



# FEDERAL REGISTER

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

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

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

**RESERVATIONS:** (202) 741-6008



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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 210

[FNS–2011–0025]

RIN 0584–AE15

#### **Certification of Compliance With Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010; Approval of Information Collection Request**

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

**ACTION:** Interim final rule; approval of information collection request.

**SUMMARY:** The Food and Nutrition Service published an interim final rule entitled “Certification of Compliance with Meal Requirements for the National School Lunch Program under the Healthy, Hunger-Free Kids Act of 2010” on April 27, 2012. The Office of Management and Budget (OMB) cleared the associated information collection requirements (ICR) on June 20, 2012. This document announces approval of the ICR.

**DATES:** The ICR associated with the interim final rule published in the *Federal Register* on April 27, 2012 at 77 FR 25024 was approved by OMB on June 20, 2012, under OMB Control Number 0584–0567.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to Jon Garcia, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302.

**SUPPLEMENTARY INFORMATION:** The April 2012 interim final rule amended National School Lunch Program regulations to conform to requirements

contained in the Healthy, Hunger-Free Kids Act of 2010 regarding performance-based cash assistance for school food authorities (SFA) certified compliant with meal patterns and nutrition standards. The interim final rule requires State agencies to certify participating SFAs that are in compliance with meal pattern and nutrition standard requirements as eligible to receive performance-based cash assistance for each reimbursable lunch served (an additional six cents per lunch available beginning October 1, 2012 and adjusted annually thereafter). This rule also requires State agencies to disburse performance-based cash assistance to certified SFAs, and withhold the performance-based cash assistance if the SFA is determined to be out of compliance with meal pattern or nutrition standards during a subsequent administrative review. Comments on the associated ICR interim final rule were accepted until June 26, 2012. This document announces OMB’s approval of the ICR under OMB Control Number 0584–0567.

Dated: June 25, 2013.

**Jeffrey J. Tribiano,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2013–15590 Filed 6–28–13; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**33 CFR Parts 1, 3, 6, 13, 72, 80, 83, 101, 103, 104, 105, 106, 110, 114, 115, 116, 117, 118, 133, 136, 138, 148, 149, 150, 151, 161, 164, and 165**

[Docket No. USCG–2013–0397]

RIN 1625–AC06

#### **Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule makes non-substantive changes throughout Title 33 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard navigation

and navigable waters regulations. These changes will have no substantive effect on the regulated public. This rule is provided to coincide with the annual recodification of Title 33 on July 1, 2013.

**DATES:** This final rule is effective July 1, 2013.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2013–0397 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG–2013–0397 in the “Search” box, and then clicking “Search.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Paul Crissy, Coast Guard; telephone 202–372–1093, email [Paul.H.Crissy@uscg.mil](mailto:Paul.H.Crissy@uscg.mil). If you have questions on viewing the docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

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DHS Department of Homeland Security  
 CFR Code of Federal Regulations  
 DOT Department of Transportation  
 E.O. Executive Order  
 FR Federal Register  
 HSAS Homeland Security Alignment System  
 MARSEC Maritime Security

NAD North American Datum  
 NTAS National Terrorism Advisory System  
 OMB Office of Management and Budget  
 OFR Office of the Federal Register  
 Pub. L. Public Law  
 U.S.C. United States Code

## II. Regulatory History

We did not publish a notice of proposed rulemaking for this rule. Under 5 U.S.C. 553(b)(A), the Coast Guard finds this rule is exempt from notice and comment rulemaking requirements because these changes involve rules of agency organization, procedure, or practice. In addition, the Coast Guard finds notice and comment procedures are unnecessary under 5 U.S.C. 553(b)(B) as this rule consists only of corrections and editorial, organizational, and conforming amendments and these changes will have no substantive effect on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective upon publication in the **Federal Register**.

## III. Background and Purpose

Each year, the printed edition of Title 33 of the Code of Federal Regulations (CFR) is recodified on July 1. This rule, which is effective July 1, 2013, makes technical and editorial corrections throughout Title 33. This rule does not create any substantive requirements. This rule is issued under the authority of 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; Department of Homeland Security Delegation No. 0170.1.

## IV. Discussion of the Rule

This rule amends § 1.05(j) to reflect changes in agency organization by correctly identifying District Bridge Managers by their appropriate title. Specifically, this change replaces the term “Bridge Program Chief”, which is no longer used in the Coast Guard, with “District Bridge Manager.”

