot exceed the sugar processor's outstanding loan quantity as of the offer due date.

To be eligible for the exchange, licensed refiners must present an updated license balance to USDA as verification that the proposed sugar exchange would not cause the refiner to have a positive license balance in excess of 50,000 MT.

**Criteria for Evaluation of Tenders (Offers and Exchange Bids)**

CCC will combine the sugar offers and exchange bids that achieve the greatest cost reduction relative to the costs of later acquiring the sugar through forfeiture. The specific formula that CCC will use to evaluate and accept offer and bid combinations will be specified in the purchase and exchange invitations.

**Refined Sugar Re-Export Program Time Period Extension**

In order to allow licensed refiners sufficient time to participate in the credit exchange described above, employing the good cause discretionary waiver authority specified in the Refined Sugar Re-export Program regulation in 7 CFR 1530.113, the time period in which licensed refiners must export or transfer an equivalent amount of refined sugar, after entering a quantity of raw cane sugar under the Refined Sugar Re-export Program, if such entry results in a positive balance to their license, is extended as described below. A positive balance exists when cumulative imports exceed cumulative exports and transfers.

As specified in 7 CFR 1530.105, licensed refiners under the Refined Sugar Re-export Program normally have 90 days after entering a quantity of raw cane sugar under the Refined Sugar Re-export Program to export or transfer an equivalent amount of refined sugar, if the entry results in a positive balance to their license. For any raw sugar entered into U.S. customs territory on a license between the effective date of this notice and September 30, 2013, which results in a positive balance to the license, a licensed refiner will now have 270 days to export or transfer an equivalent amount of sugar. For any sugar entered into U.S. customs territory on a license between October 1, 2013, and March 31, 2014, the deadline to export or transfer an equivalent amount of sugar will now be June 29, 2014. Beginning on April 1, 2014, the 90-day limit specified in the regulation in 7 CFR 1530.105 will apply, and licensed refiners will again have 90 days after any entry that results in a positive license balance to export or transfer an equivalent amount of sugar.

This temporary extension of the time period from 90 days to 270 days will facilitate participation in exchanges for CCC sugar by providing licensed refiners whose accumulated imports may exceed accumulated exports with additional time to export or transfer an equivalent amount of sugar and therefore increase participation in the exchange by licensed refiners.

Signed on June 12, 2013.

**Darci L. Vetter,**

*Acting Under Secretary, Farm and Foreign Agricultural Services.*

**Juan M. Garcia,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2013–14401 Filed 6–17–13; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Notice of Funds Availability for the Section 533 Housing Preservation Grants for Fiscal Year 2013

**SUMMARY:** The Rural Housing Service (RHS), an Agency within Rural Development, announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private non-profit organizations including, but not be limited to, faith-based and community organizations, and other eligible entities, grant funds to assist very low- and low-income homeowners in repairing and rehabilitating their homes in rural areas. In addition, the HPG program assists rental property owners and cooperative housing complexes in repairing and rehabilitating their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with RHS regulations found in 7 CFR part 1944, subpart N, which require RHS to announce the opening and closing dates for receipt of pre-applications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

**DATES:** If submitting a paper pre-application, the closing deadline for receipt of all applications in response to this Notice is 5:00 p.m., local time for each Rural Development State Office on August 2, 2013. The application should be submitted to the Rural Development State Office where the project will be located. If submitting the pre-application in electronic format, the deadline for receipt is 5:00 p.m. Eastern Daylight Time on August 2, 2013. The pre-application closing deadline is firm as to the date and hour. RHS will not consider any pre-application that is received after the closing deadline. Applicants intending to mail pre-applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget under Control Number 0575–0115.

#### Overview

*Funding Opportunity Title:* Notice of Funds Availability for the Section 533 Housing Preservation Grants for Fiscal Year 2013.

*Announcement Type:* Initial Notice inviting pre-applications from qualified applicants for Fiscal Year 2013.

*Catalog of Federal Domestic Assistance Numbers (CFDA):* 10.433.

*Dates:* If submitting a paper pre-application, the closing deadline for receipt of all applications in response to this Notice is 5:00 p.m., local time for each Rural Development State Office on August 2, 2013. The applications should be sent to the Rural Development State Office where the project will be located. If submitting the pre-application in electronic format, the deadline for receipt is 5:00 p.m. Eastern Daylight Time on August 2, 2013. The pre-application closing deadline is firm as to the date and hour. RHS will not consider any pre-application that is received after the closing deadline. Applicants intending to mail pre-applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

#### I. Funding Opportunities Description

The funding instrument for the HPG Program will be a grant agreement. The term of the grant can vary from one to two years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. You should contact the Rural Development State Office where the project will be located to determine the state allocation.

#### II. Award Information

For Fiscal Year 2013, $4,248,836.25 is available for the HPG Program. Rural Economic Area Partnership Zones and other funds will be distributed under a formula allocation to states pursuant to 7 CFR part 1940, subpart L, ''Methodology and Formulas for Allocation of Loan and Grant Program Funds.'' Decisions on funding will be based on pre-application scores. Anyone interested in submitting an application for funding under this program is encouraged to consult the Rural Development Web site periodically for updated information regarding the status of funding authorized for this program.

#### III. Eligibility Information

7 CFR part 1944, subpart N provides details on what information must be contained in the pre-application package. Entities wishing to apply for assistance should contact the Rural Development State Office where the project will be located to receive further information, the State allocation of funds, and copies of the pre-application package. Eligible entities for these competitively awarded grants include state and local governments, non-profit corporations including, but not be limited to faith-based and community organizations, Federally recognized Indian tribes, and consortia of eligible entities.

Federally recognized Indian tribes, pursuant to 7 CFR 1944.674, are exempt from the requirement to consult with local leaders including announcing the availability of its statement of activities for review in a newspaper.

As part of the application, all applicants must also provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain registration in the Central Contractor Registration (CCR) database in accordance with 2 CFR part 25. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after *October 1, 2003.* Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at (866) 705–5711 or by accessing *http://www.dnb.com/us/.* Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on *June 27, 2003* (68 FR 38402–38405). Similarly, applicants may register for the CCR at *https://www.uscontractorregistration.com/* or by calling (877) 252–2700.

The Department of Agriculture (USDA) is participating as a partner in the Government-wide Grants.gov site. Electronic applications must be submitted through the Grants.gov Web site at: *http://www.grants.gov,* following the instructions found on the Web site. Please be mindful that the application

deadline for electronic format differs from the deadline for paper format. The electronic format deadline will be based on Eastern Daylight Time. The paper format deadline is local time for each Rural Development State Office.

In addition to the electronic application at the *http://www.grants.gov* Web site, all applicants must complete and submit the Fiscal Year 2013 pre-application for Section 533 HPG, a copy of which is included with this Notice. Applicants are encouraged to submit this pre-application form electronically by accessing the Web site: *http://www.rurdev.usda.gov/HAD-HPG_Grants.html* and clicking on the link for ''Fiscal Year 2013 Pre-application for Section 533 Housing Preservation Grants (HPG).''

Applicants are encouraged but not required, to also provide an electronic copy of all hard copy forms and documents submitted in the pre-application/application package as requested by this Notice. The forms and documents must be submitted as read-only Adobe Acrobat PDF files on an electronic media such as CDs, DVDs or USB drives. For each electronic device that you submit, you must include a Table of Contents to list all of the documents and forms on that device. The electronic medium must be submitted to the local Rural Development State Office where the project will be located.

**Please Note:** If you receive a loan or grant award under this Notice, USDA reserves the right to post all information submitted as part of the pre-application/application package which is not protected under the Privacy Act on a public Web site with free and open access to any member of the public.

## IV. Application and Submission Information

All pre-applications must meet the requirements of 7 CFR part 1944, subpart N, as well as comply with the provisions of this Notice. Pre-applications can be submitted either electronically using the Section 533 pre-application form as found at *http://www.rurdev.usda.gov/HAD–HPG_Grants.html* or by hard copy to the appropriate Rural Development State Office where the project will be located. A hard-copy of the electronic pre-application form is included with this Notice. **Note:** Submission of the electronic Section 533 pre-application form does not constitute submission of the entire pre-application package which requires additional forms and supporting documentation as listed in Section V of this Notice. Although applicants are encouraged to submit the pre-application form electronically, the complete package in its entirety must still be submitted to the local Rural Development State Office where the project will be located.

Hard copy pre-applications that are submitted to a Rural Development State Office will be date and time stamped to evidence timely or untimely receipt, and upon request, Rural Development will provide the applicant with a written acknowledgement of receipt. A list of Rural Development State Office contacts may be found in the Section VIII, Agency Contacts, of this Notice. Incomplete pre-applications will be returned to the applicant. No pre-application will be accepted after 5:00 p.m., local time, for paper copies or 5:00 p.m. Eastern Daylight Time for electronic applications on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

Please note that all applicants must obtain DUNS number and register in the CCR prior to submitting a pre-application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration of the CCR database at all times during which it has an active Federal award or an application or plan of construction by the Agency. Similarly all recipients of Federal Financial assistance are required to report information about first-tier subawards and executive compensation in accordance with 2 CFR part 170. So long as an entity applicant does not have exception under 2 CFR 170.110(b), the applicant must have necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

## V. Application Review Information

Applicants wishing to apply for assistance must make their statement of activities available to the public for comment. The applicant(s) must announce the availability of its statement of activities for review in a newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of pre-applications by Rural Development.

All applications for Section 533 funds must be filed electronically or with the appropriate Rural Development State Office and must meet the requirements of this Notice and 7 CFR part 1944, subpart N. Pre-applications determined not eligible and/or not meeting the selection criteria will be notified by the Rural Development State Office. All adverse determinations are appealable pursuant to 7 CFR part 11. Instructions on the appeal process will be provided at the time the applicant is notified of the adverse decision.

If submitting a paper application, applicants will file an original and two copies of Standard Form (SF) 424, ''*Application for Federal Assistance,*'' and supporting information with the appropriate Rural Development State Office. A pre-application package, including SF–424, is available in any Rural Development State Office. In addition, the pre-application form included with this Notice must be submitted either electronically or in hard copy form with all supporting documentation.

All pre-applications shall be accompanied by the following information which Rural Development will use to determine the applicant's eligibility to undertake the HPG program and to evaluate the pre-application under the project selection criteria of 7 CFR 1944.679. References to private non-profit organizations include, but are not limited to faith and community-based organizations:

(a) A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(1) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance program, a rental property assistance program, or a cooperative assistance program;

(2) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, performing the necessary work, and monitoring/inspecting work performed;

(3) A description of the process for identifying potential environmental impacts in accordance with 7 CFR 1944.672, and the provisions for compliance with Stipulation I, A–G of the Programmatic Memorandum of Agreement, also known as PMOA, (RD Instruction 2000–FF, available in any Rural Development State Office or at *http://www.rurdev.usda.gov/SupportDocuments/2000ff.pdf*) in accordance with 7 CFR 1944.673(b);

(4) The development standard(s) the applicant will use for the housing preservation work; and, if the applicant will use the Rural Development standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented;

(5) The time schedule for completing the program;

(6) The staffing required to complete the program;

(7) The estimated number of very low- and low-income minority and non-minority persons the grantee will assist with HPG funds; and, if a rental property or cooperative assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income persons;

(8) The geographical area(s) to be served by the HPG program;

(9) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, i.e., monthly, quarterly, lump sum for program activities, etc.;

(10) A copy of an indirect cost proposal as required in 7 CFR parts 3015, 3016, and 3019, as applicable, when the applicant has another source of Federal funding in addition to the Rural Development HPG program;

(11) A brief description of the accounting system to be used;

(12) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to Rural Development in accordance with 7 CFR 1944.683(b), frequency of audits according to 7 CFR 1944.688(e), 7 CFR parts 3015 and 3016, and the monitoring plan for rental properties and cooperatives (when applicable) according to 7 CFR 1944.689;

(13) The source and estimated amount of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities;

(14) The use of program income, if any, and the tracking system used for monitoring same;

(15) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status;

(16) Any other information necessary to explain the proposed HPG program; and

(17) The outreach efforts outlined in 7 CFR 1944.671(b).

(b) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program.

(c) Evidence of the applicant's legal existence, a copy of, or an accurate reference to, the specific provisions of State (or Tribal) law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than applicants that are not public bodies; evidence of good standing from the State (or Tribe) when the corporation has been in existence 1 year or more; and the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, pre-applications should be accompanied by the names, addresses, and principal purpose of the other organizations. If the applicant is a consortium, documentation showing compliance with paragraph (4)(ii) under the definition of ''organization'' in 7 CFR 1944.656 must also be included.

(d) For a private non-profit entity, the most recently audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant.

(e) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and the actual number of both very low-income and low-income minority households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts.

(f) A statement containing the component for alleviating any overcrowding as defined by 7 CFR 1944.656.

(g) Applicant must submit an original and one copy of Form RD 1940–20, ''*Request for Environmental Information,*'' prepared in accordance with Exhibit F–1 of RD Instruction 1944–N (available in any Rural Development State Office or at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1940-20.PDF.*

(h) Applicant must also submit a description of its process for:

(1) Identifying and rehabilitating properties listed on, or eligible for listing on, the National Register of Historic Places;

(2) Identifying properties that are located in a floodplain or wetland;

(3) Identifying properties located within the Coastal Barrier Resources System; and

(4) Coordinating with other public and private organizations and programs that provide assistance in the rehabilitation of historic properties (Stipulation I, D, of the PMOA, RD Instruction 2000–FF), available in any Rural Development State Office or at: *http://www.rurdev.usda.gov/SupportDocuments/2000ff.pdf.*

(i) The applicant must also submit evidence of the State Historic Preservation Office's (SHPO), or where appropriate the Tribal Historic Preservation Office's (THPO) concurrence in the proposal, or in the event of nonconcurrence, a copy of SHPO's or (THPO's) comments together with evidence that the applicant has received the Advisory Council on Historic Preservation's (Council) advice as to how the disagreement might be resolved, and a copy of any advice provided by the Council.

(j) The applicant must submit written statements and related correspondence reflecting compliance with 7 CFR 1944.674(a) and (c) regarding consultation with local government leaders in the preparation of its program and the consultation with local and state government pursuant to the provisions of Executive Order 12372.

(k) The applicant is to make its statement of activities available to the public for comment prior to submission to Rural Development pursuant to 7 CFR 1944.674(b). The application must contain a description of how the comments (if any were received) were addressed.

(l) The applicant must submit an original and one copy of Form RD 400–1, ''Equal Opportunity Agreement,'' and Form RD 400–4, ''*Assurance Agreement,*'' in accordance with 7 CFR 1944.676. These forms can be obtained at any state office or at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-1.PDF* and *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF.*

Applicants should review 7 CFR part 1944, subpart N for a comprehensive list of all application requirements.

## VI. Selection Criteria

In accordance with 7 CFR 1944.679 applicants and proposed projects must meet the following criteria:

(a) Provide a financially feasible program of housing preservation assistance. ''Financially feasible'' is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very low- and low-income persons.

(b) Serve eligible rural areas with a concentration of substandard housing for households with very low- or low-income.

(c) Be an eligible applicant as defined in 7 CFR 1944.658.

(d) Meet the requirements of consultation and public comment in accordance with 7 CFR 1944.674.

(e) Submit a complete pre-application as outlined in 7 CFR 1944.676.

## VII. Points System

For applicants meeting all of the requirements listed above, the Rural Development State Offices will then use weighted criteria in accordance with 7 CFR part 1944, subpart N to select the grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the pre-application; the applicant's proposal will be numerically rated on each selection criteria within the point range provided. The highest-ranking applicant(s) will be selected based on allocation of funds available to the State.

(a) Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:

(1) More than 80%: 20 points
(2) 61% to 80%: 15 points
(3) 41% to 60%: 10 points
(4) 20% to 40%: 5 points
(5) Less than 20%: 0 points

(b) The applicant's proposal is expected to result in the following percentage of HPG fund use (excluding administrative costs) in comparison to the total cost of unit preservation. This percentage reflects maximum repair or rehabilitation results with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches. Points are awarded based on the following percentage of HPG funds (excluding administrative costs) to total funds:

(1) 50% or less: 20 points
(2) 51% to 65%: 15 points
(3) 66% to 80%: 10 points
(4) 81% to 95%: 5 points
(5) 96% to 100%: 0 points

(c) The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following (30 points maximum):

(1) The organization or a member of its staff has at least one or more years experience successfully managing and operating a rehabilitation or weatherization type program: 10 points.

(2) The organization or a member of its staff has at least one or more years experience successfully managing and operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.

(3) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(d) The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas (MSAs), identified by Rural Development as having populations in excess of 10,000, but not in excess of 20,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) as defined in 7 CFR 1944.656: 10 points.

(e) The program will use less than 20 percent of HPG funds for administration purposes:

(1) More than 20%: Not eligible
(2) 20%: 0 points
(3) 19%: 1 point
(4) 18%: 2 points
(5) 17%: 3 points
(6) 16%: 4 points
(7) 15% or less: 5 points

(f) The proposed program contains a component for alleviating overcrowding as defined in 7 CFR 1944.656: 5 points.

(g) In the event more than one preapplication receives the same amount of points, those pre-applications will then be ranked based on the actual percentage of very-low income persons that the applicant proposes to assist. Further, in the event that preapplications are still tied, then those preapplications still tied will be ranked based on the percentage for HPG fund use (low to high). Further, for applications where assistance to rental properties or cooperatives is proposed, those still tied will be further ranked based on the number of years the units are available for occupancy under the program (a minimum of five years is required). For this part, ranking will be based from most to least number of years.

Finally, if there is still a tie, then a lottery system will be used. After the award selections are made all applicants will be notified of the status of their applications by mail.

## VIII. Agency Contacts

Applicants must contact the Rural Development State Office serving the state in which they desire to submit an application to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely and untimely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

**Note:** Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, Alabama 36106–3683, (334) 279–3456, TDD (800) 877–8339, Melinda George.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, Alaska 99645, (907) 761–7740, TDD (907) 761–7786, Cynthia Jackson.

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Avenue, Suite 206, Phoenix, Arizona 85003–1706, (602) 280–8764, TDD (602) 280–8705, Ernie Wetherbee.

Arkansas State Office, 700 West Capitol Avenue, Room 3416, Little Rock, Arkansas 72201–3225, (501) 301–3258, TDD (501) 301–3279, Clinton King.

California State Office, 430 G Street, #4169, Davis, California 95616–4169, (530) 885–6505, TDD (530) 792–5848, Debra Moretton.

Colorado State Office, Denver Federal Center, Building 56, Room 2300, P.O. Box 25426, Denver, Colorado 80225–0426, (720) 544–2924, TDD (800) 659–3656, Donald Nunn.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 1260 Maryland Avenue, Suite 100, Hagerstown, Maryland 21740, (302) 797–0500, ext. 5, TDD (302) 857–3585, Brad King.

Florida and Virgin Islands State Office, 4440 N.W. 25th Place, Gainesville, Florida 32606–6563, (352) 338–3438, TDD (352) 338–3499, Theresa Purnell.

Georgia State Office, Stephens Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601–2768, (706) 546–2164, TDD (706) 546–2034, Revonda Pearson and Jennifer Daughtery.

Hawaii State Office, (Services all Hawaii, American Samoa, Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, Hawaii 96720, (808) 933–8303, TDD (808) 933–8321, Nathan Riedel.

Idaho State Office, Suite A1, 9173 West Barnes Drive, Boise, Idaho 83709, (208) 327–6466, TDD (800) 877–8339, Yvette Pachecho.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, Illinois 61821–2986,

(217) 403–6225, TDD (217) 403–6240, Brenda Barr.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 290–3100, ext. 423, TDD (317) 295–5799, Michael Boards.

Iowa State Office, 210 Walnut Street, Room 873, Des Moines, Iowa 50309, (515) 284–4493, TDD (515) 284–4858, Shannon Case and Dan Koetters.

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, Kansas 66604–4040, (785) 271–2700, TDD (785) 271–2767, Mike Resnik.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, Kentucky 40503, (859) 224–7357, TDD (859) 224–7422, Paul Higgins.

Louisiana State Office, 3727 Government Street, Alexandria, Louisiana 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.

Maine State Office, Post Office Box 405, Bangor, Maine 04402–0405, (207) 990–9110, TDD (207) 942–7331, Bob Nadeau.

Maryland, Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Suite 2, Amherst, Massachusetts 01002, (413) 253–4312, TDD (413) 253–4590, Julie Hanieski.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, Michigan 48823, (517) 324–5194, TDD (517) 324–5169, Julie Putnam.

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, Minnesota 55125, (763) 689–3354 x 4, TDD (651) 602–7830, Linda Swanson.

Mississippi State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, Mississippi 39269, (601) 965–4325, TDD (601) 965–5717, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, Missouri 65203, (573) 876–0976, TDD (573) 876–9480, Nancy Long.

Montana State Office, 2229 Boot Hill Court, Bozeman, Montana 59715, (406) 585–2559, TDD (800) 253–4091, Sandi Messenger.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, Nebraska 68508, (402) 437–5035, TDD (402) 437–5093, Sharon Kluck.

Nevada State Office, 1390 South Curry Street, Carson City, Nevada 89703–9910, (775) 887–1222, ext. 106, TDD 711 Relay (775) 887–1222, Mona Sargent.

New Hampshire State Office, Concord Center, 10 Ferry Street, Suite 218, Concord, New Hampshire 03301, (603) 223–6049, TDD (603) 223–6083, Daphne Fenney.

New Jersey State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, New Jersey 08054, (856) 787–7773, TDD (856) 787–7784, Derrick S. Waltz.

New Mexico State Office, 6200 Jefferson Street NE., Room 255, Albuquerque, New Mexico 87109, (505) 761–4973, TDD (800) 877–8339, Art Garcia.

New York State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357 5th Floor, Syracuse, New York 13202, (315) 477–6418, TDD (315) 477–6447, Erin Farley.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, North Carolina 27609, (919) 873–2055, TDD 711 Relay (919) 873–2061, Beverly Casey.

North Dakota State Office, Federal Building, Room 208, Post Office Box 1737, Bismarck, North Dakota 58502, (701) 225–9168, ext. 4, TDD (800) 366–6888, Steve Lervik.

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, Ohio 43215–2477, (614) 255–2409, TDD (800) 877–8339, Cathy Simmons.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, Oklahoma 74074–2654, (580) 237–4321, TDD (405) 742–1007, Lesley Worthan.

Oregon State Office, 1201 NE Lloyd Boulevard, Suite 801, Portland, Oregon 97232–1274, (503) 414–3353, TDD (503)414–3387, Rod Hansen.

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, Pennsylvania 17110–2996, (717) 237–2282, TDD (717) 237–2261, Martha Hanson.

Puerto Rico State Office, IBM Building, Suite 601, Munoz Rivera Ave. #654, San Juan, Puerto Rico 00918, (787) 859–2878, ext. 119, TDD (787) 766–5332, Teremy Hernandez.

Rhode Island, Served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, South Carolina 29201, (803) 253–3244, TDD (803) 765–5697, Rosemary Hickman.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street SW., Huron, South Dakota 57350, (605) 352–1132, TDD (605) 352–1147, Linda Weber.

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, Tennessee 37203–1084, (615) 783–1300, TDD (615) 783–1397, Abby Boggs.

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, Texas 76501, (254) 742–9772, TDD (800) 877–8339, Ana Placencia.

Utah State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 301, Salt Lake City, Utah 84138, (801) 524–4308, TDD 711 Relay (801) 524–4308, Janice Kocher.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, Vermont 05602, (802) 828–6028, TDD (802) 223–6365, Tammy Surprise.

Virgin Islands, Served by Florida State Office.

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, Virginia 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.

Washington State Office, 1835 Black Lake Boulevard, Suite B, Olympia, Washington 98512, (360) 704–7706, TDD (800) 833–6384, Bill Kirkwood.

Western Pacific Territories, Served by Hawaii State Office.

West Virginia, 530 Freedom Road, Ripley, West Virginia 25271–9794, (304) 372–3441, ext. 105, TDD (304) 284–4836, Penny Thaxton.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, Wisconsin 54481, (715) 345–7620, TDD (715) 345–7614, Dave Schwobe or Julie Czappa.

Wyoming State Office, Post Office Box 82601, Casper, Wyoming 82602–5006, (307) 233–6733, TDD (800) 877–9965, Laura Koenig.

**FOR FURTHER INFORMATION CONTACT:** For general information, applicants may contact Bonnie Edwards-Jackson, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, USDA Rural Development, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781, telephone (202) 690–0759 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service) or via email at, *Bonnie.Edwards@wdc.usda.gov.*

## VIV. Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the *USDA Program Discrimination Complaint Form* (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov.*

Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: June 11, 2013.

**Tammye Treviño,**

*Administrator, Rural Housing Service.*

BILLING CODE 3410–XV–P

# Fiscal Year 2013 Pre-application for Section 533 Housing Preservation Grants (HPG)

## Instructions

Applicants are encouraged, but not required, to submit this pre-application form electronically by accessing the website: http://www.rurdev.usda.gov/HAD-HPG_Grants.html and clicking on the link for the "Fiscal Year 2013 Pre-application for Section 533 Housing Preservation Grants (HPG)." Please note that electronic submittals are not on a secured website. If you do not wish to submit the form electronically by clicking on the **Send Form** button, you may still fill out the form, print it and submit it with your application package to the State Office. You also have the option to save the form, and submit it on an electronic media to the State Office.

Supporting documentation required by this pre-application may be attached to the email generated when you click the **Send Form** button to submit the form. However if the attachments are too numerous or large in size, the email box will not be able to accept them. In that case, submit the supporting documentation for this pre-application to the State Office with your complete application package. Under item **IX. Documents Submitted**, indicate the supporting documents that you are submitting either with the pre-application or to the State Office.

## I. Applicant Information

a. **Applicant's Name:** _____

b. **Applicant's Address:**

**Address, Line 1:** _____

**Address, Line 2:** _____

**City:** _____ **State:** _____ **Zip:** _____

c. **Name of Applicant's Contact Person:**

_____

d. **Contact Person's Telephone Number:** _____

e. **Contact Person's Email Address:**

_____

f. **Entity Type:** **(Check One)**

☐ State Government ☐ Local Government

☐ Non-Profit Corporation ☐ Federally Recognized Indian Tribes

☐ Faith-based Organization ☐ Community Organization

☐ Other consortia of an eligible entity

## II. Project Information

a. **Project Name:**

_____

b. **Project Address:**

**Address, Line 1:** _____

**Address, Line 2:** _____

**City:** _____ **State:** _____ **Zip:** _____

c. **Organization DUNS number:** _____

d. **Grant Amount Requested:** _____

**e. This grant request is for one of the following types of assistance:**

- ☐ Homeowner assistance program
- ☐ Rental property assistance program
- ☐ Cooperative assistance program

**f. In response to e. above, answer one of the following:**

The number of low- and very-low income persons that the grantee will assist in the Homeowner assistance program: _____ OR

The number of units for low- and very-low income persons in the Rental property or Cooperative assistance program: _____

**g. This proposal is for one of the following:**

- ☐ Housing Preservation Grant (HPG) program (no set-aside)
- ☐ Set-aside for Grant located in a Rural Economic Area Partnership (REAP) zone

## III. Low-income Assistance

Check the percentage of very low-income persons that this application proposes to assist in relation to the total population of the project:

- ☐ More than 80 percent (20 points)
- ☐ 61 percent to 80 percent (15 points)
- ☐ 41 percent to 60 percent (10 points)
- ☐ 20 percent to 40 percent (5 points)
- ☐ Less than 20 percent (0 points)

**Points:** ____

## IV. Percent of HPG Fund Use

Check the percentage of HPG fund use (excluding administrative costs) in comparison to the total cost of unit preservation. This percentage reflects maximum repair or rehabilitation results with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches.

- ☐ 50 percent or less of HPG Funds (20 points)
- ☐ 51 percent to 65 percent of HPG Funds (15 points)
- ☐ 66 percent to 80 percent of HPG Funds (10 points)
- ☐ 81 percent to 95 percent of HPG Funds (5 points)
- ☐ 96 percent to 100 percent of HPG Funds (0 points)

**Points:** ____

## V. Administrative Capacity

The following three criteria demonstrate your administrative capacity to assist very low- and low-income persons to obtain adequate housing (30 points maximum).

a. Does this organization or a member of its staff have at least one or more years of experience successfully managing and operating a rehabilitation or weatherization type of program? (10 points) Yes ___ No ___ **Points: ____**

b. Does this organization or a member of its staff have at least one or more years of experience successfully managing and operating a program assisting very low- or low-income persons obtain housing assistance? (10 points) Yes ___ No ___ **Points: ____**

c. If this organization has administered grant programs, are there any outstanding or unresolved audit or investigative findings which might impair carrying out the proposal? (10 points for No) No ___ Yes ___ **Points: ____**
If Yes, please explain:
_____
_____
_____

## VI. Area Served

Will this proposal be undertaken entirely in rural areas outside Metropolitan Statistical Areas, also known as MSAs, in areas identified by Rural Development as having populations below 10,000, or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) as defined in 7 CFR 1944.656 (10 points)
Yes ___ No ___ **Points: ____**

## VII. Percent of HPG Funds for Administration

Check the percentage of HPG funds that will be used for Administration purposes:

- ☐ More than 20 percent (Not eligible)
- ☐ 20 percent (0 points)
- ☐ 19 percent (1 point)
- ☐ 18 percent (2 points)
- ☐ 17 percent (3 points)
- ☐ 16 percent (4 points)
- ☐ 15 percent or less (5 points)

**Points: ____**

## VIII. Alleviating Overcrowding

Does the proposed program contain a component for alleviating overcrowding as defined in 7 CFR1944.656? (5 points) Yes ___ No ___**Points: ____**

## IX. Documents Submitted

Check if the following documents are being submitted electronically with this pre-application or will be mailed to the State Office with your complete pre-application package.

**NOTE:** You are only required to submit supporting documents for programs in which you will be participating as indicated in this pre-application. Points will be assigned for the items that you checked based on a review of the supporting documents. **Please refer to the NOFA for the complete list of documents that you are required to submit with your complete pre-application package.**

| Reference | Item | Submitted with this Pre-application | Submitted to State Office |
|---|---|---|---|
| III. | Low Income Assistance | | |
| IV. | Percent of HPG Fund Use | | |
| V. | Administrative Capacity | | |
| VI. | Area Served | | |
| VII | Percent of HPG Funds for Administration | | |
| VIII. | Alleviating Overcrowding | | |

## X. HPG 2013 Scoring

**PLEASE NOTE:** The scoring below is based on the responses that you have provided on this pre-application form and may not accord with the final score that the Agency assigns upon evaluating the supporting documentation that you submit. Your score may change from what you see here if the supporting documentation does not adequately support your answer or, if required documentation is missing.

| | Scoring Items for HPG 2013 | Points Earned |
|---|---|---|
| 1. | Low Income Assistance (5, 10, 15, 20) | |
| 2. | Percent of HPG Fund Use (5, 10, 15, 20) | |
| 3. | Administrative Capacity (10, 20, 30) | |
| | **Scoring Items for HPG 2013** | **Points Earned** |
| 4. | Area Served (10) | |
| 5. | Percent of HPG Funds for Administration (1, 2, 3, 4, 5) | |
| 6. | Alleviating Overcrowding (5) | |
| | **Total Score:** | |

[FR Doc. 2013–14400 Filed 6–17–13; 8:45 am]
BILLING CODE 3410–XV–C

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### U.S. Department of Agriculture Multi-Family Housing Section 515—Underserved Counties and Colonias and Non-Profits

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Through this Notice, the Rural Housing Service (RHS) announces the duration of time in Fiscal Year 2013 set-aside amounts will be available for Section 515 program non-profits and underserved areas. This Notice also outlines the reallocation process for the set-aside funds not obligated within the time period established in this Notice.

**DATES:** As of June 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Please contact Melinda Price, Loan and Finance Analyst, Multi-Family Housing, (614) 255–2403, fax (202) 720–0302, or email *melinda.price@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Brail, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:** The Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113–6, March 11, 2013, provided RHS with the funding levels for its Section 515 program until September 30, 2013. RHS received its initial allocation of funds (Allocation) on or about October 12, 2012, 9 percent of which will be set-aside for the Section 515 program's non-profits pursuant to 42 U.S.C. 1485(w). In addition, 5 percent of the allocation will be set-aside for the Section 515 program's underserved areas pursuant to 42 U.S.C. 1479(f)(4).

Any funds set-aside for eligible non-profit entities that are not obligated by nine months after RHS received funds shall be pooled and reallocated pursuant to 42 U.S.C. 1485(w)(3). Therefore, any non-profit set-aside funds distributed to States but not obligated by July 31, 2013, shall be pooled at the National Office and made available to any other eligible non-profit entity in any State. After the funds have been pooled and obligated for 30 days, any remaining funds shall be returned to States on a proportional basis to be used for any other eligible entity as defined in 42 U.S.C 1485 and 7 CFR part 3560.

Similarly, any funds set-aside for Underserved Counties and Colonias pursuant to 42 U.S.C. 1479(f)(4) that are not obligated by May 31, 2013, shall be made available to Colonias that have applied for and are eligible for assistance and did not yet receive assistance and to counties and communities eligible for designation as targeted underserved areas but which were not so designated. Any funds set-aside for Underserved Counties and Colonias that are still not obligated by July 31, 2013, shall be pooled and made available for the use in RHS's Section 515 program as set forth at 42 U.S.C. 1485 and 7 CFR part 3560.

**Non-Discrimination Statement**

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program *Discrimination Complaint Form* (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov.*

Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: June 11, 2013.

**Tammye Treviño,**

*Administrator, Rural Housing Service.*

[FR Doc. 2013–14399 Filed 6–17–13; 8:45 am]
BILLING CODE 3410–XV–P

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Development Voucher Program

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The United States Department of Agriculture (USDA) in Fiscal Year 2006 established the demonstration Rural Development Voucher Program, as authorized under Section 542 of the Housing Act of 1949 as amended, (without regard to Section 542(b)). This Notice informs the public that funding is available for the Rural Development Voucher Program and also sets forth the general policies and procedures for use of these vouchers for Fiscal Year 2013. Pursuant to the requirements in the Consolidated and Further Continuing Appropriations Act, 2013, Rural Development Vouchers are only available to low-income tenants of Rural Development-financed multifamily properties where the Section 515 loan has been prepaid either through prepayment or foreclosure action, prior to the loan's maturity date and after September 30, 2005.

RD Voucher issuance requested by eligible tenants will be made to the extent that funding may ultimately be made available to the Agency through appropriations.

**DATES:** In order to participate, the voucher obligation form must be submitted within 10 months of the foreclosure or pre-payment.

**FOR FURTHER INFORMATION CONTACT:** Stephanie B.M. White, Director, Multi-Family Housing Portfolio Management Division, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 0782, Washington, DC 20250–0782, telephone (202) 720–1615. Persons with hearing or speech impairments may access this number via TDD by calling the toll-free Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113–6 (March 26, 2013) provided that the Secretary of the USDA shall carry out the Rural Development Voucher program as follows:

That of the funds made available under this heading, $11,000,000 shall be available for rural housing vouchers to any low-income household (including those not receiving Rental Assistance) residing in a property financed with a Section 515 loan which has been prepaid after September 30, 2005: *Provided further,* that the amount of such voucher shall be the difference between comparable market rent for the Section 515 unit and the tenant paid rent for such unit: *Provided further,* that funds made available for such vouchers shall be subject to the availability of annual appropriations: *Provided further,* that the Secretary shall, to the maximum extent practicable, administer such vouchers with current regulations and administrative guidance applicable to section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development (HUD).

The 2013 Act only provides authority and funding levels for the Rural Development Voucher program through March 27, 2013. Rural Development will publish a subsequent Notice if the funding level changes or the authority does not continue for the Rural Development Voucher program.

This Notice outlines the process for providing voucher assistance to the eligible impacted families when an owner prepays a Section 515 loan or USDA action results in a foreclosure after September 30, 2005.

## II. Design Features of the Rural Development Voucher Program

This section sets forth the design features of the Rural Development Voucher Program, including the eligibility of families, the inspection of the units, and the calculation of the subsidy amount.

Rural Development Vouchers under this part are administered by the Rural Housing Service; an Agency under the Rural Development mission area, in accordance with requirements set forth in this Notice and further explained in, ''The Rural Development Voucher Program Guide,'' which can be obtained by contacting any Rural Development office. Contact information for Rural Development offices can be found at *http://offices.sc.egov.usda.gov/locator/app.* These requirements are generally based on the housing choice voucher program regulations of HUD set forth at 24 CFR part 982, unless otherwise noted by this Notice.

The Rural Development Voucher Program is intended to offer protection to eligible multifamily housing tenants in properties financed through Rural Development's Section 515 Rural Rental Housing Program (515 property) who may be subject to economic hardship through prepayment of the Rural Development mortgage. When the owner of a 515 property pays off the loan prior to the loan's maturity date (either through prepayment or foreclosure action), the Rural Development affordable housing requirements and rental assistance subsidies generally cease to exist. Rents may increase, thereby making the housing unaffordable to tenants. When a prepayment occurs, whether or not the rent increases, the tenant may be responsible for the full payment of rent. The Rural Development Voucher Program applies to any 515 property where the mortgage is paid off prior to the maturity date in the promissory note and the payment occurs after September 30, 2005. This includes properties foreclosed on by Rural Development. Tenants in properties foreclosed on by Rural Development are eligible for a Rural Development Voucher under the same conditions as properties that go through the standard prepayment process.

The Rural Development Voucher will help tenants by providing an annual rental subsidy, renewable on the terms and conditions set forth herein and subject to the availability of funds, that will supplement the tenant's rent payment. This program enables a tenant to make an informed decision about remaining in the property, moving to a new property, or obtaining other financial housing assistance. Low-income tenants in the prepaying property are eligible to receive a voucher to use at their current rental property or to take to any other rental unit in the United States and its territories.

There are some general limitations on the use of a voucher:

- The rental unit must pass a Rural Development health and safety inspection, and the owner must be willing to accept a Rural Development Voucher;
- Also, Rural Development Vouchers cannot be used for units in subsidized housing like Section 8 and public housing where two housing subsidies would result. The Rural Development Voucher may be used for rental units in other properties financed by Rural Development, but it will not be used in combination with the Rural Development Rental Assistance program.
- The Rural Development Voucher may not be used to purchase a home.

a. Family Eligibility. In order to be eligible for the Rural Development Voucher under this Notice, a family must:

1. Be residing in the Section 515 project on the date of the prepayment of the Section 515 loan or upon foreclosure by Rural Development;

2. The date of the prepayment or foreclosure must be after September 30, 2005;

3. As required by Section 214 of the Housing and Community Development Act of 1980 [42 U.S.C. 1436a] the primary tenant and co-tenant, if applicable, must be a United States (U.S.) citizen, U.S. non-citizen national or qualified alien.

i. For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to Rural Development a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status:

A. For each adult, the declaration must be signed by the adult; and

B. For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

ii. Each family member, regardless of age, must submit the following evidence to the responsible entity:

A. For citizens, the evidence consists of a signed declaration of U.S. citizenship. Rural Development may request verification of the declaration by requiring presentation of a U.S. passport, social security card, or other appropriate documentation;

B. For noncitizens who are 62 years of age or older, the evidence consists of:

*1.* A signed declaration of eligible immigration status; and

*2.* Proof of age document; and

C. For all other noncitizens, the evidence consists of:

*1.* A signed declaration of eligible immigration status;

*2.* Alien registration documentation or other proof of immigration registration from the United States Citizenship and Immigration Services (USCIS) that contains the individual's alien admission number or alien file number; and

*3.* A signed verification consent form, which provides that evidence of eligible immigration status may be released to Rural Development and USCIS for purposes of verifying the immigration status of the individual. Rural Development shall provide a reasonable opportunity, not to exceed 30 days, to submit evidence indicating a satisfactory immigration status, or to appeal to the Immigration and

Naturalization Service the verification determination of the Immigration and Naturalization Service; and;

4. The family must be a low-income family on the date of the prepayment or foreclosure. A low-income family is a family whose annual income does not exceed 80 percent of the family median income for the area as defined by HUD. HUD's definition of median income can be found at: *http://www.huduser.org/portal/datasets/il/il12/index_mfi.html.*

During the prepayment or foreclosure process, Rural Development will evaluate every tenant family to determine if it is low-income. If Rural Development determines a family is low-income, immediately following the foreclosure or prepayment, Rural Development will send the primary tenant a letter offering the family a voucher and will enclose a Voucher Obligation Request Form and a citizenship declaration form. If the family wants to participate in the Rural Development Voucher Program, the tenant has 10 months from the date of prepayment or foreclosure to return the Voucher Obligation Request Form and the citizenship declaration to the local Rural Development office. If Rural Development determines that the tenant is ineligible, Rural Development will provide administrative appeal rights pursuant to 7 CFR part 11.

b. Obtaining a Voucher. Rural Development will monitor the prepayment request process or foreclosure process, as applicable. As part of prepayment or foreclosure, Rural Development will obtain a rent comparability study for the property 90 days prior to the date of prepayment or foreclosure. The rent comparability study will be used to calculate the amount of voucher each tenant is entitled to receive. All tenants will be notified if they are eligible and the amount of the voucher within 90 days following the date of prepayment or foreclosure. The tenant notice will include a description of the Rural Development Voucher Program, a Voucher Obligation Request Form, and letter from Rural Development offering the tenant participation in Rural Development Voucher Program. The tenant has 10 months from the date of prepayment or foreclosure to return the Voucher Obligation Request Form and the signed citizenship declaration. Failure to submit the Voucher Obligation Request Form and the signed citizenship declaration within the required timeframes will terminate the tenant's voucher. A tenant's failure to respond within the required timeframes is not appealable. Once the primary tenant returns the Voucher Obligation Request Form and the citizenship declaration to Rural Development, a voucher will be issued within 30 days. All information necessary for a housing search, explanations of unit acceptability, and Rural Development contact information will be provided by Rural Development to the tenant at the time the Voucher Obligation Form and citizenship declaration is received.

The family receiving a Rural Development Voucher has an initial period of 60 calendar days from issuance of the voucher to find a housing unit. At its discretion, Rural Development may grant one or more extensions of the initial period for up to an additional 60 days. Generally the maximum voucher period for any family participating in the Rural Development Voucher Program is 120 days. Only if the family needs and requests an extension of the initial period as a reasonable accommodation to make the program accessible to a disabled family member, Rural Development will extend the voucher search period beyond the 120 days. If the Rural Development Voucher remains unused after a period of 150 days from original issuance, the Rural Development Voucher will become void, any funding will be cancelled, and the tenant will no longer be eligible to receive a Rural Development Voucher.

c. Initial Lease Term. The initial lease term for the housing unit where the family wishes to use the Rural Development Voucher must be for one year.

d. Inspection of Units and Unit Approval. Once the family finds a housing unit, Rural Development will inspect and determine if the housing standard is acceptable within 30 days of Rural Development's receipt of the HUD Form 52517 ''Request for Tenancy Approval Housing Choice Voucher Program'' found at *http://www.hud.gov/offices/adm/hudclips/forms/files/52517.pdf* and the Disclosure of Information on Lead-Based Paint Hazards. The inspection standards currently in effect for the Rural Development Section 515 Multi-Family Housing Program apply to the Rural Development Voucher Program. Rural Development must inspect the unit and ensure that the unit meets the housing inspection standards set forth at 7 CFR 3560.103. Under no circumstances may Rural Development make voucher rental payments for any period of time prior to the date that Rural Development physically inspects the unit and determines the unit meets the housing inspection standards. In the case of properties financed by Rural Development under the Section 515 program, Rural Development may accept the results of physical inspections performed no more than one year prior to the date of receipt by Rural Development of Form HUD 52517, in order to make determinations on acceptable housing standards. Before approving a family's assisted tenancy or executing a Housing Assistance Payments contract, Rural Development must determine that the following conditions are met:

1. The unit has been inspected by Rural Development and passes the housing standards inspection or has otherwise been found acceptable as noted previously; and

2. The lease includes the HUD Tenancy Addendum. A copy of the HUD Tenancy Addendum will be provided by Rural Development when the tenant is informed he/she is eligible for a voucher.

Once the conditions in the above paragraph are met, Rural Development will approve the unit for leasing. Rural Development will then execute with the owner a Housing Assistance Payments (HAP) contract, Form HUD–52641. The HAP contract must be executed before Rural Development Voucher payments can be made. Rural Development will use its best efforts to execute the HAP contract on behalf of the family before the beginning of the lease term. In the event that this does not occur, the HAP contract may be executed up to 60 calendar days after the beginning of the lease term. If the HAP contract is executed during this 60-day period, Rural Development will pay retroactive housing assistance payments to cover the portion of the approved lease term before execution of the HAP contract. Any HAP contract executed after the 60-day period is untimely, and Rural Development will not pay any housing assistance payment to the owner for that period. In establishing the effective date of the voucher HAP contracts, Rural Development may not execute a HAP contract that is effective prior to the Section 515 loan prepayment.

e. Subsidy Calculations for Rural Development Vouchers. As stated earlier, if eligible, the tenant will be notified of the maximum voucher amount within 90 days following prepayment or foreclosure. The maximum voucher amount for the Rural Development Voucher Program is the difference between the comparable market rent for the family's former Section 515 unit and the tenant's rent contribution on the date of the prepayment. The voucher amount will be based on the comparable market rent; the voucher amount will never exceed the comparable market rent at the time

of prepayment for the tenant's unit if the tenant chooses to stay in-place. Also, in no event may the Rural Development Voucher payment exceed the actual tenant lease rent. The amount of the voucher does not change either over time or if the tenant chooses to move to a more expensive location.

1. f. Mobility and Portability of Rural Development Vouchers. An eligible family that is issued a Rural Development Voucher may elect to use the assistance in the same project or may choose to move to another location. The Rural Development Voucher may be used at the prepaid property or any other rental unit in the United States and its territories that passes Rural Development physical inspection standards, and where the owner will accept a Rural Development Voucher and execute a Form HUD 52641. Tenants and landlords must inform Rural Development if the tenant plans to move during the HAP agreement term, even to a new unit in the same complex. All moves (within a complex or to another complex) require a new obligation, a new inspection and a new HAP agreement. In addition, HUD Section 8 and federally assisted public housing is excluded from the Rural Development Voucher Program because these units are already federally subsidized. Tenants with a Rural Development Voucher would have to give up the Rural Development Voucher to accept the assistance at those properties. The Rural Development Voucher may be used in other properties financed by Rural Development, but it cannot be used in combination with the Rural Development Rental Assistance program. Tenants with a Rural Development Voucher that apply for housing in a Rural Development-financed property must choose between using the voucher or Rental Assistance. If the tenant relinquishes the Rural Development Voucher in favor of Rental Assistance, the tenant is not eligible to receive another Rural Development Voucher.

g. Term of Funding and Conditions for Renewal for Rural Development Vouchers. The Rural Development Voucher Program provides voucher assistance for 12 monthly payments. The voucher is issued to the household in the name of the primary tenant, as the voucher holder. The voucher is not transferable from the voucher holder to any other household member except in the case of the voucher holder's death or involuntary household separation such as the incarceration of the voucher holder or transfer of the voucher holder to an assisted living or nursing home facility. Upon receiving documentation of such cases, the voucher may be transferred at the Agency's discretion to another tenant on the voucher holder's lease.

The voucher is renewable subject to the availability of appropriations to the USDA. In order to renew a voucher, a tenant must return a signed Voucher Obligation Form which will be sent to the tenant within 60–90 days before the current voucher expires. If the voucher holder fails to return the renewal Voucher Obligation Form before the current voucher funding expires, the voucher will be terminated.

In order to ensure continued eligibility to use the Rural Development Voucher, at the time they apply for renewal of the voucher, tenants must certify that the current family income does not exceed 80 percent of family median income. Rural Development will advise the tenant of the maximum income level when the renewal Voucher Obligation Form is sent.

Renewal requests will have no preference and will be processed as a new application as described in this Notice.

## III. Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

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Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

## IV. Paperwork Reduction Act

The information collection requirements contained in this document are those of the Housing Choice Voucher Program, which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: June 11, 2013.

**Tammye Treviño,**

*Administrator, Rural Housing Service.*

[FR Doc. 2013–14397 Filed 6–17–13; 8:45 am]

BILLING CODE 3410–XV–P

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–17–2013]**

### Foreign-Trade Zone 84—Houston, Texas; Authorization of Production Activity; Toshiba International Corporation; (Hybrid Electric Vehicle Motors and Generators Production); Houston, Texas

On February 11, 2013, the Port of Houston Authority, grantee of FTZ 84, submitted a notification of proposed production activity on behalf of Toshiba International Corporation, located in Houston, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400) including notice in the **Federal Register** inviting public comment (78 FR 13857, 03–01–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: June 11, 2013.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2013–14539 Filed 6–17–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–855]**

### Diamond Sawblades and Parts Thereof From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2010–2011

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 10, 2012, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the Republic of Korea (Korea). The period of review (POR) is November 1, 2010, through October 23, 2011. For the final results, we continue to find that certain companies covered by this review made sales of subject merchandise at less than normal value.

**DATES:** As of June 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Sergio Balbontin or Yasmin Nair, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 482–6478 and (202) 482–3813, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On December 10, 2012, the Department published the *Preliminary Results* of the administrative review of the antidumping duty order on diamond sawblades from Korea.[1] On January 16, 2013, we received case briefs with respect to the *Preliminary Results* from the Diamond Sawblades Manufacturers Coalition (Petitioner), Ehwa Diamond Industrial Co., Ltd. (Ehwa), and Shinhan Diamond Industrial Co., Ltd. and SH Trading, Inc. (collectively, Shinhan). On January 23, 2013, we received rebuttal briefs from these same parties.

On April 5, 2012, the Petitioner alleged that Hyosung Diamond Industrial Co., Ltd., Western Diamond Tools Inc., and Hyosung D&P Co., Ltd. (collectively, Hyosung); Ehwa and Shinhan, and their respective Chinese subsidiaries, Weihai Xiangguang Mechanical Industrial Co., Ltd. and Qingdao Shinhan Diamond Industrial Co., Ltd., sold diamond sawblades into the United States bearing false country of origin designations.

On March 19, 2013, we issued a post-preliminary memorandum finding that the information submitted by Ehwa and Shinhan is reliable for the final results of the review.[2] We allowed parties the opportunity to comment but did not receive comments.

We extended the due date for the final results of review to April 30, 2013,[3] and then to June 10, 2013.[4]

We have conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

#### Fraud Allegations

We continue to find the information Ehwa and Shinhan submitted in this review to be reliable for the final results of review.[5] The Final Decision Memorandum is a public document and is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Final Decision Memorandum and the electronic versions of the Final Decision Memorandum are identical in content.

#### Scope of the Order

The merchandise subject to the order is diamond sawblades. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under 6804.21.00. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Final Decision Memorandum. The written description is dispositive.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Final Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I.

#### Changes Since the Preliminary Results

Based on our analysis of the comments received, we changed our calculation methodology for Ehwa's and Shinhan's dumping margins. We modified the model-match methodology to ensure only products with the same physical form matched. For Ehwa, we corrected currency conversions for expenses reported by Ehwa, adjusted certain programming language related to Ehwa's level of trade (LOT), and recalculated Ehwa's variable cost of manufacturing and production interest expense.[6]

#### Use of Adverse Facts Available

Consistent with the *Preliminary Results,* we determine that the failure of Hyosung to provide requested information necessary to calculate accurate dumping margins warrants the use of facts otherwise available with an adverse inference. Consequent to the changes from the *Preliminary Results* identified above, the final margin for Hyosung is 120.90 percent.[7]

#### Cost of Production

As discussed in the *Preliminary Results,* we conducted an investigation to determine whether Ehwa and

[1] *See Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2010–2011,* 77 FR 73420 (December 10, 2012) (*Preliminary Results*).

[2] *See* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, entitled ''Administrative Review of the Antidumping Duty Orders on Diamond Sawblades and Parts Thereof from the Republic of Korea for the 2010–2011 Period: Post-Preliminary Analysis'' dated March 19, 2013 (Post-Preliminary Analysis Memorandum).

[3] *See* Department Memorandum, ''Diamond Sawblades and Parts Thereof from the Republic of Korea and the People's Republic of China: Extension of Time Limits for the Final Results of the Antidumping Duty Administrative Reviews'' dated March 22, 2013.

[4] *See* Department Memorandum, ''Diamond Sawblades and Parts Thereof from the Republic of Korea and the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Reviews'' dated April 29, 2013.

[5] *See* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, entitled ''Issues and Decision Memorandum for the Final Results in the Second Antidumping Duty Order Administrative Review of Diamond Sawblades and Parts Thereof from the Republic of Korea'' dated concurrently with this notice (Final Decision Memorandum) at Comment 2.

[6] *See* Final Decision Memorandum, and Department Memoranda, ''Final Results Calculation for Ehwa Diamond Industrial Co., Ltd. in the Second Review of Diamond Sawblades and Parts Thereof from the Republic of Korea,'' and ''Final Results Calculation for Shinhan Diamond Industrial Co., Ltd. in the Second Review of Diamond Sawblades and Parts Thereof from the Republic of Korea'' dated concurrently with this notice for a complete explanation of the changes to the dumping margin calculations.

[7] For further discussion, *see* Department Memorandum, ''Final Adverse Facts Available Rate for Hyosung'' dated concurrently with this notice.

Shinhan made home market sales of the foreign like product during the POR at prices below their costs of production within the meaning of section 773(b) of the Act. For these final results, we performed the cost test following the same methodology as discussed in the *Preliminary Results.* In accordance with sections 773(b)(1) and (2) of the Act, we disregarded certain of Ehwa's and Shinhan's sales in the home market that were made at below-cost prices. Because Hyosung failed to provide responses, we were unable to conduct a sales below cost investigation for Hyosung.

**Final Results of the Review**

As a result of the administrative review, we determine that the following weighted-average dumping margins exist for the period November 1, 2010, through October 23, 2011:

| Exporter/Manufacturer | Margin (percent) |
|---|---|
| Ehwa Diamond Industrial Co., Ltd | 1.45 |
| Hyosung Diamond Industrial Co., Ltd, Western Diamond Tools Inc., and Hyosung D&P Co., Ltd | 120.90 |
| Shinhan Diamond Industrial Co., Ltd. and SH Trading, Inc | 0.00 |

**Assessment Rates**

The Department shall determine, and U.S. Customs and Border Protection (CBP) will assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). On October 24, 2011, the U.S. Court of International Trade preliminarily enjoined liquidation of entries that are subject to the final determination.[8] Accordingly, the Department will not instruct CBP to assess antidumping duties pending resolution of the associated litigation.

Pursuant to 19 CFR 351.212(b)(1), for all sales made by the respondents for which they have reported the importer of record and the entered value of the U.S. sales, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales to an importer, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales.

To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), the Department calculated importer-specific *ad valorem* ratios based on the entered value or the estimated entered value, when entered value was not reported. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[9] This clarification will apply to entries of subject merchandise during the POR produced by Ehwa and Shinhan for which these companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate involved in the transaction. For a full discussion of this clarification, *see Assessment Policy Notice.*

**Cash Deposit Requirements**

Effective October 24, 2011, the Department revoked the antidumping duty order on diamond sawblades from Korea, pursuant to a proceeding under section 129 of the Uruguay Round Agreements Act to implement the findings of the World Trade Organization dispute settlement panel in United States—*Use of Zeroing in Anti-Dumping Measures Involving Products from Korea* (WTIDS402/R) (January 18, 2011).[10] Consequently, no cash deposits are required on imports of subject merchandise.

**Notification to Interested Parties**

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(*i*)(1) of the Act.

Dated: June 10, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

**Appendix I—Issues in Decision Memorandum**

**General Issues**

Comment 1: Whether the Petitioner's Targeted Dumping Allegations are Timely
Comment 2: Fraud Allegations and the Reliability of Respondents' Submissions
Comment 3: Product-Matching
Comment 4: Treatment of U.S. Repacking Expenses

**Ehwa-Specific Issues**

Comment 5: Treatment of Indirect Selling Expenses and Inventory Costs
Comment 6: Treatment of Level of Trade
Comment 7: Calculation of Variable Cost of Manufacture and Double-Counting G&A and Production Interest Expenses

**Shinhan-Specific Issues**

Comment 8: Treatment of Duty Drawback Adjustment

[FR Doc. 2013–14538 Filed 6–17–13; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea,* 71 FR 29310 (May 22, 2006).

[9] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[10] *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof From the Republic of Korea,* 76 FR 66892 (October 28, 2011), and accompanying Issues and Decision Memorandum.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC730**

### Fisheries of the Atlantic and the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

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

**ACTION:** Notice of SEDAR 34 assessment process webinars for Highly Migratory Species (HMS) Atlantic Sharpnose (*Rhizoprionodon terraenovae*) and Bonnethead (*Sphyrna tiburo*) sharks.

**SUMMARY:** The SEDAR 34 assessment of HMS Atlantic Sharpnose and Bonnethead sharks will consist of an in-person workshop and a series of webinars. This notice is for the webinars associated with the assessment portion of the SEDAR process. See **SUPPLEMENTARY INFORMATION.**

**DATES:** The SEDAR 34 Assessment Workshop webinars will be held on: July 18, 2013; July 30, 2013; and September 5, 2013. All webinars are

scheduled from 10 a.m. until 1 p.m., Central Standard Time (CST).

**ADDRESSES:**

*Meeting address:* The meetings will be held via a GoToWebinar Conference. The webinars are open to the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATON CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; telephone: (843) 571–4366; email: *Julie.neer@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop; and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists; biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Process webinars are as follows:

1. Participants will use datasets and initial assessment analysis recommended from the in-person workshop to employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

## Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: June 13, 2013.

**Tracey L. Thompson,**

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

[FR Doc. 2013–14478 Filed 6–17–13; 8:45 am]

**BILLING CODE 3510–22–P**

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**RIN 0648–XC034**

## Permits; Foreign Fishing

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

**ACTION:** Notice; request for comments.

**SUMMARY:** NMFS publishes for public review and comment information regarding a permit application for transshipment of Atlantic herring by Canadian vessels, submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary for NMFS to make a determination that the permit application can be approved.

**DATES:** Written comments must be received by July 2, 2013.

**ADDRESSES:** Written comments on this action, identified by RIN 0648–XC034, should be sent to Mark Wildman in the NMFS Office of International Affairs at 1315 East-West Highway, Silver Spring, MD 20910 (phone: (301) 427–8386, fax: (301) 713–2313, email: *mark.wildman@noaa.gov*).

**FOR FURTHER INFORMATION CONTACT:** Mark Wildman at (301) 427–8386 or by email at *mark.wildman@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) authorizes the Secretary of Commerce (Secretary) to issue a transshipment permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the United States Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States. In addition, Public Law 104–297, section 105(e), directs the Secretary to issue section 204(d) permits for up to 14 Canadian transport vessels to receive Atlantic herring harvested by United States fishermen and to be used in sardine processing. Transshipment must occur from within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69 degrees 30 minutes west and within 12 nautical miles from Maine's seaward boundary.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that ''no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated . . . an interest in performing the transportation at fair and reasonable rates.'' NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

## Summary of Application

NMFS received an application requesting authorization for five Canadian transport vessels to receive transfers of herring from United States purse seine vessels, stop seines, and weirs for the purpose of transporting the herring to Canada for processing. The transshipment operations will occur within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69°30′ W longitude and

within 12 nautical miles from Maine's seaward boundary.

Dated: June 12, 2013.

**Jean-Pierre Plé,**

*Acting Director, Office of International Affairs, National Marine Fisheries Service.*

[FR Doc. 2013–14477 Filed 6–13–13; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC172**

### Taking of Marine Mammals Incidental to Specified Activities; Construction at Bremerton Ferry Terminal

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

**ACTION:** Notice; issuance of an incidental take authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Washington State Department of Transportation (WSDOT) to take, by harassment, small numbers of six species of marine mammals incidental to vibratory pile driving and pile removal activities at the Bremerton Ferry Terminal in Washington State between September 2013 and August 2014.

**DATES:** Effective September 1, 2013, through August 31, 2014.

**ADDRESSES:** Requests for information on the incidental take authorization should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application containing a list of the references used in this document, NMFS' Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and the IHA may be obtained by writing to the address specified above or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

**Summary of Request**

On August 14, 2012, WSDOT submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of six marine mammal species incidental to construction associated with the replacement of wingwalls at the Bremerton Ferry Terminal in Washington State. On December 4, 2012, WSDOT submitted a revised IHA application. The action discussed in this document is based on WSDOT's December 4, 2012, IHA application.

**Description of the Specified Activity**

Detailed description of the WSDOT's wingwalls replacement work at the Bremerton Ferry Terminal is provided in the **Federal Register** notice for the proposed IHA (78 FR 11844; February 20, 2013). Since that time, no changes have been made to the wingwalls replacement project at the Bremerton Ferry Terminal, except that WSDOT requested the incidental take coverage to be extended from February 28, 2014, through August 31, 2014, in case the project may be postponed. Nevertheless, the amount of activity and the duration of actual in-water construction has not changed. The potential change in work season will not affect marine mammal take estimates since the actual construction duration will not change and the initial calculation relied on marine mammal presence in the project area on annual basis.

The details of WSDOT's wingwalls replacement work at Bremerton Ferry Terminal are provided in the **Federal Register** notice for the proposed IHA (78 FR 11844; February 20, 2013). Please refer to that **Federal Register** notice for the description of the specific activity.

**Comments and Responses**

A notice of NMFS' proposal to issue an IHA to WSDOT was published in the **Federal Register** on February 20, 2013 (78 FR 11844). That notice described, in detail, WSDOT's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). The Commission recommends NMFS issue the IHA to WSDOT, but has asked NMFS to condition the IHA in certain respects. Specific comments and responses are provided below.

*Comment 1:* The Commission requests that NMFS justify its conclusion that the taking will involve only a small number of southern resident killer whales (SRKWs) and work with the Fish and Wildlife Service and the Commission to develop a policy that sets forth the criteria and/or thresholds for determining what constitutes ''small numbers'' and ''negligible impact'' for the purpose of authorizing incidental takes of marine mammals

*Response:* As stated in the **Federal Register** for the proposed IHA, WSDOT is required to implement shutdown measures if the combined Level B takes of SRKWs reach to a total of 16 at the Bremerton Ferry Terminal, which is equivalent to approximately 19% of the SRKW population. Subsequently, NMFS

worked with WSDOT on a possible solution to further reduce takes of SRKWs. WSDOT agreed that it will take all practical steps to avoid exposing SRKWs to sound levels that may result in harassment by implementing shutdown measures whenever a SRKW is sighted in the vicinity of the project area. In the event a SRKW is not detected before entering the zone of influence, NMFS has authorized the take of no more than four SRKW, which represents 5% of the existing population. As we have done in the past, NMFS will continue to collaborate with the Commission and Fish and Wildlife Service on a variety of MMPA issues, including small numbers and negligible impact, to strengthen our collective understanding of how activities affect marine mammal species and stocks.

*Comment 2:* The Commission requests NMFS require WSDOT to monitor the Level B harassment zone at least 30 minutes before, during, and 30 minutes after the pile-removal and -driving activities to ensure that those activities are not having an unintended effect on marine mammals in or near the zone.

*Response:* NMFS agrees with the Commission and will require the WSDOT to monitor the Level B harassment zone for 30 minutes before, during, and 30 minutes after the pile driving and pile removal activities.

*Comment 3:* The Commission requests NMFS specify in its authorization that, after a delay, power down, or shutdown, the Ferries Division would not resume activities until the marine mammal (1) is observed to have left the Level B harassment zone or (2) has not been seen or otherwise detected within the Level B harassment zone for 15 minutes for small odontocetes and 30 minutes for mysticetes and large odontocetes, including killer whales.

*Response:* As described in detail in the **Federal Register** notice for the proposed IHA, WSDOT's wingwalls replacement project at the Bremerton Ferry Terminal will only use vibratory pile hammer for pile driving. Marine mammals are not expected to be injured (Level A harassment) by WSDOT's use of vibratory pile hammers, thereby obviating the need for an exclusion zone for this activity. Nevertheless, for initiation of pile driving and pile removal activities, WSDOT is required to monitor the Level B harassment zone for 30 minutes before, during, and 30 minutes after in-water construction, and to ramp up vibratory hammer for pile removal and pile driving, which will effectively reduce any startle behavior of marine mammals in the vicinity at the commencement of the piling activity.

However, WSDOT is required to shutdown when a SRKW is sighted in the vicinity of the project area, or the potential takes of any SRKW is approaching the allotted take limit. Therefore, under such circumstances, NMFS will require that WSDOT not resume activities until the killer whale under the above condition (1) is observed to have left the Level B harassment zone or (2) has not been seen or otherwise detected within the Level B harassment zone 30 minutes after a shutdown.

**Description of Marine Mammals in the Area of the Specified Activity**

The marine mammal species under NMFS jurisdiction most likely to occur in the construction area include Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), and humpback whale (*Megaptera novaeangliae*).

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2011), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2011.pdf.* Specific information concerning these species in the vicinity of the action area is provided in the **Federal Register** notice for the proposed IHA and in WSDOT's IHA application. Therefore, it is not repeated here.

**Potential Effects of the Specified Activity on Marine Mammals**

The effects of underwater noise from in-water vibratory pile driving and pile removal associated with the construction activities at the Bremerton Ferry Terminal has the potential to result in behavioral harassment of marine mammal species and stocks in the vicinity of the action area. The Notice of Proposed IHA included a discussion of the effects of anthropogenic noise on marine mammals, which is not repeated here. No instances of hearing threshold shifts, injury, serious injury, or mortality are expected as a result of WSDOT's activities given the strong likelihood that marine mammals would avoid the immediate vicinity of the pile driving area.

**Potential Effects on Marine Mammal Habitat**

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels, but the project may also result in additional effects to marine mammal prey species and short-term local water turbidity caused by in-water construction due to pile removal and pile driving. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA and are not repeated here.

**Potential Impacts on Availability of Affected Species or Stocks for Taking for Subsistence Uses**

No subsistence harvest of marine mammals occurs in the action area.

**Mitigation Measures**

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For WSDOT's wingwalls replacement work at the Bremerton Ferry Terminal, NMFS is requiring WSDOT to implement the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the in-water construction activities.

Since the measured source levels (at 10 and 16 m) of the vibratory hammer involved in pile removal and pile driving are below NMFS' current thresholds for Level A takes, i.e., below 180 dB (rms) re 1 μPa, no exclusion zone will be established, and there will be no required shutdown measures except when take of SRKWs approaches the authorized limit (see below). Instead, WSDOT is required to establish and monitor the 120 dB (rms) re 1 μPa zone of influence (ZOI, see below Monitoring and Reporting section).

One significant mitigation measure for WSDOT's pile removal and pile driving activities is ramping up, or soft start, of vibratory pile hammers. The purpose of this procedure is to prevent the startling behavior of marine mammals in the vicinity of the construction activity from sudden loud noise.

Soft start requires contractors to initiate the vibratory hammer at reduced power for 15 seconds with a 1 minute interval, and repeat such procedures for an additional two times.

In addition, monitoring for marine mammal presence will take place 30 minutes before, during and 30 minutes after pile driving to document marine mammal occurrence and responses before, during and after the pile driving

and pile removal activities (see Monitoring and Reporting section below).

In addition, WSDOT will implement shutdown measures whenever Southern Resident killer whales (SRKWs) are present in the vicinity of the project area and take all practical steps to avoid exposing SRKWs to sound levels that result in harassment. If it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW appropriate mitigation measures shall be implemented.

Further, if the number of any allotted marine mammal takes reaches the limit under the IHA, WSDOT will implement shutdown measures if such species/stock of animal approaches the 120 dB Level B harassment zone.

Finally, to avoid exceeding its SRKW take limit, NMFS has required WSDOT to not resume activities until any SRKW (1) is observed to have left the Level B harassment zone or (2) has not been seen or otherwise detected within the Level B harassment zone 30 minutes.

*Mitigation Conclusions*

Based on our evaluation of the prescribed mitigation measures, NMFS has determined the measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

*Monitoring Measures*

Any ITA issued under Section 101(a)(5)(D) of the MMPA is required to prescribe, where applicable, ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) state that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

(1) Protected Species Observers (PSOs)

WSDOT will employ qualified protected species observers (PSOs) to monitor the 120 dB re 1 μPa (rms) for marine mammals. Qualifications for marine mammal observers include:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars is necessary to correctly identify the target.
- Advanced education (at least some college level courses) in biological science, wildlife management, mammalogy or related fields (Bachelor's degree or higher is preferred), but not required.
- Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).
- Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.
- Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area as necessary.
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or within the defined ZOI.

(2) Monitoring Protocols

PSOs will be present on site at all times during pile removal and driving. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and the time corresponding to the daily tidal cycle will be recorded.

The following protocols will be used for marine mammal monitoring during the Bremerton Ferry Terminal construction work:

- A range finder or hand-held global positioning system device will be used to ensure that the 120 dB re 1 μPa (rms) Level B behavioral harassment ZOI is monitored.
- A 20-minute pre-construction marine mammal monitoring period will be required before the first pile driving or pile removal of the day. A 30-minute post-construction marine mammal monitoring period will be required after the last pile driving or pile removal of the day. If the construction personnel take a break between subsequent pile driving or pile removal for more than 30 minutes, then additional pre-construction marine mammal monitoring will be required before the next start-up of pile driving or pile removal.
- If marine mammals are observed, the following information will be document:
  - Species of observed marine mammals;
  - Number of observed marine mammal individuals;
  - Behavioral of observed marine mammals;
  - Location within the ZOI; and
  - Animals' reaction (if any) to pile-driving activities.
- During vibratory pile removal and driving, one land-based biologist will monitor the area from the terminal work site, and one boat with a qualified PSO shall navigate the ZOI in a circular path. All PSOs shall use binoculars to conducting monitoring.
- In addition, WSDOT will contact the Orca Network and/or Center for Whale Research to determine the location of the nearest marine mammal sightings. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The Northwest Fisheries Science Center of NOAA Fisheries, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline, and the British Columbia Sightings Network.
- Marine mammal occurrence information collected by the Orca Network also includes detection by the following hydrophone systems: (1) The SeaSound Remote Sensing Network, a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study killer whale communication, underwater noise, bottomfish ecology, and local climatic conditions, and (2) A hydrophone at the Port Townsend Marine Science Center that measures average underwater sound levels and automatically detects unusual sounds.

NMFS has determined that these monitoring measures are adequate, particularly as it relates to assessing the level of taking or impacts to affected species. The land-based PSO is expected to be positioned in a location that will maximize his/her ability to detect marine mammals and will also be required to utilize binoculars to improve detection rates. In addition, the boat-based PSO will cruise within the 120 dB ZOI, which is not a particularly large zone, thereby allowing him/her to conduct additional monitoring with binoculars. With respect to prevent takes of SRKW, NMFS considers WSDOT's visual and acoustic monitoring is adequate because (1) killer whales have large dorsal fins and can be easily spotted from great distances; (2) SRKWs typically move in groups which

makes visual detection much easier; and (3) resident killer whales are very vocal, which makes them relatively easier for acoustic detection.

*Reporting Measures*

WSDOT will provide NMFS with a draft monitoring report within 90 days of the conclusion of the construction work. This report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

If comments are received from the NMFS Northwest Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report will be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

*Notification of Injured or Dead Marine Mammals*

In addition to the reporting measures listed above, NMFS will require that WSDOT notify NMFS' Office of Protected Resources and NMFS' Stranding Network of sighting an injured or dead marine mammal in the vicinity of marine operations. Depending on the circumstance of the incident, WSDOT shall take one of the following reporting protocols when an injured or dead marine mammal is discovered in the vicinity of the action area.

(a) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury, serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), WSDOT shall immediately cease all operations and immediately report the incident to the Supervisor of Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinators. The report must include the following information:

(i) time, date, and location (latitude/longitude) of the incident;

(ii) description of the incident;

(iii) status of all sound source use in the 24 hours preceding the incident;

(iv) environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility, and water depth);

(v) description of marine mammal observations in the 24 hours preceding the incident;

(vi) species identification or description of the animal(s) involved;

(vii) the fate of the animal(s); and

(viii) photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with WSDOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WSDOT may not resume their activities until notified by NMFS via letter, email, or telephone.

(b) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), WSDOT will immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WSDOT to determine whether modifications in the activities are appropriate.

(c) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), WSDOT shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinators, within 24 hours of the discovery. WSDOT shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. WSDOT can continue its operations under such a case.

**Estimated Take by Incidental Harassment**

As mentioned in the **Federal Register** notice for the proposed IHA, a worst-case scenario for the Bremerton Ferry Terminal project assumes that it may take four days to remove the existing piles and seven days to install the new piles. The maximum total number of hours of pile removal activity is about 28 hours, and pile-driving activity is about 6.75 hours (averaging about 3.2 hours of active pile removal/driving for each construction day).

Also, as described in the **Federal Register** notice for the proposed IHA, for non-impulse noise, NMFS uses 120 dB (rms) re 1 μPa as the threshold for Level B behavioral harassment. The distance to the 120 dB contour Level B acoustical harassment threshold due to vibratory pile driving for the Bremerton ferry terminal project extends a maximum of 4.7 km (2.9 miles) before land is intersected. The ZOI would be monitored during construction to estimate actual harassment take of marine mammals.

Airborne noises can affect pinnipeds, especially resting seals hauled out on rocks or sand spits. The airborne 90 dB Level B threshold for hauled out harbor seals was estimated at 37 m, and the airborne 100 dB Level B threshold for all other pinnipeds is estimated at 12 m.

The nearest known harbor seal haulout site to the Bremerton ferry terminal is 8.5 km north and west (shoreline distance). The nearest documented California and Steller sea lion haulout sites to the Bremerton ferry terminal are navigation buoys in Rich Passage, approximately 9 and 10 km east of the terminal. The Puget Sound Naval Shipyard security barrier California sea lion haulout is located approximately 435 m SW of the ferry terminal.

In-air noise from this project will not reach any haulout sites, but harbor seals swimming on the surface through the 37 m zone, and other pinnipeds swimming on the surface through the 12 m zone during vibratory pile removal or driving may be temporarily disturbed.

Incidental take is estimated for each species by estimating the likelihood of a marine mammal being present within a ZOI during active pile removal or driving. Expected marine mammal presence is determined by past observations and general abundance near the Bremerton Ferry Terminal during the construction window. Typically, potential take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any given moment. However, there are no density estimates for any Puget Sound population of marine mammal. As a result, the take requests were estimated using local marine mammal data sets (e.g., Orca Network, state and federal agencies), opinions from state and federal agencies, and observations from Navy biologists.

Based on the estimates, approximately 649 Pacific harbor seals, 1,584 California sea lions, 66 Steller sea lions, 28 killer whales (24 transient, 4 Southern Resident killer whales), 8 gray

whales, and 8 humpback whales could be exposed to received sound levels at or above 120 dB re 1 μPa (rms) from the proposed Bremerton Ferry Terminal wingwalls replacement work. A summary of the estimated takes is presented in Table 3.

TABLE 3—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED PILE DRIVING AND PILE REMOVAL LEVELS ABOVE 120 DB RE 1 μPA (RMS)

| Species | Estimated marine mammal takes | Percentage |
|---|---|---|
| Pacific harbor seal | 649 | 4.4 |
| California sea lion | 1,584 | 0.53 |
| Steller sea lion | 66 | 0.11 |
| Killer whale, transient | 24 | 6.8 |
| Killer whale, Southern Resident | 4 | 5 |
| Gray whale | 8 | 0.03 |
| Humpback whale | 8 | 0.7 |

The requested takes represent 4.4% of the Inland Washington stock harbor seals (estimated at 14,612), 0.53% of the U.S. stock California sea lion (estimated at 296,750), 0.11% of the eastern stock Steller sea lion (estimated at 58,334), 6.8% of the West Coast transient killer whale (estimated at 354), 5% of Southern Resident killer whale (estimated at 85), 0.03% of the Eastern North Pacific stock gray whale (estimated at 26,000), and 0.7% of the Eastern North Pacific stock humpback whale (estimated at 1,100), all of which are small relative to their population or stock size.

**Negligible Impact and Small Numbers Analyses and Determinations**

As a preliminary matter, we typically include our negligible impact and small numbers analyses and determinations under the same section heading of our **Federal Register** Notices. Despite co-locating these terms, we acknowledge that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analyses presented below do not conflate the two standards; instead, each standard has been considered independently and we have applied the relevant factors to inform our negligible impact and small numbers determinations.

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The WSDOT's proposed Bremerton Ferry Terminal construction project would conduct vibratory pile removal and pile driving to replace wingwall structures. Elevated underwater noises are expected to be generated as a result of pile removal and pile driving activities. However, noise levels from the machinery and activities are not expected to reach to the level that may cause TTS, injury (PTS included), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving and pile removal associated with WSDOT construction project.

Based on long-term marine mammal monitoring and studies in the vicinity of the proposed construction areas, it is estimated that approximately 649 Pacific harbor seals, 1,584 California sea lions, 66 Steller sea lions, 40 killer whales (24 transient, 16 Southern Resident killer whales), 8 gray whales, and 8 humpback whales could be exposed to received noise levels above 120 $dB_{rms}$ re 1 μPa from the proposed construction work at the Bremerton Ferry Terminal. These numbers represent approximately 0.03%–6.8% of the stocks and populations of these species could be affected by Level B behavioral harassment. As mentioned earlier in this document, the worst case scenario for the proposed construction work would only take a total of 34.75 hours (28 hours for pile removal and 6.75 hours for pile driving).

In addition, these low intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. In addition, no important feeding and/or reproductive areas of marine mammals is known to be near the proposed action area. Therefore, the take resulting from the proposed Bremerton Ferry Terminal construction projects is not reasonably expected to, and is not reasonably likely to, adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival. The maximum estimated 120 dB isopleths from vibratory pile driving is approximately 4.7 km from the pile before being blocked by landmass.

The closest documented California sea lion haulout site to the Bremerton Ferry Terminal is the Puget Sound Naval Shipyard security barrier, located approximately 435 m SW of the ferry terminal. The next closest documented California sea lion haulout sites to the Bremerton Ferry Terminal are navigation buoys and net pens in Rich Passage, approximately nine and ten km east of the terminal, respectively. However, it is estimated that airborne noise from vibratory pile driving a 30-in steel pile would fall below 90 dB and 100 dB re 1 20 μPa at 37 m and 12 m

from the pile, respectively. No other pinniped haulout site exists in the vicinity of the proposed project area. Therefore, pinnipeds hauled out at the Puget Sound Naval Shipyard security barrier will not be affected.

For the reasons discussed in this document, NMFS has determined that the impact of vibratory pile removal and pile driving associated with wingwall replacements at Bremerton Ferry Terminal would result, at worst, in the Level B harassment of small numbers of six marine mammals that inhabit or visit the area. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within Washington coastal waters and haul-out sites has led NMFS to determine that this action will have a negligible impact on these species in the vicinity of the proposed construction area.

In addition, no take by TTS, Level A harassment or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation and monitoring measures mentioned previously in this document.

### National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from WSDOT's wingwalls replacement work at the Bremerton Ferry Terminal. A Finding of No Significant Impact (FONSI) was signed on June 10, 2013. A copy of the EA and FONSI is available upon request (see **ADDRESSES**).

### Endangered Species Act (ESA)

The humpback whale, Southern Resident stock of killer whale, and the eastern population of Steller sea lions, are the only marine mammal species currently listed under the ESA that could occur in the vicinity of WSDOT's construction projects. NMFS' Permits and Conservation Division consulted with NMFS' Northwest Regional Office Division of Protected Resources under section 7 of the ESA on the issuance of an IHA to WSDOT under section 101(a)(5)(D) of the MMPA for this activity. A Biological Opinion was issued on February 19, 2013, which concludes that issuance of the IHA is not likely to jeopardize the continued existence of the ESA-listed marine mammal species. NMFS will issue an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of listed species.

### Authorization

NMFS has issued an IHA to WSDOT for the potential harassment of small numbers of six marine mammal species incidental to wingwalls replacement construction activities at the Bremerton Ferry Terminal in Washington State, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 12, 2013.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–14494 Filed 6–17–13; 8:45 am]

**BILLING CODE 3510–22–P**

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No: CFPB–2013–0015]**

## 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, ''Policy to Encourage Trial Disclosure Programs: Information Collection.''

**DATES:** Written comments are encouraged and must be received on or before July 18, 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: *CFPB_Public_PRA@cfpb.gov.* Please do not submit comments to this email box.

**SUPPLEMENTARY INFORMATION:**

*Title:* Policy to Encourage Trial Disclosure Programs: Information Collection.

*OMB Control Number:* 3170–XXXX.

*Type of Review:* New collection; request for new OMB control number.

*Affected Public:* Private Sector (Certain businesses offering consumer financial services or products that meet the definition of ''covered person'' under Section 1002(6) of the Dodd-Frank Act, as well as third-parties, such as trade associations, that may coordinate the submission of information by covered persons).

*Estimated Number of Annual Responses:* 10.

*Estimated Total Annual Burden Hours:* 100.

*Abstract:* In subsection 1032(e) of the Dodd-Frank Act, 12 U.S.C. 5532(e), Congress gave the Bureau authority to provide certain legal protections to companies to conduct trial disclosure programs. This authority can be used to help further the Bureau's statutory objective, stated in subsection 1021(b)(5) of the Act, to ''facilitate access and innovation'' in the ''markets for consumer financial products and services.''

*Request for Comments:* The Bureau issued a 60-day **Federal Register** notice on December 17, 2012, 77 FR 74625. 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 methodology 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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: June 13, 2013.

**Matthew Burton,**

*Acting Chief Information Officer, Bureau of Consumer Financial Protection.*

[FR Doc. 2013–14488 Filed 6–17–13; 8:45 am]

**BILLING CODE 4810–AM–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review, Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled the Senior Corps Progress Report (PPR) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Wanda Carney, at (202) 606–6934 or email to *wcarney@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Comments**

A 60-day Notice requesting public comment was published in the **Federal Register** on December 10, 2012. This comment period ended on February 10, 2013. A total of 99 public comments were received from this Notice.

*Summary of Comments by Category and CNCS Response*

*Category 1: Statements of Support for a PPR Update.* A total of 26 comments included statements of support for an updated PPR: Nineteen commenters support updating the PPR to align with new performance measures and 7 commenters shared that the PPR is a valuable reporting tool.

*Response:* CNCS agrees with the need to align the PPR with new performance measures and also the overall value of the PPR.

C*ategory 2: Burden.* CNCS received 72 comments citing semi-annual reporting will increase reporting burden, and that CNCS should retain an annual reporting cycle. Nineteen comments stated that a semi-annual PPR would take too much time away from other project management responsibilities. Four of the 19 comments specifically noted that grantee time is needed to shift service activities to new National Performance Measures or to focus on RSVP Competition. Eight of the 19 comments noted that a Senior Corps project director's time and project management abilities are already stretched due to recent budget cuts which have resulted in reduced staff time and reduced travel budgets

*Response:* CNCS recognizes the time needed to support other Senior Corps project management responsibilities, and agree that requesting a full PPR every six months does not result in benefits that outweigh the additional administrative burden imposed. CNCS proposes the following refinements to semi-annual reporting: Only grantees that have adopted the new standard performance measures will be required to report semi-annually. These grantees comprise 33 percent of the Senior Corps portfolio in FY 2013; 66 percent in FY 2014; and 100 percent in FY 2015. The increase in percentage is due to the phased in approach of the required performance measures. In this way, grantees not yet operating under the performance measures requirements will retain their original annual reporting cycle until the time that they compete for a new grant (RSVP only) or submit a renewal for a new grant (FGP and SCP only).

CNCS will require only demographic and performance measure output data reports on the mid-year PPR, rather than the full PPR. Completing only the sections that address the performance and results will provide the data needed by CNCS to gauge progress, but will abbreviate the mid-year PPR submission.

*Category 3: Lack of useful data to justify increase in burden.* A total of 26 comments stated that a semi-annual PPR is unnecessary because performance measure data includes an annual target. Thus, a semi-annual report would not yield useful data. Eighteen of these comments stated that information reported on a semi-annual PPR would unfairly be used as a measure towards progress on achieving final targets. Two of the comments stated that commenters believed CNCS would not use the data reported.

*Response:* CNCS recognizes that performance measure targets are a goal to be achieved at the end of a 12-month period. However, information reported on a semi-annual PPR provides information used to determine whether the project is on track to achieve the target on time. The data will be used to determine adequate progress during the project period to assess whether an administrative renewal or competition is the appropriate next step for RSVP projects. The data submitted at the mid-point each year will also allow CNCS to access data needed for key documents, such as the Congressional Budget Submission.

*Category 4: Burden on volunteer stations, which are the organizations where the volunteers are placed.* A total of 15 comments expressed concern about an additional reporting burden on volunteer stations. One comment stated that the project would be at risk of losing volunteer stations due to an increased reporting burden. Two comments cited technology issues at the volunteer stations may present challenges to gathering reporting information from volunteer stations.

*Response:* CNCS recognizes the potential increase in volunteer station burden due to additional reporting. Rather than asking for a full PPR to be submitted every six months, CNCS will compromise with a requirement for only demographic and output information to be reported on the six-month PPR.

*Category 5: Time Estimate.* A total of nine comments stated that the estimated time to complete the PPR is too low.

*Response:* The time required to complete the PPR is limited to the time needed to enter the PPR information into the PPR module in eGrants and does not include the time invested in project management, performance measures monitoring, or gathering the performance measures and PPR data. However, we concur that the full burden should be reviewed, particularly since respondents will use new eGrants system functionality under this PPR version.

*Category 6: CNCS Staff Oversight.* A total of two comments stated that CNCS staff would not have time to react to and provide feedback on a semi-annual report.

*Response:* Prior to the recent move to annual PPRs, CNCS staff provided feedback on semi-annual and annual PPRs. Time to provide feedback has not been an issue for CNCS staff in the past.

*Category 7: Suggestion for Performance Metric for Achievement.* One comment suggested that grantees self-report whether they are on target to achieve the end of year goal, rather than reporting quantifiable data against the performance measures.

*Response:* Data that cannot be supported with quantifiable information would not provide enough useful information for CNCS.

*Category 8: Other.* One commenter stated that Senior Corps is a waste of government money and recommends closing out Senior Corps grants and programs.

*Response:* This comment is outside the scope of the information request.

*Description:* CNCS is seeking approval of the Senior Corps Progress Report (PPR), which is used by grantees of the Senior Corps' programs (RSVP, Foster Grandparent and Senior Companion Programs) address and fulfill legislated program purposes; meet OMB Progress Report Requirements; meet agency program management and grant requirements; track and measure progress to benefit the local project and its contributions to senior volunteers and the community; and to report progress toward work plan objectives agreed upon in the granting of the award. The PPR also includes a Progress Report Supplement (PRS), which is administered annually to all Senior Corps grantees. This PRS survey collects data from all grantees that is then aggregated to develop snapshots about Senior Corps volunteers, such as demographic characteristics, reasons for separating from the program, and service hours per week.

*Type of Review:* Renewal.

*Agency:* Corporation for National and Community Service.

*Title:* Senior Corps Progress Report (PPR).

*OMB Number:* 3045–033.

*Agency Number:* None.

*Affected Public:* Senior Corps grantees.

*Total Respondents:* 1,250.

*Frequency:* Semi-annual for PPR. Annual for PRS.

*Average Time per Response:* 14 hours.

*Estimated Total Burden Hours:* 17,500.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Dated; June 12, 2013.

**Erwin Tan,**

*Director, Senior Corps.*

[FR Doc. 2013–14461 Filed 6–17–13; 8:45 am]

BILLING CODE 6050–28–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 13–34]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 13–34 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 13, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUN 7 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-34, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Thailand for defense articles and services estimated to cost $77 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 13–34

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Thailand
(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment* | $45 million |
| Other | $32 million |
| TOTAL | $77 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 6 UH–72A Lakota Helicopters, spare and repair parts, support equipment, communication equipment, publications and technical documentation, Aviation Mission Planning Station, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Army (UAK)
(v) *Prior Related Cases, if any:* None
(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None
(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None
(viii) *Date Report Delivered to Congress:* 7 June 2013

*as defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Thailand—UH–72A Lakota Helicopters*

The Government of Thailand has requested a possible sale of 6 UH–72A Lakota Helicopters, spare and repair parts, support equipment, communication equipment,

publications and technical documentation, Aviation Mission Planning Station, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support. The estimated cost is $77 million.

This proposed sale will contribute to the foreign policy and national security of the United States, by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in Southeast Asia.

This proposed sale will contribute to Thailand's goal to upgrade and modernize its military forces with a new light utility helicopter capable of meeting requirements for rotary-wing transportation, while further enhancing greater interoperability between Thailand the U.S., and among other allies. Thailand will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be EADS North America, in Herndon, Virginia. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require U.S. Government or contractor representatives to travel to Thailand for a period of five weeks for equipment de-processing/fielding, system checkout and new equipment training and a Contractor Furnished Service Representative (CFSR) for a period of one year.

There will be no adverse impact on US defense readiness as a result of this proposed sale.

[FR Doc. 2013–14441 Filed 6–17–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 13–25]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–25 with attached transmittal and policy justification.

Dated: June 13, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUN 07 2013

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-25, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $200 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided under Separate Cover)

Transmittal No. 13–25

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective purchaser:* The Government of Kuwait

(ii) *Total Estimated Value*

| | |
|---|---|
| Major Defense Equipment* | $ 0 million |
| Other | $200 million |
| TOTAL | $200 million |

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:* continuation of logistics support, contractor maintenance, and technical services in support of the F/A–18 C/D aircraft to include avionics software upgrade, engine component improvement, ground support equipment, spare and repair parts, publications and technical documentation, engineering change proposals, U.S. Government and contractor technical and logistics support services and other related elements of logistical support.

(iv) *Military Department:* Navy (GGW)

(v) *Prior Related Cases, if any:* Multiple FMS cases dating back to 1997

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 7 June 2013

* as defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Government of Kuwait—Technical/Logistics Support for F/A–18 C/D Aircraft*

The Government of Kuwait has requested a possible sale of continuation of logistics support, contractor maintenance, and technical services in support of the F/A–18 C/D aircraft to include avionics software upgrade, engine component improvement, ground support equipment, spare and repair parts, publications and technical documentation, engineering change proposals, U.S. Government and contractor technical and logistics support services and other related elements of logistical support. The estimated cost is $200 million.

The proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale of this support will not alter the basic military balance in the region.

The principal contractors will be General Dynamics of Fairfax, Virginia; The Boeing Company of St. Louis, Missouri; and Wyle Laboratories, Inc of Huntsville, Alabama. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of ninety U.S. Government and contractor representatives for a period three years to establish and maintain operational capability.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2013–14481 Filed 6–17–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 13–15]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–15 with attached transmittal and policy justification.

Dated: June 13, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUN 07 2013

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-15, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Libya for defense articles and services estimated to cost $588 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 13–15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Libya

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment* | $222 million |
| Other | $366 million |
| Total | $588 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 2 C–130J–30 aircraft, 10 Rolls Royce AE 2100D3 engines (8 installed and 2 spares), aircraft modifications, Government Furnished Equipment (including radios), support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (SAF)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 7 June 2013

* As defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Libya—C–130J–30 Aircraft*

The Government of Libya has requested a sale of 2 C–130J–30 aircraft, 10 Rolls Royce AE 2100D3 engines (8 installed and 2 spares), aircraft modifications, Government Furnished Equipment (including radios), support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $588 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of Libya. The Government of Libya uses airlift to maintain the connection between the central government and the country's outlying areas. The sale of these C–130Js to Libya will significantly increase its capability to provide in-country airlift support for its forces, thus strengthening its capacity in the security arena.

Libya intends to use these aircraft primarily to move supplies and people within Libya. This medium lift capability should assist with border security, the interdiction of known terrorist elements, and rapid reaction to internal security threats. In addition, Libya intends to utilize these aircraft in support of regional peacekeeping and humanitarian operations. Libya, which already operates a mix of legacy C–130s, will have little difficulty absorbing these aircraft, which include a three-year training and sustainment package.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Lockheed Martin-Aerospace in Marietta, Georgia. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will require the assignment of four contracted Field Service Representatives (FSR) and one Logistics Support Representative (LSR) for a period of three years. The FSRs and LSR will have expertise in airframe, avionics/electrical, propulsion systems, ground maintenance systems, and logistics support. Additionally, there will be a USAF logistics specialist assisting the purchaser to establish a supply system in support of flight operations, supply management, inventory control, and documentation procedures for a period of three years following aircraft delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2013–14480 Filed 6–17–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Establishment of the Board of Visitors, Marine Corps University

**AGENCY:** Department of Defense.

**ACTION:** Establishment of Federal Advisory Committee.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is establishing the charter for the Board of Visitors, Marine Corps University (''the Board''). The Board has been determined to be in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** The Board shall provide independent advice and recommendations on matters relating to the Marine Corps University, as set forth in this notice.

The Board shall provide the Secretary of Defense, through the Secretary of the Navy and the Commanding General, Marine Corps Combat Development Command, independent advice and recommendations on matters pertaining to:

a. U.S. Marine Corps Professional Military Education;

b. All aspects of the academic and administrative policies of the Marine Corps University (''the University'');

c. Higher educational standards and cost effective operations of the University; and

d. The operation and accreditation of the National Museum of the Marine Corps. The Board shall be composed of at least 9 and not more than 11 members who are appointed by the Secretary of Defense or the Deputy Secretary of Defense. The members will be eminent authorities in the fields of education, defense, management, economics, leadership, academia, national military strategy, or international affairs.

Board members will be appointed for a term of service of one-to-four years, and their appointments will be renewed, on an annual basis, according to DoD policies and procedures. No member, unless authorized by the Secretary of Defense or the Deputy Secretary of Defense, may serve more than two consecutive terms of service on the Board, to include its subcommittees. Board members who are not full-time or permanent part-time Federal officers or employees shall be appointed as experts and consultants, under the authority of 5 U.S.C. § 3109, to serve as special government employee (SGE) members. Board members, who are full-time or permanent part-time Federal employees, will serve as regular government employee members. All Board members are appointed to provide advice to the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

All Board members will be reimbursed for travel and per diem as it pertains to official business of the Board. Board members, who are appointed by the Secretary of Defense as SGE members, will serve without compensation.

The Secretary of Defense authorizes the President of the University to select the Board President from among the members of the Board. The position of the Board President will be for a two-year period, not to exceed a member's term of service.

The Secretary of Defense authorizes the President of the University to serve as a non-voting ex-officio member of the Board, whose membership shall not count toward the total membership of the Board. No other full-time or permanent part-time University employee will serve on the Board.

The Secretary of the Navy, pursuant to DoD policies and procedures, may appoint, as deemed necessary, non-voting subject matter experts (SMEs) to assist the Board or its subcommittees on an ad hoc basis. These non-voting SMEs are not members of the Board or its subcommittees and will not engage or participate in any deliberations by the Board or its subcommittees. These non-voting SMEs, if not full-time or permanent part-time Government employees, will be appointed as experts and consultants, under the authority of 5 U.S.C. § 3109, to serve on an intermittent basis to address specific issues under consideration by the Board.

DoD, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the

Secretary of Defense, the Deputy Secretary of Defense, or the Secretary of the Navy, as the DoD Sponsor.

Such subcommittees shall not work independently of the Board, and shall report all of their recommendations and advice solely to the Board for full and open deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Board, directly to the DoD or any Federal officer or employee.

All subcommittee members will be appointed in the same manner as Board members; that is, the Secretary of Defense or the Deputy Secretary of Defense will appoint subcommittee members, to a term of service of one-to-four years, even if the member in question is already a member of the Board.

Subcommittee members, if not full-time or permanent part-time Federal employees, will be appointed as experts and consultants, under the authority of 5 U.S.C. § 3109, to serve as SGE members, whose appointments must be renewed on an annual basis. With the exception of travel and per diem for official travel related to the Board or its subcommittees, subcommittee members shall serve without compensation.

With the exception of the President of the University, no full-time or permanent part-time University employee will serve on any subcommittees, task forces, or working groups. Each subcommittee member is appointed to provide advice to the Government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

The Board's Designated Federal Officer (DFO), pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures.

The Board's DFO is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Board's DFO, a properly approved Alternate DFO, duly appointed to the Board according to established DoD policies and procedures, shall attend the entire duration of all of the Board and subcommittee meetings.

The DFO, or the Alternate DFO, shall call all of the Board and its subcommittees meetings; prepare and approve all meeting agendas; adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures; and chair meetings when directed to do so by the official to whom the Board reports.

Pursuant to 41 CFR §§ 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board of Visitors, Marine Corps University membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Board of Visitors, Marine Corps University. All written statements shall be submitted to the Designated Federal Officer for the Board of Visitors, Marine Corps University, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board of Visitors, Marine Corps University's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR § 102–3.150, will announce planned meetings of the Board of Visitors, Marine Corps University. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: June 13, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2013–14433 Filed 6–17–13; 8:45 am]

BILLING CODE 5001–06–P

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Public Interface Control Working Group (ICWG) Meeting

**ACTION:** Public ICWG Announcement—2013.

This notice informs the public that the Global Positioning Systems (GPS) Directorate will be hosting a Public Interface Control Working Group (ICWG) meeting for the Navstar GPS public signals-in-space documents and ICD–GPS–870; IS–GPS–200 (Navigation User Interfaces), IS–GPS–705 (User Segment L5 Interfaces), IS–GPS–800 (User Segment L1C Interface), and the Next Generation Operational Control System (OCX) to User Support Community Interfaces (ICD–GPS–870). Dates and times can be found below. The purpose of this meeting will be twofold: (1) To resolve the comments against the public signals-in-space documents with respect to the six issues outlined below, and (2) to collect issues/comments outside the scope of the issues outlined below for analysis and possible integration into the following release. The ICWG is open to the general public. For those who would like to attend and participate in this ICWG meeting, we request that you register no later than August 6, 2013. Please send the registration to *mark.marquez.2.ctr@us.af.mil* or *SMCGPER@us.af.mil* and provide your name, organization, telephone number, address, and country of citizenship.

Please note that the Directorate's primary focus will be the disposition of the comments against the following GPS related topics:

1. L1C Week Number of Operation ($WN_{OP}$)
2. Removal of Obsolete Information from IS–GPS–200
3. CNAV Reference Times
4. PRN Mission Assignments 211–1023
5. CNAV Broadcast Intervals
6. Document Baseline for User Community & Zero AOD User Interfaces

All comments must be submitted in Comments Resolution Matrix (CRM) form. These forms along with the Was/Is Matrix, current versions of the documents, and the official meeting notice will be posted at: *http://www.gps.gov/technical/icwg/.*

Comments outside the scope of the above issues will be collected, catalogued, and discussed during the public ICWG as potential inclusions to the version following this release. If accepted, these changes will be processed through the formal Directorate change process for IS–GPS–200, IS–GPS–705, and IS–GPS–800.

*Point of Contact:* Please provide them in the CRM form and submit to the SMC/GPER mailbox at *SMCGPER@us.af.mil* or to Mark Marquez at *mark.marquez.2.ctr@us.af.mil* by August 7, 2013.

**Public Interface Control Working Group Meeting (ICWG)**

*Date(s) and Times:* 24–25 Sep 2013 (0800–1700) (Pacific Standard Time P.S.T)

*Dial-in Information and Location:* 1–800–366–7242, Code: 1528652

**ADDRESSES:** SAIC Facility 300 North Sepulveda Blvd., 2nd Floor, Conference Room 2060 El Segundo CA 90245.

* Identification will be required at the entrance of the SAIC facility (Passport, state ID, or Federal ID).

SAIC Facility phone number: 310–416–8300.

**Henry Williams Jr,**

*Acting Air Force Federal Register Liaison Officer.*

[FR Doc. 2013–14428 Filed 6–17–13; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulation System

**[Docket No. DARS–2013–D005]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice

The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by *July 18, 2013.*

*Title, Associated Forms and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) part 246, Quality Assurance, and the related clause in DFARS part 252; OMB Control Number 0704–0441.

*Type of Request:* Extension.

*Number of Respondents:* 250.

*Responses per Respondent:* 1.

*Annual Responses:* 250.

*Average Burden per Response:* 1.0 hour.

*Annual Burden Hours:* 250.

*Needs and Uses:* The Government requires this information in order to perform its requirements related to critical safety items. DoD uses the information as follows:

a. To ensure that the Government receives timely notification of item nonconformance's or deficiencies that could impact safety.

b. The Procuring Contracting Officer (PCO) and the Administrative Contracting Officer (ACO) use the information to ensure that the customer is aware of potential safety issues in delivered products, has a basic understanding of the circumstances, and has a point of contact to begin addressing a mutually acceptable plan of action.

*Affected Public:* Businesses or other for-profit and not-for- profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or maintain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

*DoD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

**Kortnee Stewart,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2013–14454 Filed 6–17–13; 8:45 am]

**BILLING CODE 6820–ep–P**

## DEPARTMENT OF ENERGY

### International Energy Agency Meetings

**AGENCY:** Department of Energy.

**ACTION:** Notice of meetings.

**SUMMARY:** The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on June 24, 2013, at the headquarters of the IEA in Paris, France in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market, and on June 25 and 26, in connection with a meeting of the SEQ.

**DATES:** June 24–26, 2013.

**ADDRESSES:** 9, rue de la Fédération, Paris, France.

**FOR FURTHER INFORMATION CONTACT:** Diana D. Clark, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–3417.

**SUPPLEMENTARY INFORMATION:** In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meetings is provided:

Meetings of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on June 24, 2013, beginning at 2:00 p.m. and on June 25 commencing at 9:30 a.m. and continuing on June 26, commencing at 9:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Markets on June 24 commencing at 2 p.m.; and at a meeting of the SEQ commencing at 9:30 a.m..on June 25 and continuing on June 26 commencing at 9:30 a.m. The IAB will also hold a preparatory meeting among company representatives at the same location at 8:30 a.m. on June 25. The agenda for this preparatory meeting is to review the agenda for the SEQ meeting.

The agenda of the joint meeting of the SEQ and the SOM on June 24 is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the March 2013 Joint Session
3. Reports on Recent Oil Market and Policy Developments in IEA Countries
4. Report on Medium Term Oil Market Report
5. Report on Medium Term Gas Market Report
6. Implications for Energy Security
7. Other Business
   —Tentative schedule of upcoming SEQ and SOM meetings: October 16–October 17, 2013

The agenda of the SEQ meeting on June 25 and 26 is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 138th Meeting
3. Status of Compliance with IEP Stockholding Commitments
4. Emergency Response Review Program
   — Schedule of Emergency Response Reviews
   —Emergency Response Questionnaire
   —Publication Plan for *Energy Supply Security 2013*
   —Emergency Response Review of Estonia
5. Emergency Response Measures
   —Costs & Benefits of Stockholding (Final Report)
6. Model of Short-term Energy Security (MOSES)
7. Policy and Other Developments in Member Countries
   —Mid-Term Emergency Response Review of Denmark
   —Mid-Term Emergency Response Review of Norway
   —Mid-Term Emergency Response Review of Poland
8. Report from the Industry Advisory Board
9. Activities with International Organizations and Partner Countries
   —Association Initiative
   —Overview of Cooperation with China, India, Indonesia, Thailand
10. Documents for Information
   —Emergency Reserve and Net Import Situations of IEA Member Countries on April 1, 2013
   —Base Period Final Consumption: 2Q 2012–1Q 2013
   —Updated Emergency Contacts List
11. Other Business
   —Tentative Schedule of Next Meetings:
   —October 16–17, 2013

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accountability Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC, June 12, 2013.

**Diana D. Clark,**

*Assistant General Counsel for International and National Security Programs.*

[FR Doc. 2013–14462 Filed 6–17–13; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Portsmouth

**AGENCY:** Department of Energy (DOE)

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, July 11, 2013, 6:00 p.m.

**ADDRESSES:** Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

**FOR FURTHER INFORMATION CONTACT:** Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@lex.doe.gov.*

**SUPPLEMENTARY INFORMATION:** Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

*Tentative Agenda:*

- Call to Order, Introductions, Review of Agenda
- Approval of May Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
- Draft Recommendation 13–03
  - Public Comments on Recommendation 13–03
  - Board Comments on Recommendation 13–03
- Draft Recommendation 13–04
  - Public Comments on Recommendation 13–04
  - Board Comments on Recommendation 13–04
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

*Public Participation:* The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Greg Simonton at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC, on June 12, 2013.

**LaTanya R. Butler**

*Deputy Committee Management Officer.*

[FR Doc. 2013–14455 Filed 6–17–13; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** June 20, 2013, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

**MATTERS TO BE CONSIDERED:** Agenda *

NOTE—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

995TH—MEETING, REGULAR MEETING, JUNE 20, 2013, 10:00 A.M.

| Item No. | Docket No. | Company |
|---|---|---|
| | **ADMINISTRATIVE** | |
| A–1 | AD02–1–000 | Agency Business Matters. |
| A–2 | AD02–7–000 | Customer Matters, Reliability, Security and Market Operations. |
| A–3 | AD12–16–000 | Capacity Deliverability Across the Midwest Independent Transmission System Operator, Inc./PJM Interconnection, L.L.C. Seam. |
| A–4 | AD12–12–000 | Coordination Between Natural Gas and Electricity Markets. |
| | **ELECTRIC** | |
| E–1 | ER13–93–000 | Avista Corporation. |
| | ER13–94–000. | |
| | ER13–98–000 | Puget Sound Energy, Inc. |
| | ER13–99–000. | |
| | ER13–836–000 | MATL LLP. |
| | NJ13–1–000 | United States Department of Energy—Bonneville Power Administration. |
| E–2 | ER13–80–000 | Tampa Electric Company. |
| | ER13–86–000 | Duke Energy Carolinas, LLC. |
| | ER13–104–000 | Florida Power & Light Company. |
| | NJ13–2–000 | Orlando Utilities Commission. |
| E–3 | EC12–145–000 | ITC Holdings Corp. |
| | EL12–107–000 | Entergy Corporation. |
| E–4 | ER12–2681–000 | ITC Holdings Corp. |
| | | Entergy Corporation. |
| | | Midwest Independent Transmission System Operator, Inc. |
| | ER13–948–000 | Entergy Services, Inc. |
| | ER13–782–000 | ITC Arkansas LLC. |
| | | ITC Texas LLC. |
| | | ITC Louisiana LLC. |
| | | ITC Mississippi LLC. |
| E–5 | ER12–2682–000 | Midwest Independent Transmission System Operator, Inc. |
| E–6 | EL13–52–000 | Western Electricity Coordinating Council. |
| E–7 | RM13–8–000 | Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards. |
| E–8 | RD13–3–000 | North American Electric Reliability Corporation. |
| E–9 | RC11–6–004 | North American Electric Reliability Corporation. |
| E–10 | AC11–46–000 | Ameren Corporation. |
| E–11 | ER13–388–001 | Sky River, LLC. |
| | ER13–388–002. | |
| E–12 | ER13–941–000 | San Diego Gas & Electric Company. |
| E–13 | ER12–2693–000 | Entergy Arkansas, Inc. |
| | | Entergy Gulf States Louisiana L.L.C. |
| | | Entergy Louisiana, LLC. |
| | | Entergy Mississippi, Inc. |
| | | Entergy New Orleans, Inc. |
| | | Entergy Texas, Inc. |
| E–14 | ER12–1643–001 | ISO New England Inc. and New England Power Pool. |
| E–15 | EL12–78–001 | Gerry E. Greenfield Jr. v. Benton County, Washington. |
| E–16 | EL12–74–001 | Idaho Wind Partners 1, LLC. |
| | **HYDRO** | |
| H–1 | P–2144–040 | City of Seattle, Washington. |
| H–2 | P–2114–257 | Public Utility District No. 2 of Grant County, Washington. |
| H–3 | P–2146–111 | Alabama Power Company. |
| | P–618–000. | |
| | P–82–000. | |
| | **CERTIFICATES** | |
| C–1 | CP13–53–000 | Northern Natural Gas Company. |
| C–2 | CP13–94–000 | Kinder Morgan Texas Pipeline LLC. |

Issued June 13, 2013.

**Kimberly D. Bose,**

*Secretary.*

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact

Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2013–14542 Filed 6–14–13; 11:15 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9824–4]**

## Notice of Ability To Pay—Cash-out Settlement Agreement for the Jefferson City Residential Yards Site Under Comprehensive Environmental Response, Compensation and Liability Act

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

**ACTION:** Notice; request for comment.

**SUMMARY:** As required by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), notice is hereby given that a Section 122(h)(1) cashout settlement agreement for ability to pay peripheral parties is proposed by the United States, on behalf of the Environmental Protection Agency (EPA), and Montana Tunnels Mining, Inc. (MTMI), a Montana corporation, for the payment of certain response costs incurred at the Jefferson City Residential Yards Site in Jefferson City, Jefferson County, Montana (Site).

The Site consists of 19 residential yards, a portion of a U.S. Postal Service property, and sections of Spring Creek, in and near Jefferson City, Montana. An area known as Corbin Flats Tailings, owned by MTMI, lies upstream of the Site, and contains approximately 500,000 cubic yards of tailings. Precipitation events, snowmelt runoff, and other events have caused the tailings, which are contaminated with elevated levels of lead and arsenic, to move downstream along Spring Creek, and these materials were deposited in certain residential yards at the Site.

The EPA's response actions at the Site included excavation of contaminated soils, backfilling with clean soils, and re-grading and disposal of the contaminated soils. The removal action was completed in December of 2010.

MTMI has agreed to pay EPA the principal amount of $372,217.14 plus interest, as a cashout settlement for a portion of the past costs expended at the Site. Payment shall be made in 35 installments of $2,500 per month with a final balloon payment of $292,500. The first payment shall be due on the first day of the month beginning 30 days after the effective date of the agreement. EPA has notified the State of Montana of this action pursuant to Section 106(a) of CERCLA.

**ADDRESSES:** Comments should be sent William Ross/SEE (Mail Code 8ENF–RC), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

**FOR FURTHER INFORMATION CONTACT:** Mia Bearley (Mail Code 8ENF–L), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6554.

*Comments should be sent to:* Environmental Protection Agency, Region 8, William Ross/SEE (Mail Code 8ENF–RC), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

Dated: May 29, 2013.