Additionally, this rule updates § 1.05–10 to reflect changes in agency organization, noting that District Bridge Managers also have the authority to issue rules of local applicability with regard to temporary deviations to drawbridge operating schedules. This rule also edits the section by correcting a non-substantive typographical error in the first sentence, replacing a comma with a period.

This rule amends 33 CFR part 3 to reflect changes in agency organization by creating and defining Coast Guard sectors that exercise specific Search and Rescue Mission Coordinator authority over a designated portion of an

encompassing sector’s area of responsibility. Revisions to this part also accommodate these newly-designated Search and Rescue Coordinator Zones in parts that discuss sector authorities and divisions. Specifically, in § 3.55–25, the Coast Guard established a Search and Rescue Missions Coordinator Zone for an area near Humboldt Bay in California. Additionally, the Coast Guard established the same authority for a new sector in North Bend, Oregon.

This rule amends § 6.01–3 to make the regulation defining a Captain of the Port gender neutral. The new language indicates that a Captain of the Port may be male or female, replacing outdated language referring to Captains of the Port using only male gender designations.

This rule amends § 13.01–15(d) to correct a reference to an outdated publication. In § 13.01–15, the regulation previously referenced a *Manual for Courts-Martial* that no longer exists. Pertinent sections from that manual have been incorporated into a new publication, the *Administrative Investigations Manual*, also known as *Commandant Instruction M5830.1A (2007)*. Additionally, § 13.01 has been updated to reflect the new reference.

This rule amends 33 CFR part 72 in order to correctly state the means by which the Coast Guard issues the *Local Notice to Mariners (LNM)*. Because the Coast Guard no longer mails out the *LNM*, § 72.01–10(b) and (c) have been updated with two links: (1) A direct link to the latest *LNM*, and (2) a link to subscribe to an email distribution list that disseminates the *LNM* when new editions become available. The link previously listed in the Note to § 72.01–5 has been removed, updated, and moved to paragraph (b) as discussed above.

Additionally, this rule amends § 72.01–10(b), (c), and Note to reflect the updated language in the *LNM* indicating the agencies that work together to prepare the publication. Specifically, the National Imagery and Mapping Agency changed its name to the National Geospatial-Intelligence Agency. This rule removes the references to printed versions of the *LNM* in § 72.01–10(c). In place of paragraph (c) is an updated link to the National Geospatial-Intelligence Agency’s Web site that directs readers to digital copies of the *LNM*. The Note to § 72.01–10 has been removed because it is an outdated link and a corrected link has been incorporated into paragraph (c) as discussed above.

Further, this rule amends § 72.01–25 to update ways in which readers can

access, purchase, and download navigational aids referenced within this part. This rule removes a reference to the Government Printing Office in paragraph (b), which no longer sells Radio Navigational Aids, but replaces it with a link where readers can purchase the Aids. This rule also updates links in paragraph (c) to indicate where readers can purchase the *United States Coast Pilot* publication or download electronic charts from the Federal Aviation Administration and the National Oceanic and Atmospheric Administration.

This rule removes § 72.01–35 because it is no longer relevant or applicable. Because the *Local Notice to Mariners* is no longer published and mailed to those who request it, this section is removed to avoid confusion when reading 33 CFR part 72.

This rule also amends § 72.01–40(c) to reflect the new title of the National Geospatial-Intelligence Agency. This section previously referred to that agency by its outdated agency title, the National Imagery and Mapping Agency.

This rule amends the Note to § 72.05–5 to update the Government Printing Office address from which readers may order volumes of the *Light List* publication. This change will provide readers with an accurate address and avoids confusion amongst those who wish to order a copy of the *Light List*.

This rule revises the Note to § 72.05–10 to provide an updated link to access the Coast Guard *Light List* on the Internet. This rule replaces that link with the current Coast Guard link.

This rule amends § 80.110(b) and § 80.115(b) to correct non-substantive typographical errors in latitude positions. For consistency, this rule inserts a comma after the latitude coordinates. This rule does not change the coordinates themselves in either of the two sections.

This rule amends § 80.120(b) to make a non-substantive update and grammatical correction. The title of the lighthouse referenced in this paragraph has been updated to reflect the current, correct title for the lighthouse used as a reference point. Additionally, this rule inserts a comma after the latitude coordinates. This rule does not change the coordinates themselves.