**Eddie A. Sierra,**

*Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA, Region 8.*

[FR Doc. 2013–14516 Filed 6–17–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2013–0254; FRL–9390–1]**

## Amendment of an Experimental Use Permit

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

**ACTION:** Notice.

**SUMMARY:** EPA has received an amendment to a pending experimental use permit (EUP) from the pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

**FOR FURTHER INFORMATION CONTACT:** Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; email address: *bacchus.shanaz@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0254, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

### II. EUP

EPA has received the following amendment to the pending EUP: *89668–EUP–R. Submitter:* Robert I. Rose, Ph.D., on behalf of James Mains, Ph.D., Mosquito Mate, Inc., 1122 Oak Hill Drive, Lexington, KY 40505–3322. *Active ingredient: Wolbachia pipientis* (now identified as ZAP strain). *Type of active ingredient:* Microbial Insecticide. *Summary of amendment request:* On May 1, 2013, EPA published in the **Federal Register** (78 FR 25436; EPA–HQ–OPP–2013–0254) a Notice of Receipt of an application for an EUP, EPA File Symbol 89668–EUP–R. On May 22, 2013, the applicant submitted an amendment to that application for an EUP. The original application specified the release of 30,000 mosquitoes in Kentucky (0.7 acre). The applicant now intends to release 100,000 male *Aedes albopictus* mosquitoes infected with the *Wolbachia pipientis* ZAP strain microbial pesticide per week during the mosquito season over a 2-year period and monitor areas in neighborhoods of California (1205 acres); Florida (180 acres); Kentucky (337 acres) and New York (337 acres) as specified in the Section G descriptions in the docket. There are no other changes to the original application. The released male mosquitoes are expected to mate with

indigenous female *Aedes albopictus* causing conditional sterility and resulting in mosquito population decline. Adult and egg collection data from treated areas will be compared to those in untreated control sites to examine for the effect of the released product.

A copy of the amended application and any information submitted is available for public review in the docket established for this EUP application. Following the review of the amended application, EPA will decide whether to issue or deny the amended EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

**Authority:** 7 U.S.C. 136c.

**List of Subjects**

Environmental protection, Experimental use permits.

Dated: June 7, 2013.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2013–14479 Filed 6–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9824–7]**

## Notification of a Public Teleconference of the Chartered Science Advisory Board

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

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the Chartered Science Advisory Board Panel to receive agency briefings on science topics and complete Board discussions of planned actions identified in the agency's regulatory agenda and their supporting science.

**DATES:** The public teleconference will be held on Friday, July 19, 2013 from 1:00 p.m. to 5:00 p.m. (Eastern Time).

*Location:* The public teleconference will be conducted by telephone only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing to obtain information concerning the public meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone/voice mail at (202) 564–2218 or at *nugent.angela@epa.gov.* General information about the SAB as well as any updates concerning the meeting announced in this notice may be found on the EPA Web site at *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:** The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold a public meeting to discuss and deliberate on the topics below.

As noted in the **Federal Register** Notice announcing a meeting of the chartered SAB on March 7–8, 2013 (78 FR 9689–9690), the EPA has recently underscored the need to routinely inform the SAB about proposed and planned agency actions that have a scientific or technical basis. Accordingly, the agency provided notice to the SAB that the Office of Management and Budget published the ''Unified (Regulatory) Agenda'' on the Web on December 21, 2012 (*http://www.reginfo.gov/public*). On March 7–8, 2013, the Chartered SAB discussed whether it should provide advice and comment on the adequacy of the scientific and technical basis for EPA actions included in the Unified (Regulatory) Agenda. The chartered SAB identified three planned actions for additional fact-finding [Effluent Guidelines and Standards for Unconventional Oil and Gas Extraction Including Coalbed Methane and Shale Gas Extraction (2040 AF35); Revised Regulations for Environmental Radiation Protection Standards for Nuclear Power Plant Operations (2060 AR12), and Petroleum Refinery Sector Risk and Technology Review (RTR) and New Source Performance Standards (2060 AQ75), which EPA plans to jointly propose with Petroleum Refinery Sector for Flares (2060–AR69)]. The chartered SAB discussed information gathered relating to these planned actions at a public teleconference on June 5, 2013 (78 FR 27964–27965). On July 19, 2013, the chartered SAB will conclude its discussion of the Petroleum Refinery Sector Risk and Technology Review (RTR) and New Source Performance Standards (2060 AQ75) and Petroleum Refinery Sector for Flares (2060–AR69) and receive briefings on science topics associated with those actions.

*Availability of Meeting Materials:* Agendas and materials in support of this meeting will be placed on the EPA Web site at *http://www.epa.gov/sab* in advance of the meeting.

*Procedures for Providing Public Input:* Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a teleconference will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Dr. Angela Nugent, DFO, in writing (preferably via email) at the contact information noted above by July 12, 2013 for the teleconference, to be placed on the list of public speakers.

*Written Statements:* Written statements should be supplied to the DFO via email at the contact information noted above by July 12, 2013 for the teleconference so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with

signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

*Accessibility:* For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 564–2218 or *nugent.angela@epa.gov.* To request accommodation of a disability, please contact Dr. Nugent preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: June 12, 2013.

**Thomas H. Brennan,**

*Deputy Director, EPA Science Advisory Staff Office.*

[FR Doc. 2013–14499 Filed 6–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL—9824–4]**

### Proposed Administrative Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act for the Lightman Drum Company Superfund Site, Located in Winslow Township, Atlantic County, New Jersey

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

**ACTION:** Notice of Proposed Administrative Settlement and Opportunity for Public Comment.

**SUMMARY:** The United States Environmental Protection Agency (''EPA'') is proposing to enter into an administrative settlement agreement (''Settlement Agreement'') with Air Products and Chemicals, Inc., Alco Industries, Inc., Bayer CropScience, Inc., Colonial Heights Packaging, Inc., Continental Holdings, Inc., Croda Inks Corporation, Forenco, Inc., Henkel Corporation, LANXESS Sybron Chemicals, Inc., Reynolds Metals Company, Sara Lee Corporation, Seton Company, Sonoco Products Company, Stepan Company, Union Carbide Corporation, and USG Corporation (''Settling Parties'') pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''). The Settlement Agreement provides for Settling Parties to pay certain costs incurred at the Lightman Drum Company Superfund Site, located in Winslow Township, Camden County, New Jersey (''Site'').

In accordance with Section 122(i) of CERCLA, this notice is being published to inform the public of the proposed Settlement Agreement and of the opportunity to comment. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed Settlement Agreement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2, 290 Broadway, 17th Floor, New York, New York 10007–1866.

**DATES:** Comments must be provided by July 18, 2013.

**ADDRESSES:** Comments should reference the Lightman Drum Company Superfund Site, EPA Docket No. CERCLA–02–2012–2013 and should be sent to the U.S. Environmental Protection Agency, Region 2, Office of Regional Counsel, New Jersey Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866.

**SUPPLEMENTARY INFORMATION:** A copy of the proposed administrative settlement, as well as background information relating to the settlement, may be obtained from Michael J. van Itallie, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 2, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3151.

**FOR FURTHER INFORMATION CONTACT:** Michael J. van Itallie, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 2, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3151.

Dated: May 23, 2013.

**Walter Mugdan,**

*Director, Emergency and Remedial Response Division.*

[FR Doc. 2013–14517 Filed 6–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[ET Docket No. 13–101; DA 13–1344]**

### Technological Advisory Council Recommendation for Improving Receiver Performance

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The FCC's Technological Advisory Council (TAC) has been tasked to study the role of receivers in ensuring the efficient use of spectrum and to provide recommendations on avoiding obstacles posed by receiver performance to making spectrum available for new services. The Office of Engineering & Technology (''OET'') released a document in this proceeding seeking comment on the Technological Advisory Council (''TAC'') White Paper. OET invited comment on the TAC white paper and its recommendations to help determine what next steps may be appropriate. The Commission extends the comment and reply comment filing deadlines as described with regard to comments to the *Public Notice* of the TAC White Paper and its recommendations.

**DATES:** Comments must be filed on or before July 22, 2013, and reply comments must be filed on or before August 7, 2013.

**ADDRESSES:** You may submit comments, identified by ET Docket No. 13–101, by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Robert Pavlak, Office of Engineering and Technology, Electromagnetic Compatibility Division, Room 6–A420, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.
- *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 detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Robert Pavlak, Office of Engineering and Technology, (202) 418–0761, email *Robert.Pavlak@fcc.gov,* or Ronald Repasi, email *Ronald.Repasi@fcc.gov* (202) 418–0768, TTY (202) 418–2989.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Public Notice,* ET Docket No. 13–101, DA 13–1344, released June 10, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.*

Pursuant to sections 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 Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand 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.

*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 Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

**Summary of the Public Notice**

1. On April 22, 2013, the Office of Engineering & Technology (''OET'') released a *Public Notice* in this docket seeking comment on Technological Advisory Council (''TAC'') White Paper, titled, *Interference Limits Policy—The use of harm claim thresholds to improve the interference tolerance of wireless systems* and its recommendations. In a jointly filed ''Motion for Extension of Time,'' the Consumer Electronics Association (''CEA''), National Association of Broadcasters (''NAB''), and GPS Innovation Alliance (''GPSIA'') ask pursuant to § 1.46 of the Commission's rules that the comment and reply deadlines each be extended by 30 days. By this *Public Notice,* we extend the comment and reply comment filing deadlines as described with regard to comments to the *Public Notice* of the TAC White Paper and its recommendations.

2. It is the Commission's policy under section 1.46(a) that extensions of time are not routinely granted. In the instant case, however, we find that extending the comment and reply comment periods for remarks on the TAC White Paper, its recommendations, and questions posed in the Public Notice more broadly on receiver performance, will serve the public interest by allowing commenters additional time to review the technical contents and unique policy proposals outlined in the White Paper. Accordingly, we hereby grant the request jointly filed by CEA, NAB, and GPSIA and extend the deadline for filing comments to July 22, 2013 and the deadline for filing reply comments to August 7, 2013. This action is taken pursuant to authority found in Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and sections 0.31, 0.241, and 1.46 of the Commission's rules, 47 CFR 0. 31, 0.241, and 1.46.

Federal Communications Commission.

**Julius P. Knapp,**

*Chief, Office of Engineering and Technology.*

[FR Doc. 2013–14404 Filed 6–17–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

**[Notice 2013–08]**

## Filing Dates for the New Jersey Senate Special Elections

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of filing dates for special election.

**SUMMARY:** New Jersey has scheduled special elections on August 13, 2013, and October 16, 2013, to fill the U.S. Senate seat of the late Senator Frank R. Lautenberg.

Committees required to file reports in connection with the Special Primary Election on August 13, 2013, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and the Special General Election on October 16, 2013, shall file a 12-day Pre-Primary Report, 12-day Pre-General Report, and a 30-day Post-General Report.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

**SUPPLEMENTARY INFORMATION:**

**Principal Campaign Committees**

All principal campaign committees of candidates who participate in the New Jersey Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on August 1, 2013; a 12-day Pre-General Report on October 4, 2013; and a 30-day Post-General Report on November 15, 2013. (See charts below for the closing date for each report.)

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on August 1, 2013. (See charts below for the closing date for each report.)

**Unauthorized Committees (PACs and Party Committees)**

Political committees filing on a semi-annual basis in 2013 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the New Jersey Special Primary or Special General Elections by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the New Jersey Special Primary or General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the New Jersey Special Elections may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

**Disclosure of Lobbyist Bundling Activity**

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $17,100 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v) and (b).

CALENDAR OF REPORTING DATES FOR NEW JERSEY SPECIAL ELECTION

| Report | Close of books [1] | Reg./cert. and overnight mailing deadline | Filing deadline |
|---|---|---|---|
| **Quarterly Filing Committees Involved in *Only* the Special Primary (08/13/13) Must File:** | | | |
| Pre-Primary | 07/24/13 | 07/29/13 | 08/01/13 |
| October Quarterly | 09/30/13 | 10/15/13 | 10/15/13 |
| **Semi–Annual Filing Committees Involved in *Only* the Special Primary (08/13/13) Must File:** | | | |
| Mid-Year | —WAIVED— | | |
| Pre-Primary | 07/24/13 | 07/29/13 | 08/01/13 |
| Year-End | 12/31/13 | 01/31/14 | 01/31/14 |
| **Quarterly Filing Committees Involved in Both the Special Primary (08/13/13) and Special General (10/16/13) Must File:** | | | |
| Pre-Primary | 07/24/13 | 07/29/13 | 08/01/13 |
| Pre-General | 09/26/13 | 10/01/13 | 10/04/13 |
| October Quarterly | 09/30/13 | 10/15/13 | 10/15/13 |
| Post-General | 11/05/13 | 11/15/13 | 11/15/13 |
| Year-End | 12/31/13 | 01/31/14 | 01/31/14 |
| **Semi–Annual Filing Committees Involved in Both the Special Primary (08/13/13) and Special General (10/16/13) Must File:** | | | |
| Mid-Year | —WAIVED— | | |
| Pre-Primary | 07/24/13 | 07/29/13 | 08/01/13 |
| Pre-General | 09/26/13 | 10/01/13 | 10/04/13 |
| Post-General | 11/05/13 | 11/15/13 | 11/15/13 |
| Year-End | 12/31/13 | 01/31/14 | 01/31/14 |
| **Quarterly Filing Committees Involved in *Only* the Special General (10/16/13) Must File:** | | | |
| Pre-General | 09/26/13 | 10/01/13 | 10/04/13 |
| Post-General | 11/05/13 | 11/15/13 | 11/15/13 |
| Year-End | 12/31/13 | 01/31/14 | 01/31/14 |
| **Semi–Annual Filing Committees Involved in *Only* the Special General (10/16/13) Must File:** | | | |
| Mid-Year | 06/30/13 | 07/31/13 | 07/31/13 |
| Pre-General | 09/26/13 | 10/01/13 | 10/04/13 |
| Post-General | 11/05/13 | 11/15/13 | 11/15/13 |
| Year-End | 12/31/13 | 01/31/14 | 01/31/14 |

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

Dated: June 11, 2013.

On behalf of the Commission.

**Ellen L. Weintraub,**

*Chair, Federal Election Commission.*

[FR Doc. 2013–14403 Filed 6–17–13; 8:45 am]

**BILLING CODE 6715–01–P**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act; Notice of Meeting

**TIME AND DATE:** 10:00 a.m. (TELEPHONIC Eastern Time) June 24, 2013.

**PLACE:** 10th Floor Board Meeting Room, 77 K Street, NE., Washington, DC 20002.

**STATUS:** Parts will be open to the public and parts closed to the public.

**MATTERS TO BE CONSIDERED:**

**Parts Open to the Public**

1. Approval of the Minutes of the May 20, 2013 Board Member Meeting
2. Thrift Savings Plan Activity Reports by the Executive Director
   a. Monthly Participant Activity Report
   b. Monthly Investment Policy Report
   c. Legislative Report
3. Office of Technology Services Report
4. Office of Financial Management Report
5. FY 2013–2017 Strategic Plan Update

**Parts Closed to the Public**

1. Procurement
2. Security

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: June 13, 2013.

**James B. Petri,**

*Secretary, Federal Retirement Thrift Investment Board.*

[FR Doc. 2013–14524 Filed 6–14–13; 11:15 am]

**BILLING CODE 6760–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Determination Concerning a Petition To Add a Class of Employees to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice of a determination concerning a petition to add a class of employees from the Brookhaven National Laboratory in Upton, New York, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). On June 7, 2013, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at Brookhaven National Laboratory in Upton, New York, from January 1, 1994, to December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

Dated: June 11, 2013.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2013–14389 Filed 6–17–13; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–13–13XA]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Improving HIV Prevention and Treatment Outcomes Among HIV-Infected Persons by Integrating Community Pharmacists and Clinical Sites into a Model of Patient-Centered HIV Care—New—National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Medication Therapy Management (MTM) is a group of pharmacist provided services that is independent of, but can occur in conjunction with, provision of medication. Medication Therapy Management encompasses a broad range of professional activities and cognitive services within the licensed pharmacists' scope of practice and can include monitoring prescription filling patterns and timing of refills, checking for medication interactions, patient education, and monitoring of patient response to drug therapy.

HIV specific MTM programs have demonstrated success in improving HIV medication therapy adherence and persistence. While MTM programs have be shown to be effective in increasing medication adherence for HIV-infected persons, no MTM programs have been expanded to incorporate primary medical providers in an effort to establish patient-centered HIV care. To address this problem CDC has entered into a public-private partnership with Walgreen Company (a.k.a Walgreens pharmacies, a national retail pharmacy chain) to develop and implement a model of HIV care that integrates community pharmacists with primary medical providers for patient-centered HIV care. The model program will be implemented in ten sites and will provide patient-centered HIV care for approximately 1,000 persons.

The patient-centered HIV care model will include the core elements of MTM as well as additional services such as individualized medication adherence counseling, active monitoring of prescription refills and active collaboration between pharmacists and medical clinic providers to identify and resolve medication related treatment problems such as treatment effectiveness, adverse events and poor adherence. The expected outcomes of the model program are increased retention in HIV care, adherence to HIV medication therapy and viral load suppression.

CDC requests OMB approval to collect standardized information, from ten project sites over the three year project period. CDC also requests approval to conduct one cycle of retrospective data collection during the first year of the three year project period. The retrospective data collection will provide information about clients' baseline characteristics prior to participation in the model program which is needed to compare outcomes before and after program implementation.

Pharmacy, laboratory and medical data will be collected through abstraction of all participant clients' pharmacy and medical records. Pharmacy, laboratory and medical data are needed to monitor retention in care, adherence to therapy, viral load suppression and other health outcomes. Program specific data, such as the number of MTM elements completed per project site will be collected by program. Qualitative data will be gathered from program staff through in-person or telephone interviews.

The data collection will allow CDC to conduct continuous program performance monitoring which includes identification of barriers to program implementation, solutions to those barriers, and documentation of client health outcomes. Performance monitoring will allow the model program to be adjusted, as needed, in order to develop a final implementation model that is self-sustaining and which can be used to establish similar collaborations in a variety of clinical settings. There is no cost to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Clinic Data Manager | Project clinic characteristics form | 10 | 1 | 30/60 | 5 |
| Pharmacist | Project pharmacy characteristics form. | 10 | 1 | 30/60 | 5 |
| Clinic Data Manager | Initial medical abstraction form | 10 | 1 | 50 | 500 |
| Clinic Data Manager | Follow-up medical abstraction form | 10 | 4 | 25 | 1,000 |
| Pharmacist | Pharmacy abstraction form | 10 | 4 | 25 | 1,000 |
| Clinic and pharmacy staff | Interview form | 60 | 4 | 45/60 | 180 |
| Total | | | | | 2,690 |

**Ron A. Otten,**

*Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2013–14435 Filed 6–17–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Form CB–496. ''Title IV–E Programs Quarterly Financial Report''.

*OMB No.:* 0970–0205.

*Description:* This report is required to be submitted at the end of each fiscal quarter by each State or Tribe with an approved plan under title IV–E of the Social Security Act to administer the Foster Care, Adoption Assistance and Guardianship Assistance programs. In submitting this form, each State or Tribal grantee meets its statutory and regulatory requirement to report actual program expenditures made in the preceding fiscal quarter and to provide an estimate of program expenditures anticipated in the upcoming fiscal quarter. This reporting form also provides for the quarterly reporting of the average number of children assisted through each of the three programs.

The Administration for Children and Families provides Federal funding at the rate of 50 percent for all allowable administrative expenditures, with funding at higher rates for some training costs and maintenance assistance payments. The information collected on this report is used to calculate quarterly Federal grant awards issued to States and Tribes and to assist in the oversight of the financial management of these programs.

With the enactment of Public Law 110–351, the ''Fostering Connections to Success and Increasing Adoptions Act of 2008'' (October 7, 2008), the Guardianship Assistance program started operation in FY 2009 and Tribes, tribal organizations and consortia became eligible to submit individual title IV–E plans in FY 2010. At the time of this request for OMB review, 33 States have had their State plan amendments submitted and approved to include the Guardianship program; additional States are anticipated in the future. To date, although only a single Tribal title IV–E plan has been approved, several additional Tribal plans are in the final stages of the review process, with approval anticipated shortly.

Under Public Law 112–34, the ''Child and Family Services Improvement and Innovation Act'' (September 30, 2011), Section 1130 of the Social Security Act was amended to allow ACF to approve up to ten child welfare waiver demonstration projects in each of FYs 2012–2014. These projects are to continue no longer than five years and be completed no later than September 30, 2019, the end of FY 2019.

The anticipated inclusion of thirty additional State demonstration projects requires several additional data entry requirements for the reporting of demonstration project expenditures on Part 3 of Form CB–496.

The final draft version of this form was the result of comments in response to several teleconference calls with Federal and grantee staffs and a 'webinar'' presentation that provided detailed discussions concerning the reporting of demonstration project expenditures on Part 3. Comments were also received in response to the first **Federal Register** Notice (77 FR 70165 et. seq., November 23, 2012).

Respondents: State (including the District of Columbia and Puerto Rico) and Tribal title IV–E agencies administering the Foster Care, Adoption Assistance and Guardianship Assistance Programs.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Form CB–496, ''Title IV–E Programs Quarterly Financial Report'' (with Part 3: ''Demonstration Projects'') | 30 | 4 | 23 | 2,760 |
| Form CB–496, ''Title IV–E Programs Quarterly Financial Report'' (without Part 3: ''Demonstration Projects'') | 32 | 4 | 17 | 2,176 |

ANNUAL BURDEN ESTIMATES—Continued

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Estimated Total Annual Burden Hours | | | | 4,936 |

Additional Information:Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment:OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2013–14371 Filed 6–17–13; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

*Name of Committee:* Literature Selection Technical Review Committee.

*Date:* October 24–25, 2013.

*Open:* October 24, 2013, 8:30 a.m. to 10:45 a.m.

*Agenda:* Administrative.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Closed:* October 24, 2013, 10:45 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Closed:* October 25, 2013, 8:30 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

*Contact Person:* Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04, Bethesda, MD 20892, 301–496–6921, *backusj@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 12, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–14387 Filed 6–17–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Closed 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 meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Biomedical Library and Informatics Review Committee.

*Date:* November 14–15, 2013.

*Time:* November 14, 2013, 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Time:* November 15, 2013, 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Contact Person:* Arthur A. Petrosian, Ph.D., Chief Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 12, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–14380 Filed 6–17–13; 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; RFA–MH–14–140: Revision applications for research on assessing the role of Stigma in HIV prevention and care.

*Date:* July 10, 2013.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The St. Regis Washington, DC, 923 16th Street NW., Washington, DC 20006.

*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.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflicts: Respiratory Diseases.

*Date:* July 11–12, 2013.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301)435–1195, *Chengy5@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Program Project: A National Center for Microscopy and Imaging Research.

*Date:* July 17–19, 2013.

*Time:* 7:00 p.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* LaJolla Shores Hotel, 8110 Camino Del Oro, LaJolla, CA 92037.

*Contact Person:* Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Basic Immunological Sciences.

*Date:* July 17, 2013.

*Time:* 12:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Patrick K Lai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Gastrointestinal, Kidney, Liver, Urology and Toxicology.

*Date:* July 18–19, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Member Conflict: Cell Biology.

*Date:* July 18, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Raya Mandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

*Name of Committee:* Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cardiovascular Sciences.

*Date:* July 18–19, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

*Contact Person:* Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC–7814, Room 4126, Bethesda, MD 20892, (301 435–1743, *margaret.chandler@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowships: Risk, Prevention and Health Behavior.

*Date:* July 18–19, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Martha M Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: Non-HIV Infectious Agent Detection/Diagnostics, Food Safety, Sterilization/Disinfection and Bioremediation.

*Date:* July 18–19, 2013.

*Time:* 8:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Avenue Crowne Plaza Chicago Magnificent Mile, 160 East Huron Street, Chicago, IL 60611.

*Contact Person:* Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@mai.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel,Small Business: Non-HIV Anti-Infective Therapeutics.

*Date:* July 18–19, 2013.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Kenneth M Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge, Rm 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowships: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

*Date:* July 18, 2013.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Dianne Camp, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–1044, *campdm@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Skeletal Muscle Structure, Function and Regeneration

*Date:* July 18, 2013.

*Time:* 1:00 p.m. to 4:00 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:* Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, R15s: Vascular Biology Academic Research Enhancement Awards (AREA).

*Date:* July 18, 2013.

*Time:* 12:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214 *pinkusl@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: Biological Chemistry, Biophysics and Drug Discovery.

*Date:* July 19, 2013.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Vonda K Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, AREA: Immunology.

*Date:* July 19, 2013.

*Time:* 10:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

*Contact Person:* Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowships: Health and Behavior.

*Date:* July 19, 2013.

*Time:* 11:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, 301–435–0677, *mannl@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 12, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–14384 Filed 6–17–13; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Gene-Environment Interactions in TEDDY.

*Date:* July 25, 2013.

*Time:* 12:00 p.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Barbara A. Woynarowska, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Artificial Pancreas SBIR Applications.

*Date:* July 31, 2013.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 12, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–14382 Filed 6–17–13; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Clinical Trials in Type 1 Diabetes (UC4) Meeting A.

*Date:* July 17, 2013.

*Time:* 1:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Clinical Trials in Type 1 Diabetes (UC4) Meeting B.

*Date:* July 17, 2013.

*Time:* 2:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy

Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 12, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–14381 Filed 6–17–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications and Board of Scientific Counselors, National Center for Biotechnology Information.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL LIBRARY OF MEDICINE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

*Date:* September 12–13, 2013.

*Open:* September 12, 2013, 9:00 a.m. to 12:00 p.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* September 12, 2013, 12:00 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* September 13, 2013, 9:00 a.m. to 10:00 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* September 13, 2013, 10:00 a.m. to 11:00 a.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S709, Bethesda, MD 20892, 301–435–3137, *Ksteely@mail.nih.gov.*

*Name of Committee:* Board of Scientific Counselors, National Center for Biotechnology Information.

*Date:* October 29, 2013.

*Open:* 8:30 a.m. to 12:00 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* 12:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* 2:00 p.m. to 3:00 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* David J. Lipman, MD, Director, National Center for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Building 38A, Room 8N805, Bethesda, MD 20894, 301–435–5985, *dlipman@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 12, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–14386 Filed 6–17–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The 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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

*Date:* September 9, 2013.

*Closed:* 2:30 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov*.

*Name of Committee:* Board of Regents of the National Library of Medicine

Subcommittee on Outreach and Public Information.

*Date:* September 10, 2013.

*Open:* 7:45 a.m. to 8:45 a.m.

*Agenda:* To review and discuss outreach activities.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov*.

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* September 10–11, 2013.

*Open:* September 10, 2013,

*Time:* 9:00 a.m. to 4:15 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine.

*Place:* Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* September 10, 2013, 4:15 p.m. to 4:45 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* September 11, 2013, 9:00 a.m. to 12:00 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: June 12, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–14385 Filed 6–17–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental and 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.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel; R13 review meeting.

*Date:* June 28, 2013.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Yasaman Shirazi, Ph.D., Branch Chief, 6701 Democracy Blvd., Rm. 662, National Institute of Dental &, Craniofacial Research, National Institutes of Health, Bethesda, MD 20892—640, 301–594–5593, *yasaman.shirazi@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 12, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–14383 Filed 6–17–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4117–DR; Docket ID FEMA–2013–0001]**

### Oklahoma; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4117–DR), dated May 20, 2013, and related determinations.

**DATES:** *Effective Date:* May 20, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 20, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms and tornadoes beginning on May 18, 2013, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a),

Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Sandy Coachman, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Cleveland, Lincoln, McClain, Oklahoma, and Pottawatomie Counties for Individual Assistance.

Cleveland, Lincoln, McClain, Oklahoma, and Pottawatomie Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2013–14491 Filed 6–17–13; 8:45 am]

**BILLING CODE 9111–93–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4119–DR; Docket ID FEMA–2013–0001]**

### Iowa; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–4119–DR), dated May 31, 2013, and related determinations.

**DATES:** *Effective Date:* May 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 31, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms, straight-line winds, and flooding during the period of April 17–30, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Joe M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Appanoose, Cedar, Clinton, Davis, Decatur, Des Moines, Iowa, Johnson, Keokuk, Lee, Lucas, Marion, Monroe, Muscatine, Ringgold, Van Buren, Wapello, Warren, and Wayne Counties. Direct federal assistance is authorized.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2013–14496 Filed 6–17–13; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4118–DR; Docket ID FEMA–2013–0001]**

### North Dakota; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–4118–DR), dated May 29, 2013, and related determinations.

**DATES:** *Effective Date:* May 29, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 29, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from flooding during the period of April 22 to May 16, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as

you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gary R. Stanley, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Dakota have been designated as adversely affected by this major disaster:

Benson, Bottineau, Cass, Cavalier, Eddy, Foster, McHenry, Pembina, Ramsey, Renville, Richland, Rolette, Towner, Traill, Walsh, and Wells Counties and the Spirit Lake Reservation for Public Assistance.

All counties within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2013–14493 Filed 6–17–13; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4117–DR; Docket ID FEMA–2013–0001]**

### Oklahoma; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–4117–DR), dated May 20, 2013, and related determinations.

**DATES:** *Effective Date:* June 11, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 20, 2013.

Canadian County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2013–14500 Filed 6–17–13; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4117–DR; Docket ID FEMA–2013–0001]**

### Oklahoma; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–4117–DR), dated May 20, 2013, and related determinations.

**DATES:** *Effective Date:* June 11, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this declared disaster is now May 18, 2013, through and including June 2, 2013.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2013–14492 Filed 6–17–13; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4117–DR; [Docket ID FEMA–2013–0001]**

### Oklahoma; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–4117–DR), dated May 20, 2013, and related determinations.

**DATES:** *Effective Date:* June 11, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident type for this disaster has been expanded to include flooding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2013–14490 Filed 6–17–13; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0114]**

### Agency Information Collection Activities: Application for Civil Surgeon Designation, Form I–910; Revision of a Currently Approved Collection

**ACTION:** 30-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on March 6, 2013, at 78 FR 14586, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 18, 2013. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2013–0002 or via email at *uscisfrcomment@uscis.dhs.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0114.

**SUPPLEMENTARY INFORMATION:**

#### Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Civil Surgeon Designation.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–910; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Section 212(a)(1)(A) of the Immigration and Nationality Act (Act) renders individuals inadmissible if the individual is afflicted with the statutorily mentioned diseases or medical conditions. In order to establish that the individual is admissible when seeking adjustment of status to a legal permanent resident (and in certain cases other aliens seeking an immigration benefit), the individual must submit Form I–693 (OMB Control Number 1615–0033), Report of Medical Examination and Vaccination Record, that is completed by a civil surgeon, a USCIS designated physician. The statutory basis for the designation of civil surgeons and the medical examination of aliens is contained in section 232 of the INA and 8 CFR 232.2. To be selected as a civil surgeon, the physician has to demonstrate that he or she is a licensed physician with no less than 4 years of professional experience.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 923 respondents with an estimated response time of 1.85 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,707 total hours per year.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory

Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone 202–272–8377.

Dated: June 12, 2013.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy,U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2013–14388 Filed 6–17–13; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0086.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers (CDSOA). This request for comments is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Written comments should be received on or before August 19, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

*OMB Number:* 1651–0086

*Form Number:* CBP Form 7401

*Abstract:* This collection of information is used by CBP to make distributions of funds pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). 19 U.S.C. 1675c (repealed by the Deficit Reduction Act of 2005, Pub. L. 109–171, § 7601 (Feb. 8, 2006)). This Act prescribes the administrative procedures under which antidumping and countervailing duties assessed on imported products are distributed to affected domestic producers that petitioned for or supported the issuance of the order under which the duties were assessed. The amount of any distribution afforded to these domestic producers is based upon certain qualifying expenditures that they incur after the issuance of the order or finding up to the effective date of the CDSOA's repeal, October 1, 2007. This distribution is known as the continued dumping and subsidy offset. The claims process for the CDSOA program is provided for in 19 CFR 159.61 and 159.63.

A notice is published in the **Federal Register** in June of each year in order to inform claimants that they can make claims under the CDSOA. In order to make a claim under the CDSOA, CBP Form 7401 may be used. This form is accessible at *http://www.cbp.gov/xp/cgov/toolbox/forms/* and can be submitted electronically through *https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=8776895.*

*Current Actions:* This submission is being made to extend the expiration date and to revise the burden hours as a result of updated estimates of the number of CDSOA claims prepared on an annual basis. There are no changes to the information collected.

*Type of Review:* Extension with a change to the burden hours.

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 1,600.

*Estimated Number of Responses per Respondent:* 1.75.

*Estimated Total Annual Responses:* 2,800.

*Estimated Time per Response:* 60 minutes.

*Estimated Total Annual Burden Hours:* 2,800.

Dated: June 12, 2013.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2013–14369 Filed 6–17–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–42]**

### 30-Day Notice of Proposed Information Collection: FHA Lender Approval, Annual Renewal, Periodic Updates and Noncompliance Reporting by FHA Approved Lenders

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* July 18, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-

free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 25, 2013.

**A. Overview of Information Collection**

*Title of Information Collection:* FHA Lender Approval, Annual Renewal, Periodic Updates and Noncompliance Reporting by FHA Approved Lenders.

*OMB Approval Number:* 2502–0005.

*Type of Request:* Revision of currently approved collection.

*Form Number:*

HUD–92001–A FHA Lender Approval Application Form

HUD–92001–B FHA Branch Registration Form

HUD 92001–C Non-compliances on Title I Lenders

*Description of the need for the information and proposed use:* The information is used by FHA to verify that lenders meet all approval, renewal, update and compliance requirements at all times. It is also used to assist FHA in managing its financial risks and protect consumers from lender noncompliance with FHA rules and regulations.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 13,155. The number of respondents is 3,851, the number of responses is 14,739, the frequency of response is annually and on occasion, and the burden hour per response is .89.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35

Dated: June 11, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–14533 Filed 6–17–13; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–46]**

## 30-Day Notice of Proposed Information Collection: The Housing Counseling Federal Advisory Committee Membership Application

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* July 18, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 22, 2013.

**A. Overview of Information Collection**

*Title of Information Collection:* The Housing Counseling Federal Advisory Committee Membership Application.

*OMB Approval Number:* 2502–New

*Type of Request:* New collection.

*Form Number:* HUD–90005–HCFAC.

*Description of the need for the information and proposed use:* The Housing Counseling Federal Advisory Committee (HCFAC) was created under the Dodd-Frank ''Expand and Preserve Homeownership through Counseling Act'' Public Law 111–203, title XIV, § 1441, July 21, 2010, 124 Stat. 2163 (Act), 42 U.S.C. 3533(g) to provide strategic planning and policy guidance to HUD on housing counseling issues. The Membership Appication will be use to select the members of the HCFAC.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:*

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 250. The number of respondents is 250 the number of responses is 250 the frequency of response is on occasion, and the burden hour per response is $34.34.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated

collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: *June 11, 2013.*

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–14513 Filed 6–17–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–44]**

### 30-Day Notice of Proposed Information Collection: Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* July 18, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 31, 2012.

**A. Overview of Information Collection**

*Title of Information Collection:* Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents.

*OMB Approval Number:* 2502–0524.

*Type of Request:* Revision of a currently approved collection.

*Form Number:* HUD–92900–A, Fannie Mae 1009, HUD–92901, HUD–1, HUD–1 Addendum, HUD–92051, HUD–92561, HUD 92800.5B, Fannie Mae 1004, Fannie Mae 1004C, Fannie Mae 1025, Fannie Mae 1073,

*Description of the need for the information and proposed use:* The Residential Loan Application for Reverse Mortgages and related documents are used to determine borrower eligibility, property analysis, underwriting analysis, and collection of mortgage insurance premiums for loans that meet statutory, regulatory, state and FHA requirements. HUD's Home Equity Reverse Mortgage Information Technology (HERMIT) System is HUD's system of record for the HECM program and it interfaces with other HUD systems.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 284,728. The number of respondents is 6,010, the number of responses is 997,050, the frequency of response is on occasion, and the burden hour per response is 3.753.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 11, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–14528 Filed 6–17–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–45]**

### 30-Day Notice of Proposed Information Collection: Application and Re-certification Packages for Approval of Nonprofit Organization in FHA Activities

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* July 18, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents

submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 22, 2013.

**A. Overview of Information Collection**

*Title of Information Collection:* Application and Re-certification Packages for Approval of Nonprofit Organizations in FHA Activities.

*OMB Approval Number:* 2502–0540.

*Type of Request:* Extension of a currently approved collection.

*Form Number:* None.

*Description of the need for the information and proposed use:* HUD-Approved nonprofit organizations participate in the Discount Sales program as FHA insured mortgagors or provide down payment assistance to homebuyers in the form of secondary financing. A nonprofit organization must be HUD-approved and meet specific requirements to remain on the Nonprofit Organization Roster (Roster). This includes an application, affordable housing plan, annual reports, and required record keeping. HUD uses the information to ensure that a nonprofit organization meets the requirements to participate in Single Family programs.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 7,433. The number of respondents is 225, the number of responses is 1,056, the frequency of response is one, four or five depending on activity, and the average burden hour per response is 7.04.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 11, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–14523 Filed 6–17–13; 8:45 am]

BILLING CODE 4210–67–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–43]**

## 30-Day Notice of Proposed Information Collection: Single Family Premium Collection Subsystem-Upfront (SFPCS–U)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* July 18, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 5, 2013.

**A. Overview of Information Collection**

*Title of Information Collection:* Single Family Premium Collection Subsystem-Upfront (SFPCS–U).

*OMB Approval Number:* 2502–0423.

*Type of Request:* Extension of a currently approved collection.

*Form Number:* None.

*Description of the need for the information and proposed use:* The Single Family Premium Collection Subsystem-Upfront (SFPCS–U) allows the lenders to remit the Upfront Mortgage Insurance Premiums using funds obtained from the mortgagor during the closing of the mortgage transaction at settlement.

The SFPCS–U strengthens HUD's ability to manage and process upfront single-family mortgage insurance premium collections and corrections. It also improves data integrity for the Single Family Mortgage Insurance Program. Therefore, the FHA approved lenders transmit UPMIP payment case detail directly to HUD and this information is remitted by HUD to the Department of the Treasury's Pay.gov Automated Clearing House (ACH) applications. The case-level payment information sent to HUD is updated on the Single Family Premium Collection Subsystem-Upfront (SFPCS). The authority for this collection of information is specified in 24 CFR 203.280 and 24 CFR 203.281. The collection of information is also used in calculating refunds due to former FHA mortgagors when they apply for homeowner refunds of the unearned portion of the mortgage insurance premium, 24 CFR 203.283, as appropriate. Without this information the premium collection/monitoring process would be severely impeded, and program data would be unreliable. In general, the lenders use the ACH applications to remit the upfront premium through SFPCS–U to obtain mortgage insurance for the homeowner.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* Hourly rate is based on an estimate of the annual salary of lender clerical staff at $33,634. The number of annual burden hours is 4,880. The number of respondents is

2,711, the number of responses is 32,532, the frequency of response is monthly, and the estimated burden time response is approximated 15 minutes.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35

Dated: June 11, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–14530 Filed 6–17–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–48]**

## 30-Day Notice of Proposed Information Collection: Multifamily Default Status Report

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* July 18, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: OIRA_Submission@omb.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 18, 2013.

**A. Overview of Information Collection**

*Title of Information Collection:* Multifamily Default Status Report.

*OMB Approval Number:* 2502–0041.

*Type of Request:* Extension of a currently approved collection.

*Form Number:* HUD–92426.

*Description of the need for the information and proposed use:* Mortgagees use this information collection to notify HUD that a project owner is delinquent (16 days) or more than 30 days past due on a mortgage payment, and to elect to assign a defaulted mortgage to the Department (per regulations at 24 CFR Part 207.256) by the 75th day from the date of default. To avoid an assignment of mortgage to HUD, which costs the Government millions of dollars each year, HUD and the mortgagor may develop a plan for reinstating the loan since HUD uses the information as an early warning mechanism. HUD Field Office and Headquarters staff use the data to (a) monitor mortgagee compliance with HUD's loan servicing procedures and assignments; and (b) potentially avoid mortgage assignments. This information is submitted electronically via the Internet.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 1,159. The number of respondents is 44, the number of responses is 6,959, the frequency of response is 158, and the burden hour per response is 10 minutes

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 11, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–14510 Filed 6–17–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–47]**

## 30-Day Notice of Proposed Information Collection: Delegated Processing for Certain 202 Supportive Housing for the Elderly Projects

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* July 18, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to

the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 13, 2013.

### A. Overview of Information Collection

*Title of Information Collection:* Delegated Processing for Certain 202 Supportive Housing for the Elderly Projects.

*OMB Approval Number:* 2502–0590.

*Type of Request:* Revision of a currently approved collection.

*Form Number:* HUD–90000, HUD–90001, HUD–90002.

*Description of the need for the information and proposed use:* This is an update to the currently approved collection. It is required to implement The Frank Melville Supportive Housing Investment Act of 2010 (SHIA) regarding delegated processing of certain Section 811 capital advances and program changes to the Delegated Processing program. The Delegated Processing Agreement establishes the relationship between the Department and a Delegated Processing Agency (DPA) and details the duties and compensation of the DPA. The Certifications form provides the Department with assurances that the review of the application was in accordance with HUD requirements. The Schedule of Projects form provides the DPA with information necessary to determine if they wish to process the project and upon signature commits them to such processing. Staff of the Office of Housing Assistance and Grant Administration, Multifamily Housing Office will use the information to determine if a housing finance agency wishes to participate in the program, and obtain certifications that the review of the application was in accord with HUD requirements.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 14. The number of respondents is 8, the number of responses is 8, the frequency of response is on occasion, and the burden hour per response is 6.

### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35

Dated: June 11, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–14512 Filed 6–17–13; 8:45 am]

BILLING CODE 4210–67–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–49]**

## 30-Day Notice of Proposed Information Collection: Standardized Form for Collecting Information Regarding Race and Ethnic Data

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* July 18, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 10, 2013.

### A. Overview of Information Collection

*Title of Information Collection:* Standardized Form for Collecting Information Regarding Race and Ethnic Data.

*OMB Approval Number:* 2535–0113.

*Type of Request:* Extension without change of a currently approved collection.

*Form Number:* HUD–27061, identified on Grants.gov as HUD Race Ethnic Form.

*Description of the need for the information and proposed use:* HUD's standardized form for the Collection of Race and Ethnic Data complies with OMB's revised standards for Federal Agencies issued, October 30, 1997. These standards apply to HUD Program Office and partners that collect, maintain, and report Federal Data on race and ethnicity for program administrative reporting.

*Estimation of the total numbers of hours needed to prepare the information*

*collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 4,100,000. The number of respondents is 4,100,000 the number of responses is 4,100,000, the frequency of response is annually and on occasion, and the hours per response is 1.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35

Dated: June 11, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–14506 Filed 6–17–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R3–ES–2013–N118; FXHC11300300000–134–FF03E00000]**

### Notice of Availability of the Assessment Plan for the Sauget Industrial Corridor Sites, St. Clair County, Illinois

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (USFWS), on behalf of the Department of Interior, as a natural resource trustee, announces the release of the Assessment Plan for the Sauget Industrial Corridor Sites. The Assessment Plan describes the activities that constitute the currently proposed approach of the natural resource trustees (USFWS, State of Illinois, and State of Missouri) for conducting the assessment of natural resources exposed to hazardous substances.

**DATES:** Submit written comments on the Assessment Plan on or before July 18, 2013.

**ADDRESSES:** Send written comments or requests for copies of the Assessment Plan to:

- Annette Trowbridge, U.S. Fish and Wildlife Service, Regional Environmental Contaminants/NRDAR Coordinator, 5600 American Blvd. West, Bloomington, MN 55437–1458; or
- Mr. Tom Heavisides, Contaminant Assessment Section, Illinois Department of Natural Resources, One Natural Resources Way, Springfield, IL 62702–1271.

You may download the Assessment Plan at *http://www.fws.gov/midwest/es/ec/nrda/Sauget/index.html.*

**SUPPLEMENTARY INFORMATION:** The Assessment Plan (Plan) was developed to assess injury to natural resources as a result of exposure to hazardous substances released to the environment through industrial practices. The Sauget Industrial Corridor Sites are located within the Villages of Sauget, Cahokia, and East St. Louis, in St. Clair County, Illinois. The Plan is being released to the public in accordance with the Natural Resource Damages Assessment Regulations found in the Code of Federal Regulations (CFR) at 43 CFR part 11. In accordance with those regulations, since one or more natural resources located on the Sauget Industrial Corridor Sites have been contaminated with hazardous substances, the Trustees will be conducting a Type B assessment. The Plan is one of the first steps in the damage assessment process, the goal of which is to restore natural resources injured by the release of hazardous substances.

The Plan has been developed within the authority provided by the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.), as amended, and the Clean Water Act, as amended (33 U.S.C. 1251 et seq.).

All written comments will be considered by the Trustees, and included in the Report of Assessment at the conclusion of the assessment process.

*Public Disclosure:* 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**

This notice is provided pursuant to Natural Resource Damage Assessment and Restoration (NRDAR) regulations (43 CFR 11.32(c)(1)).

Dated: May 16, 2013.

**Thomas O. Melius,**

*Regional Director, U. S. Fish & Wildlife, Region 3.*

[FR Doc. 2013–14424 Filed 6–17–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–ES–2013–N118; FXES11130400000C2–134–FF04E00000]**

### Endangered and Threatened Wildlife and Plants; Technical Agency Draft Recovery Plan for Golden Sedge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and request for public comment.

**SUMMARY:** We, the Fish and Wildlife Service, announce the availability of the technical agency draft recovery plan for the endangered golden sedge, a species endemic to the coastal plain in North Carolina. The draft recovery plan includes specific recovery objectives and criteria to be met in order to downlist this species to threatened or delist it under the Endangered Species Act of 1973, as amended (Act). We solicit review and comment on this draft recovery plan from local, State, and Federal agencies, and the public.

**DATES:** In order to be considered, comments on the draft recovery plan must be received on or before August 19, 2013.

**ADDRESSES:** If you wish to review the draft recovery plan, you may obtain a copy by contacting the Raleigh Ecological Services Field Office, U.S. Fish and Wildlife Service, 551–F Pylon Drive, Raleigh, NC 27606; tel. 919–856–4520, or by visiting our recovery plan Web site at *http://endangered.fws.gov/recovery/index.html#plans.* If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and materials to the Field Supervisor, at the above address.

2. You may hand-deliver written comments to our Raleigh Field Office, at the above address, or fax them to 919–856–4556.

3. You may send comments by email to *dale_suiter@fws.gov.*

For additional information about submitting comments, see the ''Public Comments Solicited'' section below.

**FOR FURTHER INFORMATION CONTACT:** Dale Suiter at the above address or by telephone at 919–856–4520, ext. 18.

**SUPPLEMENTARY INFORMATION:**

## Background

We listed golden sedge (*Carex lutea*) as an endangered species under the Act (16 U.S.C. 1531 *et seq.*), on January 23, 2002 (67 FR 3120). This species is a rare perennial member of the sedge family (Cyperaceae) endemic to the coastal plain of North Carolina. It is currently known from only 21 extant occurrences (specific locations or sites) located within a 16-by-5-mile area in Pender and Onslow Counties. All eight populations of this plant occur in the Northeast Cape Fear River watershed in North Carolina.

Factors contributing to its endangered status are an extremely limited range and loss of habitat. The primary threat is the loss or alteration of habitat from fire suppression; residential, commercial, or industrial development; livestock grazing; and woody or invasive encroachment.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the endangered species program. To help guide the recovery effort, we prepare recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide a public notice and an opportunity for public review and comment during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The objective of this technical agency draft plan is to provide a framework for the recovery of this species so that protection under the Act is no longer necessary.

Golden sedge will be considered for reclassification to threatened status when:

1. There are 10 protected *Carex lutea* sites in the wild that are distributed across the range of the species. Note: Sites will be considered permanently protected when they are placed under a conservation easement, or other binding land agreement, and a management agreement, and are ranked as an A or B population by the North Carolina Natural Heritage Program (NCNHP).

2. All 10 protected sites are composed of at least 90 percent native vegetation, and nonnative plant species that have the potential to displace *Carex lutea* are maintained at or below 10 percent of both total number of species and percent cover for at least 5 years.

3. All 10 protected sites demonstrate stable or increasing population trends for 5 consecutive years.

4. Habitat management plans are actively being implemented for at least 7 of the 10 protected sites.

5. A prescribed fire regime has been developed and is being conducted at all protected sites to mimic historical frequency and timing (the frequency will be determined through recovery actions in this plan).

We define ''protected'' to mean the site has been fee simple acquired and put into long-term conservation by a local or State agency, or a conservation easement or other binding land agreement has been placed on the site by a landowner that shows a commitment to its conservation in perpetuity and it is represented in a CPC-approved seed bank. In addition, each site should have a management agreement/plan developed. These plans should include monitoring according to protocols developed collaboratively by the USFWS, NCDACS, NCDPR, TNC, and other interested parties and should occur annually at each protected site. Each site should contain an A or B ranked occurrence (see Appendix C). For delisting to be considered, we would like to have at least seven of the protected sites to be ''A-ranked'' occurrences.

*Carex lutea* will be considered for removal from the List of Endangered and Threatened Species (delisting) when:

1. There are 15 protected sites in the wild that are distributed across the range of the species. Note: Sites will be considered permanently protected when they are placed under a conservation easement or other binding land agreement and a management agreement, and are ranked as an A or B population by the North Carolina Natural Heritage Program (NCNHP).

2. All 15 protected sites are composed of at least 90 percent native vegetation, and nonnative plant species that have the potential to displace *Carex lutea* are maintained at or below 10 percent of both total number of species and percent cover for at least 5 years within the recovery site.

3. All 15 protected sites demonstrate stable or increasing population trends for 10 consecutive years.

4. Habitat management plans are actively being implemented for all protected sites and are showing evidence that actions are proving effective for this plant.

5. A prescribed fire regime is being conducted at all protected sites to mimic historical frequency and timing (which will be determined through recovery actions in this plan).

As reclassification and recovery criteria are met, the status of the species will be reviewed and it will be considered for reclassification or removal from the Federal List of Endangered and Threatened Species.

## Request for Public Comments

We request written comments on the draft recovery plan. We will consider all comments received by the date specified in **DATES** section above prior to final approval of the plan.

## Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## Authority

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 26, 2013.

**Mike Oetker,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 2013–14425 Filed 6–17–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–923–1310–FI; WYW174039]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW174039, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Oxbow Properties, Inc., for competitive oil and gas lease WYW174039 for land in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16–⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW174039 effective August 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

**Julie L. Weaver,**

*Chief, Branch of Fluid Minerals Adjudication.*

[FR Doc. 2013–14437 Filed 6–17–13; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAD070000 L16100000 DR0000]**

### Notice of Availability of the Record of Decision for the Approved Imperial Sand Dunes Recreation Area Management Plan and California Desert Conservation Area Plan Amendment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** The Bureau of Land Management (BLM) announces the availability of the Imperial Sand Dunes Recreation Area Record of Decision (ROD)/approved Recreation Area Management Plan (RAMP) and California Desert Conservation Area (CDCA) Plan Amendment, Imperial County, California. The BLM California State Director signed the ROD on June 18, 2013, which constitutes the final decision of the BLM and makes the Approved RAMP/CDCA Plan Amendment effective immediately.

**ADDRESSES:** Copies of the ROD/approved RAMP/CDCA Plan Amendment are available upon request from the Field Manager, El Centro Field Office, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243 or via the Internet at *http://www.blm.gov/ca/elcentro.* Copies of the ROD/approved RAMP/CDCA Plan Amendment are available for public inspection at the BLM El Centro Field Office at the address above; at the BLM California Desert District Office, 22835 San Juan de los Lagos, Moreno Valley, CA 92553; and the BLM California State Office, 2800 Cottage Way, Sacramento, CA 95825.

If you wish to appeal an implementation decision, the notice of appeal must be filed in the BLM El Centro Field Office, 1661 South 4th Street El Centro, CA 92243, within 30 days from the decision.

**FOR FURTHER INFORMATION CONTACT:** Greg Hill, Project Manager, telephone: 951–697–5395; address: BLM California Desert District, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553; email: *greg_hill@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Imperial Sand Dunes Recreation Area (ISDRA) and surrounding lands included in the planning area encompass about 215,000 acres, of which approximately 12,000 acres are non-Federal lands for which these planning decisions do not apply. The planning area is located in the southeastern portion of Imperial County, California, and is part of the CDCA. The primary recreation activities in the ISDRA include off- highway vehicle use, camping, backcountry auto touring, and sightseeing. The planning area also contains the North Algodones Dunes Wilderness, two Areas of Critical Environmental Concern, and habitat for several sensitive species. The RAMP/CDCA Plan Amendment and Final Environmental Impact Statement (EIS) were developed through a collaborative planning process that considered eight alternatives. The U.S. Customs and Border Protection-Border Patrol and Imperial County were cooperating agencies. Though not a cooperating agency, the U.S. Fish and Wildlife Service was involved throughout the planning process. Formal and informal consultation and contacts were made with interested tribal entities, including 17 tribal governments, the Native American Heritage Commission, and the State Historic Preservation Office. The Proposed RAMP/CDCA Plan Amendment and Final EIS were released on September 14, 2012. Eight alternatives were analyzed in the Proposed RAMP/CDCA Plan Amendment and Final EIS. The BLM selected Alternative 8, the Proposed Plan, as the best approach to maintaining the naturalness of the Imperial Sand Dunes Recreation Area and managing recreation uses, while still protecting the resources and values for which the area was established. Since release of the Proposed RAMP/CDCA Plan Amendment and Final EIS, the BLM requested a Consistency Review by the Governor's Office of Planning and Research, and received three protests, one each from the American Sand Association, the Center for Biological Diversity and other conservation groups, and the Sanitation Districts of Los Angeles County. The BLM also received a comment letter from the Environmental Protection Agency (EPA). The Governor's Consistency Review found no inconsistencies between the Proposed RAMP and any State or local plan, policies, or programs. In response to the protests and EPA comment letter, the BLM made only minor editorial modifications in preparing the ROD for

the Approved RAMP and CDCA Plan Amendment. These modifications provided further clarification of some of the decisions.

Implementation decisions in this document that may be appealed include the following:

- Site-specific camping, parking, and other restrictions to protect special status species or wildlife habitat;
- Management of wildlife guzzlers; fuels management; and placement of fencing, signing, or other facilities to protect wildlife habitat;
- Signing, fencing, interpretive sites, or other facilities to protect cultural and paleontological resources;
- Management and design of actions and facilities to meet visual resources management (VRM) class objectives;
- Site-specific protection measures to protect lands with wilderness characteristics;
- Site-specific management actions and plans for areas of critical environmental concern (ACECs);
- Design, development, management, and administration of recreation sites and facilities within Recreation Management Zones; and
- Designation of individual routes and trails within off highway vehicle (OHV) management areas as open, limited, or closed.

These decisions, including identifying routes of travel within designated areas for motorized vehicles, are implementation decisions appealable under 43 CFR part 4. The route of travel decisions are contained in Appendix G of the Approved RAMP and CDCA Plan Amendment ROD. Any party adversely affected by the proposed route identifications, or other implementation decisions, may appeal within 30 days of the publication date of this Notice of Availability pursuant to 43 CFR part 4 subpart E. The appeal should state the specific route(s) or other decision(s), as identified in the ROD.

The appeal must be filed with the El Centro Field Manager at the above listed address. Please consult the appropriate regulations (43 CFR part 4 subpart E) and the ROD for further appeal requirements.