This rule amends §§ 80.145, 80.501(d), and 80.505(c) to correct non-substantive typographical errors in latitude positions. Specifically, for consistency, this rule inserts a comma after the latitude coordinates in each particular paragraph. This rule does not change the coordinates themselves in any of these sections.

This rule corrects § 80.520(a) to reflect the correct latitude and longitude of the Hatteras Inlet Lookout Tower. The previous language in this paragraph erroneously identified the coordinates for the Hatteras Inlet Lookout Tower. The text has been updated with the correct latitude and longitude coordinates as follows: “latitude 35°11.85′ N., longitude 75°43.9′ W. 255° true to the eastern end of Ocracoke Island.”

This rule amends § 80.520 paragraphs (a) and (b) to correct a non-substantive typographical error. Specifically, for consistency, this rule inserts a comma after the latitude coordinates in each particular paragraph. This rule does not change the coordinates themselves.

This rule amends § 80.525(c) and (d) to correct a non-substantive typographical error. Specifically, for consistency, this rule inserts a comma after the latitude coordinates in each particular paragraph. This rule does not change the coordinates themselves.

This rule removes latitude and longitude points in § 80.525(e) and replaces them with more precise reference points. The reference points previously noted with coordinates have eroded, causing many of the points to disappear. The new reference language is general enough to provide a meaningful reference point while adapting to areas where erosion has noticeably affected the shoreline.

This rule amends § 80.530(a) to correct a non-substantive typographical error in latitude position. Specifically, for consistency, this rule inserts a comma after the latitude coordinate. This rule does not change the coordinate itself.

This rule amends § 80.703(f) to clarify a COLREGS demarcation line because the previous description refers to a line of longitude that no longer depicts a point of land easily discernible to mariners. This paragraph now refers to the demarcation line based on points that rely upon the physical body of land itself, and that no longer reference a particular line of longitude.

This rule amends § 80.707(a) to correct a reference point that is misleading due to shoaling in the area. Because shoaling affected the shoreline referenced in this paragraph, the bearing previously cited is no longer useful. The new text uses reference points that rely on the land itself instead of directional references.

This rule also amends § 80.707(b) to correct and update references mentioned in this paragraph. Particularly, Sandy Point is no longer a viable reference point as shoaling has

affected it. As such, the rule extends the demarcation line accordingly.

This rule amends § 80.712 to remove an outdated reference to an aid to navigation and to correct a non-substantive typographical error. The language in § 80.712(a) is updated to remove reference to an aid to navigation that has been removed.

This rule amends § 80.712(f) to correct non-substantive typographical errors in the latitude positions. Specifically, for consistency, this rule inserts a comma after the latitude coordinates in this paragraph. This rule does not change the coordinates themselves.

This rule amends § 80.715 to update the name of a lighthouse and correct non-substantive typographical errors. The “Tybee Range Rear Light” is now called the “Tybee Light.” For grammatical consistency, this rule inserts a comma after the latitude coordinates. This rule does not change the coordinates themselves. Also, this rule removes excess space between the “N” in the latitude position and the period that follows it.

This rule makes a non-substantive correction to a reference point in § 80.717(c). Previously, “Wassaw Island” was misspelled. This rule updates this paragraph to reflect the correct spelling of this island, which serves as a geographical point of reference in this paragraph.

This rule amends § 80.717(d) to correct a non-substantive typographical error in the longitude position. Previously, a zero was omitted from the minutes section of the longitude. The longitude should now read “81°08.4′W.” This rule does not change the location that the coordinates reference.

This rule amends § 80.720(a) and (b) to correct non-substantive typographical errors in latitude positions. Specifically, for consistency, this rule inserts a comma after the latitude coordinates. This rule does not change the coordinates themselves.

This rule amends § 80.735(a) and (f) to correct a non-substantive typographical error in latitude position. Specifically, for consistency, this rule inserts a comma after the latitude coordinates. This rule does not change the coordinates themselves.

This rule amends § 80.738(b) to convert the minutes and seconds in the coordinates to minutes and decimals for consistency with the other sections of this part. The Coast Guard seeks to standardize its coordinates in order to provide uniform and predictable reference points for those looking at regulations. This rule also corrects a non-substantive typographical error by

inserting periods after the “N” and “W” for readability and consistency. This rule does not change the location that the coordinates reference.