**Authority:** 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5.

**Thomas F. Zale,**

*Acting Field Manager, El Centro Field Office.*

[FR Doc. 2013–14436 Filed 6–17–13; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NRNHL–13269; 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 1, 2013. Pursuant to Section 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 3, 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 6, 2013.

**Alexandra Lord,**

*Acting Chief, National Register of Historic Places/National Historic Landmarks Program.*

**FLORIDA**

**Duval County**

Durkee, Joseph H., Athletic Field, 1701 Myrtle Ave., Jacksonville, 13000484

**IOWA**

**Woodbury County**

United States Post Office and Courthouse, 316–320 6th St., Sioux City, 13000485

**KANSAS**

**Douglas County**

Trail Park and Trail Park DAR Marker, (Santa Fe Trail MPS) NW. corner of E 1700 & N 400 Rds., Baldwin City, 13000486

**Finney County**

Finney County Point of Rocks, (Santa Fe Trail MPS) Mansfield Rd., Pierceville, 13000487

**Ford County**

Santa Fe Trail—Ford County Segment 2, (Santa Fe Trail MPS) SW. corner of Ridge & 129th Rds., Ford, 13000488

Sawlog Creek Crossing on the Fort Hayes—Fort Dodge Road, (Santa Fe Trail MPS) Address Restricted, Spearville, 13000489

**Grant County**

Santa Fe Trail—Grant County Segment 1, (Santa Fe Trail MPS) Address Restricted, Ulysses, 13000490

**Kearny County**

Indian Mound, (Santa Fe Trail MPS) N. side of N. River Rd., Lakin, 13000491

Santa Fe Trail—Kearny County Segment 1, (Santa Fe Trail MPS) N. side of US 50, Deerfield, 13000492

**Pawnee County**

Coon Creek Crossing on the Santa Fe Trail (Wet Route), (Santa Fe Trail MPS) US 56, Garfield, 13000493

Pawnee Fork Crossing (Santa Fe Trail Dry Route) and Boyd's Ranch Site, (Santa Fe Trail MPS) Address Restricted, Larned, 13000494

**Rice County**

Santa Fe Trail—Rice County Segment 1 (Boundary Increase), (Santa Fe Trail MPS) Jct. 4th Rd. & Ave. L, Chase, 13000495

**MONTANA**

**Chouteau County**

Square Butte School, S. Main St., Square Butte, 13000496

**NEW JERSEY**

**Hunterdon County**

Sand Brook Historic District, Cty. Rd. 523, Sand Brook-Headquarters & Britton Rds., Sand Brook, 13000497

**Salem County**

Marshalltown Historic District, Marshalltown Rd. & Roosevelt Ave. (Mannington Township), Pennsville, 13000498

**NEW YORK**

**Westchester County**

Dale Cemetery, 104 Havell St., Ossining, 13000500

**OHIO**

**Lucas County**

United States Courthouse and Custom House, 1716 Spielbusch Ave., Toledo, 13000501

**TENNESSEE**

**Shelby County**

Memphis Bank and Trust Building, 44 N. 2nd St., Memphis, 13000502

South Main Street Historic District (Boundary Increase), 124–125, 136–137, 148, 153, 154, 158 & 161 G.E. Patterson Ave, 138 St. Paul Ave., Memphis, 13000503

**TEXAS**

**Hays County**

Dripping Springs Downtown Historic District, 100–500 blk. Mercer, 100 blk. Wallace, 100 blk. San Marcos & 101 College Sts., 101–103 Old Fitzhugh Rd., Dripping Springs, 13000504

**WASHINGTON**

**Chelan County**

Leavenworth Ski Hill Historic District, Jct. of Ski Hill Dr. & Titus Rd., Leavenworth, 13000505

**Jefferson County**

Interrorem Guard Station—Olympic National Forest, Duckabush Rd., Duckabush, 13000506

**Pierce County**

Wilkeson Community House, 540 Church St., Wilkeson, 13000507

In the interest of preservation the comment period has been shortened to three days for the following property:

**NEW YORK**

**Queens County**

Far Rockaway Beach Bungalow Historic District, Beach 24th, Beach 25th & Beach 26th Sts., Queens, 13000499

A request for removal has been made for the following properties:

**CALIFORNIA**

**Santa Clara County**

Donner—Houghton House, 156 E. St. John, San Jose, 01001483

**NEW JERSEY**

**Cumberland County**

Levoy Theatre, 126–130 N. High St., Millville City, 98001064

**TENNESSEE**

**Meigs County**

Culvahouse House, River Rd., Ten Mile, 82004017

**Sullivan County**

Spring Place, NW. of Kingsport on W. Carter's Valley Rd., off US 23, Kingsport, 73001848

[FR Doc. 2013–14375 Filed 6–17–13; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NRNHL–13236; 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 May 25, 2013. Pursuant to section 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 3, 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: May 31, 2013.

**J. Paul Loether,**

*Chief, National Register of Historic Places/National Historic Landmarks Program.*

**ALABAMA**

**Dallas County**

Tabernacle Baptist Church, (Civil Rights Movement in Selma, Alabama MPS) 1431 Broad St., Selma, 13000469

**Lawrence County**

Boxwood Plantation Slave Quarter, 20416 AL 20, Courtland, 13000470

**Tallapoosa County**

Dadeville Historic District, Lafayette, East, South, S. Tallassee & West Sts., Dadeville, 13000471

**CALIFORNIA**

**Contra Costa County**

Dollar, Robert Stanley Sr., House, 1015 Stanley Dollar Dr., Walnut Creek, 13000472

**Orange County**

Hansen, George, House, 400B N. West St., Anaheim, 13000473

Woelke, John, House, 400B N. West St., Anaheim, 13000474

**KENTUCKY**

**Franklin County**

Knight—Taylor—Hockensmith House, 4350 Peaks Mill Rd., Frankfort, 13000475

**Jefferson County**

Breslin Building, 305 W. Broadway, Louisville, 83004589

Filson Club, The, 118 W. Breckinridge St., Louisville, 13000476

**Wolfe County**

Wolfe County High School, 166 Wolfe County Elementary School Rd., Campton, 13000477

**MICHIGAN**

**Alpena County**

Norwegian Lutheran Church Complex, 10430 S. Leer Rd. (Long Rapids Township), Leer, 13000478

**Wayne County**

Norwayne Historic District, Generally bounded by Palmer, Wildwood, Glenwood & Merriman Rds., Wayne County Lower Rouge Pkwy., Westland, 13000479

**NEW JERSEY**

**Essex County**

Glen Ridge Historic District (Boundary Increase II), Ridgewood, Sommer, Hawthorne, Victor, Forest, Oakwood, Watchung, Prescott & Sunset Aves., Brooklawn & Stonehouse Rds., Glen Ridge Borough, 13000480

**OREGON**

**Washington County**

Oak Hills Historic District, Roughly bounded by NW. West Union & Cornell Rds. NW., 143rd Ave., Bethany Blvd., Beaverton, 13000482

**Yamhill County**

Lamson Ranch, 37845 SW. Dent Rd., Willamina, 13000483

[FR Doc. 2013–14372 Filed 6–17–13; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NRNHL–13136; 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 May 18, 2013. Pursuant to section 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 3, 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: May 28, 2013.

**J. Paul Loether,**

*Chief, National Register of Historic Places/National Historic Landmarks Program.*

**CONNECTICUT**

**Hartford County**

Kensington Soldier's Monument, 312 Percival Ave., Berlin, 13000456

**HAWAII**

**Honolulu County**

East-West Center Complex, 1601 East-West Rd., Honolulu, 13000457

**Maui County**

Kaluakini, William K., House, 450 Front St., Lahaina, 13000458

**MARYLAND**

**Allegany County**

Footer's Dye Works, S. Mechanic & Howard Sts., Cumberland, 13000460

**Baltimore Independent city**

American Ice Company, 2100 W. Franklin St., Baltimore, 13000459

**NEW JERSEY**

**Somerset County**

Lyons Veterans Administration Hospital Historic District (United States Second Generation Veterans Hospitals MPS), 151 Knollcroft Rd., Lyons, 13000461

**NEW YORK**

**Erie County**

Hamlin Park Historic District, Beverly, Donaldson, Hamlin, & Lonsdale Rds., Blaine, Butler, E. Delevan, Goulding, Hughs, Jefferson & Loring Aves., Buffalo, 13000462

**Suffolk County**

Corwith, William, House, 2368 Montauk Hwy., Bridgehampton, 13000463

**SOUTH CAROLINA**

**Florence County**

Snow's Island (Boundary Increase), Address Restricted, Johnsonville, 13000464

**York County**

Catawba Rosenwald School, (Rosenwald School Building Program in South Carolina, 1917–1932 MPS), 3071 S. Anderson Rd., Catawba, 13000465

**WISCONSIN**

**Door County**

AUSTRALASIA (wooden bulk carrier) Shipwreck (Great Lakes Shipwreck Sites of Wisconsin MPS) 820 ft. SE. of Whitefish Dunes State Park, Sevastopol, 13000466

**Kewaunee County**

AMERICA (canaller) Shipwreck (Great Lakes Shipwreck Sites of Wisconsin MPS), 4 mi. offshore, Carlton, 13000467

**Milwaukee County**

EMBA (self-unloading barge) Shipwreck (Great Lakes Shipwreck Sites of Wisconsin MPS), 5 mi. E. of North Point, Milwaukee, 13000468

[FR Doc. 2013–14370 Filed 6–17–13; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

**[MMAA104000]**

### Extension of Post-Sale Evaluation Period for Central Gulf of Mexico Planning Area Lease Sale 227

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Notice to Extend Post-Sale Evaluation Period.

**SUMMARY:** This notice extends through July 18, 2013, the post-sale evaluation period for Central Gulf of Mexico Planning Area Lease Sale 227. BOEM will complete the evaluation process for all bids received in this sale by July 18, 2013. This action is necessary due to resource limitations resulting from sequestration. BOEM is unable to pay overtime to expedite the bid review process, including the incorporation of increased volumes of reprocessed proprietary datasets used by bidders to formulate their bid submittals.

**DATES:** The post-sale evaluation period for this sale will conclude on July 18, 2013.

**SUPPLEMENTARY INFORMATION:** In connection with the Central Gulf of Mexico Lease Sale 227, held March 20, 2013, BOEM received 407 bids on 320 tracts. On April 3, 2013, BOEM accepted the high bids on 42 tracts and passed the bids on another 278 tracts to Phase 2 of the post-sale evaluation period for detailed evaluation. As of Friday, May 31, 2013, BOEM had completed the evaluation and deemed acceptable the high bids offered on 163 of the tracts passed to Phase 2. BOEM is continuing the bid evaluation process for the remaining 115 tracts.

As a result of these circumstances, BOEM requires additional time to complete the bid review process, originally scheduled to conclude within 90 days following the Sale 227 sale date, that is, by June 18, 2013. Under the provisions of 30 CFR § 556.47(e)(2), BOEM is extending the bid evaluation period until July 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** David Cooke, Regional Supervisor, Office of Resource Evaluation, Gulf of Mexico Region, telephone 504–736–2710.

Dated: June 11, 2013.

**Walter D. Cruickshank,**

*Deputy Director, Bureau of Ocean and Energy Management.*

[FR Doc. 2013–14426 Filed 6–17–13; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

**[MMAA104000]**

### North American Datum of 1983 (NAD 83) Outer Continental Shelf (OCS) Provisional Official Protraction Diagram (OPDs)

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Notice of Availability of OCS Provisional OPDs.

**SUMMARY:** Notice is hereby given that effective with this publication two NAD 83-based OCS Provisional OPDs that represent the Island of Oahu and surrounding Federal waters are now available. BOEM, in accordance with its authority and responsibility under Title 43, Code of Federal Regulations, has created provisional versions of the basic record used for the description of renewable energy, mineral, and oil and gas lease sales in the geographic areas they represent. These provisional OPDs represent the approximate locations of the Submerged Lands Act (3 nautical mile), Limit of ''8(g) Zone'' (6 nautical mile), and National Marine Sanctuary boundaries. The provisional OPDs are for informational purposes only and will be superseded by official versions.

**OCS Provisional Official Protraction Diagrams in the Pacific Ocean, Hawaiian Islands**

*Description/Date*

NF04–08 (Kaua'i Channel)—July 1, 2013
NF04–09 (O'ahu)—July 1, 2013

**FOR FURTHER INFORMATION CONTACT:** Douglas Vandegraft at (703) 787–1312 or via email at *Doug.Vandegraft@boem.gov.*

**SUPPLEMENTARY INFORMATION:** Copies of the revised OPDs are available for

download in *.pdf* format from *http://www.boem.gov/Oil-and-Gas-Energy-Program/Mapping-and-Data/Pacific.aspx.*

Dated: June 11, 2013.

**Tommy P. Beaudreau,**

*Director, Bureau of Ocean Energy Management.*

[FR Doc. 2013–14429 Filed 6–17–13; 8:45 am]

**BILLING CODE 4310–MR–P**

## INTERNATIONAL TRADE COMMISSION

**[Docket No. 2960]**

### Certain Crawler Cranes and Components Thereof Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Crawler Cranes and Components Thereof,* DN 2960; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS* [1], and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC* [2]. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS* [3]. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Manitowoc Cranes, LLC on June 12, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain crawler cranes and components thereof. The complaint names as respondents Sany Heavy Industry Co., Ltd. of China and Sany America, Inc. of Peachtree City, GA. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2960'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS* [5].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: June 13, 2013.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–14440 Filed 6–17–13; 8:45 am]

**BILLING CODE 7020–02–P**

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–882]**

### Certain Digital Media Devices, Including Televisions, Blu-Ray Disc Players, Home Theater Systems, Tablets and Mobile Phones, Components Thereof and Associated Software

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice, Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 13, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Black Hills Media, LLC of Wilmington, Delaware. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital media devices, including televisions, blu-ray disc players, home theater systems, tablets and mobile phones, components thereof and associated software, by reason of infringement of U.S. Patent No. 8,028,323 (''the '323 patent''), U.S. Patent No. 8,214,873 (''the '873 patent''), U.S. Patent No. 8,230,099 (''the '099 patent''), U.S. Patent No. 8,045,952 (''the '952 patent''), U.S. Patent No. 8,050,652 (''the '652 patent''), and U.S. Patent No. 6,618,593 (''the '593 patent''). The complaint further alleges that an industry exists in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on June 11, 2013, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital media devices, including televisions, blu-ray disc players, home theater systems, tablets and mobile phones, components thereof and associated software by reason of infringement of one or more of claims 1–5, 10, 11, 13, 14, and 16–18 of the '323 patent; claims 1, 2, 5–8, 15–19, 22, 23, 25–27, 30, 31, 34–37, and 44–46 of the 873 patent; claims 1 and 10–12 of the '099 patent; claims 1, 2–4, 9–12, and 14 of the '952 patent; claims 1, 3, 4, 6, 7, 10, 11, 13, 42–45, 47–50, 52 and 55 of the '652 patent; and claims 1, 4, 7, 10 and 13–21 of the '593 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Black Hills Media, LLC, 1000 N. West Street, Suite 1200, Wilmington, Delaware 92064.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics Co. Ltd., 1320–10, Seocho 2-dong Seocho-gu, Seoul, Republic of Korea;

Samsung Electronics America, Inc., 105 Challenger Road, Ridgefield Park, New Jersey 02660;

Samsung Telecommunications America, LLC, 1301 East Lookout Drive, Richardson, Texas 75082;

LG Electronics, Inc., LG Twin Towers, 20 Yeouido-dong, Yeogdeungpo-gu, Seoul 150–721, Republic of Korea;

LG Electronics U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, New Jersey 07632;

LG Electronics MobileComm U.S.A., Inc., 10101 Old Grove Road, San Diego, California 92131;

Panasonic Corporation, 10006 Oaza Kodoma, Kadoma-shi, Osaka 571–8501, Japan;

Panasonic Corporation of North America, One Panasonic Way, Secaucus, New Jersey 07904;

Toshiba Corporation, 1–1, Shibaura 1-Chome, Minato-ku, Tokyo 105–8001, Japan;

Toshiba America Information Systems, Inc. 9740 Irvine Boulevard, Irvine, California 92618;

Sharp Corporation, 22–22 Nagaike-cho, Abenko-ku, Osaka 545–8522, Japan;

Sharp Electronics Corporation, 1 Sharp Plaza, Mahwah, New Jersey 07495.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 13, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–14448 Filed 6–17–13; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–830]**

## Certain Dimmable Compact Fluorescent Lamps and Products Containing Same; Termination as to Three Respondents on the Basis of Settlement; Decision To Review an Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to terminate the investigation as to three respondents on the basis of settlement. The Commission has also determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on February 27, 2013, finding no violation of section 337 of the Tariff Act of 1930 in this investigation.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.*

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on February 27, 2012, based on a complaint filed by Andrzej Bobel and Neptun Light, Inc., both of Lake Forest, Illinois (collectively, ''Neptun''). 77 FR 11587 (Feb. 27, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, by reason of the infringement of certain claims of United States Patent Nos. 5,434,480 (''the '480 patent'') and 8,035,318 (''the '318 patent''). The complaint named numerous respondents, many of whom have been terminated from the investigation on the basis of settlement agreement, consent order, or withdrawal of the complaint. The remaining respondents are Technical Consumer Products, Inc. of Aurora, Ohio; Shanghai Qiangling Electronics Co., Ltd. of Shanghai, China; Zhejiang Qiang Ling Electronic Co. Ltd. of Zhenjiang, China (collectively, ''TCP''); U Lighting America Inc. of San Jose, California (''ULA''); and Golden U Lighting Manufacturing (Shenzhen) of Shenzhen, China (''Golden U''). Claim 9 of the '480 patent is asserted against ULA and Golden U, and claims 1 and 12 of the '318 patent are asserted against TCP.

On February 27, 2013, the ALJ issued his final Initial Determination (''ID''). The ID found no violation of section 337 on the basis of Neptun's failure to satisfy the economic prong of the domestic industry requirement of section 337. The ALJ also found that respondent TCP's accused products do not infringe the asserted claims of the '318 patent.

On March 12, 2013, Neptun filed a petition for review of the ID; TCP and ULA each filed a contingent petition for review of the ID. On March 20, 2013, Neptun opposed TCP's and ULA's petitions, and TCP and ULA each opposed Neptun's petition. On April 3, 2013, the Commission extended the whether-to-review deadline and the target date by approximately six weeks. Notice (Apr. 3, 2013).

On June 10, 2013, Neptun and TCP filed an unopposed joint motion to terminate the investigation as to TCP on the basis of a settlement agreement between Neptun and TCP. The Commission finds that it is in the public interest to terminate the investigation as to TCP on the basis of settlement, and the Commission grants the joint motion.

Turning to the petitions for review of the ID, having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ALJ's finding that Neptun did not satisfy the domestic industry requirement. The Commission has also determined to review the ALJ's claim construction of ''integrated into'' in claim 9 of the '480 patent, as well as the ALJ's finding of infringement insofar as the finding is based upon that construction. The Commission has determined not to review the remainder of the ID.

In connection with the Commission's review, the parties are asked to respond only to the questions enumerated below. For all other matters under review, the Commission finds the extensive briefing before the ALJ and the petitions for review to be sufficient. Each party should address questions 1–4 in its opening brief, and may respond to each other's arguments in reply. Neptun should address question 5 in its opening brief, with ULA addressing question 5 in ULA's reply brief.

(1) What is the plain and ordinary meaning of ''integrated into'' (include citations to the record where you made such arguments to the ALJ)? In the context of an electronic circuit, does the construction of ''integrated into'' as ''in some way connected to'' render superfluous that claim term, including the word ''into''?

(2) Whether the specification of the '480 patent (including the passages cited in ULA's petition for review at pages 26–32) supports a construction of ''integrated into'' in which the boosting circuit uses downstream rectified current to perform boosting. If not, explain whether you contend that the specification limits the term ''integrated into'' to something other than its plain and ordinary meaning.

(3) Whether the prosecution history of the '480 patent permits a construction of ''integrated into'' in which the boosting circuit is downstream from the rectifier, and where the rectifier itself does not perform boosting.

(4) Whether the boosting circuit in ULA's accused products uses downstream rectified current to perform boosting, and whether ULA's products meet the ''integrated into'' claim limitation, literally or under the doctrine of equivalents.

(5) Which of complainants' asserted expenses constitute investments that fall under 19 U.S.C. 1337(a)(3)(C), such as investments in engineering, research and development, or licensing? Please identify and provide a reasonable estimate, based on the evidence of record, of the portion of these expenses that are associated with the exploitation of the '480 patent. Please explain, qualitatively, how these expenses—and the underlying activities that these expenses reflect—relate to exploitation of the '480 patent.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the

United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* The parties to the investigation are requested to file written submissions as set forth above. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainants are also requested to submit proposed remedial orders for the Commission's consideration. The complainants are also requested to state the date that the '480 patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Tuesday June 25, 2013 and responses to the Commission's questions should not exceed 60 pages. Reply submissions must be filed no later than the close of business on Wednesday, July 3, 2013 and such replies should not exceed 40 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–830'') in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42–46).

Issued: June 12, 2013.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–14390 Filed 6–17–13; 8:45 am]

**BILLING CODE 7020–02–P**

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Meeting of the Advisory Committee; Meeting

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (a portion of which will be open to the public) in Washington, DC, on July 8 and July 9, 2013.

**DATES:** Monday, July 8, 2013, from 9:00 a.m. to 5:00 p.m., and Tuesday, July 9, 2013, from 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** The meeting will be held at Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, (703) 414–2173.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC on Monday, July 8, 2013, from 9:00 a.m. to 5:00 p.m., and Tuesday, July 9, 2013, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2013 Basic (EA–1) and Pension (EA–2L) examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2013 Pension (EA–2F) examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the May 2013 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of other topics will

commence at 1:00 p.m. on July 9 and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All persons planning to attend the public session must notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be sent electronically to *patrick.mcdonough@irs.gov.* In addition, any interested person may file a written statement for consideration by the Joint Board and the Committee by sending it to: Executive Director, Joint Board for the Enrollment of Actuaries SE:RPO; Internal Revenue Service; 1111 Constitution Avenue NW; REFM, Park 4, Floor 4; Washington, DC 20224–0002.

Dated: June 12, 2013.

**Patrick W. McDonough,**

*Executive Director, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 2013–14379 Filed 6–17–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF JUSTICE

**[OMB No. 1121–0255]**

### Agency Information Collection Activities; Reinstatement of a Previously Approved Collection; Comments Requested: 2013 Census of Law Enforcement Training Academies

**ACTION:** 30-Day Notice.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 39, pages 13381–13382, on February 27, 2013, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 18, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Brian A. Reaves, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531 (phone: 202–616–3287).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* 2013 Census of Law Enforcement Training Academies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: CJ–52.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Government. This information collection is a census of law enforcement training academies. The affected public that will be asked to respond will include approximately 700 state, regional, county, municipal, campus, and tribal law enforcement training academies that operate basic training programs. The information will provide national statistics on law enforcement training staff, recruits/trainees, curricula, facilities, and policies.

This collection is the only national effort devoted to describing and understanding the training received by recruits entering the profession of law enforcement. The collection enables BJS, other federal agencies, and state, regional, local, campus, and tribal law enforcement authorities, as well as legislators and researchers, to track changes in the characteristics of basic recruits and their training programs.

(5) *An estimate of the total number of respondents and the average amount of time for a respondent to respond:* It is estimated that 700 respondents will complete a two-hour form. It is estimated that 70 of these respondents will be contacted a second time to participate in reliability testing for selected items. This testing will average about one hour per selected respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,470 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: June 12, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013–14350 Filed 6–17–13; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1125–0006]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested: Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR–28)

**ACTION:** 30-Day Notice.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and

affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 64, page 20140 on April, 3, 2013, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 18, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments also may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection without change.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative before the Immigration Court.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–28. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys or representatives notifying the Immigration Court that they are representing an alien in immigration proceedings. Other: None. Abstract: This information collection is necessary to allow an attorney or representative to notify the Immigration Court that he or she is representing an alien before the Immigration Court.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 165,614 respondents will complete the form annually with an average of six minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 16,561 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: June 4, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, United States Department of Justice.*

[FR Doc. 2013–14352 Filed 6–17–13; 8:45 am]

**BILLING CODE 4410–30–P**

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## DEPARTMENT OF JUSTICE

**[OMB Number 1125–0012]**

## Agency Information Collection Activities; Proposed Collection; Comments Requested: Request for Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization (Form EOIR–31)

**ACTION:** 30-Day Notice.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 64, pages 20139–20140, on April 3, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 18, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments also may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Recognition of a Non-profit Religious, Charitable, Social Service, or Similar Organization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–31. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Non-profit organizations seeking to be recognized as legal service providers by the Board of Immigration Appeals (Board) of the

Executive Office for Immigration Review (EOIR). Other: None. Abstract: This information collection is necessary to determine whether the organization meets the regulatory and relevant case law requirements for recognition by the Board as a legal service provider, which then would allow its designated representative or representatives to seek full or partial accreditation to practice before EOIR and/or the Department of Homeland Security.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 158 respondents will complete the form annually with an average of 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 316 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: June 12, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, United States Department of Justice.*

[FR Doc. 2013–14353 Filed 6–17–13; 8:45 am]

**BILLING CODE 4410–30–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1125–0005]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested: Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR–27)

**ACTION:** 30-Day Notice.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 64, page 20138 on April 3, 2013, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 18, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments also may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection without change.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–27. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys or representatives notifying the Board of Immigration Appeals (Board) that they are representing a party in proceedings before the Board. Other: None. Abstract: This information collection is necessary to allow an attorney or representative to notify the Board that he or she is representing a party before the Board.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 28,068 respondents will complete the form annually with an average of five minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,086 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: June 12, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, United States Department of Justice.*

[FR Doc. 2013–14351 Filed 6–17–13; 8:45 am]

**BILLING CODE 4410–30–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1121—NEW]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested: Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Online Trainings Package

**ACTION:** 60-Day Notice.

The Department of Justice, Office of Justice Programs, Office for Victims of Crime, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until August 19, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Shelby Jones Crawford, Victim Justice Program Specialist, Office

for Victims of Crime, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* New Collection.

(2) *The Title of the Form/Collection:* OVC TTAC Online Trainings Package.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number(s): NA. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: State, Local or Tribal agencies/organizations. Other: Federal Government; Individuals or households; Not-for-profit institutions; Businesses or other for-profit. Abstract: The Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Online Trainings Package is designed to collect the data necessary to continuously assess the satisfaction and outcomes of assistance provided through OVC TTAC online trainings for both monitoring and accountability purposes to continuously meet the needs of the victim services field. OVC TTAC will deliver these forms to recipients of online training and technical assistance and, in some cases, to online instructors or participants' supervisors. The purpose of this data collection will be to capture important feedback on the respondent's satisfaction and outcomes of the resources provided. The data will then be used to advise OVC on ways to improve the support that it provides to the victim services field at-large.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 17,315 respondents who will require an average of 8 minutes (ranging from 5 to 10 minutes across all forms) to respond to a single form each year.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection are estimated to be 2,456 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: June 12, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013–14354 Filed 6–17–13; 8:45 am]

BILLING CODE 4410–18–P

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## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0065]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested: Requisition for Forms or Publications and Requisition for Firearms/Explosives Forms

**ACTION:** 30-Day Notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 72, page 22296 on April 15, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 18, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure that your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Summary of Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Requisition for Forms or Publications and Requisition for Firearms/Explosives Forms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 1370.3 and ATF F 1370.2. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit. Other: Individuals or households.

**Need for Collection**

The forms are used by the general public to request or order forms or publications from the ATF Distribution Center. The forms also notify ATF of the quantity required by the respondent and provide a guide as to annual usage of

ATF forms and publications by the general public.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,646 respondents will complete each 3 minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 82 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: June 12, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013–14349 Filed 6–17–13; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms, and Explosives

**[OMB Number 1140–0004]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested: Interstate Firearms Shipment Report of Theft/Loss

**ACTION:** 30-Day Notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 58, page 18364 on March 26, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 18, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Summary of Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Interstate Firearms Shipment Report of Theft/Loss.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.6. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

*Need for Collection:* The form is part of a voluntary program in which the common carrier and/or shipper report losses or thefts of firearms from interstate shipments. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center to initiate investigations and to perfect criminal cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 550 respondents will complete a 20 minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 182 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: June 12, 2013.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2013–14348 Filed 6–17–13; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[OMB Number 1117–0023]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested: Import/Export Declaration for List I and List II Chemicals; DEA Forms 486 and 486A

**ACTION:** 30-Day Notice.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at Volume 78 FR 19312, March 29, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 18, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy A. Gallagher, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best

way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the eight-digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact Cathy A. Gallagher, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of Information Collection 1117–0023**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Import/Export Declaration for List I and List II Chemicals.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form number:* DEA Forms 486 and 486A.

*Component:* Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Business or other for-profit.

*Other:* Not-for-profit; State, local, and tribal government.

*Abstract:* Persons importing, exporting, and conducting international transactions with List I and List II chemicals must notify DEA of those transactions in advance of their occurrence, including information regarding the person(s) to whom the chemical will be transferred and the quantity to be transferred. Persons must also provide return declarations, confirming the date of the importation and transfer, and the amounts of the chemical transferred. For the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, importers must report all information known to them on the chain of distribution of the chemical from the manufacturer to the importer. This information is used to prevent shipments not intended for legitimate purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses, and associated burden hours. Note that all hour calculations have been rounded up to the nearest hour.

| Form | Number of respondents 2012 | Number of responses 2012 | Average time per response (hours) | Minutes | Total hours 2012 |
|---|---|---|---|---|---|
| Form 486—Export (Facsimile) | 189 | 8,395 | 0.2833 | 17 | 2,379 |
| Form 486—Export (Online) | 25 | 434 | 0.1333 | 8 | 58 |
| Form 486—Export Return Declaration (Facsimile) | 189 | 5,357 | 0.1166 | 7 | 625 |
| Form 486—Export Return Declaration (Online) | 25 | 311 | 0.0833 | 5 | 26 |
| Form 486—Import (Facsimile) | 119 | 1,593 | 0.3330 | 20 | 531 |
| Form 486—Import (Online) | 2 | 3 | 0.1167 | 10 | 1 |
| Form 486—Import Return Declaration * (Facsimile) | 119 | 1,138 | 0.2000 | 12 | 228 |
| Form 486—Import Return Declaration * (Online) | 2 | 3 | 0.1000 | 6 | 1 |
| Form 486A—Import (Facsimile) | 26 | 336 | 0.4000 | 24 | 135 |
| Form 486A—Import (Online) | 0 | 0 | 0.1167 | 10 | 1 |
| Form 486A—Import Return Declaration * (Facsimile) | 26 | 213 | 0.2000 | 12 | 43 |
| Form 486A—Import Return Declaration * (Online) | 0 | 0 | 0.1000 | 6 | 1 |
| Form 486—International (brokered) | 15 | 366 | 0.2833 | 17 | 104 |
| Form 486—International (brokered) Return Declaration | 15 | 83 | 0.1333 | 8 | 12 |
| Quarterly Reports for Imports of Acetone, 2-Butanone, and Toluene | 50 | 150 | 0.5 | 30 | 75 |
| Total | 802 | 18,382 | ..... | ..... | 4,220 |

* DEA assumes 10% of all imports will not be transferred in the first thirty days and will necessitate submission of a subsequent return declaration.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection takes 4,220 annual burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Suite 3W–1407B, Washington, DC 20530.

Dated: June 12, 2013.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2013–14346 Filed 6–17–13; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[OMB Number 1117–0052]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested; Extension With Change of a Previously Approved Collection: National Drug Threat Survey

**ACTION:** 30-Day Notice.

The United States Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 64, page 20141 on April 3, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 18, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden and associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Richard L. Nagy, Unit Chief, Domestic Strategic Intelligence Unit, Office of Intelligence, Warning, Plans and Programs, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency whether the information will have practical utility;
- Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection 1117–0052**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Drug Threat Survey.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Intelligence Division, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal, State, Tribal, and Local, law enforcement agencies.

Other: None.

Abstract: This survey is a critical component of the National Drug Threat Assessment and other reports and assessments produced by the Drug Enforcement Administration. It provides direct access to detailed drug threat data from state and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 3,500 respondents will complete a survey response within approximately 20 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,167 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Suite 3W–1407B, Washington, DC 20530.

Dated: June 12, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013–14347 Filed 6–17–13; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 12–15]**

### Belinda R. Mori, N.P.; Decision and Order

On November 17, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Belinda R. Mori, N.P. (Respondent), of Santa Fe, New Mexico. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration, on the ground that her ''registration would be inconsistent with the public interest.'' ALJ Ex. 1, at 1.

The Show Cause Order specifically alleged that on March 18, 2011, Respondent applied for a Certificate of Registration as a mid-level practitioner, seeking authority to dispense controlled substances in schedules II through V. *Id.* The Order further alleged that Respondent had previously held a registration, which authorized her to dispense controlled substances in schedules II through V as a mid-level practitioner but that ''this registration expired on January 31, 2011.'' *Id.*

Next, the Show Cause Order alleged that ''[b]etween August 29, 2009 and March 15, 2011, [Respondent] issued approximately thirty-three purported prescriptions for alprazolam (a [s]chedule IV controlled substance) to [her] daughter without conducting a medical examination and without creating a patient record,'' and that these prescriptions ''were issued outside the usual course of professional practice, in violation of Federal and . . . state law.'' *Id.* (citing 21 CFR 1306.04(a); N.M Admin. Code tit. 16, §§ 12.2.7(V) and 12.2.13(N)(5)(g)). The Order further alleged that ''[o]n or about March 15, 2011, [Respondent] issued a purported prescription for alprazolam . . . to [her] daughter . . . while [she was] without a valid DEA Certificate of Registration, in violation of Federal and . . . state law.'' *Id.* at 2 (citing 21 U.S.C. 841(a)(1); N.M. Admin. Code tit. 16, § 12.2.13(N)(5)(a)).

On December 5, 2011, Respondent, through her counsel, requested a hearing on the allegations. ALJ Ex. 2. The matter was placed on the docket of the Office of Administrative Law Judges (ALJ), and assigned to an ALJ who proceeded to conduct pre-hearing procedures.

On December 20, 2011, the Government filed its pre-hearing statement. Therein, the Government provided notice that it intended to elicit

the testimony of an Agency Diversion Investigator (DI) that ''on or about April 14, 2011, she spoke with Respondent about her application for a DEA Certificate of Registration'' and ''asked Respondent whether [she] used her previous DEA Certificate of Registration after it expired, and Respondent stated that she had not.'' Gov't Prehr'g Statement, at 3. The Government also provided notice that it intended to show that ''[o]n this same day, [the DI] ran a prescription monitoring report with the New Mexico Board of Pharmacy for the period of February 1, 2011, through April 14, 2011, and that the report showed that Respondent issued one prescription for controlled substances (alprazolam) after her previous DEA Certificate of Registration expired,'' and that the prescription was for her daughter and issued ''on or about March 15, 2011.'' *Id.* Finally, the Government provided notice that the DI would ''testify that on or about May 3, 2011, she interviewed Respondent about the alprazolam prescription that was issued after her previous DEA Certificate of Registration expired,'' and that ''Respondent informed [the DI] that she issued the alprazolam prescription to her daughter because [she] did not have health insurance and therefore could not see her treating physician.'' *Id.*

On May 1, 2012, the ALJ conducted a hearing in Albuquerque, New Mexico. At the hearing, the Government elicited the testimony of the DI and introduced various documents into the record; Respondent testified on her own behalf and also introduced various documents into the record. Following the hearing, both parties submitted briefs containing their proposed findings of fact, conclusions of law, and argument.

On July 30, 2012, the ALJ issued her Recommended Decision (R.D.). Therein, the ALJ found that the Government had proved that Respondent violated federal law because she issued thirty-three prescriptions to her daughter and ''did not establish a good faith practitioner-patient relationship with [her] prior to issuing controlled substance prescriptions to her.'' R.D. at 16. Moreover, the ALJ found that Respondent ''violated federal law by issuing a prescription after the expiration of her DEA Certificate of Registration.'' *Id.* (citing 21 U.S.C. 843(a)(2)). The ALJ thus concluded that ''in light of Respondent's serious and undisputed violations of the CSA and New Mexico law, . . . the Government has presented a *prima facie* case that supports the denial of Respondent's application.'' *Id.* at 16–17.

The ALJ then addressed whether Respondent had rebutted the Government's *prima facie* case. R.D. at 17. The ALJ found that ''Respondent has both taken responsibility for her actions and shown remorse for her unlawful conduct,'' noting that ''she demonstrated visible remorse for her misconduct'' and ''testified credibly and candidly about the circumstances surrounding the misconduct.'' *Id.* She also explained that Respondent's testimony regarding her ''health problems,'' the ''death of her son in a motorcycle accident, and her daughter's subsequent struggle with mental illness after losing her health insurance'' were ''appropriate mitigating factors'' which should be considered. *Id.* at 17–18.

The ALJ further found that although Respondent had made a false statement to the DI in an April 2011 phone call when she denied writing any prescriptions after her registration had expired, the ALJ rejected the Government's contention that she did so deliberately. *Id.* at 18. Instead, the ALJ found ''that it is quite plausible that [Respondent] unintentionally made the false statement,'' reasoning that ''the Government's argument regarding [her] lack of candor is undercut by the extensive and voluntary disclosures [she] made to [the DI] during that April 2011 telephone conversation, namely that she had not prepared or maintained any treatment records regarding these prescriptions.'' *Id.* The ALJ thus reasoned that ''[i]n light of the totality of [her] interaction with [the DI] and her credible testimony at the hearing, . . . her statement, while admittedly false, does not negatively outweigh her overall candor with the Agency.'' *Id.*

Next, the ALJ found ''that Respondent has demonstrated specific remedial measures which she has undertaken to prevent the reoccurrence of her unlawful conduct,'' including her completion of ''a continuing medical education class on prescribing for family members'' and that she ''has pledged to cease writing prescriptions for her daughter or any other family member.'' *Id.* at 19. The ALJ further noted that Respondent had discussed her daughter's treatment with her psychiatrist and confirmed that all of her daughter's prescriptions would henceforth be issued by him. *Id.*

The ALJ thus concluded that the Government's proposed sanction of denial would be ''too severe.'' *Id.* While finding that Respondent's ''misconduct was . . . serious,'' the ALJ recommended that Respondent be granted a restricted registration, concluding that she ''has now demonstrated that she understands the responsibilities and requirements of a DEA registrant.'' *Id.* at 19–20.

Having considered the record in its entirety, I adopt the ALJ's findings of fact and conclusions of law except as discussed below. While I reject the ALJ's finding that Respondent violated the CSA's prescription requirement when she prescribed to her daughter as unsupported by substantial evidence, I adopt her finding that Respondent violated DEA regulations when she prescribed a controlled substance after the expiration of her registration. I further reject the ALJ's finding that Respondent unintentionally made a false statement to the DI when she denied having written any controlled substance prescriptions after the expiration of her DEA registration. Because Respondent has failed to accept responsibility for her misconduct, I reject the ALJ's recommended sanction and will order that Respondent's application be denied.

**Findings of Fact**

Respondent is a Certified Nurse Practitioner licensed by the Board of Nursing for the State of New Mexico. GX 3, at 3. On June 23, 2010, the Executive Director of the Board of Nursing (Board) notified Respondent that she had reviewed evidence suggesting that Respondent had practiced on an expired license (and thus practiced without a license). GX 4, at 1. While the Executive Director noted that ''there is sufficient evidence for the Board to consider disciplinary actions against [Respondent's] nursing license,'' the Board offered Respondent a ''voluntary reprimand and fine.'' *Id., see also* GX 4, at 3. On July 2, 2010, Respondent accepted the reprimand, *id.* at 2, and in December 2010, the Board issued her a Voluntary Letter of Reprimand. GX 5.

Respondent also previously held a DEA Certificate of Registration, which authorized her to dispense controlled substances in schedules II through V, as a mid-level practitioner, at the registered address of 3715 Southern Blvd., Rio Rancho, New Mexico. GX 2, at 1. On January 31, 2011, the registration expired. *Id.* Thereafter, ''no controlled substances could be obtained, stored, administered, prescribed, or dispensed under'' the registration. *Id.* Respondent did not submit a renewal application until March 18, 2011. *Id.*

At some point not clear on the record, but after Respondent submitted her renewal application, Respondent called the DEA Office in Albuquerque regarding the status of her application. Tr. 16. The DI who was assigned the weekly duty of taking phone calls subsequently returned her call and

explained that her application had yet to be assigned to an investigator, but that it would be and that an investigator would contact her for further information. *Id.*

The DI testified that before she returned Respondent's phone call, she had determined that Respondent had previously held a DEA registration.[1] Id. at 17. The DI also testified that before she returned Respondent's call, she had queried the Board of Nursing's Web site and noted that Respondent had been reprimanded by the Board. *Id.*

During the phone call, the DI verified with Respondent that she had previously held a registration. *Id.* The DI also told Respondent that as part of the pre-registration investigation, she would be contacting the Board for more information regarding the basis of the reprimand. *Id.* She then discussed with Respondent the reason for having to submit a new application. Respondent told the DI that her registration had expired because she had failed to renew it. *Id.* at 22.

The DI asked Respondent if she had written any prescriptions past the expiration date; Respondent ''stated she had not.'' *Id.* The DI then told Respondent that she ''would be running a prescription monitoring program report [PMP]'' and ''explained to [her] what the PMP was and what it would show me.'' *Id.* The DI told Respondent that the PMP ''would show the prescriptions that were filled pursuant to her DEA number for a certain time period,'' *id,* and ''explained that [she] would be querying that to verify the information she had provided of not writing any prescriptions with an expired DEA number.'' *Id.* at 23.

Subsequently, the DI ran the PMP from August 1, 2009 through August 5, 2011. *Id.* at 23; GX 6. The DI testified that ''the document shows . . . that Ms. Mori had self-prescribed a controlled substance in August of 2009, and also that there was a patient by the name of Mia Mori who had a prescription written and filled on March 15 of 2011.'' *Id.;* GX 6, at 1. The DI testified that the report listed additional prescriptions written by Respondent for Mia Mori, which were for two schedule IV controlled substances, alprazolam and zolpidem, and which were written between August 29, 2009 through March 15, 2011. *Id.* at 24–25; GX 6, at 1–3. The PMP report also shows that on August 12, 2009, Respondent self-prescribed thirty tablets of zaleplon 10 mg, a schedule IV controlled substance. GX 6, at 1; 21 CFR 1308.14(c)(51).

The DI then testified that Respondent's DEA registration had expired on January 31, 2011. *Id.* at 25. She also reiterated that Respondent had not told her about the March prescription when she spoke to her in April 2011. *Id.*

Next, the DI testified regarding the process for renewing a registration and the procedures used by the Agency to notify a registrant regarding an impending expiration. More specifically, the DI explained that a DEA registration does not renew automatically, and that a ''renewal application . . . has to be submitted by the registrant, asking for a renewal of the number.'' *Id.* The DI further explained that the expiration date is printed on the face of the registration certificate, and that ''the [Agency's] registration unit . . . automatically generates two notices before the expiration, advising [the registrant that] you're coming close to the expiration date.'' *Id.* at 25–26. According to the DI, if a registration ''actually does expire before it is renewed . . . a delinquency notice is mailed out to the registered address of the registrant.'' *Id.* at 26.

The DI testified that after she discovered the March 15, 2011 prescription, she spoke again with Respondent by telephone. The DI explained to Respondent that she had run the PMP report and that there were three prescriptions filled after the expiration date which were written prior to the expiration date, and one prescription that was written after the expiration date that was also filled. *Id.* at 26. Regarding these prescriptions, the DI testified that Respondent told her ''that Mia Mori was her daughter and that she had written the prescription after her daughter had lost her health insurance, and that she had forgotten to advise me of that.'' *Id.* at 26–27. Respondent told the DI ''that her daughter had seen a psychiatrist'' and that she was ''treating her daughter's anxiety and that was why she had prescribed the alprazolam to her.'' *Id.* at 27.

The DI then asked Respondent to meet her and bring her daughter's patient chart for review. *Id.* Respondent told the DI that she had not created a patient chart for her daughter, and that she did not maintain any records regarding periodic evaluations of her daughter to determine whether her treatment was proceeding as it should. *Id.* at 27–28. Moreover, when asked by the Government's counsel if she knew if Respondent ''was conducting a medical examination of any sort,'' the DI answered that she did ''not know.'' *Id.* at 28.

The DI ran another PMP report using Mia Mori's name; the report covered the period from January 2006 through December 8, 2011. GX 7. The report shows that Respondent first began prescribing to her daughter in April 2007; the first prescription was for hydrocodone with acetaminophen, a schedule III controlled substance. Tr. 29; GX 7, at 2.

The report also shows that Respondent wrote multiple prescriptions for her daughter for both zolpidem and alprazolam. These include prescriptions for 90 tablets of zolpidem 10 mg on July 28 and October 17, 2007, as well a prescription for 30 tablets of zolpidem 10 mg on August 29, 2009, which was refilled on September 26, 2009. GX 7, at 2.

As for the alprazolam prescriptions, on October 23, 2009, Respondent wrote a prescription for 30 tablets of alprazolam 0.5 mg; this prescription was refilled on November 8, 18, and 29. *Id.* On December 9, 2009, Respondent wrote a prescription for her daughter for 60 tablets of alprazolam 0.5 mg; this prescription was refilled on December 28 and January 14, 2010. *Id.* This was followed by a February 3, 2010 prescription for 30 tablets of alprazolam 0.5 mg, which was refilled on February 12, 22, and March 3, 2010; as well as another prescription for 30 tablets of alprazolam 0.5 mg on March 14, 2010 (which was not filled until March 25, 2010). *Id.*

On April 15, 2010, Respondent wrote another prescription for 60 tablets of alprazolam 0.5 mg, which was refilled on May 20, June 15, and July 2, 2010. *Id.* This was followed by prescriptions for 30 tablets of alprazolam 0.5 mg on July 28, 2010 (which was refilled on August 9, 19, and 29), on September 8, 2010 (which was refilled on September 20, October 4, 15 and 27), and on January 14, 2011 (which was refilled four times through March 6, 2011). Respondent wrote a final prescription for 30 alprazolam 0.5 mg for her daughter on March 15, 2011, which was 43 days after her DEA registration had expired. *Id.*

The DI testified that the 2007 prescriptions were noteworthy because Respondent's daughter turned twenty-two in 2009, and the DI's understanding was that she had lost her health insurance upon reaching this age. Tr. 29. The DI stated that ''based on the information that [Respondent] provided,

[1] According to the DI, at the time of her first phone call with Respondent, the matter had yet to be assigned to an Investigator. However, the matter was eventually assigned to the DI. The record is less than transparent regarding whether at the time of the DI's initial phone call with Respondent she had queried the State Board's Web site as well as determined that Respondent had previously been registered or whether she made these inquiries prior to a second phone conversation.

her daughter would have had health insurance'' in 2007. *Id.* at 29–30.

The DI continued her investigation by contacting the pharmacies listed as having filled the controlled substances and asking them to pull the original prescriptions, the signature log, and the method of payment for those prescriptions. *Id.* at 31. Those documents indicated that each of those prescriptions was called in by Respondent for her daughter, and that Mia Mori had picked up the prescriptions. *Id.*

The DI testified that Respondent issued her daughter a total of thirty-three controlled substance prescriptions. *Id.* Of these, eleven were original prescriptions; the other twenty-two were refills. *Id.*

The DI testified that she provided a copy of her report to the New Mexico Board of Nursing, and that after the report was forwarded to the Board, it initiated a complaint and subsequently took action against Respondent's nursing license. *Id.* at 32. This resulted in a Settlement Agreement between the Board and Respondent in December 2011. *Id.* at 33–34; RX 4, at 2. Under the Settlement Agreement, Respondent received a letter of reprimand and was required to complete a continuing education course in patient/physician/family caregiver relationships. RX 4, at 2. Respondent completed the course in December 2011. *Id.* at 5.

Respondent testified that in 2004, after being released from active duty in the army, she had suffered a heart attack, and that about a year and a half later, her son was killed in a motorcycle accident. Tr. 53. Shortly thereafter, her daughter complained that ''she was going crazy'' and ''needed to see a psychiatrist.'' *Id.* at 53–54. Respondent stated that she took her daughter to a psychiatrist, who diagnosed her with ''severe anxiety disorder with an OCD component.'' *Id.* at 54. Subsequently, the psychiatrist recommended that Respondent's daughter see a specialist in OCD, and so she began treating with a Dr. Summers. *Id.*

When asked by her counsel as to why she had written her daughter prescriptions for Abilify (a non-controlled prescription drug) and alprazolam, Respondent testified that her daughter's OCD causes thoughts of self-harm, and she wanted to ensure that her daughter was mentally stable. *Id.* Respondent testified that she ''could not lose another child.'' *Id.*

Respondent then testified regarding several other prescriptions she had issued for her daughter. Specifically, Respondent testified that she prescribed Ambien (zolpidem) for her daughter on two occasions, including on August 29, 2009 (as well as on another date which she did not recall) because ''she was unable to sleep at all.'' *Id.* at 55. *See also* GX 7, at 2 (zolpidem prescriptions issued on 7/28/07 and 10/16/07). Respondent testified that Ambien had been prescribed for her daughter by her treating physicians, but did not state when or by whom specifically.[2] Id. at 56. Respondent testified that she also wrote her daughter a prescription for Percodan on April 21, 2007, when she had inflamed tonsils. *Id.* at 58.

Respondent stated that one of the reasons she wrote the prescriptions for her daughter was because she ''did not have insurance and the cost of the drugs,'' and ''to maintain her sanity, so that she would not commit suicide.'' *Id.* However, when the Government asked Respondent if her daughter had been diagnosed as suicidal, she stated: ''I have not read her records.'' *Id.* at 61. Moreover, Respondent's evidence shows that her daughter resumed treatment with her psychiatrist on January 13, 2011. RX 3, at 11. Yet the next day, Respondent issued to her daughter another prescription for thirty alprazolam with four refills. GX 8, at 40. Moreover, on March 15, 2011, Respondent issued another prescription for thirty alprazolam, which also authorized multiple refills. GX 8, at 45. Respondent offered no explanation as to why she issued these prescriptions when her daughter had resumed seeing her psychiatrist.

Respondent was also asked whether she looked into care alternatives when she knew her daughter would not be able to continue seeing her doctor. *Id.* at 62. Respondent first stated she did not, but then changed her response to ''yes.'' *Id.* Respondent then testified that there were neither free therapy services nor group therapy sessions available for her daughter, and that because she was stable, she decided to just continue her on the medication. *Id.* Respondent then admitted that when she informed the doctor that her daughter no longer had health insurance, he did not immediately cease all ties with her. *Id.* at 63. When asked whether she had developed a treatment plan with her daughter's psychiatrist for the period when her daughter did not have health insurance, Respondent replied that the psychiatrist had already created a treatment plan. *Id.*

Regarding the prescriptions she issued her daughter, Respondent also introduced several exhibits. The first of these is an affidavit by her daughter's psychiatrist, who stated that he had treated her daughter from April 2006 through 2011, and that he had diagnosed her with ''an anxiety disorder and secondary depression due to obsessive compulsive neurosis.'' RX 1. The psychiatrist stated that he had prescribed Abilify and alprazolam to Respondent's daughter. *Id.* The psychiatrist further stated that it was his understanding that ''due to insurance concerns,'' Respondent had ''actually filled out prescriptions for her daughter from the time frame of August 2010 through March 2011[3],'' and that ''[s]uch prescriptions would have been in conformance with my desired treatment including drugs ordered, strength indicated, and number of pills to be given.'' *Id.* Finally, the psychiatrist expressed his belief that the ''prescriptions were written in conformance with my treatment and do not indicate any prescription regime that was not recommended by me.'' *Id.* Yet, the psychiatrist did not address why Respondent had continued to prescribe alprazolam after her daughter had resumed treatment with him.

Regarding the prescribing class the Board required her to take, Respondent testified that ''it's common practice that is not well established to not prescribe for your family members, and that this is a real issue.'' *Id.* at 59. She further testified that she understood that she can never again prescribe to a family member. *Id.* And when asked by the ALJ if she had issued any prescriptions to her daughter since taking the class on prescribing to family members, Respondent answered ''absolutely not.'' *Id.* at 66.

Respondent also acknowledged that in December 2010, the State Board issued her a reprimand for not renewing her state license in a timely manner. *Id.* at 64–65. When the Government asked if it was correct that she then let her DEA registration lapse in January 2011, Respondent replied:

> Well, I didn't let it. I just was unaware of the expiration, and I didn't know this until I started refilling my New Mexico pharmacy license, where they require you to put in the expiration of your DEA. At that point, I

[2] Other evidence corroborates Respondent's testimony that Ambien had been prescribed to her daughter on multiple occasions by a Dr. D.R., beginning in May 2006. GX 7, at 2.

[3] In a letter written by the psychiatrist to Respondent's counsel approximately one week before he executed his affidavit, the psychiatrist stated that ''[a]pparently, in 2009[,] she [Respondent's daughter] was unable to afford health insurance. She was lost to follow-up until January 2011.'' RX 2, at 1. In resolving the apparent conflict between the dates during which Respondent's daughter lacked insurance, I give no weight to the psychiatrist's letter (which is unsworn) and rely solely on the affidavit.

called the DEA in El Paso, to ask them when that was, and that's how I found out. . . .

*Id.* at 64. Respondent admitted that notwithstanding having been reprimanded for not renewing her state license in a timely manner, she did not then check her DEA registration to determine if it was going to expire soon. *Id.* at 65. Indeed, she described herself as being ''very much'' scattered during the previous five years with regard to filing the renewals for her various licenses on time. *Id.* at 53. However, in response to a series of questions regarding whether she now understood the importance of keeping her licenses current, Respondent testified that she ''understood the gravity'' of the situation, *id.,* and on cross-examination, she testified that she had recently renewed her pharmacy license and had ''sent it in early.'' *Id.* at 66.

**Discussion**

Section 303(f) of the Controlled Substances Act (CSA) provides that the Attorney General ''may deny an application for [a practitioner's] registration if he determines that the issuance of such a registration is inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, the CSA directs that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). It is well settled that I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.; see also MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482.[4]

The Government has ''the burden of proving that the requirements for . . . registration . . . are not satisfied.'' 21 CFR 1301.44(d). However, where the Government has met its *prima facie* burden of showing that issuing a new registration to the applicant would be inconsistent with the public interest, an applicant must then ''present sufficient mitigating evidence'' to show why she can be entrusted with a new registration. *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))).

In this matter, while I reject the ALJ's conclusion that Respondent violated 21 U.S.C. 843(a)(2), I find Respondent violated DEA regulations when she issued a controlled substance prescription when she was not registered to do so. Accordingly, I agree with the ALJ's conclusion that factors two (Respondent's experience in dispensing controlled substances) and four (Respondent's compliance with applicable laws related to controlled substances) support the denial of Respondent's application. R.D. at 16–17. However, with respect to factor five, I reject the ALJ's conclusion that Respondent did not intentionally make a false statement to the DI when she denied having written any controlled substance prescriptions after her registration expired. Moreover, I reject the ALJ's conclusion that Respondent has ''both taken responsibility for her actions and shown remorse for her misconduct.'' *Id.* at 17. Indeed, Respondent offered no remorse for her misconduct in prescribing to her daughter after her registration expired. Nor did she offer any testimony addressing the materially false statement she made to the DI when she denied writing controlled substance prescriptions after the expiration of her registration.[5]

**Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances**

Under a longstanding Agency regulation, ''[a] prescription for a controlled substance [is not] effective [unless it is] issued for a legitimate medical purpose by an individual practitioner acting in the usual course of [her] professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of [21 U.S.C. § 829] and . . . the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' *Id.; see also* 21 U.S.C. 802(10) (defining the term ''dispense'' as meaning ''to deliver a controlled substance to an ultimate user by, or pursuant to *the lawful order of, a practitioner,* including the prescribing and administering of a controlled substance'') (emphasis added).