This rule amends § 80.740 and paragraphs (a) and (c) of § 80.745 to correct non-substantive typographical errors in the latitude positions. Specifically, this correction inserts commas after the “N” and “W” for consistency. This rule does not change the coordinates themselves.

This rule amends § 80.748(d) to correct a non-substantive typographical error in the latitude position. Specifically, for consistency, this correction inserts a comma after the “N” in the latitude coordinate. This rule does not change the location that the coordinates reference.

This rule amends § 80.757(g) to correct non-substantive typographical errors in the latitude position. Specifically, this correction inserts commas after the “N” and “W” for consistency. This rule does not change the location that the coordinates reference.

This rule amends § 80.757(h) to update the name of a lighthouse listed as a reference point. The lights previously referred to as the “Suwannee River Wadley Pass Channel Daybeacons 30 and 31” are now referred to as the “Suwannee River Mcgriff Pass Daybeacons 30 and 31.” The name change reflects the updated names in the *Light List*.

This rule amends § 80.805(d) to update a COLREGS demarcation line. The line previously described did not intersect Turkey Light Point 2, a referenced aid to navigation. Instead, this demarcation line is updated to correctly identify the demarcation line by removing that reference and instead using a fixed extremity of land as a point of reference. Additionally, this rule corrects non-substantive typographical errors in the longitude position. Specifically, for consistency, this correction inserts a comma after the “W.” This grammatical change does not change the location that this line references.

This rule amends § 80.830(a) to remove a reference to an aid to navigation that has been removed. A reference to the “West Bay light” was replaced by a reference to the “westernmost point near Pass du Bois,” as the previous point of reference is an aid to navigation that was removed. Additionally, this rule corrects non-substantive typographical errors in the latitudes referenced in this paragraph. Specifically, for consistency, this rule adds a comma after the letter “N” in the latitude coordinates. This grammatical

correction does not change the location that the coordinates reference.

This rule amends § 80.835 to update a reference to the name of an aid to navigation, removes a navigational reference point that no longer exists, and corrects non-substantive typographical errors in latitude and longitude coordinates. The aid to navigation previously referred to as "Point Au Fer Reef Light 33" is now correctly referred to as the "Atchafalaya Channel Light 33," reflecting a recent name change. Further, the reference point known as "Pipeline Light D" no longer exists, and any reference to it has been removed. Additionally, this rule adds commas after the "N" and "W" in the latitude and longitude coordinates listed in this regulation. This grammatical change is done for consistency and does not change the location that the coordinates reference.

This rule amends § 80.1110 to update the numbers for the lights referenced. The light previously referred to as "Dana Point Jetty Light 6" has since been renamed to "Dana Point Jetty Light 4" and the light previously referred to as "Dana Point Breakwater Light 5" is now known as "Dana Point Breakwater Light 3."

This rule amends § 83.10(l) to make a non-substantive grammatical change. This rule capitalizes the "R" in "rule" for clarity and consistency. This capitalization indicates to the reader that the word "rule" refers to the requirements of Rule 10, the rule in which paragraph (l) is located.

This rule amends § 83.38(d)(5) to add a word for clarity. Previously, this paragraph had a sentence that read, "The restructuring of all lights to meet the prescriptions of Annex I to these, until. . ." This rule adds the word "Rules" to clarify that the prescriptions of Annex I come from the previously discussed Rules.

This rule amends § 83.38(d)(6) to make a non-substantive grammatical change. Specifically, this rule inserts a hyphen into the phrase "all-round" for clarity and consistency.

This rule amends § 101.105 to make a non-substantive update to correct a Web site referenced in the text. The Web site is now located at <http://www.uscg.mil/hq/cg5/nvic>. The contents of that Web site remain the same; only the link has changed.

This rule amends § 101.115(a) to reflect changes in internal agency organization by updating Coast Guard office titles. The Coast Guard has implemented its DCO 3.0 policy that changes office titles and internal organizational structure. The office reference in this paragraph has changed

from "CG-54" to "CG-5P." This section has been updated to reflect the new office designation as CG-5P.

This rule amends § 101.120(b) to make non-substantive changes for clarification. This paragraph makes reference to Alternative Security Programs that owners and operators of vessels may comply with. This rule changes the language from "may meet an Alternative Security Program" to "may meet the requirements of an Alternative Security Program." This section always intended that the requirements of the Alternative Security Programs be met; a clause is being added to clarify that point.