As the Supreme Court recently explained, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)).

Under the Controlled Substances Act, ''it is fundamental that a practitioner must establish a bona fide doctor-patient relationship in order to act 'in

[4] In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct. *Jayam Krishna-Iyer,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821. Likewise, findings under a single factor can support the denial of an application.

[5] As for factor one, I acknowledge that Respondent holds the requisite New Mexico certified nurse practitioner and controlled substance licenses. However, there is no ''recommendation'' one way or the other from the various state authorities as to whether Respondent's application should be granted.

While the possession of state authority to dispense controlled substances is a prerequisite for obtaining and maintaining a DEA registration, the CSA vests this Agency with ''a separate oversight responsibility [apart from that which exists in state authorities] with respect to the handling of controlled substances.'' *Mortimer B. Levin,* 55 FR 8209, 8210 (1990). DEA has therefore long recognized that it has ''a statutory obligation to make its independent determination as to whether the granting of [a registration] would be in the public interest.'' *Id.* Thus, while Respondent satisfies this prerequisite for obtaining registration, this factor is not dispositive of the public interest inquiry. *Id.* (holding that practitioner's reinstatement by state board ''is not dispositive'' in public interest inquiry).

As for factor three, while a history of criminal convictions for offenses involving the distribution or dispensing of controlled substances is a highly relevant consideration in the public interest inquiry, there are any number of reasons why a registrant may not have been convicted of such an offense, and thus, the absence of such a conviction is of considerably less consequence. *Jayam Krishna-Iyer,* 74 FR 459, 461 (2009). Accordingly, that Respondent has not been convicted of an offense related to the distribution or dispensing of a controlled substance is also not dispositive of whether granting her application ''is consistent with the public interest.'' 21 U.S.C. 823(f); *Krishna-Iyer,* 74 FR at 461.

the usual course of professional practice' and to issue a prescription for a legitimate medical purpose.'' *Patrick W. Stodola,* 74 FR 20727, 20731 (2009) (citing *Moore,* 423 U.S. at 141–43). The CSA generally looks to state law and medical practice standards to determine whether a practitioner has established a valid practitioner-patient relationship. *See United Prescription Services, Inc.,* 72 FR 50397, 50407 (2007) (citation omitted); *but see* 21 U.S.C. 829(e).

Under New Mexico regulations, a Certified Nurse Practitioner (CNP) who has ''fulfilled the requirements for prescriptive authority may prescribe and distribute dangerous drugs including controlled substances . . . within [her] clinical specialty and practice setting.'' N.M. Code § 16.12.2.13N(5). These regulations further provide that a CNP ''may prescribe, provide samples of and dispense any dangerous drug to a patient where there is a valid practitioner-patient relationship as defined in'' N.M. Code § 16.12.2.7. The latter provision defines a ''valid practitioner-patient relationship'' as:

> a professional relationship between the practitioner and the patient for the purpose of maintaining the patient's well-being. At minimum, this relationship is an interactive encounter between the practitioner and patient involving an appropriate history and physical or mental examination, ordering labs or diagnostic tests sufficient to make a diagnosis and providing, prescribing or recommending treatment, or referring to other health care providers. A patient record must be generated by the encounter. *Id.* § 16.12.2.7.V.

Based on this regulation, the Government argues that Respondent violated both federal and state law when she prescribed controlled substances such as alprazolam and Ambien (zolpidem) to her daughter because she ''kept no prescription records, kept no patient charts, and performed no physical or mental examinations.'' Gov't Br. 8. It further argues that ''[a] practitioner is not excused from establishing a valid [practitioner]-patient relationship simply because another practitioner has previously established a valid relationship and the course of prescribed controlled substances is the same as with the prior practitioner.'' *Id.* at 7 (citing *Randall L. Wolff,* 77 FR 5106 (2012)). With respect to the latter contention, the Government argues that the psychiatrist's ''post-approval of the program, [in] an attempt to bring validity to the prescriptions[,] instead reveals two New Mexico practitioners ignoring or unaware of the simple fact that a doctor-patient relationship is not transferrable.'' *Id.* at 8 (citations omitted).

As support for its contention that Respondent ''performed no physical or mental examinations,'' the Government cites the DI's testimony. Gov't Br. 4 (citing Tr. 27–28). However, while the DI testified that Respondent indicated ''that she had never made a patient chart for her daughter'' or provided her ''with any prescription records,'' *id.* (citing Tr. 27), on the issue of whether Respondent had examined her daughter, the DI's testimony lacked probative force.

More specifically, when asked if Respondent told her ''about weekly, monthly sessions of meeting with her daughter to diagnose or to make sure the treatment was proceeding as it should,'' the DI testified: ''No, she did not.'' Tr. 27. When the Government followed up by asking the DI if she knew ''why [Respondent] didn't provide you with any of that information?'' the DI testified: ''Because she stated she had not maintained any of those documents.'' *Id.* And when asked ''do you know if she [Respondent] was conducting a medical examination of any sort?,'' the DI testified: ''No, I do not know.'' *Id.* at 28.

Significantly, at no point did the Government ask the DI if she had specifically asked Respondent whether she had examined her daughter or had performed periodic evaluations of her and been told that she had not. Nor, during Respondent's testimony, did the Government ask her if she had examined her daughter or performed periodic evaluations of her.[6]

To be sure, there are cases in which evidence that a practitioner failed to create medical records has given rise to the inference that the practitioner failed to perform those tasks (such as taking the necessary history and performing an appropriate examination) which are essential for properly diagnosing and periodically re-evaluating her patient. Yet this case stands on a substantially different footing than those cases, because even if it is not within professional ethics for a Nurse Practitioner to prescribe to a family member,[7] the evidence is undisputed that Respondent was intimately involved in her daughter's wellbeing and the decision to seek psychiatric care. Thus, while Respondent may not have documented a history of her daughter's psychiatric condition, she was obviously well aware of her daughter's condition. So too, she was well aware of her daughter's diagnosis and her response to treatment. And significantly, upon resuming active treatment of Respondent's daughter, her psychiatrist made the same assessment of her condition and continued to prescribe alprazolam to her. *See* RX 3, at 9–10.

As noted above, the Government also cites the Agency decision in *Wolff,* to argue that a ''doctor-patient relationship is not transferrable'' and that Respondent ''ignor[ed] clear laws that make such transference of the doctor-patient relationship a violation.'' Gov't Br. 8. The Government ignores that the decision in *Wolff* specifically cited the testimony of an expert witness that it was not ''within the standard of care'' in the State where Dr. Wolff practiced ''for a physician to 'perpetuate[] the issuance of controlled substances ordered by another doctor without first establishing his own valid doctor-patient relationship.' '' 77 FR at 5107 n.2. Contrary to the Government's

[6] There is evidence that Respondent practiced at a med spa. *See* GX 1 (Respondent's application); Tr. 52 (Respondent's testimony that in 2006, she had ''moved into the medical aesthetics industry''). However, while New Mexico's regulations limit a CNP's prescribing authority to ''their clinical specialty and practice setting,'' N.M. Code § 16.12.2.13N(5), and it seems most unlikely that prescribing for psychiatric conditions was within Respondent's clinical specialty, the Government made no such contention.

[7] It is noted that the State Board required Respondent to take a course in ''patient/physician/family caregiver relationships.'' RX 4, at 2. While it seems unlikely that the Board would have required Respondent to take this course if prescribing to a family member was not a violation of professional standards, the Board's Order contains no reference to any such standard. *See generally* RX 4. Nor does the Government cite to any New Mexico statute, board regulation, policy statement, or decision (of either the Board or state courts) holding that prescribing to family members exceeds the bounds of professional practice. It also did not sponsor any expert testimony on the issue.

In her decision, the ALJ sidestepped the issue of the adequacy of the Government's proof, reasoning that ''[t]he parties acknowledge that [Respondent] violated both federal and state law when she issued the thirty-three prescriptions to'' her daughter. R.D. at 16 (citing, *inter alia,* Tr. 45). However, the cited portion of the transcript was simply the opening statement of Respondent's counsel and not testimony. Therein, Respondent's counsel stated: ''Should she have written prescriptions for her daughter? The answer is, no, she shouldn't have.'' Tr. 45.

Moreover, even were I to treat this statement as evidence, there are many things that people do that they shouldn't do. But that does not necessarily make the particular act a violation of a law or regulation. Given that the State Board required Respondent to take a course in prescribing to family members, Respondent may well have recognized that doing so was unethical or constituted malpractice. While Respondent testified that prescribing to family members ''is a real issue,'' Tr. 59, on cross-examination, the Government did not ask Respondent why she now recognized that doing so ''is a real issue'' or why she should not have written the prescriptions, and in any event, her acknowledgement does not constitute an admission that her ''actions completely betrayed any semblance of legitimate medical treatment'' and thus constituted drug dealing. *United States* v. *Feingold,* 454 F.3d 1001, 1010 (9th Cir. 2006).

understanding, neither the CSA, nor Agency regulations, address the issue of whether, and under what circumstances, a prescriber-patient relationship is transferable. Rather, this is an issue which can be decided only by reference to the standards adopted by the New Mexico authorities and the accepted standards of professional practice. Here, however, the Government cites to no state authority (whether a statute, regulation, administrative or judicial decision, or policy statement) to support its contention that Respondent violated ''clear laws.'' Nor did it offer any expert testimony to this effect.

Thus, while Respondent's failure to create a patient record for her daughter provides some evidence that Respondent lacked a legitimate medical purpose in prescribing alprazolam to her daughter, I conclude that the record as a whole does not support a finding that she violated the CSA's prescription requirement.[8] As for whether her failure to create a patient record is, by itself, sufficient to establish that she prescribed without a valid practitioner-patient relationship under New Mexico law, I conclude that that was a matter for state authorities. In short, I conclude that the Government's evidence establishes only that Respondent did not create state-required medical records. *See* N.M. Code §§ 16.12.2.7.V, 16.12.2.13.N(5)(g).

The Government's evidence does, however, establish that Respondent's registration expired on January 31, 2011, GX 2, and that on March 15, 2011, Respondent issued her daughter another prescription for alprazolam. *See* GX 7, at 1; GX 8, at 45. Under federal law, it is ''unlawful for any person knowingly or intentionally . . . to use in the course of the . . . dispensing of a controlled substance, . . . a registration number which is . . . expired.'' 21 U.S.C. 843(a)(2).

Regarding this violation, the DI testified that the expiration date of a registration ''is printed on the certificate'' and that the Agency's registration unit ''automatically generates two notices before the expiration'' advising a registrant of the impending expiration. Tr. 25–26. The DI also testified that after the expiration of a registration, a delinquency notice is also mailed to the registrant. *Id.* at 26. Respondent's registration was not ''retired from the DEA computer system [until] March 1, 2011.'' GX 2, at 1. However, the Government offered no evidence that these notices were actually mailed to Respondent, let alone evidence as to what address they were sent.[9]

At the hearing, Respondent asserted that she ''was just unaware of the expiration'' of her registration, and ''didn't know this until [she] started refilling [sic] [her] New Mexico pharmacy license, where they require you to put in the expiration of your DEA.'' Tr. 64. She further asserted that notwithstanding the reprimand she had received in late December 2010 for practicing nursing without a license, she did not check her DEA registration to see if it was due to expire soon. *Id.* at 65. The Government did not, however, ask Respondent when she had filled out her pharmacy license application, or introduce any documentary evidence establishing the date on which she did this.

Notwithstanding Respondent's testimony (which the ALJ found to be credible) that she was unaware of the expiration of her registration, the ALJ found that Respondent ''violated federal law by issuing a prescription after the expiration of her'' registration. R.D. at 16 (citing 21 U.S.C. 843(a)(2)). However, as explained above, establishing a violation of section 843(a)(2) requires proof that Respondent knowingly issued the prescription after the expiration of her registration. As the D.C. Circuit has explained, to establish knowledge, the Government must either prove that when she wrote the March 15, 2011 prescription, Respondent had actual knowledge that her registration had expired or that she was willfully blind or deliberately indifferent to that fact that her registration had expired. *Cf. United States* v. *Alston-Graves,* 435 F.3d 331 (D.C. Cir. 2006). However, if Respondent ''act[ed] through ignorance, mistake or accident,'' *id.* at 337, she did not act with the requisite knowledge.

Here, the ALJ found Respondent's testimony credible that she was unaware of the expiration of her registration at the time she issued the prescription and did not become aware of its expiration until she filed her application for her state pharmacy license and was required to provide the expiration date. Notably, the Government adduced no evidence sufficient to support the rejection of the ALJ's credibility finding. As explained above, the Government produced no evidence establishing the date on which she filed her pharmacy license application. Nor did it establish when Respondent had last looked at her DEA registration. And while there is evidence that various notices regarding the expiration of her registration were likely sent to Respondent, there is no evidence that the notices were mailed to her new address, or forwarded from her registered address to either her new registered address or her mailing address. *See* GX 1. Thus, the Government has failed to prove that Respondent either had actual knowledge of, or was willfully blind to, the fact that her registration had expired. Rather, the evidence supports the conclusion that Respondent was simply ignorant of the fact that her registration had expired. Accordingly, the ALJ's conclusion that Respondent violated 21 U.S.C. 843(a)(2) is not supported by substantial evidence.

However, the Controlled Substances Act requires that ''[e]very person who dispenses . . . any controlled substance, shall obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him.'' 21 U.S.C. 822(a)(2). Agency regulations further provide that ''[a] prescription for a controlled substance may be issued only by an individual practitioner who is . . . [e]ither registered or exempted from registration. . . .''[10] 21 CFR 1306.03(a). *Cf. id.* § 1301.13(a) (''No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted. . . .''). To establish a violation of 21 CFR 1306.03(a), the Government is required to prove only that Respondent issued a prescription for a controlled substance when she was not registered to do so; it is not required to prove that Respondent knew that she lacked a valid registration when she issued the prescription. Accordingly, I find that Respondent violated DEA regulations when she issued the March 15, 2011 alprazolam prescription.[11]

[8] It is also noted that the Government makes no claim that the drugs Respondent prescribed to her daughter were being abused or diverted to others.

[9] According to the Government's evidence, Respondent was registered at the address of PMG GI, 3715 Southern Blvd., Rio Rancho, New Mexico. GX 2, at 1. However, on her application, Respondent listed her proposed registered address as Eden Medspa, 405 Kiva Court, Santa Fe, New Mexico. GX 1, at 1. Under federal law, ''[e]very registrant . . . shall be required to report any change of professional or business address in such manner as the Attorney General shall by regulation require.'' 21 U.S.C. 827(g); *see also* 21 CFR 1301.51 (providing procedure for modifying address). While Respondent was required to inform the Agency that she had changed her address and modify her registration, no such allegation was raised by the Government. Moreover, no evidence was adduced as to whether her mail had been forwarded to her by the clinic listed on her expired registration.

[10] Respondent makes no claim that she was exempt from registration.

[11] While there was also evidence that Respondent self-prescribed thirty tablets of zaleplon, *see* GX 6, at 1, the Government offered no further evidence or

**Factor Five—Such Other Conduct Which May Threaten Public Health and Safety**

In making the public interest determination, ''this Agency also places great weight on a registrant's candor, both during an investigation and in any subsequent proceeding.'' *Robert H. Hunt,* 75 FR 49995, 50004 (2010); *see also, e.g., The Lawsons, Inc., t/a The Medicine Shoppe Pharmacy,* 72 FR 74334, 74338 (2007); *Rose Mary Jacinta Lewis,* 72 FR 4035, 4042 (2007) (holding that lying under oath in proceeding to downplay responsibility supports conclusion that physician ''cannot be entrusted with a registration''). As the Sixth Circuit has recognized, ''[c]andor during DEA investigations properly is considered by the DEA to be an important factor when assessing whether a . . . registration is consistent with the public interest.'' *Hoxie,* 419 F.3d at 483.

The Government argues that Respondent knowingly made a false statement to the DI when the DI asked her if she had written any prescriptions after the expiration of her registration and Respondent denied doing so. Gov't Br. 11. The ALJ rejected the Government's contention, explaining that she found it ''quite plausible that [Respondent] unintentionally made the false statement to'' the DI. R.D. at 18. As support for her conclusion, the ALJ reasoned that ''the Government's argument regarding [Respondent's] lack of candor is undercut by the extensive and voluntary disclosures which [Respondent] made to [the DI] *during that April 2011 telephone conversation,* namely that she had not prepared or maintained any treatment records regarding these prescriptions.'' *Id.* (emphasis added). The ALJ thus concluded that ''[i]n light of the totality of [Respondent's] interaction with [the DI] and her credible testimony at the hearing, . . . her statement, while admittedly false, does not negatively outweigh her overall candor with the Agency.'' *Id.*

I reject the ALJ's finding that Respondent unintentionally made the false statement. Indeed, the ALJ's conclusion clearly rests on a misreading of the record, which while not a model of clarity, nonetheless establishes that Respondent made the false statement in a phone call which occurred before the DI had run the PMP, and in fact, during this phone call, the DI specifically discussed with Respondent that her registration had expired and told her that she would be running a PMP report ''to verify the information [Respondent] had provided of not writing any prescriptions with an expired DEA number.'' Tr. 22–23. Moreover, the evidence clearly shows that what the ALJ characterized as Respondent's ''extensive and voluntary disclosures'' (regarding her failure to create and maintain treatment records for her daughter's prescriptions), were not made until a subsequent phone call which occurred after the DI had run the PMP report. Thus, contrary to the ALJ's understanding, it was only after Respondent was confronted with the evidence of her misconduct that she made the admissions regarding her failure to create records. And even then, she maintained that she had forgotten that she had written the March 15 prescription.

Of further note, Respondent submitted her application three days after she wrote the prescription and clearly knew then that her registration had expired. Moreover, the phone call in which she denied having written any prescriptions after the expiration of her registration occurred in April 2011, approximately a month (more or less) after she had written the prescription.[12] It simply defies credulity to suggest that Respondent did not remember having written the prescription in the preceding month, especially given that the prescription was written for her daughter.[13]

I therefore conclude that Respondent knowingly made the false statement to the investigator. I further conclude that the false statement was material in that it had '''a natural tendency to influence, or was capable of influencing, the decision of' the decisionmaking body to which it was addressed.'' *Kungys* v. *United States,* 485 U.S. 759, 770 (1988) (quoting *Weinstock* v. *United States,* 231 F.2d 699, 701 (D.C. Cir. 1956) (other citation omitted)) (quoted in *Samuel S. Jackson,* 72 FR 23848, 23852 (2007)); *see also United States* v. *Wells,* 519 U.S. 482, 489 (1997) (quoting *Kungys,* 485 U.S. at 770). Most significantly for this proceeding, the Supreme Court has explained that ''[i]t has never been the test of materiality that the misrepresentation or concealment would *more likely than not* have produced an erroneous decision.'' *Kungys,* 485 U.S. at 771 (emphasis in original). Rather, the test is ''whether the misrepresentation or concealment was predictably capable of affecting, *i.e.,* had a natural tendency to affect, the official decision.'' *Id.*

'''[T]he ultimate finding of materiality turns on an interpretation of substantive law,''' *id.* at 772 (int. quotations and other citation omitted), and must be met ''by evidence that is clear, unequivocal, and convincing.'' *Id.* That standard is met here. As explained above, under federal law, a practitioner cannot lawfully dispense a controlled substance unless she possesses a registration or is otherwise exempt from registration.[14] 21 U.S.C. 822(a)(2); 21 CFR 1306.03(a). So too, it is a violation of federal law for a practitioner to knowingly use an expired registration to dispense a controlled substance.[15] 21 U.S.C. 843(a)(2). Respondent's false statement denying that she had issued any controlled substance prescriptions after her registration expired was clearly material under the public interest standard, because the standard clearly directs the Agency to consider an applicant's ''[c]ompliance with applicable . . . Federal . . . laws relating to controlled substances.'' *Id.* § 823(f)(4).

That the DI made clear that she intended to obtain a PMP report and verify the validity of Respondent's statement does not make her statement immaterial. As the First Circuit has noted with respect to the material falsification requirement under 18 U.S.C. 1001, ''[i]t makes no difference that a specific falsification did not exert influence so long as it had the *capacity* to do so.'' *United States* v. *Alemany Rivera,* 781 F.2d 229, 234 (1st Cir. 1985); *see also United States* v. *Norris,* 749 F.2d 1116, 1121 (4th Cir. 1984) (''There is no requirement that the false statement influence or effect the decision making process of a

argument regarding the lawfulness of this prescription. I therefore do not consider it.

[12] In its brief, the Government asserts that the conversation occurred on April 14, 2011. Gov. Br. 11. Yet the record does not establish anything more than that it occurred in April 2011. *See* Tr. 21 (testimony of DI: ''I had a phone conversation with [Respondent] in April, and we discussed the licensing information, and at that point, I also asked [her] if she had prescribed controlled substances to anyone after the expiration date of her prior registration.''); *see also id.* (Government counsel: ''And do you know the date of this phone call or approximate date?'' DI: ''It was in April . . . of 2011.'').

[13] In support of her contention that Respondent did not deliberately make the false statement, the ALJ also cited Respondent's ''credible testimony at the hearing.'' R.D. at 18. Yet, Respondent offered no testimony regarding the circumstances surrounding her statement. Thus, the ALJ's finding does not rest on a credibility determination.

[14] Respondent makes no argument that she was exempt from registration at the time she issued the prescription to her daughter.

[15] That in this matter, the Government did not ultimately prove Respondent knew that her registration had expired does not make her statement immaterial. Moreover, at the time of the statement, Respondent knew her registration had expired, and that when she issued the prescription, she did not have authority to do so. 21 CFR 1306.03(a).

department of the United States Government.'').

To the extent the ALJ's opinion suggests that because Respondent, in a subsequent conversation, admitted to various other acts (but not to writing a prescription after her registration expired), and thus her overall candor excuses her false statement, I reject it. Indeed, adopting the ALJ's reasoning would create a perverse incentive to falsely deny the commission of acts which could result in the denial of one's application, in the hope that the Agency's investigator would simply take one at her word. Contrary to the ALJ's understanding, there is no free pass for those who make a false statement during the course of an Agency investigation, and those who seek registration from the Agency have an obligation to provide truthful answers to all material questions asked by Agency personnel, no matter the stage of the investigation. I therefore conclude that Respondent's false statement provides additional grounds to conclude that her registration would be inconsistent with the public interest.[16]

**Sanction**

As found above, while I reject the Government's contention that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in violation of federal and state law when she prescribed to her daughter, I nonetheless find that Respondent violated federal law when she issued a controlled substance prescription after the expiration of her registration and then made a materially false statement to the DI when she denied having issued any such prescriptions after the expiration of her registration. Had the proven violations been limited to Respondent's issuance of a controlled substance prescription after the expiration of her registration, I would likely have concluded that denial of her application would be unwarranted. *See Jacobo Dreszer,* 76 FR 19386, 19387–88 (2011) (holding that even where the Government has made out a *prima facie* case under the public interest standard, a respondent can argue that ''his conduct was not so egregious as to warrant revocation''); *Gregory D. Owens,* 74 FR 36751, 36757 n.22 (2009) (''in assessing what sanction to impose, the Agency . . . considers the extent and egregiousness of a practitioner's misconduct.'').

However, I find that Respondent's act in making a materially false statement to the Investigator constitutes sufficiently egregious misconduct to support the denial of her application. I therefore hold that the Government has satisfied its *prima facie* burden of showing that issuing a new registration to the applicant would be inconsistent with the public interest.

As DEA has repeatedly held, upon this showing, the applicant must then ''present sufficient mitigating evidence'' to show why she can be entrusted with a new registration. *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))). ''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs. Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [her] actions and demonstrate that [she] will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Cuong Tron Tran,* 63 FR 64280, 64283 (1998); *Prince George Daniels,* 60 FR 62884, 62887 (1995); *Hoxie* v. *DEA,* 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination). So too, in determining the appropriate sanction, the Agency has a substantial interest in deterring future acts of misconduct, both on the part of a respondent in a particular case and the community of registrants. *See Joseph Gaudio,* 74 FR 10083, 10094 (2009) (quoting *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007)); *see also Butz* v. *Glover Livestock Commission Co., Inc.,* 411 U.S. 182, 187–88 (1973); *Michael S.* Moore, 76 FR 45867, 45868 (2011).

Here, the ALJ found that ''Respondent has both taken responsibility for her actions and shown remorse for her unlawful conduct.'' R.D. at 17 (citing Tr. 53, 59). As to the first citation, Respondent testified regarding her having been reprimanded, for—in the words of her counsel—''not filling out things in a timely basis.'' Tr. 53. In this regard, Respondent testified that she was ''very much scattered'' and that she now ''absolutely understand[s] the gravity of this.'' *Id.* The issue, however, is not whether Respondent timely completed a renewal application but why she issued a prescription when she lacked legal authority to do so and then falsely denied doing so to the DI.[17] Respondent simply offered no testimony acknowledging that she had violated federal law when she issued a prescription after her registration expired. Nor did Respondent even address the circumstances surrounding the false statement she made to the DI. Accordingly, I reject the ALJ's finding that Respondent has accepted responsibility for her misconduct.

In recommending that I grant Respondent's application, the ALJ also cited various mitigating factors which I should consider including Respondent's health problems (a 2004 heart attack), her son's death in a motorcycle accident (in 2006), and her daughter's struggle with mental illness after losing her health insurance. R.D. at 17. While the first two events are indisputably tragic, they do not mitigate Respondent's misconduct, which occurred years later.

As for her daughter's struggle with mental illness after losing her insurance, because I find the allegation that Respondent acted outside of the usual course of professional practice in issuing prescriptions to her daughter to be unsupported by substantial evidence, I need not decide whether this mitigates her conduct. However, it clearly does not mitigate her misconduct in issuing the prescription after the expiration of her registration, as the evidence shows that Respondent's daughter had resumed treatment with her psychiatrist prior to the issuance of the prescription.

Most significantly, it does not excuse her deliberate and material false statement to the Investigator. Because Respondent has failed to acknowledge her misconduct in making the statement, I conclude that her application should be denied. However, in the event Respondent is willing to acknowledge her misconduct in making this statement, favorable consideration should be granted to a new application made no earlier than six months from the date of this Order.

**Order**

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that the application of Belinda R. Mori, N.P., for a DEA Certificate of Registration as a Mid-Level Practitioner, be, and it hereby is, denied. This Order is effective immediately.

[16] Respondent's false statement has generally been considered under factor five, as other conduct which may threaten public health or safety.

[17] At Tr. 59, Respondent testified regarding what she had learned in the class about prescribing for family members. Respondent is not, however, required to acknowledge wrongdoing for unproven misconduct.

Dated: June 9, 2013.

**Michele M. Leonhart,**

*Administrator.*

[FR Doc. 2013–14447 Filed 6–17–13; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### David M. Lewis, D.M.D., Dismissal of Proceeding

On December 5, 2012, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David M. Lewis, D.M.D. (Registrant), of Sacramento, California. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration BL7253115, and the denial of any pending application to renew or modify his registration, on the ground that he lacks authority to handle controlled substances in California, the State in which he is registered with DEA. Show Cause Order at 1 (citing 21 U.S.C. 823(f) & 824(a)(3)). Show Cause Order at 1. The Order also alleged that Registrant's registration ''will expire by its terms on March 31, 2013.'' *Id.*

Specifically, the Show Cause Order alleged that on February 24, 2012, the Dental Board of California suspended Registrant's dental license, based ''on multiple findings'' that he performed ''unnecessary dental work'' and filed ''fraudulent insurance claims.'' *Id.* The Order further alleged that as a result of the suspension, Registrant is without authority to handle controlled substances in California, the State in which he is registered, and therefore, his registration is subject to revocation. *Id.* at 1–2 (citations omitted). The Show Cause Order also notified Registrant of his right to request a hearing on the allegations, or to submit a written statement in lieu of a hearing, the procedure for doing either, and the consequence for failing to do either. *Id.* at 2 (citing 21 CFR 1301.43).

According to the declaration of an Agency Diversion Investigator (DI), on December 18, 2012, he ''traveled to the office of Robert Zaro, Esq., who is the attorney for [Registrant].'' GX 3, at 1–2. The DI further stated that ''[a]fter [he] spoke about the nature of the [Show Cause Order], Robert Zaro requested to take possession of the [Order] for his client.'' *Id.* at 2.

Thereafter, on February 8, 2013, the Government submitted a Request for Final Agency Action to my Office. Therein, the Government maintains that more than thirty days have passed since the Order ''was served on Respondent and no request for [a] hearing has been received.'' Gov. Req. for Final Agency Action, at 1. The Government therefore seeks a final order revoking Respondent's registration. *Id.*

I reject the Government's request for two reasons. First, contrary to the Government's understanding, it has not properly served Respondent. Second, even had I concluded that service was proper, I would hold that the case is now moot.

As for whether service was proper, 21 U.S.C. 824(c) provides that ''[b]efore taking action pursuant to this section . . . the Attorney General shall serve *upon the . . . registrant* an order to show cause why registration should not be . . . revoked[] or suspended.'' (emphasis added). As the DI's affidavit makes clear, the Government did not serve the Show Cause Order ''upon the . . . [R]egistrant,'' *id.,* but on an attorney who, according to the DI, is the Registrant's attorney.

However, ''[n]umerous Federal Courts have held that '[t]he mere relationship between a defendant and his attorney does not, in itself, convey authority to accept service.''' *Harbinson* v. *Commonwealth of Virginia,* 2010 WL 3655980, at *9 (E.D. Va. Aug. 11, 2010) (quoting *Davies* v. *Jobs & Adverts Online, Gmbh,* 94 F.Supp.2d 719, 722 (E.D. Va. 2000)). *See also United States* v. *Ziegler Bolt & Parts Co.,* 111 F.3d 878, 881 (Fed. Cir. 1997); *Grandbouche v. Lovell,* 913 F.2d 835, 837 (10th Cir. 1990); *Ransom* v. *Brennan,* 437 F.2d 5134, 518–19 (5th Cir. 1971). '''Rather, the party seeking to establish the agency relationship must show ''that the attorney exercised authority beyond the attorney-client relationship, including the power to accept service.'''''' *Harbinson,* 2010 WL 3655980, at * 9 (quoting *Davies,* 94 F.Supp.2d at 722 (quoting Ziegler, 111F.3d at 881)).

While an attorney's authority to act as an agent for the acceptance of process ''may be implied from surrounding circumstances indicating the intent of'' his client, *In re Focus Media Inc.,* 387 F.3d 1077, 1082 (9th Cir. 2004) (other citation and internal quotations omitted), ''an agent's authority to act cannot be established solely from the agent's actions.'' *Id.* at 1084. ''Rather, the authority must be established by an act of the principal.'' *Id.* (citing *FDIC* v. *Oaklawn Apartments,* 959 F.2d 170, 175 (10th Cir. 1992)).

Here, the only evidence submitted by the Government as to whether Registrant's attorney was authorized to accept the Show Cause Order on his behalf was the DI's statement that the attorney requested to take possession of the Order. In short, the Government offered no evidence of an act of the Registrant establishing that he had granted authority to the attorney to accept process on his behalf. *Focus Media,* 387 F.3d at 1084. Accordingly, I hold that the Government has not properly served Registrant. I therefore reject its request for a final order.[1]

### Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that the Order to Show Cause issued to David M. Lewis, D.M.D., be, and it hereby is, dismissed.

Dated: June 11, 2013.

**Thomas M. Harrigan,**

*Deputy Administrator.*

[FR Doc. 2013–14453 Filed 6–17–13; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Application; Lipomed

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on March 22, 2013, Lipomed, One Broadway, Cambridge, Massachusetts 02142, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

[1] Even had I found that the Government properly served Registrant, I would dismiss this matter as moot. As noted above, Respondent's registration was due to expire on March 31, 2013. Accordingly, I have taken official notice of the registration records of this Agency. *See* 5 U.S.C. 556(e). Those records show that Registrant's registration expired on March 31, 2013, that he did not file a renewal application (whether timely or not), and that his registration was retired on May 1, 2013.

It is well settled that ''[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.'' *Ronald J. Riegel,* 63 FR 67132, 67133 (1998); *see also William W. Nucklos,* 73 FR 34330 (2008). So too, because Registrant did not file a renewal application, there is no application to act upon. *See Nucklos,* 73 FR at 34330. Accordingly, there is neither a registration, nor an application, to act upon, and had the Government properly served Registrant, I would nonetheless hold that the case is moot.

| Drug | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methcathinone (1237) | I |
| 4-Mephedrone (1248) | I |
| N-Ethylamphetamine (1475) | I |
| N,N-Dimethylamphetamine (1480) | I |
| Fenethylline (1503) | I |
| Aminorex (1585) | I |
| 4-Methylaminorex (cis isomer) (1590) | I |
| Gamma Hydroxybutyric Acid (2010) | I |
| Methaqualone (2565) | I |
| Mecloqualone (2572) | I |
| JWH–250 (6250) | I |
| SR–18 (Also known as RCS–8) (7008) | I |
| JWH–019 (7019) | I |
| JWH–081 (7081) | I |
| SR–19 (Also known as RCS–4)(7104) | I |
| JWH–018 AND AM–678 (7118) | I |
| JWH–122 (7122) | I |
| JWH–073 (7173) | I |
| JWH–200 (7200) | I |
| AM–2201 (7201) | I |
| JWH–203 (7203) | I |
| Alpha-ethyltryptamine (7249) | I |
| Ibogaine (7260) | I |
| CP–47497 (7297) | I |
| CP–47497 C8 Homologue (7298) | I |
| Lysergic acid diethylamide (7315) | I |
| 2C–T–7 (7348) | I |
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Parahexyl (7374) | I |
| Mescaline (7381) | I |
| 2C–T–2 (7385) | I |
| 3,4,5-Trimethoxyamphetamine (7390) | I |
| 4-Bromo-2,5-dimethoxyamphetamine (7391) | I |
| 4-Bromo-2,5-dimethoxyphenethylamine (7392) | I |
| 4-Methyl-2,5-dimethoxyamphetamine (7395) | I |
| 2,5-Dimethoxyamphetamine (7396) | I |
| JWH-398 (7398) | I |
| 2,5-Dimethoxy-4-ethylamphetamine (7399) | I |
| 3,4-Methylenedioxyamphetamine (7400) | I |
| 5-Methoxy-3,4-methylenedioxyamphetamine (7401) | I |
| N-Hydroxy-3,4-methylenedioxyamphetaimine (7402) | I |
| 3,4-Methylenedioxy-N-ethylamphetamine (7404) | I |
| 3,4-Methylenedioxymethamphetamine (7405) | I |
| 4-Methoxyamphetamine (7411) | I |
| 5-Methoxy-N–N-dimethyltryptamine (7431) | I |
| Alpha-methyltryptamine (7432) | I |
| Bufotenine (7433) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| 5-Methoxy-N,N-diisopropyltryptamine (7439) | I |
| N-Ethyl-1-phenylcyclohexylamine (7455) | I |
| 1-[1-(2-Thienyl)cyclohexyl]piperidine (7470) | I |
| 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (7473) | I |
| N-Ethyl-3-piperidyl benzilate (7482) | I |
| N-Methyl-3-piperidyl benzilate (7484) | I |
| N-Benzylpiperazine (7493) | I |
| 2C-D (7508) | I |
| 2C-E (7509) | I |
| 2C-H (7517) | I |
| 2C-I (7518) | I |
| 2C-C (7519) | I |
| 2C-N (7521) | I |
| 2C-P (7524) | I |
| 2C-T-4 (7532) | I |
| MDPV (7535) | I |
| Methylone (7540) | I |
| AM–694 (7694) | I |
| Acetyldihydrocodeine (9051) | I |
| Benzylmorphine (9052) | I |
| Codeine-N-oxide (9053) | I |
| Cyprenorphine (9054) | I |
| Desomorphine (9055) | I |

| Drug | Schedule |
|---|---|
| Etorphine (except HCl) (9056) | I |
| Codeine methylbromide (9070) | I |
| Dihydromorphine (9145) | I |
| Difenoxin (9168) | I |
| Heroin (9200) | I |
| Hydromorphinol (9301) | I |
| Methyldesorphine (9302) | I |
| Methyldihydromorphine (9304) | I |
| Morphine methylbromide (9305) | I |
| Morphine methylsulfonate (9306) | I |
| Morphine-N-oxide (9307) | I |
| Myrophine (9308) | I |
| Nicocodeine (9309) | I |
| Nicomorphine (9312) | I |
| Normorphine (9313) | I |
| Pholcodine (9314) | I |
| Thebacon (9315) | I |
| Acetorphine (9319) | I |
| Acetylmethadol (9601) | I |
| Allylprodine (9602) | I |
| Alphacetylmethadol except levo-alphacetyl-methadol (9603) | I |
| Alphamethadol (9605) | I |
| Dioxaphetyl butyrate (9621) | I |
| Dipipanone (9622) | I |
| Elhylmethylthiambutene (9623) | I |
| Etonitazene (9624) | I |
| Etoxeridine (9625) | I |
| Furethidine (9626) | I |
| Hydroxypethidine (9627) | I |
| Ketobemidone (9628) | I |
| Levomoramide (9629) | I |
| Levophenacylmorphan (9631) | I |
| Morpheridine (9632) | I |
| Noracymethadol (9633) | I |
| Norlevorphanol (9634) | I |
| Normethadone (9635) | I |
| Norpipanone (9636) | I |
| Phenadoxone (9637) | I |
| Phenampromide (9638) | I |
| Phenoperidine (9641) | I |
| Piritramide (9642) | I |
| Proheptazine (9643) | I |
| Properidine (9644) | I |
| Racemoramide (9645) | I |
| Trimeperidine (9646) | I |
| Phenomorphan (9647) | I |
| Propiram (9649) | I |
| Tilidine (9750) | I |
| Para-Flouorofentanyl (9812) | I |
| 3-Methylfentanyl (9813) | I |
| Acetyl-alpha-methylfentanyl (9815) | I |
| Beta-hydroxy-3-methylfentanyl (9831) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Lisdexamfetamine (1205) | II |
| Phenmetrazine (1631) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Glutethimide (2550) | II |
| Nabilone (7379) | II |
| 1-Phenylcyclohexylamine (7460) | II |
| Phencyclidine (7471) | II |
| 4-Anilino-N-phenethyl-4-piperidine (8333) | II |
| Phenylacetone (8501) | II |
| 1-Piperidinocyclohexanecarbonitrile (8603) | II |
| Alphaprodine (9010) | II |
| Anileridine (9020) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Etorphine HCl (9059) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |

| Drug | Schedule |
|---|---|
| Hydromorphone (9150) | II |
| Diphenoxylate (9170) | II |
| Ecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Hydrocodone (9193) | II |
| Levomethorphan (9210) | II |
| Levorphanol (9220) | II |
| Isomethadone (9226) | II |
| Meperidine (9230) | II |
| Meperidine intermediate-B (9233) | II |
| Metazocine (9240) | II |
| Methadone (9250) | II |
| Methadone intermediate (9254) | II |
| Metopon (9260) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Dihydroetorphine (9334) | II |
| Levo-alphacetylmethadol (9648) | II |
| Oxymorphone (9652) | II |
| Noroxymorphone (9668) | II |
| Phenazocine (9715) | II |
| Piminodine (9730) | II |
| Racemethorphan (9732) | II |
| Racemorphan (9733) | II |
| Alfentanil (9737) | II |
| Remifentanil (9739) | II |
| Sufentanil (9740) | II |
| Carfentanil (9743) | II |
| Tapentadol (9780) | II |
| Bezitramide (9800) | II |
| Fentanyl (9801) | II |

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I and II, which fall under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952 (a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than July 18, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: June 7, 2013.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2013–14446 Filed 6–17–13; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Application GE Healthcare

Pursuant to Title 21, Code of Federal Regulations 1301.34(a), this is notice that on April 29, 2013, GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to import small quantities of ioflupane, in the form of three separate analogues of Cocaine, to validate production and quality control systems, for a reference standard, and for producing material for a future investigational new drug (IND) submission.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance listed in schedules I and II, which falls under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR § 1301.43, and in such form as prescribed by 21 CFR § 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than July 18, 2013.

This procedure is to be conducted simultaneously with, and independent

of, the procedures described in 21 CFR § 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic classes of any controlled substances in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR § 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: June 7, 2013.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2013–14456 Filed 6–17–13; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances, Notice of Registration, National Center for Natural Products Research-NIDA; Correction

In **Federal Register** (FR DOC) 2013–09325 on page 23597, in the issue of Friday, April 19, 2013, make the following correction:

On page 23597, in the first column, in the table, the last cells, ''II'' should read ''I''.

Dated: June 7, 2013.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2013–14442 Filed 6–17–13; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–0277]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested; Revisions of Currently Approved Collection and Extension of Currently Approved Collection: OJJDP National Training and Technical Assistance Center (NTTAC) Evaluation Feedback Form Package

**ACTION:** 30-Day Notice.

The Department of Justice, Office of Justice Programs will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 78, Number 52, page 16710 on March 18, 2013, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 18, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officers, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* OJJDP NTTAC Evaluation Feedback Form Package.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: State, Local, or Tribal. Other: Federal Government, Individuals or households; Not-for-profit institutions; Businesses or other for-profit. The Office for Juvenile Justice and Delinquency Prevention National Training and Technical Assistance Center (NTTAC) Evaluation Feedback Form Package is designed to collect in-person and online data necessary to continuously assess the outcomes of the assistance provided for both monitoring and accountability purposes and for continuously assessing and meeting the needs of the field. OJJDP NTTAC will send these forms to technical assistance (TA) recipients; conference attendees; training and TA providers; online meeting participants; in-person meeting participants; and focus group participants to capture important feedback on the recipients' satisfaction with the quality, efficiency, referrals, information and resources provided and assess the recipients' additional training and TA needs. The data will then be used to advise NTTAC on ways to improve the support provided to its users; the juvenile justice field at-large; and ultimately improve services and outcomes for youth.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 5140 respondents will complete forms and the response time will range from .03 hours to 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 470.83 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Planning and Policy Staff, Justice Management Division, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: June 12, 2013.

**Jerri Murray,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 2013–14355 Filed 6–17–13; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Death Gratuity

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Death Gratuity,'' 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 18, 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=201301-1240-002* (this link will only become active on the day following publication of this notice) 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:** 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:** The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, amended the Federal Employees' Compensation Act (FECA) by establishing a FECA death gratuity benefit of up to $100,000 for eligible beneficiaries of Federal employees and Non-Appropriated Fund Instrumentality employees who die from injuries incurred in connection with service with an Armed Force in a contingency operation. *See* 5 U.S.C. 8102a. The OWCP associates three forms with this ICR. Form CA–40 requests information necessary from an employee who chooses to name alternate beneficiaries from those otherwise established by law. Form CA–41 provides the means for those named beneficiaries to file benefit claims. Information provided by such claimants allows the OWCP to determine payment eligibility. The statute and regulations also require Agencies to notify the OWCP immediately upon the death of a covered employee, and Form CA–42 provides the means to accomplish this notification. This latter form requests information necessary to administer any claim for benefits resulting from such a death.

This ICR has been classified as a revision, because the OWCP has enhanced disclosures on the forms about how the Agency uses information collected under this ICR and the accommodations available for respondents with disabilities. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 19, 2013 (78 FR 11638).

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 1240–0017. It should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New information collection provisions 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 within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0017. 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:* Death Gratuity.

*OMB Control Number:* 1240–0017.

*Affected Public:* Federal Government and Individuals or Households.

*Total Estimated Number of Respondents:* 272.

*Total Estimated Number of Responses:* 272.

*Total Estimated Annual Burden Hours:* 70.

*Total Estimated Annual Other Costs Burden:* $5.

Dated: June 12, 2013.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2013–14473 Filed 6–17–13; 8:45 am]

BILLING CODE 4510–CH–P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be a representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling,

investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Council members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year.

The terms of five members of the Council expire this year. The groups or fields they represent are as follows: (1) Employee organizations; (2) employers; (3) insurance; (4) accounting; and (5) the general public. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse Council.

Accordingly, notice is hereby given that any person or organization desiring to nominate one or more individuals for appointment to the Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph may submit nominations to Larry Good, Council Executive Secretary, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Suite N–5623, Washington, DC 20210, or to good.larry@dol.gov. Nominations (including supporting nominations) must be received on or before August 8, 2013. Please allow three weeks for regular mail delivery to the Department of Labor. Nominations may be in the form of a letter, resolution or petition, signed by the person making the nomination or, in the case of a nomination by an organization, by an authorized representative of the organization.

Nominations, including supporting letters, should:

- State the person's qualifications to serve on the Council.
- State that the candidate will accept appointment to the Council if offered.
- Include which of the five positions the candidate is nominated to fill.
- Include the nominee's full name, work affiliation, mailing address, phone number, and email address.
- Include the nominator's full name, mailing address, phone number, and email address.
- Include the nominator's signature, whether sent by email or otherwise.

Please do not include any information that you do not want publicly disclosed.

In selecting Council members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals.

Nominees will be contacted to provide information on their political affiliation and their status as registered lobbyists. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Council. Historically, this has meant a commitment of 15–20 days per year.

Signed at Washington, DC this 13th day of June, 2013.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration.*

[FR Doc. 2013–14460 Filed 6–17–13; 8:45 am]

BILLING CODE 4510–29–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment Request for Information Collection for Job Corps Application Data; Extension With Minor Revisions

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)].

This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of Job Corps application data collection forms (OMB Control NO. 1205–0025, expires 11/30/2013): ETA Form 652, Job Corps Data Sheet; ETA Form 655, Statement from Court or Other Agency; and ETA Form 682, Child Care Certification.

**DATES:** Written comments must be submitted to the office listed in the addressee's section below on or before August 19, 2013.

**ADDRESSES:** Submit written comments to Kristen Johnson, Office of Job Corps, Room N4463, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–8014 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 877–889–5627 (TTY/TDD). Fax: 202–693–2767. Email: *johnson.kirsten@dol.gov.* A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed above.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Job Corps is the nation's largest residential, educational, and career technical training program for young Americans. Job Corps was established in 1964 by the Economic Opportunity Act and currently is authorized by Title I–C of the Workforce Investment Act of 1998. For almost 50 years, Job Corps has helped prepare nearly 3 million at-risk young people between the ages of 16 and 24 for success in our nation's workforce. With 125 centers in 48 states, Puerto Rico, and the District of Columbia, Job Corps assists students across the nation in attaining academic credentials, including a High School Diploma (HSD) and/or General Educational Development (GED), and career technical training credentials, including industry-recognized certifications, state licensures, and pre-apprenticeship credentials.

Job Corps is a national program administered by the U.S. Department of Labor (DOL) through the Office of Job Corps and six Regional Offices. DOL awards and administers contracts for the recruiting and screening of new students, center operations, and the placement and transitional support of graduates and former enrollees. Large and small corporations and nonprofit organizations manage and operate 97 Job Corps centers under contractual agreements with DOL. These contract Center Operators are selected through a competitive procurement process that evaluates potential operators' technical expertise, proposed costs, past performance, and other factors, in accordance with the Competition in Contracting Act and the Federal Acquisition Regulations. The remaining 28 Job Corps centers, called Civilian

Conservation Centers, are operated by the U.S. Department of Agriculture Forest Service, via an interagency agreement. The DOL has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program.

**II. Review Focus**

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**III. Current Actions**

*Type of Review:* Extension with minor revisions.

*Title:* Job Corps Application Data.

*OMB Number:* OMB 1205–0025.

*Affected Public:* Job Corps applicants.

*Form(s):* ETA Form 652, ETA Form 655, ETA Form 682.

| ETA form No. | Total number of respondents | Frequency | Average time per respondent (minutes) | Total burden hours | Currently approved hours | NET change from 2010 |
|---|---|---|---|---|---|---|
| Job Corps Application ETA 652 | 86,581 | 1/person | 10 | 14,430 | 17,139 | −2,709 |
| Statement from Court ETA 655 | 86,581 | 1/person | 1 | 1,443 | 1,714 | −271 |
| Child Care Certification ETA 682 | 6,561 | On occasion | 3 | 328 | 41 | 276 |
| Total | | | | 16,201 | 18,894 | −2,693 |

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Signed in Washington, DC, on this 4th day of June, 2013.

**Gerri Fiala,**

*Acting Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2013–14459 Filed 6–17–13; 8:45 am]

**BILLING CODE 4510–FT–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Workforce Investment Act: Native American Employment and Training Council

**AGENCY:** Employment and Training Administration, U. S. Department of Labor.

**ACTION:** Notice of Teleconference Meeting.

**SUMMARY:** Pursuant to Section 10 (a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and Section 166 (h)(4) of the Workforce Investment Act (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the next teleconference meeting of the Native American Employment and Training Council (Council), as constituted under WIA.

**DATES:** The teleconference meeting will begin at 2:00 p.m. (Eastern Time) on Wednesday, July 10, 2013, and continue until 3:30 p.m. that day. The call in number is (888) 566–5784. Council members must enter the leader pass code number 7617445#. Members of the public can access the teleconference via listening mode by calling (888) 769–8927 and entering pass code 8202495#.

**ADDRESSES:** On July 10, 2013, the teleconference is being held at the U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, Northwest, Room C5515, Washington, DC 20210.

**SUPPLEMENTARY INFORMATION:** The teleconference is open to the public. Members of the public not participating on the teleconference call may submit a written statement on or before July 8, 2013, to be included in the record of the meeting. Submit written statements to Mrs. Evangeline M. Campbell, Designated Federal Official (DFO), U.S. Department of Labor, 200 Constitution Avenue, Northwest, Room S–4209, Washington, DC 20210. The formal agenda will focus on the following topics: (1) Two Page White Paper on Statement of Urgency Section 166 Indian and Native American Programs; (2) Our Story Project Update; (3) Program Year 2013 Training and Technical Assistance; and (4) Council Update and Recommendations. Persons who need special accommodations (TTY), or members of the public who would like a copy of the formal agenda, should contact Mr. Craig Lewis at (202) 693–3384, at least two business days before the meeting.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Evangeline M. Campbell, DFO, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue Northwest, Washington, DC 20210. Telephone number (202) 693–3737 (VOICE) (this is not a toll-free number).

Signed at Washington, DC, this 11th day of June, 2013.

**Gerri Fiala,**

*Acting Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2013–14457 Filed 6–17–13; 8:45 am]

**BILLING CODE 4501–FR–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application

of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

**DATES:** All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before July 18, 2013.

**ADDRESSES:** You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

## II. Petitions for Modification

*Docket No:* M–2013–024–C.

*Petitioner:* Wolf Run Mining Company, 99 Edmiston Way, Buckhannon, West Virginia 26201.

*Mine:* Sentinel Mine, MSHA I.D. No. 46–04168, located in Barbour County, West Virginia.

*Regulation Affected:* 30 CFR 75.500(d) (Permissible electric equipment).

*Modification Request:* The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible low-voltage or battery-powered nonpermissible electronic testing and diagnostic equipment in or inby the last open crosscut in the Sentinel Underground Coal Mine. The petitioner states that:

(1) The nonpermissible low-voltage or battery-powered electronic testing and diagnostic equipment would be limited to laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, signal analyzer devices, ultrasonic measuring devices, electronic component testers and electronic tachometers.

(2) Permissible approved voltage measuring instruments are available and will be used when possible.

(3) All other testing and diagnostic equipment used in or inby the last open crosscut will be permissible.

(4) Other testing and diagnostic equipment may be used if approved in advance by the District Manager.

(5) All nonpermissible low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment to be used in or inby the last open crosscut will be examined prior to use by a certified person to assure that the equipment is being maintained in a safe operating condition.

(6) The results of the examinations will be recorded and retained for one year and made available to MSHA on request.

(7) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible electronic testing and diagnostic equipment in or inby the last open crosscut.

(8) Nonpermissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above one percent. When methane is detected at such levels while the nonpermissible electronic testing and diagnostic equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(9) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(10) Coal production will cease, except for the time necessary to trouble-shoot under actual mining conditions. Coal may remain in or on the equipment in order to test and diagnose the equipment under load. This change will require production to cease except during actual testing. Accumulations of coal and combustible materials referenced in 30 CFR 75.400 will be removed before testing begins to provide additional safety to the miners.

(11) Nonpermissible electronic test and diagnostic equipment will not be used to test equipment when float coal dust is in suspension.

(12) All electronic and diagnostic equipment will be used in accordance with the manufacturer's recommended safe use procedures.

(13) Qualified personnel engaged in the use of nonpermissible electronic testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible electronic testing and diagnostic equipment in areas where methane could be present.

(14) The nonpermissible electronic testing and diagnostic equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the above terms and conditions.

(15) Cables supplying power to low-voltage test and diagnostic equipment will only be used when permissible testing and diagnostic equipment are unavailable.

The petitioner asserts that the proposed alternative method will guarantee no less than the same measure of protection afforded by the existing standard.

*Docket No:* M–2013–025–C.

*Petitioner:* Wolf Run Mining Company, 99 Edmiston Way, Buckhannon, West Virginia 26201.

*Mine:* Sentinel Mine, MSHA I.D. No. 46–04168, located in Barbour County, West Virginia.

*Regulation Affected:* 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

*Modification Request:* The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of nonpermissible low-voltage or battery-powered nonpermissible electronic testing and diagnostic equipment in return airways in the

Sentinel Underground Coal Mine. The petitioner states that:

(1) The nonpermissible low-voltage or battery-powered electronic testing and diagnostic equipment would be limited to laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, signal analyzer devices, ultrasonic measuring devices, electronic component testers and electronic tachometers.

(2) Permissible approved voltage measuring instruments are available and will be used when possible.

(3) All other testing and diagnostic equipment used in return airways will be permissible.

(4) Other testing and diagnostic equipment may be used if approved in advance by the District Manager.

(5) All nonpermissible low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment to be used in return airways will be examined prior to use by a certified person to assure that the equipment is being maintained in a safe operating condition.

(6) The results of the examinations will be recorded and retained for one year and made available to MSHA on request.

(7) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible electronic testing and diagnostic equipment in return airways.

(8) Nonpermissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above one percent. When methane is detected at such levels while the nonpermissible electronic testing and diagnostic equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(9) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(10) Coal production will cease, except for the time necessary to trouble-shoot under actual mining conditions. Coal may remain in or on the equipment in order to test and diagnose the equipment under load. This change will require production to cease except during actual testing. Accumulations of coal and combustible materials referenced in 30 CFR 75.400 will be removed before testing begins to provide additional safety to the miners.

(11) Nonpermissible electronic test and diagnostic equipment will not be used to test equipment when float coal dust is in suspension.

(12) All electronic and diagnostic equipment will be used in accordance with the manufacturer's recommended safe use procedures.

(13) Qualified personnel engaged in the use of nonpermissible electronic testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible electronic testing and diagnostic equipment in areas where methane could be present.

(14) The nonpermissible electronic testing and diagnostic equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the above terms and conditions.

(15) Cables supplying power to low-voltage test and diagnostic equipment will only be used when permissible testing and diagnostic equipment are unavailable.

The petitioner asserts that the proposed alternative method will guarantee no less than the same measure of protection afforded by the existing standard.

*Docket No:* M–2013–026–C.

*Petitioner:* Wolf Run Mining Company, 99 Edmiston Way, Buckhannon, West Virginia 26201.

*Mine:* Sentinel Mine, MSHA I.D. No. 46–04168, located in Barbour County, West Virginia.

*Regulation Affected:* 30 CFR 75.1002 (installation of electric equipment and conductors; permissibility).

*Modification Request:* The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of nonpermissible low-voltage or battery-powered nonpermissible electronic testing and diagnostic equipment within 150 feet of pillar workings in the Sentinel Underground Coal Mine. The petitioner states that:

(1) The nonpermissible low-voltage or battery-powered electronic testing and diagnostic equipment would be limited to laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, signal analyzer devices, ultrasonic measuring devices, electronic component testers and electronic tachometers.

(2) Permissible approved voltage measuring instruments are available and will be used when possible.

(3) All other testing and diagnostic equipment used within 150 feet of pillar workings or longwall faces will be permissible.

(4) Other testing and diagnostic equipment may be used if approved in advance by the District Manager.

(5) All nonpermissible low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment to be used within 150 feet of pillar workings will be examined prior to use by a certified person to assure that the equipment is being maintained in a safe operating condition.

(6) The results of the examinations will be recorded and retained for one year and made available to MSHA on request.

(7) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible electronic testing and diagnostic equipment within 150 feet of pillar workings.

(8) Nonpermissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above one percent. When methane is detected at such levels while the nonpermissible electronic testing and diagnostic equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(9) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(10) Coal production will cease, except for the time necessary to trouble-shoot under actual mining conditions. Coal may remain in or on the equipment in order to test and diagnose the equipment under load. This change will require production to cease except during actual testing. Accumulations of coal and combustible materials referenced in 30 CFR 75.400 will be removed before testing begins to provide additional safety to the miners.

(11) Nonpermissible electronic test and diagnostic equipment will not be used to test equipment when float coal dust is in suspension.

(12) All electronic and diagnostic equipment will be used in accordance with the manufacturer's recommended safe use procedures.

(13) Qualified personnel engaged in the use of nonpermissible electronic testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible electronic testing and diagnostic equipment in areas where methane could be present.

(14) The nonpermissible electronic testing and diagnostic equipment will

not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the above terms and conditions.

(15) Cables supplying power to low-voltage test and diagnostic equipment will only be used when permissible testing and diagnostic equipment are unavailable.

The petitioner asserts that the proposed alternative method will guarantee no less than the same protection afforded by the existing standard.

*Docket No:* M–2013–027–C.

*Petitioner:* North American Drillers, 130 Meadow Ridge Road, Suite 22, Mount Morris, Pennsylvania 15349.

*Mine:* American Energy Corporation's Century Mine, MSHA I.D. No. 33–01070, located in Belmont County, Ohio.

*Regulation Affected:* 30 CFR 77.1914(a) (Electrical equipment).

*Modification Request:* The North American Drillers (petitioner) requests a modification of the existing standard to permit the use of a 480-volt, three-phase, alternating current submersible pump, to dewater completed ventilation shafts prior to being put into service at the American Energy Corporation's Century Mine. The petitioner states that:

(1) The three-phase, alternating current electric power circuit for the pump will be designed and installed to:

(a) Contain either a direct or derived neutral wire that will be grounded through a suitable resistor at the source transformer or power center, and through a grounding circuit originating at the grounded side of the grounded resistor, that will extend along with the power conductors and serve as the grounding conductor for the frame of the pump. Power will not be supplied to any other electric equipment from this circuit. The borehole casing will be bonded to the system grounding medium.

(b) Contain a grounding resistor that limits the ground-fault current to not more than 15 amperes. The grounding resistor will be rated for the maximum fault current available and will be insulated from the ground for a voltage equal to the phase-to-phase voltage of the system.

(2) The following protections for the 480-volt pump circuit will be provided by a suitable circuit interrupting device of adequate interrupting capacity with devices to provide protection against under-voltage, grounded-phase, short-circuit, and/or overload:

(a) The under-voltage protection device will operate on a loss of voltage to prevent automatic restarting of the equipment.

(b) The grounded-phase protection device will be set not to exceed 40 percent of the current rating of the neutral grounding resistor.

(c) The pump-power system will include a test circuit that will inject a test current through the ground phase transformer.

(d) The short-circuit protection device will be set not to exceed the required short-circuit protection for the power cable or 75 percent of the minimum available phase-to-phase short-circuit current, whichever is less.

(e) The circuit will include a disconnecting device located on the surface and be installed in conjunction with the circuit breaker to provide visual evidence that the power is disconnected.

(f) The disconnecting device will include a means to determine visually that the pump power circuit is disconnected and provided with a means to lock and tag-out the system.

(g) The pump power system will include a fail-safe ground-check circuit or other, no less effective, device approved by the Secretary that will cause the circuit breaker to open when either the ground or pilot wire is broken. A manually operated test switch will be provided to verify the operation of the ground-check device.

(h) The pump power system will include a look-ahead circuit device to prevent closing the breaker when a phase to ground-fault condition exists on the system.

(3) The pump(s) electric control circuit(s) will be designed and installed so that:

(a) The pump(s) cannot start and/or run in either the manual or automatic mode if the water is below the low-water level.

(b) The low-water probe will be positioned to maintain water above the electrical connections of the pump motor.

(c) The low-water probe will be suitable for submersible pump control application.

(d) All probe circuits will be intrinsically safe.

(e) A motor controller will be provided and used for pump startup and shutdown.

(4) The pump installation will be equipped with a water-level indicator located at the pump electric controls so that a miner can determine the water level at the pump location prior to restarting the pump motor.

(5). The surface pump(s) control and power circuits will be examined, tested, and properly maintained in accordance with 30 CFR 77.502 as follows:

(a) A record of the examination will be kept in accordance with 30 CFR 77.502–2.

(b) The examination will include a functional test of the grounded phase protective device(s) to determine proper operation.

(c) A record of these functional tests will be recorded in the approved examination of electric equipment record books.

(d) Prior to placing the pump in service, an electrical examination will be performed.

(6) The power cable to the submersible pump motor will be suitable for this application and have a current carrying capacity not less than 125 percent of the full load motor current of the submersible pump motor.

(7) Splices and connections made in low- and medium-voltage submersible pump cable(s) will be made in a workmanlike manner and will meet the requirements of 30 CFR 77.504.

(8) The District Manager will be notified prior to construction via the required shaft plan for any blind drilled shaft when any submersible pump is to be utilized in dewatering any blind drill shaft(s).

The petitioner further states that:

(1) The petitioner will submit to the District Manager proposed revisions for the approved 30 CFR part 48 training plan that will specify task training for all qualified electricians who perform electric work and monthly electric examinations as required by 30 CFR 77.502, refresher training regarding the alternative method outlined in this petition, and the terms and conditions stated in the Proposed Decision and Order. The training will include the following elements:

(a) Training in hazards that could exist if the water level falls below the electric connections of the pump and pump motor.

(b) Training in safe restart procedures that will include the miner determining that the water level is above the electric components and pump motor prior to attempting to manually restart the pump motor.

(2) The procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply.

(3) When implementing the work of providing a blind drilled shaft for the mine operator, the blind drilled shaft remains full of water and personnel are never required to go below the collar of the blind drilled shaft.

(4) The petitioner will remove water from the blind drilled shaft installation upon completion of the work prior to

the mine operator connecting the blind drilled shaft to the underground mine.

(5) The blind drilled shaft is fully lined with steel casing and is grouted in place. This steel casing and grout seal isolate the completed blind drilled shaft from any coal seams mitigating any possibility for methane to enter the blind drilled shaft.

(6) The electric motor of any submersible pump is located below the pump intake making it impossible for the motor to ever be above the surface of the water.

(7) Currently there are no electric submersible motor/pump assemblies manufactured that will effectively pump water deeper than approximately 400 feet that are permissible as required in the existing standard.

(8) The petitioner proposes to use permissible pumps to dewater blind drilled shafts where depths are less than approximately 400 feet.

(9) At depths greater than approximately 400 feet, the alternative method outlined in this petition is consistent with prudent engineering design pursuant to 30 CFR 77.1900 whereas it minimizes the hazards to those employed in the initial or subsequent development of the blind drilled shaft.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

*Docket No:* M–2013–028–C.

*Petitioner:* Brody Mining, LLC, 33207 Pond Fork Rd., Wharton, West Virginia 25208.

*Mine:* Brody Mine No. 1, MSHA I.D. No. 46–09086, located in Boone County, West Virginia.

*Regulation Affected:* 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the use of the Getman Diesel Grader with rear wheel brakes only at the Brody Mine No. 1. The petitioner states that:

(1) The maximum speed of the diesel grader will be limited to 10 miles per hour by physically blocking the higher gear ratios that provide for speeds exceeding 10 miles per hour.

(2) The miners that operate the grader will be trained to recognize the gear blocking device and its proper application and requirements.

(3) The miners who operate the grader will be trained to drop the grader blade to provide additional stopping capability in emergencies.

(4) The low speeds coupled with the availability of the grader blade for stopping in emergencies will provide for the appropriate stopping ability. The rear wheel brakes will be maintained in proper working condition at all times.

(5) All other applicable requirements of the Federal Mine Safety and Health Act of 1977 and its corresponding regulations for the Getman grader will apply.

(6) This petition is limited to the Getman diesel grader, Serial No. 6732.

(7) The petitioner will submit to the District Manager proposed revisions for the approved 30 CFR part 48 training plan that will specify initial and refresher training consistent with the terms and conditions stated in this petition.

The petitioner asserts that the proposed alternative method will guarantee no less than the same measure of protection to all miners as would be provided by the existing standard.

Dated: June 13, 2013.

**George F. Triebsch,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 2013–14449 Filed 6–17–13; 8:45 am]

**BILLING CODE 4510–43–P**

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting; Notice

**DATE AND TIME:** The Legal Services Corporation's Institutional Advancement Committee will meet telephonically on June 25, 2013. The meeting will commence at 4:00 p.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 presiding Chair may solicit comments from the public.

**STATUS OF MEETING:** Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to discuss prospective funders for LSC's 40th anniversary celebration and development activities and LSC's 40th anniversary celebration planning.

A verbatim transcript will be made of the closed session meeting of the Institutional Advancement Committee. The transcript of any portion of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (9), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

**Matters To Be Considered**

*Open*

1. Approval of agenda.
2. Consider and act on fundraising policies.
3. Public comment.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

*Closed*

6. Discussion of prospective funders for LSC's 40th anniversary celebration and development activities.
7. Discussion of LSC's 40th anniversary celebration planning.
8. 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 who need 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 14, 2013.

**Atitaya C. Rok,**

*Staff Attorney.*

[FR Doc. 2013–14655 Filed 6–14–13; 4:15 pm]

**BILLING CODE 7050–01–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–13–0029]**

## Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before July 18, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

*Mail:* NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

*Email*: *request.schedule@nara.gov.*

*FAX:* 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

### Schedules Pending

1. Department of the Army, U.S. Army Corps of Engineers (DAA–AU–2013–0003, 2 items, 1 temporary item). Videotape recordings of routine activities of the New Orleans District Office, primarily from 1981 to 1995. Proposed for permanent retention are videotape recordings of the office's significant activities during this period.

2. Department of Commerce, Bureau of the Census (DAA–0029–2013–0003, 1 item, 1 temporary item). Records relating to processing user-defined tabulations created from decennial census microdata.

3. Department of Defense, National Reconnaissance Office (N1–525–12–2, 4 items, 4 temporary items). Records include budget, appropriations, and other expenditure accounting files.

4. Department of Defense, National Reconnaissance Office (N1–525–12–4, 3 items, 3 temporary items). Records include routine investigative, audit, litigation, and other legal files.

5. Department of Defense, Office of the Secretary of Defense (N1–330–13–3, 1 item, 1 temporary item). Master files of an electronic information system used to maintain scholarship and fellowship program records.

6. Department of Health and Human Services, Office of the Secretary (DAA–0514–2013–0002, 1 item, 1 temporary item). Master files of an electronic information system that maintains user login information for a health awareness Web site.

7. Department of the Navy, Agency-wide (DAA–0428–2012–0004, 11 items, 11 temporary items). Correspondence and related records regarding the administration of family support programs.

8. Department of Transportation, Federal Transit Administration (DAA–0408–2013–0009, 1 item, 1 temporary item). Master files of an electronic information system used to manage a financial assistance and award program.

9. Office of Personnel Management, Agency-wide (N1–478–11–4, 1 item, 1

temporary item.) Master files of an electronic information system used to create and manage vacancy announcements and develop lists of eligible applicants for federal jobs.

10. Special Inspector General for Afghanistan Reconstruction, Agency-wide (N1–220–11–3, 25 items, 12 temporary items). Records include routine hotline investigative case files pertaining to waste, fraud, and abuse; reference files; notes; and working files. Proposed for permanent retention are executive program and correspondence files, speeches, congressional meeting files, formal legal opinions, and investigative case files of historical significance.

Dated: June 11, 2013.

**Paul M. Wester, Jr.,**

*Chief Records Officer for the U.S. Government.*

[FR Doc. 2013–14402 Filed 6–17–13; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On May 13, 2013, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on June 12, 2013 to: Celia Lang, Permit No. 2014–002.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 2013–14361 Filed 6–17–13; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0001]**

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATES:** Weeks of June 17, 24, July 1, 8, 15, 22, 2013.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of June 17, 2013**

There are no meetings scheduled for the week of June 17, 2013.

**Week of June 24, 2013—Tentative**

There are no meetings scheduled for the week of June 24, 2013.

**Week of July 1, 2013—Tentative**

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 web cast 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.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

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 13, 2013.

**Rochelle C. Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2013–14586 Filed 6–14–13; 4:15 pm]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 237, OMB Control No. 3235–0528, SEC File No. 270–465.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (''Canadian retirement accounts''). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States (''Canadian-U.S. Participants'' or ''participants'') often continue to hold their retirement assets in their Canadian

retirement accounts rather than prematurely withdrawing (or ''cashing out'') those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most securities that are ''qualified investments'' for Canadian retirement accounts are not registered under the U.S. securities laws. Those securities, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Securities Act of 1933 (''Securities Act'').[1] As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.[2] Rule 237 under the Securities Act[3] permits securities of foreign issuers, including securities of foreign funds, to be offered to Canadian-U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act.

Rule 237 requires written offering documents for securities offered and sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and are exempt from registration under the U.S. securities laws. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The Commission understands that there are approximately 4101 Canadian issuers other than funds that may rely on rule 237 to make an initial public offering of their securities to Canadian-U.S. Participants.[4] The staff estimates that in any given year approximately 41 (or 1 percent) of those issuers are likely to rely on rule 237 to make a public offering of their securities to participants, and that each of those 41 issuers, on average, distributes 3 different written offering documents concerning those securities, for a total of 123 offering documents.

The staff therefore estimates that during each year that rule 237 is in effect, approximately 41 respondents[5] would be required to make 123 responses by adding the new disclosure statements to approximately 123 written offering documents. Thus, the staff estimates that the total annual burden associated with the rule 237 disclosure requirement would be approximately 20.5 hours (123 offering documents × 10 minutes per document). The total annual cost of burden hours is estimated to be $7769.50 (20.5 hours × $379 per hour of attorney time).[6]

In addition, issuers from foreign countries other than Canada could rely on rule 237 to offer securities to Canadian-U.S. Participants and sell securities to their accounts without becoming subject to the registration requirements of the Securities Act. However, the staff believes that the number of issuers from other countries that rely on rule 237, and that therefore are required to comply with the offering document disclosure requirements, is negligible.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

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 control number.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 13, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14452 Filed 6–17–13; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 77. In addition, the offering and selling of securities of investment companies (''funds'') that are not registered pursuant to the Investment Company Act of 1940 (''Investment Company Act'') is generally prohibited by U.S. securities laws. 15 U.S.C. 80a.

[2] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 7d–2 under the Investment Company Act, permitting foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act. 17 CFR 270.7d–2.

[3] 17 CFR 230.237.

[4] This estimate is based on the following calculation: 3970 equity issuers + 131 bond issuers = 4101 total issuers. *See* World Federation of Exchanges, Number of Listed Issuers, *available at http://www.world-exchanges.org/statistics/annual-query-tool* (providing number of equity issuers listed on Canada's Toronto Stock Exchange in 2012). After 2009, the World Federation of Exchanges ceased reporting the number of fixed-income issuers on Canada's Toronto Stock Exchange. The number of fixed-income issuers in 2012 is based on the ratio of the number of fixed-income issuers listed on Canada's Toronto Stock Exchange in 2009 (111) relative to the number of bonds listed on that exchange in that year (178) multiplied against the number of bonds listed on that exchange in 2012 (210): (111/178) × 210 = 131.

[5] This estimate of respondents only includes foreign issuers. The number of respondents would be greater if foreign underwriters or broker-dealers draft stickers or supplements to add the required disclosure to existing offering documents.

[6] The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $379 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 15Ba2–1 and Form MSD.

SEC File No. 270–0088, OMB Control No. 3235–0083

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15Ba2–1 (17 CFR 240.15Ba2–1) and Form MSD (17 CFR 249.1100), under the Securities and Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15Ba2–1 provides that an application for registration with the Commission by a bank municipal securities dealer must be filed on Form MSD. The Commission uses the information obtained from Form MSD filings to determine whether bank municipal securities dealers meet the standards for registration set forth in the Act, to maintain a central registry where members of the public may obtain information about particular bank municipal securities dealers, and to develop risk assessment information about bank municipal securities dealers.

Based upon past submissions, the staff estimates that approximately 22 respondents will utilize this application procedure annually. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 15Ba2–1 and Form MSD is 1.5 hours per respondent, for a total burden of 33 hours per year. The staff estimates that the average internal compliance cost per hour is approximately $310. Therefore, the estimated total annual cost of compliance for the respondents is approximately $10,230.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 12, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14421 Filed 6–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 7d–2, OMB Control No. 3235–0527, SEC File No. 270–464.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (''Canadian retirement accounts''). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States (''Canadian-U.S. Participants'' or ''participants'') often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or ''cashing out'') those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most investment companies (''funds'') that are ''qualified companies'' for Canadian retirement accounts are not registered under the U.S. securities laws. Securities of those unregistered funds, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Investment Company Act of 1940 (''Investment Company Act'').[1] As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.[2] Rule 7d–2 under the Investment Company Act[3] permits foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act.

Rule 7d–2 contains a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[4] Rule 7d–2 requires written offering materials for securities offered or sold in reliance on that rule to disclose prominently that those securities and the fund issuing those securities are not registered with the Commission, and that those securities and the fund issuing those securities are exempt from registration under U.S. securities laws. Rule 7d–2 does not require any documents to be filed with the Commission.

Rule 7d–2 requires written offering documents for securities offered or sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from registration under the U.S. securities laws, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average

[1] 15 U.S.C. 80a. In addition, the offering and selling of securities that are not registered pursuant to the Securities Act of 1933 (''Securities Act'') is generally prohibited by U.S. securities laws. 15 U.S.C. 77.

[2] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 237 under the Securities Act, permitting securities of foreign issuers to be offered to Canadian-U.S. Participants and sold to Canadian retirement accounts without being registered under the Securities Act. 17 CFR 230.237.

[3] 17 CFR 270.7d–2.

[4] 44 U.S.C. 3501–3502.

of 10 minutes per document to draft the requisite disclosure statement.

The staff estimates that there are 2866 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act.[5] The staff estimates that all of these funds have previously relied upon the rule and have already made the one-time change to their offering documents required to rely on the rule. The staff estimates that 143 (5 percent) additional Canadian funds may newly rely on the rule each year to offer securities to Canadian-U.S. Participants and sell securities to their Canadian retirement accounts, thus incurring the paperwork burden required under the rule. The staff estimates that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 429 offering documents. The staff therefore estimates that 143 respondents would make 429 responses by adding the new disclosure statement to 429 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d–2 disclosure requirement would be 71.5 hours (429 offering documents × 10 minutes per document). The total annual cost of these burden hours is estimated to be $27,099 (71.5 hours × $379 per hour of attorney time).[6]

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. 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 control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given in comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 13, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14451 Filed 6–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

[5] Investment Company Institute, 2013 Investment Company Fact Book (2013) at 202, tbl. 61.

[6] The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $379 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 15Bc3–1and Form MSDW.

SEC File No. 270–93, OMB Control No. 3235–0087

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'')(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 15Bc3–1 (17 CFR 15Bc3–1) and Form MSDW (17 CFR 249.1110) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15Bc3–1 provides that a notice of withdrawal from registration with the Commission as a bank municipal securities dealer must be filed on Form MSDW. The Commission uses the information submitted on Form MSDW in determining whether it is in the public interest to permit a bank municipal securities dealer to withdraw its registration. This information is also important to the municipal securities dealer's customers and to the public, because it provides, among other things, the name and address of a person to contact regarding any of the municipal securities dealer's unfinished business.

Based upon past submissions, the staff estimates that, on an annual basis, approximately three bank municipal securities dealers will file a notice of withdrawal from registration with the Commission as a bank municipal securities dealer on Form MSDW. The staff estimates that the average number of hours necessary to comply with the notice requirements set out in Rule 15Bc3–1 and Form MSDW is 0.5 per respondent, for a total burden of 1.5 hours per year. The staff estimates that the average internal compliance cost per hour is approximately $310. Therefore, the estimated total cost of compliance for the respondents is approximately $465.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 12, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14420 Filed 6–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69740; File No. SR–FICC–2013–04]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to the Government Securities Division Rules and the Mortgage-Backed Securities Division Clearing Rules in Connection With the Implementation of the Foreign Account Tax Compliance Act (FATCA)

June 12, 2013.

On April 22, 2013, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FICC–2013–04 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on May 8, 2013.[3] The Commission did not receive comments on the proposed rule change. This order approves the proposed rule change.

### I. Description

FICC is amending various FICC rules in its Government Securities Division (''GSD'') Rulebook and its Mortgage-Backed Securities Division (''MBSD'') Clearing Rules ''in connection with implementation of sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended, that were enacted as part of the Foreign Account Tax Compliance Act, and the Treasury Regulations or other official interpretations thereunder (collectively ''FATCA'').'' [4] In its filing with the Commission, FICC provided information concerning FATCA background, implementation, and FICC's proposed rule changes.

*FICC's Background Statement*

FATCA was enacted on March 18, 2010, as part of the Hiring Incentives to Restore Employment Act, and became effective, subject to transition rules, on January 1, 2013. The U.S. Treasury Department finalized and issued various implementing regulations (''FATCA Regulations'') on January 17, 2013. FATCA generally requires foreign financial institutions (''FFIs'') [5] to become ''participating FFIs'' by entering into agreements with the Internal Revenue Service (''IRS''). Under these agreements, FFIs are required to report to the IRS information on U.S. persons and entities that have (directly or indirectly) accounts with these FFIs. If an FFI does not enter into such an agreement with the IRS, FATCA will impose a 30% withholding tax on U.S.-source interest, dividends and other periodic amounts paid to such ''nonparticipating FFI'' (''Income Withholding''), as well as on the payment of gross proceeds arising from the sale, maturity, or redemption of securities or any instrument yielding U.S.-source interest and dividends (''Gross Proceeds Withholding,'' and, together with Income Withholding, ''FATCA Withholding''). The 30% FATCA Withholding taxes will apply to payments made to a nonparticipating FFI acting in any capacity, including payments made to a nonparticipating FFI that is not the beneficial owner of the amount paid and acting only as a custodian or other intermediary with respect to such payment. To the extent that U.S.-source interest, dividend, and other periodic amount or gross proceeds payments are due to a nonparticipating FFI in any capacity, a U.S. payor, such as FICC, transmitting such payments to the nonparticipating FFI will be liable to the IRS for any amounts of FATCA Withholding that the U.S. payor should, but does not, withhold and remit to the IRS.

According to FICC, under FATCA, a U.S. payor, such as FICC, could be required to deduct Income Withholding with regard to a *participating* FFI if either: (x) The participating FFI makes a statutory election to shift its withholding responsibility under FATCA to the U.S. payor; or (y) the U.S. payor is required to ignore the actual recipient and treat the payment as if made instead to certain owners, principals, customers, account holders or financial counterparties of the participating FFI. FICC believes it is not in a position to accept this burden shift and is implementing preventive measures to protect itself against such a burden through the rule changes contained herein.

According to FICC, as an alternative to FFIs entering into individual agreements with the IRS, the U.S. Treasury Department provided another means of complying with FATCA for FFIs which are resident in non-U.S. jurisdictions that enter into intergovernmental agreements (''IGA'') with the United States.[6] Generally, such a jurisdiction (''FATCA Partner'') would pass laws to eliminate the conflicts of law issues that would otherwise make it difficult for FFIs in its jurisdiction to collect the information required under FATCA and transfer this information, directly or indirectly, to the United States. An FFI resident in a FATCA Partner jurisdiction would either transmit FATCA reporting to its local competent tax authority, which in turn would transmit the information to the IRS, or the FFI would be authorized/required by FATCA Partner law to enter into an FFI agreement and transmit FATCA reporting directly to the IRS. Under both IGA models, payments to such FFIs would not be subject to FATCA Withholding so long as the FFI complies with the FATCA Partner's laws mandated in the IGA.

According to FICC, under the FATCA Regulations, (A) beginning January 1, 2014, FICC will be required to do Income Withholding on any payments made to any nonparticipating FFI approved for membership by FICC as of such date or thereafter, (B) beginning July 1, 2014, FICC will be required to do Income Withholding on any payments made to any nonparticipating FFI approved for membership by FICC prior to January 1, 2014 and (C) beginning January 1, 2017, FICC will be required to do Gross Proceeds Withholding on all nonparticipating FFIs, regardless when any such FFI's membership was approved.

*FICC's Statement on FATCA Implementation*

According to FICC, in preparation for FATCA's implementation, FFIs are being asked to identify their expected FATCA status as a condition of continuing to do business. Customary legal agreements in the financial services industry already contain provisions allocating the risk of any FATCA Withholding tax that will need to be collected, and requiring that, upon FATCA's effectiveness, foreign counterparties must certify (and periodically recertify) their FATCA status using the relevant tax forms that the IRS has announced it will provide.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69495 (May 2, 2013), 78 FR 26832 (May 8, 2013) (SR–FICC–2013–04).

[4] *Id.* at 26832.

[5] According to FICC, non-U.S. financial institutions are referred to as ''foreign financial institutions'' or ''FFIs'' in the FATCA Regulations.

[6] FICC states that as of the date of this proposed rule change filing, the United Kingdom, Mexico, Ireland, Switzerland, Spain, Norway Denmark, Italy and Germany have signed or initialed an IGA with the United States. The U.S. Treasury Department has announced that it is engaged in negotiations with more than 50 countries and jurisdictions regarding entering into an IGA.

[7] For example, credit agreements now routinely require foreign lenders to agree to provide certifications of their FATCA status under approved

Advance disclosure by an FFI client or counterparty would permit a withholding agent to readily determine whether it must, under FATCA, withhold on payments it makes to the FFI. If an FFI fails to provide appropriate compliance documentation to a withholding agent, such FFI would be presumed to be a nonparticipating FFI and the withholding agent will be obligated to withhold on certain payments.

FICC states that FATCA will require FICC to deduct FATCA Withholding on payments to certain members arising from certain transactions processed by FICC on behalf of such members.[8] Because FATCA treats any entity holding financial assets for the account of others as a ''financial institution,'' FICC believes that almost all of its members which are treated as non-U.S. entities for federal income tax purposes, including those members that are U.S. branches of non-U.S. entities, will likely be FFIs under FATCA (collectively, ''FFI Members'').[9] FICC says that as a result, it will be liable to the IRS for any failures to withhold correctly under FATCA on payments made to its FFI Members.

In light of this, FICC has evaluated its existing systems and services to determine whether and how it may comply with its FATCA obligations. As a result of this evaluation, FICC has determined that its existing systems currently cannot process the new FATCA Withholding obligations with regard to the securities transactions processed by it, as no similar withholding obligation of this magnitude has ever been imposed upon it to date, and FICC has therefore not built its systems to support such an obligation.

Further, FICC states that the vast majority of the transactions that are processed at FICC are processed through its netting and settlement systems at its GSD and MBSD divisions (the ''Systems''). At GSD, the netting and settlement system service provides centralized, automated clearance and guaranteed settlement of eligible U.S. Treasury bills, notes, bonds, strips and book-entry non-mortgage-backed agency securities. Through netting, the GSD establishes a single net long or short position for each participant's daily trading activity in a given security. The participant's net position is the difference between all long and all short positions in a given security.

At MBSD, the mortgage-backed securities trades entering the MBSD clearing and settlement systems are settled using either the Settlement Balance Order system (SBO) or the Trade-for-Trade system (TFTD). The SBO settlement system is MBSD's trade netting system, which nets by automatically pairing off settlement obligations with like terms, such as MBS product, coupon rate, maturity and settlement date, on a multilateral basis, *i.e.,* regardless of contra party identity, resulting in the fewest possible number of receive/deliver obligations. Through the Trade-for-Trade settlement system, members are given the opportunity to settle individual trades on a gross basis, as originally executed, following matching and comparison of each trade. Further netting is accomplished through MBSD's CCP Pool Netting service (''Pool Netting''). Members submit pool details (''Pool Instructs'') into the Pool Netting system for bilateral matching versus their counterparties' submissions. As many of the matched Pool Instructs as possible are then netted by the Pool Netting system. For pools that meet all the criteria, FICC steps in as the central counter-party to settle the net pool obligations with its members.

FICC believes that each division's net settlement functionality could make FATCA Withholding virtually impossible, or, at the very least, would create onerous efficiency and liquidity issues for both FICC and its membership. FICC believes that undertaking FATCA Withholding, given FICC's settlement functionality, could require FICC in certain circumstances to resort to a draw on FICC's clearing fund for GSD or MBSD, as applicable (''Clearing Fund'') in order to fund FATCA Withholding taxes with regard to nonparticipating FFI Members in non-FATCA Partner jurisdictions whenever the net credit owed to such FFI Member is less than the 30% FATCA tax. For example, if a nonparticipating FFI (in a non-FATCA Partner jurisdiction) is owed a $100M payment from the sale of U.S. securities, but such nonparticipating FFI is in a net debit position at the end of that day because of FICC's net settlement functionality, there would be no payment to this FFI Member from which FICC can withhold. In this example, FICC would likely need to fund the $30M FATCA Withholding tax until such time as the FFI Member can reimburse FICC and, as FICC has no funds for this purpose, it would likely require a draw on the Clearing Fund.[10] FICC would need to consider an increase in the amount of cash required to be deposited into the Clearing Fund, either by FFI Members or perhaps all of its members, which would reduce such member's liquidity and could have significant systemic effects. The amount of the FATCA Withholding taxes would be removed from market liquidity, which could lead to increased risk of member failure and increased financial instability.

For the reasons explained above and the following additional reasons, FICC is amending its rules to implement preventive measures that would generally require all of FICC's (i) existing members that are treated as non-U.S. entities for federal income tax purposes and (ii) any applicants applying to become members that are treated as non-U.S. entities for federal income tax purposes to be participating FFIs because FICC believes that:

- Undertaking FATCA Withholding by FICC (even if possible) would make it economically unfeasible for affected FFI Members to engage in transactions involving U.S. securities. It would likely also quickly cause a significant negative impact on such FFI Members' liquidity because such withholding taxes would be imposed on the very large sums that FICC pays to such FFI Members. Furthermore, members would be burdened with extra costs and the negative impact on liquidity caused by the likely need to substantially increase the amount of cash required to be deposited into the Clearing Fund.
- The cost of implementing a FATCA Withholding system for a small number of nonparticipating FFI Members would be substantial and disproportionate to the related benefit. Under the Model I IGA form and its executed versions with various FATCA Partners, FICC would not be required to withhold with regard to FFI residents in such FATCA Partner jurisdictions. Accordingly, FICC's withholding obligations under FATCA would effectively be limited to nonparticipating FFI Members in non-FATCA Partner jurisdictions. Since the

IRS forms to U.S. borrowers, and subscription agreements for alternative investment funds that are anticipated to earn U.S.-source income are routinely requiring similar covenants.

[8] According to FICC, FFI Members resident in IGA countries, that are compliant with the terms of applicable IGAs, should not be subject to FATCA Withholding.

[9] Currently, only a small percentage of the FICC's members are treated as non-U.S. entities for federal income tax purposes.

[10] FICC notes that the FATCA Regulations provide that ''clearing organizations'', which settle money on a net basis, may withhold on a similar net basis for FATCA purposes. However, it is unclear whether certain amounts being netted at FICC would qualify for the special FATCA netting rule. Even if the end of day net settlement amount would qualify as the correct amount to do FATCA Withholding on, the liquidity risks described herein are still present. This is because the sheer volume of FICC's net daily payments among FICC and members means that withholding FATCA tax from such net settlement payments, in any material proportion, would likely reduce liquidity and thus increase financial instability.

cost of developing and maintaining a complex FATCA Withholding system would be passed on to FICC's members at large, it may burden members that otherwise comply with, or are not subject to, FATCA Withholding.

• As briefly noted above, absent this current action and in order to avoid counterparty credit risk, FICC would likely require each of the nonparticipating FFI Members in non-FATCA Partner jurisdictions to make initial or additional cash deposits to the Clearing Fund as collateral for the approximate potential FATCA tax liability of such nonparticipating FFI Member or otherwise adjust required deposits to the Clearing Fund. The amount of such deposits, which could amount to billions of dollars, would be removed from market liquidity.

• From the nonparticipating FFI Member's perspective, having 30% of its payments withheld and sent to the IRS would have a severe negative impact on such nonparticipating FFI Member's financial status. In many cases, the gross receipts would be for client accounts, and the nonparticipating FFI Member would need to make such accounts whole. Without receipt of full payment for its dispositions, the nonparticipating FFI Member would not have sufficient assets to fund its client accounts.

• These rule changes should not create business issues or be onerous to FICC's membership because requiring FFIs to certify (and to periodically recertify) their FATCA status, and imposing the costs of non-compliance on them, are becoming standard market practice in the United States, separate and apart from membership in FICC.

*Rule Changes*

FICC states that managing the risks inherent in executing securities transactions is a key component of FICC's business. FICC's ''risk tolerances'' (*i.e.,* the levels of risk FICC is prepared to confront, under a range of possible scenarios, in carrying out its business functions) are determined by the Board of Directors, in consultation with the Group Chief Risk Officer. FICC uses a combination of risk management tools, including strict criteria for membership, to mitigate the risks inherent in its business.

In line with its risk management focus, FICC has determined that compliance with FATCA, so that FICC shall not be responsible for FATCA Withholding, should be a general membership requirement (A) for all applicants seeking membership at GSD or MBSD, as applicable, that are treated as non-U.S. entities for federal income tax purposes, and (B) for all existing FFI Members.[11] FICC is amending its rules as follows:

• Amend GSD Rule 1 and MBSD Rule 1 to add ''FATCA'', ''FATCA Certification'', ''FATCA Compliance Date'' [12], ''FATCA Compliant'' and ''FFI Member'', as defined terms;

• Amend GSD Rule 2A, Section 2(a)(v) and MBSD Rule 2A, Section 1 to (1) require foreign members to certify to FICC that they are FATCA Compliant and (2) add FATCA Compliance as a qualification requirement for any applicant that will be an FFI Member;

• Amend GSD Rule 2A Section 5 and MBSD Rule 2A Section 3 to add that each applicant must complete and deliver a FATCA Certification to FICC as part of its membership application unless FICC has waived this requirement with regard to membership type;

• Amend GSD Rule 2A Section 6 and MBSD Rule 2A Section 4 to add FATCA Compliance as a qualification requirement for any applicant that will be an FFI Member;

• Amend GSD Rule 3, Section 7 and MBSD Rule 3, Section 6 to specify that failure to be FATCA Compliant creates a duty upon an FFI Member (both new and existing) to inform FICC;

• Amend GSD Rule 3, Section 9 and MBSD Rule 3, Section 8 to require that all FFI Members (both new and existing), in general: (i) Agree not to conduct any transaction or activity through FICC if such FFI Member is not FATCA Compliant, (ii) certify and, as required under the timelines set forth under FATCA, periodically recertify, to FICC that they are FATCA Compliant; and (iii) indemnify FICC for any losses sustained by FICC resulting from such FFI Member's failure to be FATCA Compliant.

• FICC believes the proposed rule changes are consistent with the requirements of the Act. In particular, the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act [13] because they promote the prompt and accurate clearing and settlement of securities transactions by eliminating an uncertainty in payment settlement that would arise if FICC were subject to FATCA Withholding obligations under FATCA. The proposed rule changes are also consistent with Section 17A(b)(3)(D) of the Act [14] because they provide for the equitable allocation of reasonable dues, fees, and other charges among FICC's members. Specifically, the proposed rule changes allow FICC to comply with FATCA Regulations without developing and maintaining a complex FATCA Withholding system, the cost of which, as discussed above, would be would be passed on to FICC's members at large for the benefit of a small number of nonparticipating FFI Members.

## II. Discussion

Section 19(b)(2)(C) of the Act [15] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [16] requires the rules of a clearing agency to be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and protect investors and the public interest. The Commission finds that FICC's proposed rule change is consistent with these requirements because it is designed to comply with FATCA while eliminating uncertainty in funds settlement. Specifically, based on FICC's representations, the Commission understands that the proposed rule change is designed codify FICC's rules in a way that will allow FICC to comply with FACTA without developing and maintaining a complex FATCA Withholding system and, as a result, it will eliminate uncertainty in funds settlement that FICC believes will arise if FICC is subject to FATCA Withholding.[17]

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the

[11] FICC may grant a waiver under certain circumstances, provided, however, that FICC will not grant a waiver if it causes FICC to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property.

[12] Although Income Withholding with regard to FFI Members approved for membership by FICC prior to January 1, 2014 is first required under FATCA beginning July1, 2014, the proposed amendments to the GSD rules and MBSD rules would require such existing FFI Members to be FATCA compliant approximately 60 days prior to July 1, 2014 in order for FICC to comply with its disciplinary and notice processes as set forth in FICC.

[13] 12 U.S.C. 78q–1(b)(3)(F).

[14] 12 U.S.C. 78q–1(b)(3)(D).

[15] 15 U.S.C. 78s(b)(2)(C).

[16] 12 U.S.C. 78q–1(b)(3)(F).

[17] In approving this proposed rule change, the Commission is mindful of the IRS's jurisdiction respecting FATCA. This Order does not interpret FATCA. The Commission's approval of the proposed rule change in no way constitutes a determination or finding by the Commission that the proposed rule change complies with FATCA, which is under the purview of the IRS.

Act and in particular with the requirements of Section 17A of the Act[18] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FICC–2013–04) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14393 Filed 6–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69751; File No. SR–NYSE–2013–29]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Deleting NYSE Rule 476(a)(8), Which Addresses Wash Sales, in Order To Harmonize the Exchange's Rules With the Rules of the Financial Industry Regulatory Authority

June 13, 2013.

### I. Introduction

On April 10, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to delete NYSE Rule 476(a)(8) to harmonize the Exchange's rules with the rules of the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change was published for comment in the **Federal Register** on April 30, 2013.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules''). NYSE MKT LLC (''NYSE MKT'') became a party to the Agreement effective December 15, 2008.[4]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE, and NYSE MKT of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE rules in order to create a consolidated FINRA rulebook.[5] In this proposal, the Exchange has proposed to delete NYSE Rule 476(a)(8) in order to harmonize the NYSE's rules with the rules of FINRA.

Proposed Rule Change

NYSE Rule 476(a)(8) prohibits a member, member organization, principal executive, approved person, registered or non-registered employee of a member or member organization, or person otherwise subject to the jurisdiction of the Exchange from making a fictitious bid, offer, or transaction; or giving an order for the purchase or sale of securities the execution of which would involve no change of beneficial ownership; or executing such an order with knowledge of its character.

In 2009, the Exchange adopted NYSE Rule 6140(a)–(b),[6] which is substantially the same as FINRA Rule 6140(a)–(b) and which also addresses wash sale activity. NYSE Rule 6140(a) provides that no member or member organization shall execute or cause to be executed or participate in an account for which there are executed purchases of any NMS stock as defined in Rule 600(b)(47) of Regulation NMS[7] (''designated security'') at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price that does not reflect the true state of the market in such security.

NYSE Rule 6140(b) prohibits a member or member organization, for the purpose of creating or inducing a false or misleading appearance of activity in a designated security or creating or inducing a false or misleading appearance with respect to the market in such security, from (1) executing any transaction in such security which involves no change in the beneficial ownership thereof; (2) entering any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or (3) entering any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

In the filing, the Exchange represented that NYSE Rule 476(a)(8), which was adopted at a time when the Exchange was operating in a manual, on-floor trading environment, differs from NYSE Rule 6140 and FINRA Rule 6140 in that the second prong of NYSE Rule 476(a)(8), which prohibits giving an order for the purchase or sale of securities the execution of which would involve no change of beneficial ownership, can be read as having no scienter standard. On the other hand, NYSE Rule 6140 and FINRA Rule 6140 provide that a market participant is prohibited from engaging in wash sales that have the purpose of creating or inducing a false or misleading appearance of activity in a designated security.

The Exchange stated that it believes that the scienter requirement in NYSE Rule 6140 and FINRA Rule 6140 recognizes that in today's markets there can be certain instances of trading

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[18] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69441 (April 24, 2013), 78 FR 25327 (''Notice'').

[4] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE MKT LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE MKT to the substance of any of the Common Rules.

[5] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[6] *See* Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR–NYSE–2009–25).

[7] 17 CFR 242.600(b)(47).

activity that may inadvertently and unknowingly result in executions with no change in beneficial ownership, and that such conduct should not always be treated as a wash sale violation if the market participant did not act with purpose. The Exchange noted that activity involving an off-floor market participant's algorithmic orders that inadvertently execute against themselves due to latency issues could be deemed a violation of the second prong of NYSE Rule 476(a)(8), thus the Exchange has proposed to eliminate NYSE Rule 476(a)(8) because it believes that such conduct should not be treated as a wash sale violation in all instances, and stated that it will instead utilize NYSE Rule 6140 for disciplinary actions involving wash sales.

The Exchange also proposes to make a conforming amendment to NYSE Rule 6140(a) and (b) to expand its coverage to include principal executives, approved persons, registered or non-registered employees of a member or member organization or persons otherwise subject to the jurisdiction of the Exchange. The change to NYSE Rule 6140 will cover the persons originally covered by NYSE Rule 476(a)(8) who would be subject to disciplinary action for wash sales.

## III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules be 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 a national market system, and, in general, to protect investors and the public interest.

The Exchange is deleting NYSE Rule 476(a)(8), a rule which the Exchange explained was adopted to address manual, floor-based trading activity. The Exchange stated that NYSE Rule 6140, which has a scienter standard that the second prong of NYSE Rule 476(a)(8) lacks, substantively covers the same conduct as NYSE Rule 476(a)(8). The Exchange has explained that in today's markets, algorithmic trading can result in unintended executions with no change in beneficial ownership. The Exchange believes that such executions should not be treated as wash sale violations because they lack the intent to create or induce a false or misleading appearance of activity in a security. In addition, the Exchange is amending NYSE Rule 6140 to cover the same persons that NYSE Rule 476(a)(8) covered.

The Commission understands that algorithmic trading can result in inadvertent executions with no change in beneficial ownership.[11] The Exchange has represented that the proposed rule change would not result in any material change in the surveillance of potentially violative activity nor any material diminution of the Exchange's enforcement authority as it may still bring a disciplinary action in cases where a market participant engages in a significant number of trades without a change of beneficial ownership, even if such activity does not per se violate Rule 6140(b) because the participant did not act with ''purpose.'' The Exchange further represented that such unintended activity could also give rise to other violations, such as a failure to supervise under NYSE Rule 342, or a violation of just and equitable principles of trade or could otherwise constitute unethical activity under NYSE Rule 2010. Accordingly, the Commission expects the Exchange to continue to surveil for potential wash sale activity and to take necessary action as appropriate.

The Commission believes that the proposed deletion of NYSE Rule 476(a)(8) promotes harmonization, consistency and clarity with respect to the Exchange's rules [12] by resolving the inconsistent scienter standards of NYSE Rule 476(a)(8) and NYSE Rule 6140 and FINRA Rule 6140, as well as extending the breadth of persons covered by NYSE Rule 6140 to those persons covered by NYSE Rule 476(a)(8). The Commission further believes that the proposed rule change would result in less burdensome and more efficient regulatory compliance for firms that are members of FINRA and the NYSE. As such, the Exchange's rules would continue to protect investors and the public interest.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [13] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[14] that the proposed rule change (SR–NYSE–2013–29) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14467 Filed 6–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 15 U.S.C. 78f.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] The Commission notes that algorithmic trading resulting in executions with no change in beneficial ownership, even if unintended, raises concerns.

[12] The Exchange stated that it can bring disciplinary actions under NYSE Rule 476(a)(8) for conduct that occurred prior to the time the rule is deleted. Thus, the proposed rule change would have no impact on ongoing disciplinary actions involving violations of NYSE Rule 476(a)(8).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69744; File No. SR–BYX–2013–018]**

## Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2.11, Entitled ''BATS Trading, Inc. as Outbound Router''

June 12, 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 3, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. 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] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 2.11, entitled ''BATS Trading, Inc. as Outbound Router'', with respect to the authority of the Exchange or BATS Trading, Inc. (''BATS Trading'') to cancel orders on the Exchange's equity securities platform when a technical or system issue occurs, as well as to describe the operation of an error account for BATS Trading.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The Exchange proposes to amend Rule 2.11(a) by amending subparagraph (4) and adding new subparagraphs (6) and (7) that address the authority of the Exchange or BATS Trading to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for BATS Trading as it relates to the Exchange.[5] BATS Trading is the approved routing broker of the Exchange, subject to the conditions listed in Rule 2.11, 2.12. The Exchange relies on BATS Trading to provide outbound routing services from itself to routing destinations of BATS Trading (''Routing Destinations''). Additionally, the Exchange relies on BATS Trading to provide inbound routing services for BATS Exchange, Inc. (''BZX'').[6] When BATS Trading routes orders to a Routing Destination, it does so by sending a corresponding order in its own name to the Routing Destination. In the normal course, routed orders that are executed at Routing Destinations are submitted for clearance and settlement in the name of BATS Trading, and BATS Trading arranges for any resulting securities positions to be delivered to the Member that submitted the corresponding order to the Exchange.

#### Examples of Situations That May Lead to Cancelled Orders

A technical or systems issue may arise at BATS Trading, a Routing Destination, or the Exchange that may cause the Exchange or BATS Trading to take steps to cancel orders if the Exchange or BATS Trading determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the situations in which the Exchange or BATS Trading may decide to cancel orders.[7]

*Example 1.* If BATS Trading or a Routing Destination experiences a technical or systems issue that results in BATS Trading not receiving responses to immediate or cancel (''IOC'') orders that it sent to the Routing Destination and that issue is not resolved in a timely manner, BATS Trading or the Exchange would seek to cancel the routed orders affected by the issue.[8] For instance, if BATS Trading experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from Routing Destinations, it may be unable to receive timely execution or cancellation reports from the Routing Destinations, and BATS Trading or the Exchange may consequently seek to cancel the affected routed orders. Once the decision is made to cancel those routed orders, any cancellation that a Member submitted to the Exchange on its initial order during such a situation would be honored.[9]

*Example 2.* If the Exchange experiences a systems issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected Members of the cancellations. In those cases, the Exchange would seek to cancel any routed orders related to the Members' initial orders.

#### Examples of Situations That May Lead to Error Positions

In some instances, the technical or systems issue at BATS Trading, a Routing Destination, the Exchange, or a non-affiliate third party Routing Broker may also result in BATS Trading acquiring an error position that it must resolve. The examples set forth below describe some of the circumstances in which error positions may arise.

*Example A.* Error positions may result from routed orders that the Exchange or BATS Trading attempts to cancel but that are executed before the Routing Destination receives the cancellation message or that are executed because the Routing Destination is unable to process the cancellation message. Using the situation described in Example 1 above, assume that the Exchange seeks to cancel orders routed to a Routing Destination because it is not receiving timely execution or cancellation reports from the Routing Destination. In such a situation, BATS

[5] BATS Trading is a facility of the Exchange. Accordingly, under Rule 2.11, the Exchange is responsible for filing with the Commission rule changes and fees relating to the functions of BATS Trading. In addition, the Exchange is using the phrase ''BATS Trading or the Exchange'' in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of BATS Trading or the Exchange depending on the circumstances of the issue.

From time to time, the Exchange also uses non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing Brokers). In those cases, orders are submitted to the third-party Routing Broker through BATS Trading, the third-party Routing Broker routes the orders to the Routing Destination in its name, and any executions are submitted for clearance and settlement in the name of BATS Trading so that any resulting positions are delivered to BATS Trading upon settlement. As described above, BATS Trading normally arranges for any resulting securities positions to be delivered to the Member that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 2.11(a)(7)) result in connection with the Exchange's use of a third-party Routing Broker for outbound routing, and those positions are delivered to BATS Trading through the clearance and settlement process, BATS Trading would be permitted to resolve those positions in accordance with proposed Rule 2.11(a)(7)(B)–(E). If the third-party Routing Broker received error positions in connection with its role as a routing broker for the Exchange, and the error positions were not delivered to BATS Trading through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself and BATS Trading would not be permitted to accept the error positions, as set forth in proposed Rule 2.11(a)(7)(B).

[6] The Exchange has authority to receive inbound routes of equities orders by BATS Trading from BZX. *See* Securities Exchange Act Release No. 66807 (April 13, 2012), 77 FR 23300 (April 18, 2012) (SR–BYX–2012–006).

[7] The examples described in this filing are not intended to be comprehensive or exclusive. Rule 2.11, as proposed, would provide general authority for the Exchange or BATS Trading to cancel orders in order to maintain fair and orderly markets when technical and systems issues occur and would also set forth the manner in which error positions may be handled by the Exchange or BATS Trading. The proposed rule change is not limited to addressing order cancellation or error positions resulting only from the specific examples described in this filing.

[8] In a normal situation (*i.e.,* one in which a technical or systems issue does not occur), BATS Trading should receive an immediate response to an IOC order from a Routing Destination and would pass the resulting fill or cancellation on to the Member. After submitting an order that is routed to a Routing Destination, if a Member sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the Routing Destination. For instance, if the Routing Destination executes that order, the execution would be passed on to the Member and the cancellation instruction would be disregarded.

[9] If a Member did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor BATS Trading would treat any execution of that initial order or any subsequent routed order related to that initial order as an error.

Trading may still receive executions from the Routing Destination after connectivity is restored, which it would not then allocate to Members because of the earlier decision to cancel the affected routed orders. Instead, BATS Trading would post those positions into its error account and resolve the positions in the manner described below.

*Example B.* Error positions may result from an order processing issue at a Routing Destination. For instance, if a Routing Destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order (*i.e.,* a locked-in trade) to The Depository Trust & Clearing Corporation (''DTCC'') for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the Member because of the earlier cancellation message from the Routing Destination. Instead, BATS Trading would post those positions into its error account and resolve the positions in the manner described below.

*Example C.* Error positions may result if BATS Trading receives an execution report from a Routing Destination but does not receive clearing instructions for the execution from the Routing Destination. For instance, assume that a Member sends the Exchange an order to buy 100 shares of ABC stock, which causes BATS Trading to send an order to a Routing Destination that is subsequently executed, cleared, and closed out by that Routing Destination, and the execution is ultimately communicated back to that Member. On the next trading day (T+1), if the Routing Destination does not provide clearing instructions for that execution, BATS Trading would still be responsible for settling that Member's purchase, but would be left with a short position in its error account.[10] BATS Trading would resolve the position in the manner described below.

*Example D.* Error positions may result from a technical or systems issue that causes orders to be executed in the name of BATS Trading that are not related to BATS Trading's function as the Exchange's routing broker and are not related to any corresponding orders of Members. As a result, BATS Trading would not be able to assign any positions resulting from such an issue to Members. Instead, BATS Trading would post those positions into its error account and resolve the positions in the manner described below.

*Example E.* Error positions may result from a technical or systems issue at the Exchange through which the Exchange does not receive sufficient notice that a Member that has executed trades on the Exchange has lost the ability to clear trades through DTCC, as well as where the Exchange received notice of such Member's loss of ability to clear trades through DTCC, but, because of a technical or systems issue at the Exchange, the Exchange was unable to react to such notice in a timely manner. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being automatically processed for clearance and settlement on a locked-in basis. Accordingly, BATS Trading would assume that Member's side of the trades so that the counterparties can settle the trades. BATS Trading would post those positions into its error account and resolve the positions in the manner described below.

*Example F.* Error positions may result from a technical or systems issue at the Exchange that does not involve routing of orders through BATS Trading. For example, a situation may arise in which a posted order was validly cancelled, but the system erroneously matched that order with an order that was seeking to access it. In such a situation, BATS Trading would have to assume the side of the trade opposite the order seeking to access the cancelled order. BATS Trading would post the position in its error account and resolve the position in the manner described below.

In each of the circumstances described above, it is possible that neither the Exchange nor BATS Trading may learn about an error position until T+1, either: (1) During the clearing process when a Routing Destination has submitted to DTCC a transaction for clearance and settlement for which BATS Trading never received an execution confirmation; or (2) when a Routing Destination does not recognize a transaction submitted by BATS Trading to DTCC for clearance and settlement. Moreover, the affected Members' trades may not be nullified absent express authority under BYX rules.[11]

Proposed Amendments to Rule 2.11

The Exchange proposes to amend Rule 2.11(a) to add new paragraphs (6) and (7) and to add certain language to Rule 2.11(a)(4). Specifically, the Exchange proposes to amend Rule 2.11(a)(4) to state that BATS Trading may employ an error account in compliance with proposed paragraph (a)(7). Under paragraph (6) of the proposed rule, the Exchange or BATS Trading would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a technical or systems issue occurred at the Exchange, BATS Trading, or a Routing Destination.[12] The Exchange or BATS Trading would be required to provide notice of the cancellation to affected Members as soon as is practicable.

Paragraph (a)(7)(A) of the proposed rule would permit BATS Trading to maintain an error account for the purpose of addressing positions that are the result of an execution or executions that are not clearly erroneous[13] under Rule 11.17 and result from a technical or systems issue at BATS Trading, the Exchange, a Routing Destination, or a non-affiliate third-party Routing Broker that affects one or more orders (''Error Positions''). By definition, an Error Position would not include any position that results from an order submitted by a Member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis. Under paragraph (a)(7)(B) of the proposed rule, BATS Trading also would not be permitted to accept any positions in its error account from an account of a Member and could not permit any Member to transfer any positions from the Member's account to BATS Trading's error account under the proposed rule.[14] However, under paragraph (a)(7)(C) of the proposed rule, if a technical or systems issue results in the Exchange not having valid clearing instructions for a Member to a trade, BATS Trading may assume that

[10] To the extent that BATS Trading incurred a loss in covering its positions, short or long, it would submit reimbursement claim to that Routing Destination.