This rule amends § 101.120 paragraphs (b), (c), (d)(2), and (f), and the introduction to § 101.125 to reflect changes in internal agency organization by updating Coast Guard office titles. The Coast Guard implemented its DCO 3.0 policy that changed office titles and internal organizational structure. The office references in these paragraphs have changed from "CG-54" to "CG-5P." This section has been updated to reflect the new office designation as CG-5P.

This rule removes § 101.125 in order to avoid confusion about Alternative Security Programs. Previously in this section, the Coast Guard kept a list of approved Alternative Security Programs. However, the programs and organizations that issue them change so frequently that it is difficult for the Coast Guard to maintain an updated list in the CFR. The list contained within the regulation was never exhaustive and Alternative Security Programs continue to be regulated under subchapter H and approved according to the existing provisions. The Coast Guard maintains an up-to-date list, which can be found under the "MTSA" link located on the Coast Guard Homeport Web site (<https://homeport.uscg.mil/>).

This rule amends § 101.130(a) to reflect changes in internal agency organization by updating Coast Guard office titles. The Coast Guard implemented its DCO 3.0 policy that changed office titles and internal organizational structure. The office reference in this paragraph changed from "CG-54" to "CG-5P." This section has been updated to reflect the new office designation as CG-5P.

This rule amends § 101.200 paragraphs (c) and (d) to remove outdated references to a threat advisory system and replaces those references with updated, corrected references. Previously, under § 101.200, the Commandant would adjust the Maritime Security (MARSEC) levels in conjunction with the Homeland

Security Alignment System (HSAS). The HSAS was replaced by the National Terrorism Advisory System (NTAS), which now serves as the consulted system in adjusting the MARSEC levels.

This rule removes and reserves § 101.205, because it references an outdated advisory system. Because the HSAS was replaced by the NTAS, this section is no longer relevant and may cause confusion to the reader.

This rule amends § 101.420 to reflect changes in internal agency organization by updating Coast Guard office titles. The Coast Guard implemented its DCO 3.0 policy that changed office titles and internal organizational structure. The office references in these paragraphs have changed from "CG-54" to "CG-5P" and from "CG-543" to "CG-CVC." This section has been updated to reflect the new office designations as CG-5P and CG-CVC.

This rule also amends § 101.510(a) to update a reference to reflect the current version of a document. The updated document is "NVIC 9-02 change 3," which replaces "NVIC 9-02 change 2."

This rule amends § 104.130 to reflect changes in internal agency organization by updating Coast Guard office titles. The Coast Guard implemented its DCO 3.0 policy that changed office titles and internal organizational structure. The office reference in this paragraph changed from "CG-54" to "CG-5P." This section has been updated to reflect the new office designation as CG-5P.

This rule amends § 104.200(b)(7) to remove a reference to a Web site that is no longer valid. In § 104.200(b)(7), the text refers to a link in which the Maritime Administration supplies the text of the treaties referred to in the paragraph. This Web site and the preceding sentence referring readers to the Web site are being removed because the Web site no longer exists.

This rule amends § 104.205(b)(1) to make a non-substantive change to update an email address to contact the Captain of the Port. The updated email address now reads "HQS-DG-Ist-NRCINFO@uscg.mil."

This rule also amends § 104.205(b)(3) to reflect changes in internal agency organization by updating Coast Guard office titles. The Coast Guard implemented its DCO 3.0 policy that changed office titles and internal organizational structure. The office reference in this paragraph changed from "CG-54" to "CG-5P." This section has been updated to reflect the new office designation as CG-5P.

This rule amends § 104.267(b)(2) to correct a non-substantive typographical error in the parentheses. The CFR shows an extra space inserted around the left

parenthesis. This rule corrects paragraph (b)(2) by removing the extra space.

This rule amends § 104.410(a)(2) by making a non-substantive revision clarifying the security programs that the paragraph refers to. Previously, this paragraph omitted the word “Alternative,” which is used consistently in Subpart D. This paragraph is updated to refer to alternative options as “Approved Alternative Security Programs.”

This rule also amends § 105.130 to reflect changes in internal agency organization by updating Coast Guard office titles. The Coast Guard implemented its DCO 3.0 policy that changes office titles and internal organizational structure. The office reference in this paragraph has changed from “CG-54” to “CG-5P.” This section has been updated to reflect the new office designation as CG-5P.

This rule amends § 105.200(b)(9) to remove a reference to a Web site that is no longer valid. In § 105.200(b)(9), the text refers to a link in which the Maritime Administration supplies the text of the treaties referred to in the paragraph. This Web site and the preceding sentence referring readers to the Web site are being removed because the Web site no longer exists.

This rule amends the introductory paragraph to § 105.400 to make a non-substantive update to correct a Web site referenced in the text. The previous link no longer contains the information referenced. The new link provides information about how to submit a Facility Security Plan electronically as previously referenced in this section.

This rule amends § 104.510(a)(2) by making a non-substantive revision clarifying the security programs that the paragraph refers to. Previously, this paragraph omitted the word “Alternative,” which is used consistently in subpart H. This paragraph is updated to refer to alternative options as “Approved Alternative Security Programs.”

This rule amends § 106.410(a)(2) by making a non-substantive revision clarifying the security programs that the paragraph refers to. Previously, this paragraph omitted the word “Alternative,” which is used consistently in subpart H. This paragraph is updated to refer to alternative options as “Approved Alternative Security Programs.”

This rule adds two paragraphs to § 110.155 that were incorrectly removed during a previous revision. These two paragraphs describe anchorage grounds that were incorrectly removed in a 2008 technical amendment to Title 33 (73 FR

34998). In that rule, this paragraph was amended to accurately identify coordinates using NAD 83. However, in processing this rule, the two anchorages that are the subject of this correction were incorrectly stricken. This rule adds those anchorages—Anchorage No. 38 and 39 back to § 110.115. Despite their incorrect removal from this section, these anchorages have remained in active use by mariners. These anchorages also remain charted in other publications.

This rule amends § 114.01(b) by making non-substantive changes to accurately reflect the description of the regulations in the subchapter. Specifically, this rule removes text that says a description of forms exists in the subchapter. There are no forms associated with § 114.01, thus this rule removes the reference to forms in this section.

This rule amends § 114.10 to make a non-substantive clarification to the text of this paragraph. The text in § 114.10 previously referenced bridge laws listed in § 114.01, however, that section does not identify bridge laws; it generally mentions them but goes no further. That reference to § 114.01 is being replaced with a reference to the authority section for part 114, where the relevant statutes and regulations are identified for the section.

This rule amends §§ 114.25, 114.50, 115.60, and 115.70 by removing a superfluous citation. The previously-cited statute, 49 U.S.C. 1655(g), references a transfer of power from the U.S. Army to the Department of Transportation. Because the Coast Guard moved from the Department of Transportation to the Department of Homeland Security, this delegation is no longer relevant. The delegation of authority to the Department of Homeland Security and the Coast Guard is now transferred through another statute.

This rule amends §§ 116.10(c); 116.15 paragraphs (c) and (d); 116.20 paragraphs (a) and (b); 116.25(a); 116.30 table of contents and title, paragraphs (a), (d), (e), and (g); 116.35(c); 116.40 paragraphs (a), (b), and (c); 116.45(a); and 116.55 paragraphs (a) and (b) to reflect changes to rules of agency organization. The title “Administrator, Office of Bridge Programs” changed to “Chief, Office of Bridge Programs.” This rule updates this reference in the sections mentioned above.

This rule amends § 117.35 to reflect changes to rules of agency organization, procedure, or practice. The language in this paragraph referring to the title of **Federal Register** notices that advise the public of deviations from drawbridge

regulations is updated to “Notice of temporary deviation from regulations.” This change has no effect on the requirements of those notices, but adds the word “temporary” to the action heading in these notices.

This rule amends § 117.393 to make a non-substantive change by updating addresses in this section. The Elgin, Joliet, and Eastern Railway bridge is now operated out of a location in Homewood, Illinois. This section is being updated to reflect that change of address.

This rule amends § 117.425 to make a non-substantive change by updating the name of the bridge referenced in this paragraph. The bridge formerly known as the U.S. 90 bridge is now known as the U.S. 182 bridge. This section is being updated to reflect that name change.

This rule amends § 117.585(a) to make a non-substantive change by updating the name of the bridge referenced in this paragraph. The bridge in this section is now known as the New Bedford-Fairhaven RT. 6 Bridge, mile 0.0. This section is being updated to reflect that name change.