[11] *See, e.g.,* Rule 11.17 (regarding clearly erroneous executions).

[12] Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Rule 611 of Regulation NMS. If the Exchange or BATS Trading determines to cancel orders routed to a routing destination under proposed Rule 2.11(a)(7), but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in Rule 611 with respect to that routing destination.

[13] As defined in Rule 11.17(a), a transaction executed on the Exchange is ''clearly erroneous'' when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

[14] The purpose of this provision is to clarify that BATS Trading may address error positions under the proposed rule that are caused by a technical or systems issue, but that BATS Trading may not accept from a Member positions that are delivered to the Member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at BATS Trading, the Exchange, a Routing Destination of BATS Trading, or a non-affiliate third-party Routing Broker. This provision would not apply, however, to situations like the one described in Example C in which BATS Trading incurred a short position to settle a Member's purchase, as the Member did not yet have a position in its account as a result of the purchase at the time of BATS Trading's action (*i.e.,* BATS Trading's action was necessary for the purchase to settle into the Member's account). Similarly, the provision would not apply to situations like the one described in Example F, where a system issue caused one Member to receive an execution for which there was not an available contra-party, in which case action by BATS Trading would be necessary for the position to settle into that Member's account. Moreover, to the extent a Member receives locked-in positions in connection with a technical or systems issue, that Member may seek to rely on BYX Rule 11.16 if it experiences a loss. That rule provides Members with the ability to file claims against the Exchange for ''losses resulting directly from the malfunction of the Exchange's physical equipment, devices and/or programming or the negligent acts or omissions of its employees.''

Member's side of the trade so that the trade can be processed for clearing and settlement on a locked-in basis.[15]

Under paragraph (a)(7)(D), in connection with a particular technical or systems issue, BATS Trading or the Exchange would be permitted to either (i) assign all resulting Error Positions to Members; or (ii) have all resulting Error Positions liquidated, as described below. Any determination to assign or liquidate Error Positions, as well as any resulting assignments, would be required to be made in a nondiscriminatory fashion.

BATS Trading or the Exchange would be required to assign all Error Positions resulting from a particular technical or systems issue to the applicable Members affected by that technical or systems issue if BATS Trading or the Exchange: (i) Determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the applicable Members affected by that technical or systems issue; (ii) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the applicable Members affected by that technical or systems issue; and (iii) does not determine to cancel all orders affected by that technical or systems issue.

For example, a technical or systems issue of limited scope or duration may occur at a Routing Destination and the resulting trades may be submitted for clearance and settlement by such Routing Destination to DTCC. If there were a small number of trades, there may be sufficient time to match positions with Member orders and avoid using the error account.

There may be scenarios, however, where BATS Trading determines that it is unable to assign all Error Positions resulting from a particular technical or systems issue to all of the affected Members, or determines to cancel all affected routed orders. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issue might be such that the research necessary to determine which Members to assign those executions to could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a Routing Destination experiences a technical or systems issue after BATS Trading has transmitted IOC orders to it that prevents BATS Trading from receiving responses to those orders, BATS Trading or the Exchange may determine to cancel all routed orders affected by that issue. In such a situation, BATS Trading or the Exchange would not pass on to the Members any executions on the routed orders received from the Routing Destination.

Proposed Rule 2.11(a)(7)(D) would require BATS Trading to liquidate Error Positions as soon as practicable.[16] In liquidating Error Positions, BATS Trading would be required to provide complete time and price discretion for the trading to liquidate the Error Positions to a third-party broker-dealer and could not attempt to exercise any influence or control over the timing or methods of trading to liquidate the Error Positions.[17] BATS Trading also would be required to establish and enforce policies and procedures reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and BATS Trading/the Exchange associated with the liquidation of the Error Positions.

Under proposed paragraph (a)(7)(E), BATS Trading and the Exchange would be required to make and keep records to document all determinations to treat positions as Error Positions and all determinations for the assignment of Error Positions to Members or the liquidation of Error Positions, as well as records associated with the liquidation of Error Positions through the third-party broker-dealer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[18] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[19] 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that this proposal is in keeping with those principles since BATS Trading's or the Exchange's ability to cancel orders during a technical and systems issue and to maintain an error account facilitates the smooth and efficient operation of the market. Specifically, the Exchange believes that allowing BATS Trading or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing BATS Trading to assume Error Positions in an error account and to liquidate those positions, subject to the conditions set forth in the proposed amendments to Rule 2.11, would be the least disruptive means to correct these errors, except in cases where BATS Trading can assign all such Error Positions to all affected Members of the Exchange. Overall, the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling Error Positions in a manner that does not discriminate among Members. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require BATS Trading to establish controls to restrict the flow of any confidential information between the third-party broker and BATS Trading/the Exchange associated with the liquidation of Error Positions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed amendment will align the Exchange's rules with other competing market centers. Specifically, the rule change proposed herein is substantially similar to the rules of other exchanges, including NASDAQ Stock Market LLC (''Nasdaq'') Rule 4758(d), NYSE Arca Equities, Inc. (''Arca'') Rule 7.45(d)(2), and EDGX Exchange, Inc. (''EDGX'') Rule 2.11(a).

[15] *See* Example E above.

[16] If BATS Trading determines in connection with a particular technical or systems issue that some error positions can be assigned to some affected Members, but other error positions cannot be assigned, BATS Trading would be required under the proposed rule to liquidate all such error positions (including those positions that could be assigned to the affected Members).

[17] This provision is not intended to preclude BATS Trading from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, BATS Trading might instruct the broker to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the stock being traded.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

*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 written 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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) [21] thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange, without delay, to implement the proposed rule change, which is designed to provide a consistent methodology for handling Error Positions in a manner that does not discriminate among Members. The Commission also notes that the proposed rule change is based on, and substantially similar to, rules of NYSE Arca, Inc.,[22] EDGX Exchange, Inc,[23] and NASDAQ Stock Market LLC,[24] which the Commission previously approved. Accordingly, the Commission designates the proposal operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–BYX–2013–018 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–BYX–2013–018. 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–BYX–2013–018 and should be submitted on or before July 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14391 Filed 6–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] *See* Securities Exchange Act Release No. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22).

[23] *See* Securities Exchange Act Release No. 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR–EDGX–2012–08).

[24] *See* Securities Exchange Act Release No. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR–NASDAQ–2012–057).

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69741; File No. SR–DTC–2013–03]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change in Connection With the Implementation of The Foreign Account Tax Compliance Act (FATCA)

June 12, 2013.

On April 22, 2013, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–DTC–2013–03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on May 8, 2013.[3] The Commission did not receive comments on the proposed rule change. This order approves the proposed rule change.

**I. Description**

DTC is amending various DTC rules ''in connection with the implementation of sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended, which sections were enacted as part of the Foreign Account Tax Compliance Act, and the Treasury Regulations or other official interpretations thereunder (collectively ''FATCA'').'' [4] In its filing with the Commission, DTC provided information concerning FATCA background, implementation, and DTC's proposed rule changes.

*DTCC's Background Statement*

FATCA was enacted on March 18, 2010, as part of the Hiring Incentives to Restore Employment Act, and became effective, subject to transition rules, on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69494 (May 2, 2013), 78 FR 26823 (May 8, 2013) (SR–DTC–2013–03).

[4] *Id.* at 26823.

January 1, 2013. The U.S. Treasury Department finalized and issued various implementing regulations (''FATCA Regulations'') on January 17, 2013. FATCA generally requires foreign financial institutions (''FFIs'') [5] to become ''participating FFIs'' by entering into agreements with the Internal Revenue Service (''IRS''). Under these agreements, FFIs are required to report to the IRS information on U.S. persons and entities that have (directly or indirectly) accounts with these FFIs. If an FFI does not enter into such an agreement with the IRS, FATCA will impose a 30% withholding tax on U.S.-source interest, dividends and other periodic amounts paid to such ''nonparticipating FFI'' (''Income Withholding''), as well as on the payment of gross proceeds arising from the sale, maturity, or redemption of securities or any instrument yielding U.S.-source interest and dividends (''Gross Proceeds Withholding,'' and, together with Income Withholding, ''FATCA Withholding''). The 30% FATCA Withholding taxes will apply to payments made to a nonparticipating FFI acting in any capacity, including payments made to a nonparticipating FFI that is not the beneficial owner of the amount paid and acting only as a custodian or other intermediary with respect to such payment. To the extent that U.S.-source interest, dividend, and other periodic amount or gross proceeds payments are due to a nonparticipating FFI in any capacity, a U.S. payor, such as DTC, transmitting such payments to the nonparticipating FFI will be liable to the IRS for any amounts of FATCA Withholding that the U.S. payor should, but does not, withhold and remit to the IRS with respect to those payments.

According to DTC, as an alternative to FFIs entering into individual agreements with the IRS, the U.S. Treasury Department provided another means of complying with FATCA for FFIs which are resident in jurisdictions that enter into intergovernmental agreements (''IGA'') with the United States.[6] Generally, such a foreign jurisdiction (''FATCA Partner'') would pass laws to eliminate the conflicts of law issues that would otherwise make it difficult for FFIs in its jurisdiction to collect the information required under FATCA and transfer this information, directly or indirectly, to the United States. An FFI resident in a FATCA Partner jurisdiction would either transmit FATCA reporting to its local competent tax authority, which in turn would transmit the information to the IRS, or the FFI would be authorized/required by FATCA Partner law to enter into an FFI agreement and transmit FATCA reporting directly to the IRS. Under both IGA models, payments to such FFIs would not be subject to FATCA Withholding taxes so long as the FFI complies with the FATCA Partner's laws mandated in the IGA.

According to DTC, under the FATCA Regulations, (A) beginning January 1, 2014, DTC will be required to do Income Withholding on any payments made to any nonparticipating FFI approved for membership by DTC as of such date or thereafter, (B) beginning July 1, 2014, DTC will be required to do Income Withholding on any payments made to any nonparticipating FFI approved for membership by DTC prior to January 1, 2014 and (C) beginning January 1, 2017, DTC will be required to do Gross Proceeds Withholding on all nonparticipating FFIs, regardless when any such FFI's membership was approved.

DTC stated that it already has established tax services that are currently available to its Participants in which DTC, in accordance with sections 1441 through 1446 of the Code, withholds on certain payments of income made to certain of its Participants. Thus, DTC can and intends to support certain FATCA Income Withholding as part of such established tax services.

*DTC's Statement on FATCA Implementation*

According to DTC, in preparation for FATCA's implementation, FFIs are being asked to identify their expected FATCA status as a condition of continuing to do business. Customary legal agreements in the financial services industry already contain provisions allocating the risk of any FATCA Withholding tax that will need to be collected, and requiring that, upon FATCA's effectiveness, foreign counterparties must certify (and periodically recertify) their FATCA status using the relevant tax forms that the IRS has announced it will provide.[7] Advance disclosure by an FFI client or counterparty would permit a withholding agent to readily determine whether it must, under FATCA, withhold on payments it makes to the FFI. If an FFI fails to provide appropriate compliance documentation to a withholding agent, such FFI would be presumed to be a nonparticipating FFI and the withholding agent will be obligated to withhold on certain payments.

DTC states that FATCA will require DTC to deduct FATCA Withholding on payments to certain of its Participants arising from certain transactions processed by DTC on behalf of such Participants.[8] Because FATCA treats any entity holding financial assets for the account of others as a ''financial institution,'' and almost all Participants hold financial assets for the account of others, new and existing Participants which are treated as non-U.S. entities for federal income tax purposes, including those members and limited members that are U.S. branches of non-U.S. entities (collectively, ''FFI Participants'') [9] will likely be FFIs under FATCA. DTC says that as a result, it will be liable to the IRS for the amounts associated with any failures to withhold correctly under FATCA on payments made to its FFI Participants.

In light of this, DTC has evaluated its existing systems and services to determine whether and how it may comply with its FATCA obligations. As a result of this evaluation, DTC has determined that its existing systems are incapable of processing and accounting for Gross Proceeds Withholding with regard to the securities transactions processed by it, as no similar withholding obligation of this magnitude has ever been imposed on it to date and DTC has therefore not built systems to support such an obligation.

Additionally, DTC nets credits and debits per Participant for end of day net funds settlement. There is further netting with DTC's affiliated central counterparty, National Securities Clearing Corporation and further netting on a settling bank basis; the effect of this netting is to significantly reduce the number and magnitude of payments made via the NSS System of the Federal Reserve. Gross Proceeds Withholding would foreclose such netting, greatly reducing liquidity available to the

[5] According to DTC, non-U.S. financial institutions are referred to as ''foreign financial institutions'' or ''FFIs'' in the FATCA Regulations.

[6] DTC states that as of the date of this proposed rule change filing, the United Kingdom, Mexico, Ireland, Switzerland, Spain, Norway, Denmark, Italy and Germany have signed or initialed an IGA with the United States. The U.S. Treasury Department has announced that it is engaged in negotiations with more than 50 countries and jurisdictions regarding entering into an IGA.

[7] For example, credit agreements now routinely require foreign lenders to agree to provide certifications of their FATCA status under approved IRS forms to U.S. borrowers, and subscription agreements for alternative investment funds that are anticipated to earn U.S.-source income are routinely requiring similar covenants.

[8] According to DTC, FFI participants resident in IGA countries, that are compliant with the terms of applicable IGAs, should not be subject to FATCA Withholding.

[9] Currently, only a small percentage of DTC's Participants are treated as non-U.S. entities for federal income tax purposes.

system and Participants, increasing systemic risk.

Furthermore, DTC believes that, given DTC's netting, undertaking Gross Proceeds Withholding could require DTC in certain circumstances to apply its Participants Fund in order to fund FATCA Withholding taxes with regard to nonparticipating FFI Participants in non-FATCA Partner jurisdictions whenever the net credit owed to such FFI Participant is less than the 30% FATCA tax. In the view of DTC, this would not be the best application of such funds which are required to support liquidity and satisfy losses attributable to the settlement activities of DTC, *inter alia.* For example, if a nonparticipating FFI is owed a $100M gross payment from the sale or maturity of U.S. securities, but such nonparticipating FFI is in a net debit settlement position at the end of that day because of DTC's end of day net crediting and debiting, and the other netting described above, there would be no payment to this FFI Participant from which DTC could withhold. In this example, DTC would likely need to fund the $30M FATCA Withholding tax until such time as the FFI Participant can reimburse DTC.[6] In that case, DTC would need to consider an increase in the amount of cash required to be deposited into the Participants Fund, either by FFI Participants or all Participants, which would reduce liquidity resources of Participants and could have significant systemic effects. The amount of the FATCA Gross Proceeds Withholding taxes would be removed from market liquidity, which could lead to increased risk of Participant failure and increased financial instability.

For the reasons explained above and the following additional reasons, DTC is amending its rules to implement preventive measures that would generally require all of DTC's FFI Participants not to cause a Gross Proceeds Withholding obligation on DTC because DTC believes that:

- Undertaking Gross Proceeds Withholding by DTC (even if possible) would make it economically discouraging for affected FFI Participants to engage in transactions involving U.S. securities. It would likely also quickly cause a significant negative impact on liquidity because such withholding taxes would be imposed on the very large gross amounts due to such FFI Participants. Furthermore, Participants would be burdened with extra costs and the negative impact on liquidity caused by the likely need to substantially increase the amount of cash required to be deposited into the Participants Fund.
- The cost of implementing a Gross Proceeds Withholding system for a small number of nonparticipating FFI Participants would be substantial and disproportionate to the related benefit. Under the Model I IGA form and its executed versions with various FATCA Partners, DTC would not be required to withhold with regard to FFI residents in such FATCA Partner jurisdictions. Accordingly, DTC's withholding obligations under FATCA would effectively be limited to nonparticipating FFI Participants in non-FATCA Partner jurisdictions. Since the cost of developing and maintaining a complex Gross Proceeds Withholding system would be passed on to DTC's Participants at large, it may burden Participants that otherwise comply with, or are not subject to, FATCA Withholding.
- As briefly noted above, absent this current action and in order to avoid counterparty credit risk, DTC would likely require each of the nonparticipating FFI Participants in non-FATCA Partner jurisdictions to make initial or additional cash deposits to the Participants Fund as liquidity for the approximate potential FATCA tax liability of such nonparticipating FFI Participant or otherwise adjust required deposits to the Participants Fund. The amount of such deposits, which could amount to billions of dollars, would be removed from market liquidity.
- From the nonparticipating FFI Participant's perspective, having 30% of its payments withheld and sent to the IRS would have a severe negative impact on such nonparticipating FFI Participants' financial stability. In most cases, the gross receipts are for client accounts, and the nonparticipating FFI Participant would need to make such accounts whole. Without receipt of full payment for its dispositions, the nonparticipating FFI Participant would not have sufficient assets to fund its client accounts.
- These rule changes should not create an undue burden for Participants because requiring FFIs to certify (and to periodically recertify) their FATCA status, and imposing the costs of non-compliance on them, are becoming standard market practice in the United States, separate and apart from being a Participant of DTC.

*Rule Changes*

In line with its risk management focus, DTC has determined that compliance with FATCA, so that DTC shall not be responsible for Gross Proceeds Withholding, should be a general membership requirement (A) for all applicants that are treated as non-U.S. entities for U.S. federal income tax purposes, and (B) for all existing FFI Participants.[10] DTC is amending its rules as follows:

- Amending Rule 1: adding ''FATCA,'' ''FATCA Certification,'' ''FATCA Compliance Date,'' [11] ''FATCA Compliant,'' and ''FFI Participant'' to Section 2 as terms cross-referenced from Rule 2, Section 9;
- Amending Section 1 of Rule 2: adding the requirements that, (i) *with regard to any applicant that shall be an FFI Participant, such applicant must be FATCA Compliant, and (ii)* as a qualification for activation of its membership that each applicant approved by DTC complete and deliver to DTC a FATCA Certification; and
- Adding new Section 9 of Rule 2: (i) Requiring all FFI Participants (both new and existing) to agree not to conduct any transaction or activity through DTC if such Participant is not FATCA Compliant, (ii) requiring all FFI Participants to certify and, as required under the timelines set forth under FATCA, periodically recertify, to DTC, in accordance with the timelines set out under FATCA, that they are FATCA Compliant, (iii) specifying that failure to be FATCA Compliant creates a duty upon an FFI Member (both new and existing) to inform DTC, (iv) providing that Participants that violate the provisions of Section 9 are subject to disciplinary sanction or other applicable actions by DTC in accordance with DTC rules, including, but not limited to, a fine, as well as restrictions of services to the Participant and/or ceasing to act for the Participant in accordance with Rule 10, *and (v) requiring all FFI Participants to* indemnify DTC for any losses sustained by DTC resulting from such FFI Participants' failure to be FATCA Compliant. In addition, Rule 2, Section 9 will include the definitions for ''FATCA,'' ''FATCA Certification,'' ''FATCA Compliance Date,'' ''FATCA Compliant,'' and ''FFI Participant''.
- In addition, DTC will modify its *Policy Statement on the Admission of Non-U.S. Entities as Direct Depository*

[10] DTC may grant a waiver under certain circumstances, provided, however, that DTC will not grant a waiver if it causes DTC to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property.

[11] Although FATCA Withholding with regard to FFI Participants approved for membership by DTC prior to January 1, 2014 is first required under FATCA beginning July 1, 2014, the proposed amendments to DTC rules would require such existing FFI Participants to be FATCA compliant approximately 60 days prior to July 1, 2014 in order for DTC to comply with its disciplinary and notice processes as set forth in DTC rules.

*Participants* to reference DTC rules requirements of foreign entities which are treated as non-U.S. entities for tax purposes.

## II. Discussion

Section 19(b)(2)(C) of the Act [12] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [13] requires the rules of a clearing agency to be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and protect investors and the public interest. The Commission finds that DTC's proposed rule change is consistent with these requirements because it is designed to comply with FATCA while eliminating uncertainty in funds settlement. Specifically, based on DTC's representations, the Commission understands that the proposed rule change is designed codify DTC's rules in a way that will allow DTC to comply with FACTA without developing and maintaining a complex Gross Proceeds Withholding system under FATCA and, as a result, it will eliminate uncertainty in funds settlement that DTC believes will arise if DTC is subject to FATCA Withholding.[14]

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [15] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–DTC–2013–03) be, and it hereby is, approved.

[12] 15 U.S.C. 78s(b)(2)(C).

[13] 12 U.S.C. 78q-1(b)(3)(F).

[14] In approving this proposed rule change, the Commission is mindful of the IRS's jurisdiction respecting FATCA. This Order does not interpret FATCA. The Commission's approval of the proposed rule change in no way constitutes a determination or finding by the Commission that the proposed rule change complies with FATCA, which is under the purview of the IRS.

[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14418 Filed 6–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69747; File No. SR–CBOE–2013–059]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

June 12, 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 May 31, 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 amend the Fees Schedule. 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.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule. Currently, the Exchange assesses an SPX Arbitrage Phone Positions fee of $550 per month for each clerk who is placed by a Market-Maker on the perimeter of the SPX trading crowd and provides futures trading information to the Market-Maker in the crowd and takes futures orders from the Market-Maker in order to hedge the Market-Maker's SPX options positions (for the purposes of this proposed rule change, such activity (regardless of the relevant options class) shall be referred to as ''Arbitrage''). However, Market-Makers can have a clerk placed on the perimeter of other trading crowds engaging in Arbitrage. The Exchange desires to assess this Arbitrage Phone Positions fee regardless of the trading crowd, and cease the Fees Schedule's limitation of it to the SPX trading crowd. As such, the Exchange proposes deleting ''SPX'' and merely stating that the Arbitrage Phone Positions fee will be $550 per month (thereby applying such fee to all trading crowds).

TickerXpress (''TX'') is an optional Exchange service that supplies market data to Exchange Market-Makers trading on the Hybrid Trading System. Currently, the Exchange assesses two TickerXpr#ess (TX) User Fees. The $350-per-month Enhanced TX User Fee is assessed to CBOE Market-Makers desiring access to enhanced TX market data. The $100-per-month TX Software Fee is assessed to TX users for the software used for the use and display of market data. However, due to decreased demand, the Exchange has determined that it is no longer economically viable to provide access to TickerXpress, and therefore, effective June 1, 2013, will cease doing so (Market-Makers will still have other methods available to access market data). As such, the Exchange proposes to remove the TX User Fees from the Fees Schedule.

The proposed changes are to take effect June 1, 2013.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[4] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes it is reasonable to assess the Arbitrage Phone Positions fee of $550 for all clerks engaged in Arbitrage because the amount is the same as is being assessed to SPX Market-Makers who are engaged in that activity. The Exchange believes this proposed change is equitable and not unfairly discriminatory because it will put the placement of all clerks for Arbitrage on equal fee footing with those who engage in Arbitrage for SPX.

The Exchange believes the proposed rule change to delete from the Fees Schedule the TX fees is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation 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. Deleting from the Fees Schedule fees for a service that is no longer offered by the Exchange will prevent any possible confusion that perhaps the service is still available (and the fees still applicable), and preventing confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

*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 that is not necessary or appropriate in furtherance of the purposes of the Act. CBOE does not believe that the proposed rule change to apply the Arbitrage Phone Positions fee to all trading crowds (as opposed to just SPX) will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will put the placement of all clerks for Arbitrage on equal fee footing with those who engage in such activity for SPX. CBOE does not believe that the proposed rule change to delete the TX fees from the Fees Schedule will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because this deletion applies to all CBOE market participants. CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only apply to CBOE and do not impact trading on other exchanges.

*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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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–2013–059 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–2013–059. 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–2013–059, and should be submitted on or before July 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14419 Filed 6–17–13; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69748; File No. SR–BATS–2013–032]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2.11, Entitled ''BATS Trading, Inc. as Outbound Router''

June 12, 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 3, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. 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 filed a proposal to amend Rule 2.11, entitled ''BATS Trading, Inc. as Outbound Router'', and Rule 21.9, entitled ''Order Routing'', with respect to the authority of the Exchange or BATS Trading, Inc. (''BATS Trading'') to cancel orders on the Exchange's equity securities platform (''BATS Equities'') and equity options platform (''BATS Options'') when a technical or system issue occurs, as well as to describe the operation of an error account for BATS Trading.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange filed a proposal The Exchange proposes to amend Rule 2.11(a) by amending subparagraph (4) and adding new subparagraphs (6) and (7) that address the authority of the Exchange or BATS Trading to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for BATS Trading as it relates to BATS Equities.[5] The Exchange also proposes to amend Rule 21.9 by adding subparagraphs (g) and (h) that address the authority of the Exchange or BATS Trading to cancel options orders when a technical or systems issue occurs and to describe the operation of an error account for BATS Trading as it relates to BATS Options.

BATS Trading is the approved routing broker of the Exchange for both BATS Equities and BATS Options, subject to the conditions listed in Rule 2.11, 2.12, and 21.9. The Exchange relies on BATS Trading to provide outbound routing services from itself to routing destinations of BATS Trading (''Routing Destinations''). Additionally, BATS Equities relies on BATS Trading to provide inbound routing services for BATS Y-Exchange, Inc. (''BYX'').[6] When BATS Trading routes orders to a Routing Destination, it does so by sending a corresponding order in its own name to the Routing Destination. In the normal course, routed orders that are executed at Routing Destinations are submitted for clearance and settlement in the name of BATS Trading, and BATS Trading arranges for any resulting securities positions to be delivered to the Member that submitted the corresponding order to the Exchange.

Examples of Situations That May Lead to Cancelled Orders

A technical or systems issue may arise at BATS Trading, a Routing Destination, or the Exchange that may cause the Exchange or BATS Trading to take steps to cancel orders if the Exchange or BATS Trading determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the situations in which the Exchange or BATS Trading may decide to cancel orders.[7]

*Example 1.* If BATS Trading or a Routing Destination experiences a technical or systems issue that results in BATS Trading not receiving responses to immediate or cancel (''IOC'') orders that it sent to the Routing Destination and that issue is not resolved in a timely manner, BATS Trading or the Exchange would seek to cancel the routed orders affected by the issue.[8] For

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] BATS Trading is a facility of the Exchange. Accordingly, under Rule 2.11, the Exchange is responsible for filing with the Commission rule changes and fees relating to the functions of BATS Trading. In addition, the Exchange is using the phrase ''BATS Trading or the Exchange'' in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of BATS Trading or the Exchange depending on the circumstances of the issue.

From time to time, the Exchange also uses non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing Brokers). In those cases, orders are submitted to the third-party Routing Broker through BATS Trading, the third-party Routing Broker routes the orders to the Routing Destination in its name, and any executions are submitted for clearance and settlement in the name of BATS Trading so that any resulting positions are delivered to BATS Trading upon settlement. As described above, BATS Trading normally arranges for any resulting securities positions to be delivered to the Member that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 2.11(a)(7)) result in connection with the Exchange's use of a third-party Routing Broker for outbound routing, and those positions are delivered to BATS Trading through the clearance and settlement process, BATS Trading would be permitted to resolve those positions in accordance with proposed Rule 2.11(a)(7)(B)–(E). If the third-party Routing Broker received error positions in connection with its role as a routing broker for the Exchange, and the error positions were not delivered to BATS Trading through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself and BATS Trading would not be permitted to accept the error positions, as set forth in proposed Rule 2.11(a)(7)(B).

[6] The Exchange has authority to receive inbound routes of equities orders by BATS Trading from BYX. *See* Securities Exchange Act Release No. 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR–BATS–2012–013).

[7] The examples described in this filing are not intended to be comprehensive or exclusive. Rule 2.11 and 21.9, as proposed, would provide general authority for the Exchange or BATS Trading to cancel orders in order to maintain fair and orderly markets when technical and systems issues occur and would also set forth the manner in which error positions may be handled by the Exchange or BATS Trading. The proposed rule change is not limited to addressing order cancellation or error positions resulting only from the specific examples described in this filing.

[8] In a normal situation (*i.e.,* one in which a technical or systems issue does not occur), BATS Trading should receive an immediate response to an IOC order from a Routing Destination and would pass the resulting fill or cancellation on to the Member. After submitting an order that is routed to a Routing Destination, if a Member sends an

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instance, if BATS Trading experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from Routing Destinations, it may be unable to receive timely execution or cancellation reports from the Routing Destinations, and BATS Trading or the Exchange may consequently seek to cancel the affected routed orders. Once the decision is made to cancel those routed orders, any cancellation that a Member submitted to the Exchange on its initial order during such a situation would be honored.[9]

*Example 2.* If the Exchange experiences a systems issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected Members of the cancellations. In those cases, the Exchange would seek to cancel any routed orders related to the Members' initial orders.

## Examples of Situations That May Lead to Error Positions

In some instances, the technical or systems issue at BATS Trading, a Routing Destination, the Exchange, or a non-affiliate third party Routing Broker may also result in BATS Trading acquiring an error position that it must resolve. The examples set forth below describe some of the circumstances in which error positions may arise.

*Example A.* Error positions may result from routed orders that the Exchange or BATS Trading attempts to cancel but that are executed before the Routing Destination receives the cancellation message or that are executed because the Routing Destination is unable to process the cancellation message. Using the situation described in Example 1 above, assume that the Exchange seeks to cancel orders routed to a Routing Destination because it is not receiving timely execution or cancellation reports from the Routing Destination. In such a situation, BATS Trading may still receive executions from the Routing Destination after connectivity is restored, which it would not then allocate to Members because of the earlier decision to cancel the affected routed orders. Instead, BATS Trading would post those positions into its error account and resolve the positions in the manner described below.

*Example B.* Error positions may result from an order processing issue at a Routing Destination. For instance, if a Routing Destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order (i.e., a locked-in trade) to The Depository Trust & Clearing Corporation (''DTCC'') for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the Member because of the earlier cancellation message from the Routing Destination. Instead, BATS Trading would post those positions into its error account and resolve the positions in the manner described below.

*Example C.* Error positions may result if BATS Trading receives an execution report from a Routing Destination but does not receive clearing instructions for the execution from the Routing Destination. For instance, assume that a Member sends the Exchange an order to buy 100 shares of ABC stock, which causes BATS Trading to send an order to a Routing Destination that is subsequently executed, cleared, and closed out by that Routing Destination, and the execution is ultimately communicated back to that Member. On the next trading day (T+1), if the Routing Destination does not provide clearing instructions for that execution, BATS Trading would still be responsible for settling that Member's purchase, but would be left with a short position in its error account.[10] BATS Trading would resolve the position in the manner described below.

*Example D.* Error positions may result from a technical or systems issue that causes orders to be executed in the name of BATS Trading that are not related to BATS Trading's function as the Exchange's routing broker and are not related to any corresponding orders of Members. As a result, BATS Trading would not be able to assign any positions resulting from such an issue to Members. Instead, BATS Trading would post those positions into its error account and resolve the positions in the manner described below.

*Example E.* Error positions may result from a technical or systems issue at the Exchange through which the Exchange does not receive sufficient notice that a Member that has executed trades on the Exchange has lost the ability to clear trades through DTCC, as well as where the Exchange received notice of such Member's loss of ability to clear trades through DTCC, but, because of a technical or systems issue at the Exchange, the Exchange was unable to react to such notice in a timely manner. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being automatically processed for clearance and settlement on a locked-in basis. Accordingly, BATS Trading would assume that Member's side of the trades so that the counterparties can settle the trades. BATS Trading would post those positions into its error account and resolve the positions in the manner described below.

*Example F.* Error positions may result from a technical or systems issue at the Exchange that does not involve routing of orders through BATS Trading. For example, a situation may arise in which a posted order was validly cancelled, but the system erroneously matched that order with an order that was seeking to access it. In such a situation, BATS Trading would have to assume the side of the trade opposite the order seeking to access the cancelled order. BATS Trading would post the position in its error account and resolve the position in the manner described below.

In each of the circumstances described above, it is possible that neither the Exchange nor BATS Trading may learn about an error position until T+1, either: (1) During the clearing process when a Routing Destination has submitted to DTCC a transaction for clearance and settlement for which BATS Trading never received an execution confirmation; or (2) when a Routing Destination does not recognize a transaction submitted by BATS Trading to DTCC for clearance and settlement. Moreover, the affected Members' trades may not be nullified absent express authority under BATS rules.[11]

## BATS Equities—Proposed Amendments to Rule 2.11

The Exchange proposes to amend Rule 2.11(a) to add new paragraphs (6) and (7) and to add certain language to Rule 2.11(a)(4). Specifically, the Exchange proposes to amend Rule 2.11(a)(4) to state that BATS Trading may employ an error account in compliance with proposed paragraph (a)(7). Under paragraph (6) of the proposed rule, the Exchange or BATS Trading would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a technical or systems issue occurred at the Exchange, BATS Trading, or a Routing Destination.[12] The Exchange or BATS Trading would be required to provide notice of the cancellation to affected Members as soon as is practicable.

Paragraph (a)(7)(A) of the proposed rule would permit BATS Trading to maintain an error account for the purpose of addressing positions that are the result of an execution or executions that are not clearly erroneous[13] under

instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the Routing Destination. For instance, if the Routing Destination executes that order, the execution would be passed on to the Member and the cancellation instruction would be disregarded.

[9] If a Member did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor BATS Trading would treat any execution of that initial order or any subsequent routed order related to that initial order as an error.

[10] To the extent that BATS Trading incurred a loss in covering its positions, short or long, it would submit reimbursement claim to that Routing Destination.

[11] *See, e.g.,* Rule 11.17 (regarding clearly erroneous executions).

[12] Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Rule 611 of Regulation NMS. If the Exchange or BATS Trading determines to cancel orders routed to a routing destination under proposed Rule 2.11(a)(7), but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in Rule 611 with respect to that routing destination.

[13] As defined in Rule 11.17(a), a transaction executed on the Exchange is ''clearly erroneous'' when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

Rule 11.17 and result from a technical or systems issue at BATS Trading, the Exchange, a Routing Destination, or a non-affiliate third-party Routing Broker that affects one or more orders (''Error Positions''). By definition, an Error Position would not include any position that results from an order submitted by a Member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis. Under paragraph (a)(7)(B) of the proposed rule, BATS Trading also would not be permitted to accept any positions in its error account from an account of a Member and could not permit any Member to transfer any positions from the Member's account to BATS Trading's error account under the proposed rule.[14] However, under paragraph (a)(7)(C) of the proposed rule, if a technical or systems issue results in the Exchange not having valid clearing instructions for a Member to a trade, BATS Trading may assume that Member's side of the trade so that the trade can be processed for clearing and settlement on a locked-in basis.[15]

Under paragraph (a)(7)(D), in connection with a particular technical or systems issue, BATS Trading or the Exchange would be permitted to either (i) assign all resulting Error Positions to Members; or (ii) have all resulting Error Positions liquidated, as described below. Any determination to assign or liquidate Error Positions, as well as any resulting assignments, would be required to be made in a nondiscriminatory fashion.

BATS Trading or the Exchange would be required to assign all Error Positions resulting from a particular technical or systems issue to the applicable Members affected by that technical or systems issue if BATS Trading or the Exchange: (i) Determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the applicable Members affected by that technical or systems issue; (ii) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the applicable Members affected by that technical or systems issue; and (iii) does not determine to cancel all orders affected by that technical or systems issue.

For example, a technical or systems issue of limited scope or duration may occur at a Routing Destination and the resulting trades may be submitted for clearance and settlement by such Routing Destination to DTCC. If there were a small number of trades, there may be sufficient time to match positions with Member orders and avoid using the error account.

There may be scenarios, however, where BATS Trading determines that it is unable to assign all Error Positions resulting from a particular technical or systems issue to all of the affected Members, or determines to cancel all affected routed orders. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issue might be such that the research necessary to determine which Members to assign those executions to could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a Routing Destination experiences a technical or systems issue after BATS Trading has transmitted IOC orders to it that prevents BATS Trading from receiving responses to those orders, BATS Trading or the Exchange may determine to cancel all routed orders affected by that issue. In such a situation, BATS Trading or the Exchange would not pass on to the Members any executions on the routed orders received from the Routing Destination.

Proposed Rule 2.11(a)(7)(D) would require BATS Trading to liquidate Error Positions as soon as practicable.[16] In liquidating Error Positions, BATS Trading would be required to provide complete time and price discretion for the trading to liquidate the Error Positions to a third-party broker-dealer and could not attempt to exercise any influence or control over the timing or methods of trading to liquidate the Error Positions.[17] BATS Trading also would be required to establish and enforce policies and procedures reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and BATS Trading/the Exchange associated with the liquidation of the Error Positions.

Under proposed paragraph (a)(7)(E), BATS Trading and the Exchange would be required to make and keep records to document all determinations to treat positions as Error Positions and all determinations for the assignment of Error Positions to Members or the liquidation of Error Positions, as well as records associated with the liquidation of Error Positions through the third-party broker-dealer.

BATS Options—Proposed Amendments to Rule 21.9

In order to maintain consistency between analogous services offered by BATS Equities and BATS Options, the Exchange proposes to modify the rules of BATS Options to conform with the changes described above related to the cancellation of orders and the management of the BATS Trading error account as it relates to BATS Equities. Accordingly, the exchange proposes to add paragraphs (g) to Rule 21.9.

As proposed, Rule 21.9(g)(1) and (2) are identical to the description set forth in proposed Rule 2.11(a)(6) and (7) and described above with the exception of minor references necessary due to the difference between rules applicable to BATS Equities and BATS Options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the

[14] The purpose of this provision is to clarify that BATS Trading may address error positions under the proposed rule that are caused by a technical or systems issue, but that BATS Trading may not accept from a Member positions that are delivered to the Member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at BATS Trading, the Exchange, a Routing Destination of BATS Trading, or a non-affiliate third-party Routing Broker. This provision would not apply, however, to situations like the one described in Example C in which BATS Trading incurred a short position to settle a Member's purchase, as the Member did not yet have a position in its account as a result of the purchase at the time of BATS Trading's action (*i.e.,* BATS Trading's action was necessary for the purchase to settle into the Member's account). Similarly, the provision would not apply to situations like the one described in Example F, where a system issue caused one Member to receive an execution for which there was not an available contra-party, in which case action by BATS Trading would be necessary for the position to settle into that Member's account. Moreover, to the extent a Member receives locked-in positions in connection with a technical or systems issue, that Member may seek to rely on BATS Rule 11.16 if it experiences a loss. That rule provides Members with the ability to file claims against the Exchange for ''losses resulting directly from the malfunction of the Exchange's physical equipment, devices and/or programming or the negligent acts or omissions of its employees.''

[15] *See* Example E above.

[16] If BATS Trading determines in connection with a particular technical or systems issue that some error positions can be assigned to some affected Members, but other error positions cannot be assigned, BATS Trading would be required under the proposed rule to liquidate all such error positions (including those positions that could be assigned to the affected Members).

[17] This provision is not intended to preclude BATS Trading from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, BATS Trading might instruct the broker to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the stock being traded.

requirements of Section 6 of the Act.[18] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[19] 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that this proposal is in keeping with those principles since BATS Trading's or the Exchange's ability to cancel orders during a technical and systems issue and to maintain an error account facilitates the smooth and efficient operation of the market. Specifically, the Exchange believes that allowing BATS Trading or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing BATS Trading to assume Error Positions in an error account and to liquidate those positions, subject to the conditions set forth in the proposed amendments to Rule 2.11 and 21.9, would be the least disruptive means to correct these errors, except in cases where BATS Trading can assign all such Error Positions to all affected Members of the Exchange. Overall, the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling Error Positions in a manner that does not discriminate among Members. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require BATS Trading to establish controls to restrict the flow of any confidential information between the third-party broker and BATS Trading/the Exchange associated with the liquidation of Error Positions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed amendment will align the Exchange's rules with other competing market centers. Specifically, the rule change proposed herein is substantially similar to the rules of other exchanges, including NASDAQ Stock Market LLC (''Nasdaq'') Rule 4758(d), Nasdaq Options Market (''NOM'') Chapter VI, Section 11(g), NYSE Arca Equities, Inc. (''Arca'') Rule 7.45(d)(2), and EDGX Exchange, Inc. (''EDGX'') Rule 2.11(a).

*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 written 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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6)[21] thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange, without delay, to implement the proposed rule change, which is designed to provide a consistent methodology for handling Error Positions in a manner that does not discriminate among Members. The Commission also notes that the proposed rule change is based on, and substantially similar to, rules of NYSE Arca, Inc.,[22] EDGX Exchange, Inc,[23] and NASDAQ Stock Market LLC,[24] which the Commission previously approved. Accordingly, the Commission designates the proposal operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–BATS–2013–032 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–BATS–2013–032. 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.,

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] *See* Securities Exchange Act Release No. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22).

[23] *See* Securities Exchange Act Release No. 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR–EDGX–2012–08).

[24] *See* Securities Exchange Act Release No. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR–NASDAQ–2012–057).

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–BATS–2013–032 and should be submitted on or before July 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14450 Filed 6–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

[26] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69743; File No. SR–CME–2013–04]**

## Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Related to the Liquidity Factor of CME's CDS Margin Methodology

June 12, 2013.

On April 9, 2013, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make adjustments to the liquidity risk factor component of its credit default swap (''CDS'') margin model. CME proposes to use an index portfolio's market risk rather than its gross notional as the basis for determining the margins associated with the liquidity risk factor component. The proposed rule change was published for comment in the **FEDERAL REGISTER** on April 29, 2013.[3] The Commission did not receive comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is June 13, 2013. The Commission is extending this 45-day time period.

The Commission finds it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, which would implement a significant change to CME's CDS margin methodology.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates July 28, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CME–2013–04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14394 Filed 6–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69435 (Apr. 23, 2013), 78 FR 25116 (Apr. 29, 2013) (SR–CME–2013–04).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69739; File No. SR–MIAX–2013–27]**

## Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Definition of ''Attributable Order''

June 12, 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 4, 2013, Miami International Securities Exchange LLC (''Exchange'' or ''MIAX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 516 to modify the definition of ''Attributable Order.''

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange received approval to be registered as a national securities exchange on December 3, 2012 [3] and commenced trading operations on December 7, 2012. At that time, the Exchange included in Exchange Rule 516 definitions of order types that the Exchange intended to use after the commencement of trading on the Exchange. The preamble of Rule 516 notes that not all of the order types listed and described in Rule 516 will be initially available for use on the Exchange. In addition, Rule 516 provides that the Exchange will issue a Regulatory Circular listing which order types, among the order types defined in Rule 516, are available and that additional Regulatory Circulars will be issued as additional order types become available for use on the Exchange.

The Attributable Order type, defined in Rule 514(e), exists as one such order type that was not originally available at the commencement of trading on the

[3] *See* Securities Exchange Act Release No. 68341 (December 3, 2012) 77 FR 73089 (December 7, 2012) (File No. 10–207).

Exchange. The Exchange has now developed the necessary technology to support the Attributable Order type and would like to correspondingly modify its definition contained in Rule 516(e) to accommodate the functionality that will be implemented at this time. Pursuant to Rule 516(e), an Attributable Order is a market or limit order which displays the user firm ID for purposes of trading on the Exchange. Use of Attributable Orders is voluntary.[4]

The ability to display information pertaining to a single order depends upon the Exchange's ability to broadcast that information to its members. This is currently accomplished through the Exchange's market data products, which for example includes the MIAX Top of Market (ToM).[5] Thus, the functionality of an Attributable Order is linked to what is technologically feasible through the Exchange's market data products. The Exchange would like to modify the definition of Attributable Order contained in Rule 516(e) to acknowledge this relationship and to allow the functionality of the Attributable Order type to develop and be deployed correspondingly with technical advances related to its market data products. The Exchange proposes adding the following: ''Attributable Orders will be available for execution but may not display the user firm ID for all Exchange processes.'' This concept, which can be found in the definition of Attributable Orders of other options exchanges,[6] will serve to put MIAX members on notice that the functionality of an Attributable Order to display the user firm ID, as it continually develops, may not be available during all Exchange processes. The Exchange proposes adding to Rule 516(e) that the Exchange will inform its members through a Regulatory Circular of the various Exchange processes in which the user firm ID of Attributable Order will be displayed.

The Exchange believes that the proposed additional language in the Rule text will provide the Exchange the necessary flexibility to allow the Attributable Order type to display the user firm ID in additional Exchange processes while the Exchange continues to develop them. For instance, at its initial launch, Attributable Orders may be entered into and rest on the Exchange System and will only display the user firm ID through the Exchange market data products when the Attributable Order initiates a Liquidity Refresh Pause[7] or a Route Timer.[8] If the Exchange develops the Attributable Order to display the user firm ID in an additional Exchange process, for example during the Opening process, the Exchange will update its members through a Regulatory Circular as proposed in this filing.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow firms to better manage order flow by understanding the Attributable Order type functionality available on the Exchange. In addition, the proposed clarifying language will protect investors and the public interest by eliminating potential confusion that could be caused by the current description of order type functionality which may imply that the Attributable Order is available for all Exchange processes. The Exchange notes that the current available processes for the Attributable Order type do not encompass all the potential Exchange processes in which the Exchange believes would be useful to offer the Attributable Order, such as a price improvement mechanism or complex order mechanism which the Exchange may deploy in the future.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. . The Exchange believes that the proposal will would provide member organizations with the information required for better use of the Attributable Order type. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. Many competing venues offer similar functionality to market participants. To this end, the Exchange is proposing adding more detail regarding one of its order types and a mechanism, specifically the Regulatory Circular, to provide continuing updates. The Exchange believes the proposed rule change is pro-competitive because the added information regarding the Attributable Order type would enable member organizations to better compare the functionality of the Attributable Order type on the Exchange to that of other exchanges.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the

[4] *See* MIAX Rule 516(e).

[5] *See* Securities Exchange Act Release No. 69007 (February 28, 2013) 78 FR 14617 (March 6, 2013) (SR–MIAX–2013–05).

[6] *See* C2 Rule 6.10(f); ISE Rule 715(h); NYSE Arca Rule 6.62(x); NYSE MKT Rule 900.3NY(v).

[7] *See* Rule 515(c)(1)(iii)(A).

[8] *See* Rule 529(b)(2).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

Commission to waive the 30-day operative delay, noting that doing so will, among other things, protect investors by avoiding potential confusion regarding the availability of Attributable Orders. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, MIAX's Rule 516 (Order Types Defined) already provides that certain order types would not be available when MIAX initially commenced operations. Specifically, MIAX Rule 516 provides that ''. . . not all of the order types listed and described in this rule will be initially available for use on the Exchange. The Exchange will issue a Regulatory Circular listing which order types, among the order types set forth below, are available.'' Paragraph (e) of MIAX Rule 516 sets forth the applicable provision on Attributable Orders. In addition to defining that order type and noting that its use is voluntary, Paragraph (e) states that ''[t]he Exchange will issue a Regulatory Circular specifying the class(es) of securities for which the Attributable Order type shall be available.'' As such, MIAX currently has the ability to begin to offer the Attributable Order type on its market without submitting a rule change to the Commission. However, this proposed rule change would further clarify Paragraph (e) by stating that Attributable Orders will only display the user firm ID for those exchange processes that are specified by MIAX. MIAX further clarifies that it will issue a Regulatory Circular that specifies the applicable Exchange processes and classes of securities for which Attributable Order types will display the user firm ID. Waiving the 30-day operative delay in this case will allow MIAX to avoid investor confusion by immediately clarifying the applicable rule text to reflect the current state of Attributable Orders on MIAX as it begins to offer this order type to market participants and will allow MIAX to accommodate this order type as it develops the technological capability to fully utilize it through MIAX's market data products. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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–MIAX–2013–27 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–MIAX–2013–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–MIAX–2013–27 and should be submitted on or before July 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14395 Filed 6–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69742; File No. SR–NSCC–2013–04]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change in Connection With the Implementation of The Foreign Account Tax Compliance Act (FATCA)

June 12, 2013.

On April 22, 2013, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–NSCC–2013–04 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on May 8, 2013.[3] The Commission did not receive comments on the proposed rule change. This order approves the proposed rule change.

### I. Description

NSCC is amending various NSCC rules ''in connection with the implementation of sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended, which sections were enacted as part of the Foreign Account Tax Compliance Act, and the Treasury Regulations or other official interpretations thereunder (collectively ''FATCA'').''[4] In its filing with the Commission, NSCC provided information concerning FATCA background, implementation, and NSCC's proposed rule changes.

*NSCC's Background Statement*

FATCA was enacted on March 18, 2010, as part of the Hiring Incentives to Restore Employment Act, and became effective, subject to transition rules, on January 1, 2013. The U.S. Treasury Department finalized and issued various implementing regulations (''FATCA

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69497 (May 2, 2013), 78 FR 26838 (May 8, 2013) (SR–NSCC–2013–04).

[4] *Id.* at 26838.

Regulations'') on January 17, 2013. FATCA generally requires foreign financial institutions (''FFIs'')[5] to become ''participating FFIs'' by entering into agreements with the Internal Revenue Service (''IRS''). Under these agreements, FFIs are required to report to the IRS information on U.S. persons and entities that have (directly or indirectly) accounts with these FFIs. If an FFI does not enter into such an agreement with the IRS, FATCA will impose a 30% withholding tax on U.S.-source interest, dividends and other periodic amounts paid to such ''nonparticipating FFI'' (''Income Withholding''), as well as on the payment of gross proceeds arising from the sale, maturity, or redemption of securities or any instrument yielding U.S.-source interest and dividends (''Gross Proceeds Withholding,'' and, together with Income Withholding, ''FATCA Withholding''). The 30% FATCA Withholding taxes will apply to payments made to a nonparticipating FFI acting in any capacity, including payments made to a nonparticipating FFI that is not the beneficial owner of the amount paid and acting only as a custodian or other intermediary with respect to such payment. To the extent that U.S.-source interest, dividend, and other periodic amount or gross proceeds payments are due to a nonparticipating FFI in any capacity, a U.S. payor, such as NSCC, transmitting such payments to the nonparticipating FFI will be liable to the IRS for any amounts of FATCA Withholding that the U.S. payor should, but does not, withhold and remit to the IRS. According to NSCC, under FATCA, a U.S. payor, such as NSCC, could be required to deduct Income Withholding with regard to a participating FFI if either: (x) the participating FFI makes a statutory election to shift its withholding responsibility under FATCA to the U.S. payor; or (y) the U.S. payor is required to ignore the actual recipient and treat the payment as if made instead to certain owners, principals, customers, account holders or financial counterparties of the participating FFI. NSCC believes it is not in a position to accept this burden shift and is implementing preventive measures to protect itself against such a burden through the rule changes contained herein.

According to NSCC, as an alternative to FFIs entering into individual agreements with the IRS, the U.S. Treasury Department provided another means of complying with FATCA for FFIs which are resident in non-U.S. jurisdictions that enter into intergovernmental agreements (''IGA'') with the United States.[6] Generally, such a jurisdiction (''FATCA Partner'') would pass laws to eliminate the conflicts of law issues that would otherwise make it difficult for FFIs in its jurisdiction to collect the information required under FATCA and transfer this information, directly or indirectly, to the United States. An FFI resident in a FATCA Partner jurisdiction would either transmit FATCA reporting to its local competent tax authority, which in turn would transmit the information to the IRS, or the FFI would be authorized/required by FATCA Partner law to enter into an FFI agreement and transmit FATCA reporting directly to the IRS. Under both IGA models, payments to such FFIs would not be subject to FATCA Withholding so long as the FFI complies with the FATCA Partner's laws mandated in the IGA.

According to NSCC, under the FATCA Regulations, (A) beginning January 1, 2014, NSCC will be required to do Income Withholding on any payments made to any nonparticipating FFI approved for membership by NSCC as of such date or thereafter, (B) beginning July 1, 2014, NSCC will be required to do Income Withholding on any payments made to any nonparticipating FFI approved for membership by NSCC prior to January 1, 2014 and (C) beginning January 1, 2017, NSCC will be required to do Gross Proceeds Withholding on all nonparticipating FFIs, regardless when any such FFI's membership was approved.

*NSCC's Statement on FATCA Implementation*

According to NSCC, in preparation for FATCA's implementation, FFIs are being asked to identify their expected FATCA status as a condition of continuing to do business. Customary legal agreements in the financial services industry already contain provisions allocating the risk of any FATCA Withholding tax that will need to be collected, and requiring that, upon FATCA's effectiveness, foreign counterparties must certify (and periodically recertify) their FATCA status using the relevant tax forms that the IRS has announced it will provide.[7] Advance disclosure by an FFI client or counterparty would permit a withholding agent to readily determine whether it must, under FATCA, withhold on payments it makes to the FFI. If an FFI fails to provide appropriate compliance documentation to a withholding agent, such FFI would be presumed to be a nonparticipating FFI and the withholding agent will be obligated to withhold on certain payments.

NSCC states that FATCA will require NSCC to deduct FATCA Withholding on payments to certain members and limited members arising from certain transactions processed by NSCC on behalf of such members.[8] Because FATCA treats any entity holding financial assets for the account of others as a ''financial institution,'' NSCC believes that almost all of its members and limited members which are treated as non-U.S. entities for federal income tax purposes, including those members and limited members that are U.S. branches of non-U.S. entities, will likely be FFIs under FATCA (collectively, ''FFI Members'').[9] NSCC says that as a result, it will be liable to the IRS for any failures to withhold correctly under FATCA on payments made to its FFI Members.

In light of this, NSCC has evaluated its existing systems and services to determine whether and how it may comply with its FATCA obligations. As a result of this evaluation, NSCC has determined that its existing systems cannot process the new FATCA Withholding obligations with regard to the securities transactions processed by it, as no similar withholding obligation of this magnitude has ever been imposed upon it to date, and NSCC has therefore not built its systems to support such an obligation.

In addition, NSCC states that the vast majority of the transactions that are processed at NSCC are processed through its Continuous Net Settlement (''CNS'') System. CNS is NSCC's core netting, allotting, and fail-control engine. Within CNS, each security and related money settlement obligation is

[5] According to NSCC, non-U.S. financial institutions are referred to as ''foreign financial institutions'' or ''FFIs'' in the FATCA Regulations.

[6] NSCC states that as of the date of this proposed rule change filing, the United Kingdom, Mexico, Ireland, Switzerland, Spain, Norway, Denmark, Italy, and Germany have signed or initialed an IGA with the United States. The U.S. Treasury Department has announced that it is engaged in negotiations with more than 50 countries and jurisdictions regarding entering into an IGA.

[7] For example, credit agreements now routinely require foreign lenders to agree to provide certifications of their FATCA status under approved IRS forms to U.S. borrowers, and subscription agreements for alternative investment funds that are anticipated to earn U.S.-source income are routinely requiring similar covenants.

[8] According to NSCC, FFI members and limited members resident in IGA countries that are compliant with the terms of applicable IGAs should not be subject to FATCA Withholding.

[9] Currently, only a small percentage of NSCC's members and limited members are treated as non-U.S. entities for federal income tax purposes.

netted to one net security and/or payment position per member, including FFI Members, with NSCC as its central counterparty. CNS maintains an orderly flow of security and money balances, providing clearance and settlement for equities, corporate bonds, unit investment trusts and municipal bonds that are eligible for book entry delivery at The Depository Trust Company (''DTC''), an affiliate of NSCC.

Further, NSCC's related Money Settlement Service provides for net money settlement with regard to payments attributable to CNS, as well as with regard to payments attributable to other NSCC-processed transactions, including mutual fund and insurance transactions. Money settlement at NSCC occurs at the end of the day and, from an operational perspective, is centralized with DTC's end-of-day money settlement in order to provide common NSCC members/DTC participants with consolidated reporting and a single point of access for all settlement information. Throughout the day, debit and credit data generated by member activity are recorded in the settlement system. At the end of the processing day, the data is summarized by product category (e.g., CNS, mutual funds, etc.) and netted to produce an aggregate debit or credit for each member. Similarly, DTC activity is also recorded and netted. Following the determination of final net numbers for each NSCC member and/or DTC participant, these amounts are further netted to produce a consolidated net settlement obligation. So, for example, a member with a settlement debit at NSCC, which member is also a DTC participant, will have that debit netted against its settlement credit at DTC. Settling banks, who may settle on behalf of multiple NSCC members and/or DTC participants, must separately acknowledge the respective settlement balances of their customer members/participants at each clearing agency. The consolidated net balances of their respective member/participant customers are then further netted to produce a single net-net settling bank consolidated debit or credit. Settlement of these net-net balances occurs through use of the Federal Reserve's National Settlement Service, whereby DTC, on its own behalf and as NSCC's settlement agent, submits instructions to have the Federal Reserve accounts of the settling banks charged for their net-net debit balances and credited with their net-net credit balances. NSCC believes that this net-net settlement functionality could make FATCA Withholding virtually impossible, or, at the very least, would create onerous efficiency and liquidity issues for both NSCC and its membership.

NSCC believes that undertaking FATCA Withholding, given NSCC's net-net settlement functionality, could require NSCC in certain circumstances to resort to a draw on NSCC's clearing fund (''Clearing Fund'') in order to fund FATCA Withholding taxes with regard to nonparticipating FFI Members in non-FATCA Partner jurisdictions whenever the net credit owed to such FFI Member is less than the 30% FATCA tax. For example, if a nonparticipating FFI (in a non-FATCA Partner jurisdiction) is owed a $100M payment from the sale of U.S. securities, but such nonparticipating FFI is in a net debit position at the end of that day because of NSCC's net settlement functionality and end-of-day crediting and debiting, there would be no payment to this FFI Member from which NSCC can withhold. In this example, NSCC would likely need to fund the $30M FATCA Withholding tax until such time as the FFI Member can reimburse NSCC and, as NSCC has no funds for this purpose, it likely would require a draw on the Clearing Fund.[10] NSCC would need to consider an increase in the amount of cash required to be deposited into the Clearing Fund, either by FFI Members or perhaps all of its members, which would reduce such member's liquidity and could have significant systemic effects. The amount of the FATCA Withholding taxes would be removed from market liquidity, which could lead to increased risk of member failure and increased financial instability.

For the reasons explained above and the following additional reasons, NSCC is amending its rules to implement preventive measures that would generally require all of NSCC's (i) existing members and limited members that are treated as non-U.S. entities for federal tax income purposes and (ii) any applicants applying to become members or limited members, that are treated as non-U.S. entities for federal income tax purposes to be participating FFIs because NSCC believes that:

- Undertaking FATCA Withholding by NSCC (even if possible) would make it economically unfeasible for affected FFI Members to engage in transactions involving U.S. securities. It would likely also quickly cause a significant negative impact on such FFI Members' liquidity because such withholding taxes would be imposed on the very large sums that NSCC pays to such FFI Members. Furthermore, FFI Members would be burdened with extra costs and the negative impact on liquidity caused by the likely need to substantially increase the amount of cash required to be deposited into the Clearing Fund.
- The cost of implementing a FATCA Withholding system for a small number of nonparticipating FFI Members would be substantial and disproportionate to the related benefit. Under the Model I IGA form and its executed versions with various FATCA Partners, NSCC would not be required to withhold with regard to FFI residents in such FATCA Partner jurisdictions. Accordingly, NSCC's withholding obligations under FATCA would effectively be limited to nonparticipating FFI Members in non-FATCA Partner jurisdictions. Since the cost of developing and maintaining a complex FATCA Withholding system would be passed on to NSCC's members at large, it may burden members that otherwise comply with, or are not subject to, FATCA Withholding.
- As briefly noted above, absent this current action and in order to avoid counterparty credit risk, NSCC would likely require each of the nonparticipating FFI Members in non-FATCA Partner jurisdictions to make initial or additional cash deposits to the Clearing Fund as collateral for the approximate potential FATCA tax liability of such nonparticipating FFI Member or otherwise adjust required deposits to the Clearing Fund. The amount of such deposits, which could amount to billions of dollars, would be removed from market liquidity.
- From the nonparticipating FFI Member's perspective, having 30% of its payments withheld and sent to the IRS would have a severe negative impact on such nonparticipating FFI Member's financial status. In many cases, the gross receipts would be for client accounts, and the nonparticipating FFI Member would need to make such accounts

[10] NSCC notes that the FATCA Regulations provide that ''clearing organizations,'' which settle money on a net basis, may withhold on a similar net basis for FATCA purposes. However, the end-of-day net settlement amounts, which are attributable to the sales and dispositions of many different securities as well as debits and credits for other items, would likely not qualify for the special FATCA netting rule. Additionally, as discussed above, each of NSCC's member's end-of-day money settlement obligation is cross-netted with such member's respective money settlement obligation at DTC, and therefore, qualifying as a ''clearing organization'' under FATCA would still not prevent the possibility that NSCC would need to fund FATCA Withholding taxes from the Clearing Fund. Even if the end-of-day net-net settlement amount would qualify as the correct amount from which to do FATCA Withholding, the liquidity risks described herein are still present. This is because the sheer dollar value attributable to NSCC's net daily payments among NSCC and members means that withholding FATCA tax from such net settlement payments, in any material proportion, would likely reduce liquidity and thus increase financial instability.

whole. Without receipt of full payment for its dispositions, the nonparticipating FFI Member would not have sufficient assets to fund its client accounts.

• These rule changes should not create business issues or be onerous to NSCC's membership because requiring FFIs to certify (and to periodically recertify) their FATCA status, and imposing the costs of non-compliance on them, are becoming standard market practice in the United States, separate and apart from membership in NSCC.

*Rule Changes*

NSCC states that managing the risks inherent in executing securities transactions is a key component of NSCC's business. NSCC's risk tolerances (i.e., the levels of risk NSCC is prepared to confront, under a range of possible scenarios, in carrying out its business functions) are determined by the Board of Directors, in consultation with the Group Chief Risk Officer. NSCC uses a combination of risk management tools, including strict criteria for membership, to mitigate the risks inherent in its business.

In line with its risk management focus, NSCC has determined that compliance with FATCA, so that NSCC shall not be responsible for FATCA Withholding, should be a general membership requirement (A) for all applicants that are treated as non-U.S. entities for federal income tax purposes, and (B) for all existing FFI Members.[11] NSCC is amending its rules as follows:

• *Rule 1:* adding ''FFI Member,'' ''FATCA,'' ''FATCA Certification,'' ''FATCA Compliance Date'' [12] and ''FATCA Compliant'' as defined terms;

• *Rule 2, Section 4:* requiring that all FFI Members (both new and existing), in general: (i) Agree not to conduct any transaction or activity through NSCC if such FFI Member is not FATCA Compliant, (ii) certify and, as required under the timelines set forth under FATCA, periodically recertify, to NSCC that they are FATCA Compliant, and (iii) indemnify NSCC for any losses sustained by NSCC resulting from such FFI Member's failure to be FATCA Compliant;

• *Rule 2A, Section 1.B.:* adding FATCA Compliance as a qualification requirement for any applicant that will be an FFI Member;

• *Rule 2A, Section 1.B., Foot Note 1:* making a technical clarification to expressly include the policy statement set forth in Addendum O as other qualification standards that NSCC has promulgated with regard to certain applicants;

• *Rule 2A, Section 1.C.:* adding that each applicant must complete and deliver a FATCA Certification to NSCC as part of its membership application unless NSCC has waived this requirement with regard to membership type;

• *Rule 2B, Section 1:* making a technical clarification by adding a footnote to expressly include the policy statement set forth in Addendum O as qualifications and standards which are continuing membership requirements;

• *Rule 2B, Section 2.B:* specifying that failure to be FATCA Compliant creates a duty upon an FFI Member (both new and existing) to inform NSCC;

• *Addendum O:* requiring applicants that are subject to this Policy Statement (i) to be FATCA Compliant, (ii) to deliver to NSCC a FATCA Certification, and to periodically recertify such FATCA Certification, (iii) to agree not to submit any order for processing through NSCC if the applicant fails to be FATCA Compliant at any time, and (iv) to agree to indemnify NSCC for any losses sustained by NSCC resulting from the applicant's failure to be FATCA Compliant, as conditions to admission and continued membership.

## II. Discussion

Section 19(b)(2)(C) of the Act [13] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [14] requires the rules of a clearing agency to be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and protect investors and the public interest. The Commission finds that NSCC's proposed rule change is consistent with these requirements because it is designed to comply with FATCA while eliminating uncertainty in funds settlement. Specifically, based on NSCC's representations, the Commission understands that the proposed rule change is designed codify NSCC's rules in a way that will allow NSCC to comply with FACTA without developing and maintaining a complex FATCA Withholding system and, as a result, it will eliminate uncertainty in funds settlement that NSCC believes will arise if NSCC is subject to FATCA Withholding.

In approving this proposed rule change, the Commission is mindful of the IRS's jurisdiction respecting FATCA. This Order does not interpret FATCA. The Commission's approval of the proposed rule change in no way constitutes a determination or finding by the Commission that the proposed rule change complies with FATCA, which is under the purview of the IRS.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [15] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NSCC–2013–04) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–14392 Filed 6–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

[11] NSCC may grant a waiver under certain circumstances, provided, however, that NSCC will not grant a waiver if it causes NSCC to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property.

[12] Although Income Withholding with regard to FFI Members approved for membership by NSCC prior to January 1, 2014 is first required under FATCA beginning July, 1 2014, the proposed amendments to NSCC rules would require such existing FFI Members to be FATCA compliant approximately 60 days prior to July 1, 2014 in order for NSCC to comply with its disciplinary and notice processes as set forth in NSCC rules.

[13] 15 U.S.C. 78s(b)(2)(C).

[14] 12 U.S.C. 78q–1(b)(3)(F).

[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13586 and #13587]**

### Oklahoma Disaster Number OK–00071

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4117–DR), dated 05/20/2013.

*Incident:* Severe Storms, Tornadoes and Flooding.

*Incident Period:* 05/18/2013 and continuing through 06/02/2013.

*Effective Date:* 06/11/2013.

*Physical Loan Application Deadline Date:* 07/19/2013.

*EIDL Loan Application Deadline Date:* 02/20/2014.

**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:** Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of OKLAHOMA, dated 05/20/2013 is hereby amended to re-establish the incident period for this disaster as beginning 05/18/2013 and continuing through 06/02/2013 and expand the incident to include flooding.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Jerome Edwards,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2013–14471 Filed 6–17–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13616 and #13617]**

### Texas Disaster #TX–00408

**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 06/12/2013.

*Incident:* Severe Weather and Flooding.

*Incident Period*: 05/25/2013 through 05/27/2013.

*Effective Date:* 06/12/2013.

*Physical Loan Application Deadline Date:* 08/12/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/12/2014.

**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:* Bexar.

*Contiguous Counties:*

Texas: Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina, Wilson.

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 13616 6 and for economic injury is 13617 0.

The States which received an EIDL Declaration # are Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 12, 2013.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2013–14475 Filed 6–17–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13618 and #13619]**

### Michigan Disaster #MI–00039

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Michigan dated 06/12/2013.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 04/07/2013 through 04/20/2013.

*Effective Date:* 06/12/2013.

*Physical Loan Application Deadline Date:* 08/12/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/12/2014.

**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:* Kent.

*Contiguous Counties:*

Michigan: Allegan, Barry, Ionia, Montcalm, Muskegon, Newaygo, Ottawa.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 3.375 |
| Homeowners Without Credit Available Elsewhere | 1.688 |
| 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 13618 6 and for economic injury is 13619 0.

The States which received an EIDL Declaration # are Michigan.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 12, 2013.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2013–14474 Filed 6–17–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13586 and #13587]**

### Oklahoma Disaster Number OK–00071

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 3.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4117–DR), dated 05/20/2013.

*Incident:* Severe Storms, Tornadoes and Flooding.

*Incident Period:* 05/18/2013 through 06/02/2013.

*Effective Date:* 06/11/2013.

*Physical Loan Application Deadline Date:* 07/19/2013.

*EIDL Loan Application Deadline Date:* 02/20/2014.

**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:** Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Oklahoma, dated 05/20/2013 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties: (Physical Damage and Economic Injury Loans):*

Canadian.

*Contiguous Counties: (Economic Injury Loans Only):*

Oklahoma: Blaine, Caddo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Jerome Edwards,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2013–14472 Filed 6–17–13; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

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

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period was published on June 13, 2012 (Vol. 77, No. 144/FR pp.35473–35475).

**DATES:** Submit comments to the Office of Management and Budget (OMB) on or before July 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mary Hinch at the National Highway Traffic Safety Administration, Office of Behavioral Safety Research (NTI–132), W44–466, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Mary Hinch's phone number is 202–366–5595 and her email address is *mary.hinch@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2127–0665.

*Title:* NHTSA Distracted Driving Survey Project.

*Form No.:* NHTSA Form 1084.

*Type of Review:* Revision of previously approved collection of information.

*Respondents:* Licensed drivers 18 years of age and older residing in the communities participating in the distracted driving demonstration program. Participation by all respondents would be voluntary and anonymous. The surveys would not collect any personal information that would allow anyone to identify respondents. A Spanish-language translation and bilingual interviewers would be used to minimize language barriers to participation.

*Estimated Number of Respondents:* A maximum of 20,000 licensed drivers.

*Estimated Time Per Response:* The interviews are estimated to run 5 minutes in length.

*Total Estimated Annual Burden Hours:* 1,667 hours.

*Frequency of Collection:* Each respondent will only participate in the survey once.

*Abstract:* The National Highway Traffic Safety Administration (NHTSA) proposes to conduct awareness surveys to evaluate a traffic safety program designed to reduce texting and driving. The program will be conducted at the community level in two States. Information on attitudes, awareness, knowledge, and self-reported behavior would be collected.

The findings from the proposed information collection would build on existing knowledge and contribute to our safety goal of reducing distracted driving. In 2010 and 2011, NHTSA conducted a high visibility enforcement distracted driving program in Hartford, Connecticut and Syracuse, New York focusing on hand-held phone use. The current project would expand the distracted driving program to focus on texting behavior. This data collection would provide great insight into the application of the high visibility enforcement model to reduce texting amongst drivers.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, or by email at *oira_submission@omb.eop.gov,* or fax: 202–395–5806.

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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 on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

**Authority:** 44 U.S.C. Section 3506(c)(2)(A).

**Jeff Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2013–14445 Filed 6–17–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[US DOT Docket No. NHTSA–2013–0056]**

### Reports, Forms and Record Keeping Requirements, Agency Information Collection Activity Under OMB Review, OMB Control Number 2127—NEW

**AGENCY:** National Highway Traffic Safety Administration, U.S. Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 2, 2009 [74 FR 63225] in conjunction with a notice of proposed rulemaking that would establish a new Federal Motor Vehicle Safety Standard (FMVSS) No. 226 for which the collection of information would be needed. No comments were received on the ICR.

This document describes the collection of information for which NHTSA intends to seek OMB approval. The collection of information described is the ''Ejection Mitigation Phase in Reporting Requirements—Part 585.'' (OMB Control Number: 2127–XXXX)

**DATES:** Comments must be submitted on or before July 18, 2013.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Mr. Louis N. Molino at U.S. Department of Transportation, NHTSA, 1200 New Jersey Avenue SE., West Building Room W43–419, NVS–112, Washington, DC 20590. Mr. Molino's telephone number is (202) 366–1740 and fax number is (202) 493–2990.

**SUPPLEMENTARY INFORMATION:**

### National Highway Traffic Safety Administration

*Title:* Ejection Mitigation Phase in Reporting Requirements—Part 585.

*OMB Control Number:* 2127–XXXX.

*Type of Request:* New collection.

*Abstract:* 49 U.S.C. 30111 authorizes the issuance of Federal motor vehicle safety standards (FMVSSs) and regulations. The agency, in prescribing an FMVSS or regulations, considers available relevant motor vehicle safety data, and consults with other agencies, as it deems appropriate. Further, the statute mandates that in issuing any FMVSS or regulation, the agency considers whether the standard or regulation is ''reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed,'' and whether such a standard will contribute to carrying out the purpose of the Act.

The Secretary is authorized to invoke such rules and regulations, as deemed necessary to carry out these requirements. Using this authority, on January 19, 2011, the agency published a final rule (76 FR 3212) establishing FMVSS No. 226, ''Ejection mitigation.'' The final rule contained a collection of information because of the proposed phase-in reporting requirements. The collection of information requires manufacturers of passenger cars and of trucks, buses and multi-purpose passenger vehicles (MPVs) with a GVWR of 4,536 kg (10,000 lb) or less, to annually submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the ejection mitigation requirements of this FMVSS. The phase-in of the test requirements would be completed on September 1, 2017, at which time, all affected vehicles are required to meet the new requirements. The purpose of the reporting requirements is to aid the agency in determining whether a manufacturer has complied with the ejection mitigation requirements during the phase-in of those requirements.

*Affected Public:* Businesses.

*Estimated Total Annual Burden:* 1,260 hours.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; 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 on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: June 13, 2013.

**Lori Summers,**

*Acting Associate Administrator for Rulemaking.*

[FR Doc. 2013–14443 Filed 6–17–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA—2012–0084]**

### National Automotive Sampling System

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

**ACTION:** Notice of public listening session.

**SUMMARY:** NHTSA has reached the next phase of the design for the modernization of National Automotive Sampling System (NASS) or Data Modernization (DataMod). NHTSA announces that it will hold a public listening session to solicit information and comments on: (a) Adding, deleting or changing the current NASS data elements for DataMod, and; (b) recommendations for changing or improving the NASS data collection methodology. NHTSA will give a brief status of the project and then open the floor to the public. The listening session will also be accessible through the Internet.

**DATES:** The listening session will be held on July 18, 2013, from 1:00–5:00 p.m., EDT. If all participants have had an opportunity to comment, the session may conclude earlier.

**ADDRESSES:** The listening session will be held at the U. S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, in the Oklahoma City Conference Room. In addition to attending the session in person, the Agency offers several ways to provide comments as enumerated below.

- *Internet Access Via the Web:* NHTSA will post specific information on how to participate via the Internet on the NHTSA Web site at *www.nhtsa.gov* one week before the listening session.

You may submit comments bearing the Federal Docket Management System Docket ID NHTSA–2012–0084 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Send comments to: Docket Management Facility, 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

• *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 mention the agency and the docket number of this document within your correspondence. Please note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comments, 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 19477–78) or you may visit *http://DocketInfo.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the listening session or access via the Internet, please contact Delia Lopez, National Center for Statistics and Analysis, NHTSA (telephone: 202–366–5365 or email: *delia.lopez@dot.gov*). Registration is available at *www.nhtsa.gov*.

If you need sign language assistance to participate in this listening session, contact Ms. Lopez by July 3, 2013, to allow us to arrange for such services. NHTSA cannot guarantee that interpreter services requested on short notice will be provided.

**SUPPLEMENTARY INFORMATION:** The listening session will allow interested persons to present comments and propose future data elements to be collected by NASS excluding comments already submitted. All comments and discussions will be transcribed and placed in docket NHTSA–2012–0084 for NHTSA's consideration.

## I. Background

NHTSA is undertaking a modernization effort to upgrade the National Automotive Sampling System (NASS) by improving the information technology (IT) infrastructure, updating and prioritizing the data collected, reselecting the sample sites and sample sizes, re-examining the electronic formats in which the crash data files are made available to the public, and improving data collection methods and quality control procedures, among other activities. This project is called the Data Modernization (DataMod) Project.

NASS collects crash data on a nationally representative sample of police-reported motor vehicle traffic crashes and related injuries. NASS data are used by Federal, State, and local government agencies, as well as by industry and academia in the U.S. and around the world. The data enable stakeholders to make informed regulatory, program, and policy decisions regarding vehicle design and traffic safety. The NASS system currently has two components: the General Estimates System (GES) and the Crashworthiness Data System (CDS). While the GES captures information on all types of traffic crashes, the CDS focuses on more severe crashes involving passenger vehicles to better document the consequences to vehicles and occupants in crashes—i.e., crashworthiness.

NASS was originally designed in the 1970's, and has not received significant revision since that time with regard to the type of data collected and the sites for data collection. Over the last three decades NHTSA understands that the scope of traffic safety studies has expanded and the data needs of the transportation community have increased and significantly changed. In addition, the distribution of the U.S. population has shifted over the past 23 years, and there is a growing need for the collection of information that addresses issues of crash avoidance. Recognizing the importance of this data, NHTSA is pursuing the DataMod Project to enhance the quality of the data collected and the overall effectiveness of the NASS.

This modernization effort includes the following major objectives:

• Propose data elements for the crash investigation portion of NASS that are responsive to the current and future needs of both internal and external data users;

• Develop a detailed, executable sample design and data collection protocol blueprint that meets data needs in an effective and efficient manner while still maintaining national representativeness;

• Modernize the information technology (IT) infrastructure;

• Re-examine the electronic formats in which the crash data files are made available to the public; and

• Examine using new data collection methods and quality control procedures to improve data quality and timeliness.

## II. Comments From Stakeholders

On June 21, 2012, NHTSA published a **Federal Register** notice (77 FR 37471–72) soliciting comments from NASS users on the current data elements, proposed new data elements, suggestions on the research design and data collection protocol for the modernized study, and any other ideas NHTSA should consider to improve crash data.

Twenty-five organizations and individuals submitted comments in response to the **Federal Register** Notice. Most of the comments came from research organizations and automobile manufacturers and their associations. The 25 organizations and individuals provided 313 specific comments. As expected, most of the specific comments were related to NASS CDS (292 or 93%). The remaining comments were related to GES, the Fatality Analysis Reporting System (FARS), or multiple NHTSA crash data bases.

Specific comments fell into common general topic areas. The most common topic areas were scene, followed by sample design, data elements, and vehicle reconstruction. Once the comments were grouped into topic areas, it was clear that many of the comments overlapped or were the same. At least two or more associations and individuals requested the same information in the new system. For example, although we received 41 specific comments on scene information, many of the comments were similar. In fact, if you group by unique comments there are only 18 unique comments related to scene. Seven commenters wanted latitude and longitude data added to both GES and CDS in the new system.

Anyone who responded previously to the previous **Federal Register** Notice requesting comments does not need to resubmit their comments. To see the comments that were submitted, please go to *http://www.regulations.gov* and search for docket number, NHTSA–2012–0084.

## III. Meeting Participation and Information NHTSA Seeks From the Public

The listening session is open to the public. NHTSA will open the meeting by providing a brief presentation on the current status. The status update will include an overall description of the Data Mod Project and project timing, provide information on the new sample design and describe the information

technology implementation. NHTSA has reached the next phase of the design for the modernization of NASS. In this phase we need to finalize the new data elements. Current NASS data elements, coding instructions, and descriptive materials can be reviewed on NHTSA's Web site at: *http://nhtsa.gov/NASS.*

Speakers' remarks will be limited to 10 minutes each. Pre-registration is required for in-person and webinar participation. Register at *www.nhtsa.gov* by July 11, 2013. For questions contact Delia Lopez at *delia.lopez@dot.gov* or 202–366–5365. In-person participants need to bring photo identification and should plan to arrive 45 minutes before the session starts to allow time to clear building security. The public may submit material to the NHTSA staff at the session for inclusion in the public docket, NHTSA–2012–0084.

### IV. Alternative Access Via the Internet During the Listening Session on July 18, 2013

NHTSA will also provide access via the Internet for participants. The telephone access number and other information on how to participate via the Internet will be posted on the NHTSA Web site at *www.nhsta.gov* one week before the listening session. Internet participants must register at *www.nhtsa.gov* by July 11, 2013.

**Terry Shelton,**

*Associate Administrator, National Center For Statistics and Analysis.*

[FR Doc. 2013–14363 Filed 6–17–13; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of the individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''.

**DATES:** The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the two individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on June 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202)622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

#### Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On June 12, 2013, the Director of OFAC removed from the SDN List the two individuals listed below, whose property and interests in property were blocked pursuant to the Order:

*Individuals*

1. PUENTE GONZALEZ, Carlos Alberto; DOB 28 Nov 1937; Cedula No. 2449885 (Colombia); Passport 2449885 (Colombia) (individual) [SDNT].
2. VASQUEZ DIAZ, Augusto de Jesus, c/o FLORIDA SOCCER CLUB S.A., Medellin, Colombia; POB Colombia; Cedula No. 3333064 (Colombia) (individual) [SDNT].

Dated: June 12, 2013.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2013–14463 Filed 6–17–13; 8:45 am]

BILLING CODE 4810–AL–P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Additional Designations, Foreign Narcotics Kingpin Designation Act

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of 18 individuals and 15 entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

**DATES:** The designation by the Director of OFAC of the 18 individuals and 15 entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on June 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation Office of Foreign Assets Control U.S. Department of the Treasury Washington, DC 20220 Tel: (202) 622–2490

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

#### Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of

sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On June 12, 2013, the Director of OFAC designated the following 18 individuals and 15 entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

*Individuals:*

1. ADIB MADERO, Michel; DOB 21 Feb 1977; POB Jalisco, Mexico; Cedula No. 3348806 (Mexico); R.F.C. AIMM770221CJ7 (Mexico); C.U.R.P. AIMM770221HJCDDC08 (Mexico) (individual) [SDNTK] (Linked To: RESTAURANT BAR LOS ANDARIEGOS, S.A. DE C.V.).
2. BUENROSTRO VILLA, Denisse, Circuito Madrigal 4236–05, Zapopan 45510, Mexico; DOB 22 Mar 1980; POB Guadalajara, Jalisco, Mexico; C.U.R.P. BUVD800322MJCNLN06 (Mexico) (individual) [SDNTK] (Linked To: EL BANO DE MARIA, S. DE R.L. DE C.V.).
3. CARO ELENES, Hector Rafael (a.k.a. CARO HELENES, Hector Rafael), Callejon del Serrano 4361, Guadalajara, Jalisco, Mexico; Loreto Mendez #4432, Guadalajara, Jalisco, Mexico; San Gonzalo No. 1715, Colonia Santa Isabel, Zapopan, Jalisco C.P. 45110, Mexico; Calle Circuito Madrigal No. 4236 Interior 5, Colonia Santa Isabel, Zapopan, Jalisco C.P. 45110, Mexico; Avenida Acueducto No. 5056, Colonia Jardines de la Patria, Zapopan, Jalisco, Mexico; DOB 18 Dec 1975; POB Culiacan, Sinaloa, Mexico; R.F.C. CAEH751218JT4 (Mexico); C.U.R.P. CAEH751218HSLRLC01 (Mexico) (individual) [SDNTK] (Linked To: BLUE POINT SALT, S.A. DE C.V.; Linked To: DESARROLLOS BIO GAS, S.A. DE C.V.; Linked To: ECA ENERGETICOS, S.A. DE C.V.; Linked To: ORGANIC SALT, S.A. DE C.V.; Linked To: PETRO BIO, S. DE R.L. DE C.V.; Linked To: PRONTO SHOES, S.A. DE C.V.).
4. CARO ELENES, Henoch Emilio, Callejon del Sereno No. 4361, Col. Fracc. Jardines Universidad, Zapopan, Jalisco C.P. 45110, Mexico; Paseo del Bosque No. 2428, Colonia Lomas Altas, Zapopan, Jalisco, Mexico; Av. Pablo Neruda No. 4111, Casa 1, Colonia Lomas del Valle, Zapopan, Jalisco C.P. 45129, Mexico; Paseo de los Parques No. 3995, Interior 7, Zapopan, Jalisco C.P. 45110, Mexico; Loreto Mendez #4432, Guadalajara, Jalisco, Mexico; DOB 15 Mar 1980; POB Culiacan, Sinaloa, Mexico; alt. POB Guadalajara, Jalisco, Mexico; R.F.C. CAEH800315V38 (Mexico); C.U.R.P. CAEH800315HSLRLN07 (Mexico) (individual) [SDNTK] (Linked To: BLUE POINT SALT, S.A. DE C.V.; Linked To: DESARROLLOS BIO GAS, S.A. DE C.V.; Linked To: ECA ENERGETICOS, S.A. DE C.V.; Linked To: EVCOMER, S.A. DE C.V.; Linked To: PETRO BIO, S. DE R.L. DE C.V.; Linked To: PRONTO SHOES, S.A. DE C.V.; Linked To: REFORESTACIONES CARELES, S. DE P.R. DE R.L.).
5. CARO ELENES, Mario Yibran (a.k.a. CARO, Gibran), Callejon del Sereno No. 4361, Col. Fracc. Jardines Universidad, Zapopan, Jalisco C.P. 45110, Mexico; Calle Loreto Mendez 4432, Sector Hidalgo, Guadalajara, Jalisco, Mexico; DOB 11 Jun 1983; POB Guadalajara, Jalisco, Mexico; R.F.C. CAEM830611SXD (Mexico); C.U.R.P. CAEM830611HJCRLR05 (Mexico) (individual) [SDNTK] (Linked To: PETRO BIO, S. DE R.L. DE C.V.; Linked To: PRONTO SHOES, S.A. DE C.V.; Linked To: REFORESTACIONES CARELES, S. DE P.R. DE R.L.).
6. CARO ELENES, Roxana Elizabeth, Callejon del Sereno No. 4361, Col. Fracc. Jardines Universidad, Zapopan, Jalisco C.P. 45110, Mexico; San Gonzalo No. 1715, Colonia Santa Isabel, Zapopan, Jalisco C.P. 45110, Mexico; DOB 17 Jan 1978; POB Culiacan, Sinaloa, Mexico; R.F.C. CAER780117MK8 (Mexico); C.U.R.P. CAER780117MSLRLX03 (Mexico) (individual) [SDNTK] (Linked To: HACIENDA LAS LIMAS, S.A. DE C.V.; Linked To: PETRO BIO, S. DE R.L. DE C.V.; Linked To: REFORESTACIONES CARELES, S. DE P.R. DE R.L.).
7. CONTRERAS SANCHEZ, Diego; DOB 19 Apr 1985; POB Jalisco, Mexico; R.F.C. COSD850419T13 (Mexico); C.U.R.P. COSD850419HJCNNG02 (Mexico) (individual) [SDNTK] (Linked To: RESTAURANT BAR LOS ANDARIEGOS, S.A. DE C.V.).
8. CORTES VILLASENOR, Luis, Av. Vallarta No. 3060, Colonia Vallarta San Jorge, Guadalajara, Jalisco, Mexico; DOB 03 Mar 1971; POB Mexico City, Mexico; R.F.C. COVL7103034L4 (Mexico) (individual) [SDNTK] (Linked To: GRUPO FRACSA, S.A. DE C.V.; Linked To: GRUPO CONSTRUCTOR SEGUNDO MILENIO, S.A. DE C.V.).
9. ELENES LERMA, Maria Elizabeth (a.k.a. ELENES DE CARO, Elizabeth), San Gonzalo No. 1715, Colonia Santa Isabel, Zapopan, Jalisco C.P. 45110, Mexico; Carretera Isidro Mazatepec No. 500, Colonia San Agustin, Tlajomulco de Zuniga, Jalisco C.P. 45645, Mexico; DOB 12 Dec 1952; POB Badiraguato, Sinaloa, Mexico; alt. POB Culiacan, Sinaloa, Mexico; R.F.C. EELE521212B18 (Mexico); C.U.R.P. EELE521212MSLLRL01 (Mexico) (individual) [SDNTK] (Linked To: HACIENDA LAS LIMAS, S.A. DE C.V.).
10. GARZA RODRIGUEZ, Beatriz (a.k.a. GARZA RODRIGUEZ DE SANCHEZ, Beatriz), Av. Vallarta No. 3060, Colonia Vallarta San Jorge, Guadalajara, Jalisco, Mexico; 5151–37 A Av. Acueducto, La Colonia Residencial Pontevedra, Zapopan, Jalisco, Mexico; DOB 14 Nov 1948; POB Los Mochis, Sinaloa, Mexico; R.F.C. GARB481114965 (Mexico); C.U.R.P. GARB481114MSLRDT03 (Mexico) (individual) [SDNTK].
11. RIEBELING CORDERO, Hilda, 3888 Calle Paseo de los Parques, Colonia Colinas de San Javier, Zapopan, Jalisco, Mexico; DOB 21 Jan 1972; POB Guadalajara, Jalisco, Mexico;

Passport 99140083768 (Mexico); R.F.C. RICH7201214J3 (Mexico); C.U.R.P. RICH720121MJCBRL08 (Mexico) (individual) [SDNTK].

12. SANCHEZ BARBA, Jose de Jesus, Av. Vallarta No. 3060, Col. Vallarta San Jorge, Guadalajara, Jalisco, Mexico; 5151–37 A Avenida Acueducto, La Colonia Residencial Pontevedra, Zapopan, Jalisco, Mexico; DOB 02 Jul 1937; POB Tepatitlan de Morelos, Jalisco, Mexico; C.U.R.P. SABJ370702HJCNRS04 (Mexico) (individual) [SDNTK].
13. SANCHEZ GARZA, Mauricio, Av. Vallarta No. 3060, Colonia Vallarta San Jorge, Guadalajara, Jalisco, Mexico; DOB 07 Dec 1970; POB Guadalajara, Jalisco, Mexico; Passport 99140083769 (Mexico); R.F.C. SAGM7012071B6 (Mexico); C.U.R.P. SAGM701207HJCNRR05 (Mexico) (individual) [SDNTK] (Linked To: DBARDI, S.A. DE C.V.; Linked To: GRUPO FRACSA, S.A. DE C.V.).
14. SANCHEZ GARZA, Jose de Jesus, Av. Vallarta No. 3060, Colonia Vallarta San Jorge, Guadalajara, Jalisco, Mexico; DOB 12 Aug 1968; POB Guadalajara, Jalisco, Mexico; Passport 98140159994 (Mexico); R.F.C. SAGJ680812RE1 (Mexico); C.U.R.P. SAGJ680812HJCNRS08 (Mexico) (individual) [SDNTK] (Linked To: GRUPO FRACSA, S.A. DE C.V.; Linked To: DBARDI, S.A. DE C.V.).
15. SANCHEZ GARZA, Diego, Av. Vallarta No. 3060, Colonia Vallarta San Jorge, Guadalajara, Jalisco, Mexico; DOB 05 Apr 1976; POB Guadalajara, Jalisco, Mexico; R.F.C. SAGD760405A45 (Mexico); C.U.R.P. SAGD760405HJCNRG06 (Mexico) (individual) [SDNTK] (Linked To: GRUPO FRACSA, S.A. DE C.V.; Linked To: DBARDI, S.A. DE C.V.; Linked To: GRUPO CONSTRUCTOR SEGUNDO MILENIO, S.A. DE C.V.).
16. SANCHEZ GONZALEZ, Ernesto, Av. Vallarta 3216, Colonia Vallarta San Jorge, Guadalajara, Jalisco, Mexico; DOB 03 Feb 1967; POB Tepatitlan de Morelos, Jalisco, Mexico; R.F.C. SAGE670203KH4 (Mexico); C.U.R.P. SAGE670203HJCNNR06 (Mexico) (individual) [SDNTK] (Linked To: GRUPO FRACSA, S.A. DE C.V.; Linked To: DBARDI, S.A. DE C.V.).
17. SANCHEZ GONZALEZ, Ruben, Av. Arcos 960, Colonia Jardines del Bosque, Guadalajara, Jalisco, Mexico; DOB 14 Jul 1964; POB Tepatitlan de Morelos, Jalisco, Mexico; R.F.C. SAGR640714–882 (Mexico); C.U.R.P. SAGR640714HJCNNB02 (Mexico) (individual) [SDNTK] (Linked To: GRUPO FRACSA, S.A. DE C.V.; Linked To: DBARDI, S.A. DE C.V.; Linked To: PISCILANEA, S.A. DE C.V.).
18. VARGAS CORREA, Humberto; DOB 25 Mar 1959; POB Iztacalco, Distrito Federal, Mexico; R.F.C. VACH5903253B0 (Mexico); C.U.R.P. VACH590325HDFRRM07 (Mexico) (individual) [SDNTK].

*Entities*

1. BLUE POINT SALT, S.A. DE C.V., A Las Rocas No. 244, Col. Prados Vallarta, Zapopan, Jalisco C.P. 45020, Mexico; Callejon del Sereno 4361, Zapopan, Jalisco C.P. 45110, Mexico; R.F.C. BPS050519NM6 (Mexico) [SDNTK].
2. DBARDI, S.A. DE C.V., Guadalajara, Jalisco C.P. 44540, Mexico; Folio Mercantil No. 4867–1 (Mexico) [SDNTK].
3. DESARROLLOS BIO GAS, S.A. DE C.V., Independencia Sur No. 185, Col. Analco, Guadalajara, Jalisco C.P. 44450, Mexico; R.F.C. DBG0805095P7 (Mexico) [SDNTK].
4. ECA ENERGETICOS, S.A. DE C.V., Calle Adolfo B. Horn No. 1437, Col. Pueblo Toluquilla, Tlaquepaque, Jalisco C.P. 45610, Mexico; R.F.C. EEN0310271G7 (Mexico) [SDNTK].
5. EL BANO DE MARIA, S. DE R.L. DE C.V., Periferico Poniente No. 2100, Col. Ciudad Granja, Guadalajara, Jalisco C.P. 45010, Mexico; Santa Clara No. 88, Col. El Briseno, Zapopan, Jalisco C.P. 45236, Mexico; Av. Pablo Neruda casi esq. con Ruben Dario, Guadalajara, Jalisco, Mexico; Gran Plaza, Guadalajara, Jalisco, Mexico; Plaza del Sol, Guadalajara, Jalisco, Mexico; Plaza Patria, Guadalajara, Jalisco, Mexico; Plaza Mexico, Guadalajara, Jalisco, Mexico; Aeropuerto de Guadalajara, Jalisco, Mexico; Puerto Vallarta, Jalisco, Mexico; Mazatlan, Sinaloa, Mexico; Monterrey, Nuevo Leon, Mexico; Celaya, Guanajuato, Mexico; Tijuana, Baja California, Mexico; Los Cabos, Baja California Sur, Mexico; R.F.C. BMA040923MZ9 (Mexico) [SDNTK].
6. EVCOMER, S.A. DE C.V., Independencia Sur No. 185, Col. Analco, Guadalajara, Jalisco C.P. 44450, Mexico; R.F.C. EVC080410DE6 (Mexico) [SDNTK].
7. GRUPO CONSTRUCTOR SEGUNDO MILENIO, S.A. DE C.V., Av. Acueducto, s/n Col. Fraccionamiento Jardines del Country, Guadalajara, Jalisco C.P. 44210, Mexico; Folio Mercantil No. 5269–1 [SDNTK].
8. GRUPO FRACSA, S.A. DE C.V. (a.k.a. PONTEVEDRA; a.k.a. ZOTOGRANDE), Av. Vallarta No. 3060, Col. Vallarta Norte, Guadalajara, Jalisco, Mexico; Acueducto 5300, Zapopan, Jalisco, Mexico; Acueducto 5151, Zapopan, Jalisco, Mexico; Folio Mercantil No. 19730–1 (Mexico) [SDNTK].
9. HACIENDA LAS LIMAS, S.A. DE C.V., Carretera a Ciudad Guzman Km. 49, entre de crucero de Atoyac y crucero de Amacueca, Acatlan, Jalisco, Mexico; Callejon del Sereno #4361, Colonia Villa Universitaria, Zapopan, Jalisco, Mexico; R.F.C. HLI040211HK3 (Mexico) [SDNTK].
10. ORGANIC SALT, S.A. DE C.V., Callejon del Sereno No. 4361, Col. Jacarandas Zapopan 4, Zapopan, Jalisco C.P. 45110, Mexico; R.F.C. OSA030512AL3 (Mexico) [SDNTK].
11. PETRO BIO, S. DE R.L. DE C.V., Independencia Sur No. 185, Col. Analco, Guadalajara, Jalisco C.P. 44450, Mexico; R.F.C. PBI080509Q47 (Mexico) [SDNTK].
12. PISCILANEA, S.A. DE C.V. (a.k.a. ALBERCAS E HIDROMASAJE PISCILANEA; a.k.a. ALBERCAS Y TINAS BARCELONA), Provenza Center, Av. Lopez Mateos No. 5565, Loc 23, Col. Santa Anita, Tlajomulco de Zuniga, Jalisco 45645, Mexico; R.F.C. PIS090915KS1 (Mexico) [SDNTK].
13. PRONTO SHOES, S.A. DE C.V. (a.k.a. CX INSPIRA; a.k.a. CX MILAN GUADALAJARA; a.k.a. CX MODA; a.k.a. CX–SHOES), 16 de Septiembre 635, Casi Esq. la Paz, Guadalajara, Jalisco, Mexico; Av. Lafragua 2729, Esq. Paseo Jardin, Fracc. Moderno, Veracruz, Veracruz, Mexico; Comercio No. 172, Col. Mexicaltzingo, Guadalajara, Jalisco C.P. 44180, Mexico; Padre Mier 185, Col. Centro, Monterrey, Nuevo Leon C.P. 64000, Mexico; San Lorenzo 31 Entre Calzada la Ermita y Rueda Pastor, Col. 8va. Amplicacion Iztapalapa, Mexico, Distrito Federal, Mexico; Tecnologico 210, Esq. Cortador, Fracc. Industrial Julian de Obregon, Leon, Guanajuato C.P. 37290, Mexico; R.F.C. PSH081211I53 (Mexico) [SDNTK].
14. REFORESTACIONES CARELES, S. DE P.R. DE R.L., Callejon del Sereno No. 4361, Col. Fracc. Jardines Universidad, Zapopan, Jalisco C.P. 45110, Mexico; R.F.C. RCA050316ET5 (Mexico) [SDNTK].
15. RESTAURANT BAR LOS ANDARIEGOS, S.A. DE C.V. (a.k.a. BARBARESCO RESTAURANT),

Buenos Aires No. 3090, esq. Montevideo, Col. Providencia, Guadalajara, Jalisco 44630, Mexico; R.F.C. RBA0504194T6 [SDNTK].

Dated: June 12, 2013.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2013–14465 Filed 6–17–13; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of 3 individuals and 2 entities whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. Sections 1901–1908, 8 U.S.C. Section 1182).

**DATES:** The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the 3 individuals and 2 entities identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on June 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220 Tel: (202) 622–2420

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

#### Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On June 12, 2013, the Director of OFAC removed from the SDN List the 3 individuals and 2 entities listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

*Individuals*

BELTRAN SANCHEZ, Rosario, c/o FABRIDIESEL, S.A. DE C.V., Los Mochis, Sinaloa, Mexico; DOB 05 Oct 1952; POB Los Mochis, Sinaloa, Mexico; nationality Mexico; citizen Mexico (individual) [SDNTK].

ZERMENO BELTRAN, Guillermo, c/o FABRIDIESEL, Los Mochis, Sinaloa, Mexico; DOB 20 Dec 1977; POB Mexico; nationality Mexico; citizen Mexico; R.F.C. ZEBG771220–PE6 (Mexico) (individual) [SDNTK].

ZERMENO BELTRAN, Patricia, c/o FABRIDIESEL, S.A. DE C.V., Los Mochis, Sinaloa, Mexico; DOB 25 May 1975; POB Los Mochis, Sinaloa, Mexico; nationality Mexico; citizen Mexico (individual) [SDNTK].

*Entities*

FABRIDIESEL, Juan De Dios Batiz 690 OTE, Colonia El Parque, Los Mochis, Sinaloa 81250, Mexico; R.F.C. ZEBG–771220–PE6 (Mexico) [SDNTK].

FABRIDIESEL, S.A. DE C.V., Blvd. Juan De Dios Batiz 712 OTE, Los Mochis, Sinaloa, Mexico [SDNTK].

Dated: June 12, 2013.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2013–14464 Filed 6–17–13; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8916–A

**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 8916–A, Reconciliation of Cost of Goods Sold Reported on Schedule M–3.

**DATES:** Written comments should be received on or before August 19, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Gerald J. Shields, at (202) 927–4374, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Gerald.J.Shields@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Reconciliation of Cost of Goods Sold Reported on Schedule M–3.

*OMB Number:* 1545–2061.

*Form Number:* Form 8916–A.

*Abstract:* Form 8916–A provides a detailed schedule that reconciles the amount of the of cost of goods sold reported on Schedule M–3 for the Form 1120, form 1065, or Form 1120–S.

*Current Actions:* There are no changes being made to Form 8916–A, at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 156,000.

*Estimated Time per Respondent:* 32 hours, 22 minutes.

*Estimated Total Annual Burden Hours:* 5,049,720.

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: May 29, 2013.

**Allan M. Hopkins,**

*Tax Analyst.*

[FR Doc. 2013–14378 Filed 6–17–13; 8:45 am]

**BILLING CODE 4830–01–P**

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## 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 revised regulations concerning section 403(b) tax-sheltered annuity contracts.

**DATES:** Written comments should be received on or before August 19, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Gerald J. Shields at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 927–4374, or through the internet at *Gerald.J.Shields@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts.

*OMB Number:* 1545–2068.

*Regulation Project Number:* TD 9340.

*Abstract:* The collection of information in the regulations is in final regulations under section 403(b) of the Internal Revenue Code and under related provisions of sections 402(b), 402(g), 402A, and 414(c). The regulations provide updated guidance on section 403(b) contracts of public schools and tax-exempt organizations described in section 501(c)(3). Such information exchange is necessary to ensure compliance with tax law requirements relating to loans and hardship distributions from section 403(b) plans and sponsors of section 403(b) contracts, administrators, participants, and beneficiaries.

*Current Actions:* There are no changes being made to this regulation.

*Type of Review:* Extension of a previously approved collection.

*Affected Public:* Individuals or households, state, local or tribal governments, and not-for-profit institutions.

*Estimated Number of Respondents:* 11,000.

*Estimated Time Per Respondent:* 4.1 hours.

*Estimated Total Annual Burden Hours:* 45,000.

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: May 22, 2013.

**Allan M. Hopkins,**

*Tax Analyst.*

[FR Doc. 2013–14376 Filed 6–17–13; 8:45 am]

**BILLING CODE 4830–01–P**

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## 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 timely mailing treated as timely filing.

**DATES:** Written comments should be received on or before August 19, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or

copies of the regulation should be directed to Gerald J. Shields, at (202) 927–4374, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Gerald.J.Shields@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Timely Mailing Treated As Timely Filing.

*OMB Number:* 1545–1899.

*Regulation Project Number:* TD 9543.

*Abstract:* This information collection contains regulations amending a Treasury Regulation to provide guidance as to the only ways to establish prima facie evidence of delivery of documents that have a filing deadline prescribed by the internal revenue laws, absent direct proof of actual delivery. The regulations are necessary to provide greater certainty on this issue and to provide specific guidance. The regulations affect taxpayers who mail Federal tax documents to the Internal Revenue Service or the United States Tax Court.

*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, federal government and state, local, or tribal government.

*Estimated Number of Respondents:* 10,847,647.

*Estimated Time Per Respondent:* 6 minutes.

*Estimated Total Annual Burden Hours:* 1,084,765.

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: May 22, 2013.

**Allan M. Hopkins,**

*Tax Analyst.*

[FR Doc. 2013–14377 Filed 6–17–13; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulations 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 constructive transfers and transfers of property to a third-party on behalf of a spouse.

**DATES:** Written comments should be received on or before August 19, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Gerald J. Shields, (202) 927–4374, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Gerald.J.Shields@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Constructive Transfers and Transfers of Property to a Third-Party on Behalf of a Spouse (§ 1.1041–2).

*OMB Number:* 1545–1751.

*Regulation Project Number:* TD 9035.

*Abstract:* The regulation sets forth the required information that will permit spouses or former spouses to treat a redemption by a corporation of stock of one spouse or former spouse as a transfer of that stock to the other spouse or former spouse in exchange for the redemption proceeds and a redemption of the stock from the latter spouse or a former spouse in exchange for the redemption proceeds.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and households, and businesses and other for-profit organizations.

*Estimated Number of Respondents:* 1000.

*Estimated Time per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 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: May 29, 2013.

**Allan M. Hopkins,**

*Tax Analyst.*

[FR Doc. 2013–14373 Filed 6–17–13; 8:45 am]

**BILLING CODE 4830–01–P**

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of period during which individuals may apply to be appointed to certain voting memberships of the Practitioners Advisory Group; request for applications.

**SUMMARY:** Because the terms of certain voting members of the Practitioners Advisory Group are expiring as of October 2013, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to succeed such a voting member to apply. The voting memberships covered by this notice are three circuit memberships (for the Third Circuit, the Ninth Circuit, and the District of Columbia Circuit). Applications should be received by the Commission not later than August 19, 2013. Applications may be sent to the address listed below.

**DATES:** Applications for voting membership of the Practitioners Advisory Group should be received not later than August 19, 2013.

**ADDRESSES:** Send applications to: United States Sentencing Commission, One Columbus Circle NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

**FOR FURTHER INFORMATION CONTACT:** Jeanne Doherty, Public Affairs Officer, 202–502–4502.

**SUPPLEMENTARY INFORMATION:** The Practitioners Advisory Group of the United States Sentencing Commission is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. The advisory group consists of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members.

To be eligible to serve as a voting member, an individual must be an attorney who (1) devotes a substantial portion of his or her professional work to advocating the interests of privately-represented individuals, or of individuals represented by private practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission.

The Commission invites any individual who is eligible to be appointed to a voting membership covered by this notice to apply by sending a letter of interest and a resume to the address above.

**Authority:** 28 U.S.C. § 994(a), (o), (p), § 995; USSC Rules of Practice and Procedure 5.2, 5.4.

**Patti B. Saris,**

*Chair.*

[FR Doc. 2013–14438 Filed 6–17–13; 8:45 am]

**BILLING CODE 2210–40–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0697]**

### Proposed Information Collection (Application for Approval of a Licensing or Certification and Organization or Entity) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to approve licensing and certification tests for payment.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 19, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0697'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Application for Approval of a Licensing or Certification and Organization or Entity: 38 CFR 21.4268.

*OMB Control Number:* 2900–0697.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The data collected will be used to determine whether licensing

and certification tests, and the organizations offering them, should be approved for VA training under education programs VA administers.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,584 hours.

*Frequency of Response:* On occasion.

*Estimated Average Burden per Respondents:* 3 hours.

*Estimated Annual Responses:* 528.

Dated: June 13, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–14411 Filed 6–17–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0021]**

### Proposed Information Collection (VA Loan Electronic Reporting Interface (VALERI) System) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to oversee loan holders processing of loan guaranty homes.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 19, 2013.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0021'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* VA Loan Electronic Reporting Interface (VALERI) System.

*OMB Control Number:* 2900–0021.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA will use the Information submitted through the VALERI system to perform supplemental servicing, determination on forbearance, foreclosure, protection of property and initiation of claim payment on loan guaranty homes.

*Affected Public:* Business or other for profit.

*Estimated Annual Burden:* 113 hours.

*Estimated Average Burden Per Respondent:* 1 second.

*Frequency of Response:* Daily.

*Estimated Number of Respondents:* 418.

*Estimated Number of Responses:* 1555.

Dated: June 13, 2013.

By direction of the Acting Secretary.

**Crystal Rennie,**

*VA Clearance Officer, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–14407 Filed 6–17–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0089]**

### Proposed Information Collection (Statement of Dependency of Parent(s)) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to establish a claimant's parents' dependency.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 19, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0089'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of

information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Statement of Dependency of Parent(s), VA Form 21–509.

*OMB Control Number:* 2900–0089.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Veterans receiving compensation benefits based on 30 percent or higher for service-connected injuries and depends on his or her parent(s) for support complete VA Form 21–509 to report income and dependency information. Surviving parents of deceased veterans are required to establish dependency only if they are seeking death compensation. Death compensation is payable when a veteran died on active duty or due to service-connected disabilities prior to January 1, 1957, or died between May 1, 1957 and January 1, 1972 while the veteran's waiver of U.S. Government Life Insurance was in effect. The data collected will be used to determine the dependent parent(s) eligibility for benefits.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 4,000 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 8,000.

Dated: June 13, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–14408 Filed 6–17–13; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0261]**

### Proposed Information Collection (Application for Refund of Educational Contributions) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA) 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 process refunds of contributions made by program participants who disenroll from the Post Vietnam Era Veterans Education Program.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 19, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0261'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Application for Refund of Educational Contributions (VEAP, Chapter 32, Title 38, U.S.C.), VA Form 22–5281.

*OMB Control Number:* 2900–0261.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Veterans and service persons complete VA Form 22–5281 to request a refund of their contribution to the Post-Vietnam Veterans Education Program. Contribution made into the Post-Vietnam Veterans Education Program may be refunded only after the participant has disenrolled from the program. Request for refund of contribution prior to discharge or release from active duty will be refunded on the date of the participant's discharge or release from activity duty or within 60 days of receipt of notice by the Secretary of the participant's discharge or disenrollment. Refunds may be made earlier in instances of hardship or other good reasons. Participants who stop their enrollment from the program after discharge or release from active duty contributions will be refunded within 60 days of receipt of their application.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 85 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 511.

Dated: June 13, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–14410 Filed 6–17–13; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900—NEW]**

### Proposed Information Collection (Wrist Conditions Disability Benefits Questionnaire) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA) 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 new collection, and allow 60 days for

public comment in response to the notice. This notice solicits comments on information needed to adjudicate the claim for VA disability benefits related to a claimant's diagnosis of wrist conditions.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 19, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900—NEW (Wrist Conditions Disability Benefits Questionnaire)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

**SUPPLEMENTARY INFORMATION:**

*Title:* Wrist Conditions Disability Benefits Questionnaire, VA Form 21–0960M–16.

*OMB Control Number:* 2900–NEW (Wrist Conditions Disability Benefits Questionnaire).

*Type of Review:* New data collection.

*Abstract:* The VA Form 21–0960M–16, *Wrist Conditions Disability Benefits Questionnaire* will be used for disability compensation or pension claims which require an examination and/or receiving private medical evidence that may potentially be sufficient for rating purposes. The form will be used to gather necessary information from a claimant's treating physician regarding the results of medical examinations. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits. Lastly, this form will gather information related to the claimant's diagnosis of a wrist condition.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 20,000.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 40,000.

Dated: June 13, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–14412 Filed 6–17–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### National Research Advisory Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2, that the National Research Advisory Council will hold a meeting on Wednesday, June 19, 2013, in conference room 23, at 131 M Street NE., Washington, DC. The meeting will convene at 9:30 a.m. and end at 3:30 p.m. The meeting is open to the public.

The purpose of the Council is to provide external advice and review for VA's research mission. The agenda will include a review of the VA research portfolio and a summary of special projects. The Council will also provide feedback on the direction/focus of VA's research initiatives.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested members of the public may submit written statements for the Council's review to Pauline Cilladi-Rehrer, Designated Federal Officer, Office of Research and Development (10P9), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *pauline.cilladi-rehrer@va.gov.* Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Cilladi-Rehrer at (202) 443–5607.

Dated: June 12, 2013.

By Direction of the Secretary.

**Vivian Drake,**

*Committee Management Officer.*

[FR Doc. 2013–14398 Filed 6–17–13; 8:45 am]

**BILLING CODE 8320–01–P**

# Reader Aids

**Federal Register**

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The Federal Register staff cannot interpret specific documents or regulations.

**Reminders.** Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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