This rule amends § 117.997(c)(2)(ii) to correct a phone number. The phone number for the Gilmerton Bridge is now 757-485-5567.

This rule amends §§ 133.5(c) and 136.9 to update citations within the regulation text. Previously, these paragraphs referred to Department of Transportation regulations in regard to regulations that apply to funds and sanctions. This rule updates those references to Department of Homeland Security regulations to correctly state the applicable regulations. These changes do not impose new regulations upon those affected by these sections.

This rule amends § 138.45 to update contact phone numbers at the National Pollution Funds Center. These new phone numbers are being corrected to reflect a change in location of the National Pollution Funds Center.

This rule amends portions of parts 148, 149, and 150 to correct non-substantive typographical errors and it makes changes to reflect updated rules of agency organization, procedure, or practice. The Coast Guard implemented its DCO 3.0 policy that changes office titles and internal organizational structure. The office references in these parts have been updated to reflect that (1) CG-5, CG-522, and CG-PSO are now known as CG-5P; and (2) CG-PSE is now known as CG-ENG. Additionally, the citations for statutes and regulations have been formatted for consistency within these parts. This rule also updates references to agencies that have

changed names or acronyms since the promulgation of these regulations. This rule makes non-substantive corrections to these sections to comply with plain language guidelines. Further, this rule clarifies acronyms in some sections by spelling them out where necessary. This rule also updates outdated Web sites to provide current, working links. Because there are more than 350 changes encompassed in these three parts, a table showing each change is available in the docket for this technical amendment.

This rule amends § 151.05 to make non-substantive edits to the text to remove a superfluous reference and provide order and consistency. The word “oily mixture” appears twice in the text, so the second reference is being removed. These definitions are being unified to avoid the confusion of duplicative definitions.

This rule amends § 164.03 to update the address listed in the text. The address in the incorporation by reference section for the Radio Technical Commission for Maritime Services has changed. This rule updates the address to reflect the new address for the Commission.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

### A. Regulatory Planning and Review

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Two additional executive orders were recently published to promote the goals of E.O. 13563: E.O. 13609 (“Promoting International Regulatory Cooperation”) and E.O. 13610 (“Identifying and Reducing Regulatory Burdens”). Executive Order 13609 targets international regulatory cooperation to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. Executive Order 13610 aims to modernize the regulatory

systems and to reduce unjustified regulatory burdens and costs on the public.

This rule is not a significant regulatory action under section 3(f) of E.O. 12866 as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. The Office of Management and Budget (OMB) has not reviewed it under E.O. 12866. Because this rule involves non-substantive changes and internal agency practices and procedures, it will not impose any additional costs on the public.

### B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), rules exempt from the notice and comment requirements of the Administrative Procedure Act are not required to examine the impact of the rule on small entities. Nevertheless, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There is no cost to this rule and we do not expect it to have an impact on small entities because the provisions of this rule are technical and non-substantive. It will have no substantive effect on the public and will impose no additional costs. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

### C. 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 so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Paul Crissy by phone at 202–372–1093 or via email at [Paul.H.Crissy@uscg.mil](mailto:Paul.H.Crissy@uscg.mil). 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.

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).

### D. Collection of Information

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

### E. Federalism

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

### F. 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.

### G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630, (“Governmental Actions and Interference with Constitutionally Protected Property Rights”).

### H. Civil Justice Reform

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

### I. Protection of Children

We have analyzed this rule under E.O. 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.

*J. Indian Tribal Governments*

This rule does not have tribal implications under E.O. 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.

*K. Energy Effects*

We have analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

*L. Technical Standards*

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

*M. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraphs (34)(a) and

(b) of the Instruction. This rule involves regulations that are editorial, procedural, or concern internal agency functions or organizations. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects***33 CFR Part 1*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

*33 CFR Part 3*

Organization and functions (Government agencies).

*33 CFR Part 6*

Harbors, Security measures, Vessels.

*33 CFR Part 13*

Decorations, medals, awards.

*33 CFR Part 72*

Government publications, Navigation (water).

*33 CFR Part 80*

Navigation (water), Treaties, Waterways.

*33 CFR Part 83*

Navigation (water), Waterways, Vessels, Marine safety, Traffic regulation.

*33 CFR Part 101*

Harbors, Incorporation by reference, Maritime Security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

*33 CFR Part 103*

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

*33 CFR Part 104*

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

*33 CFR Part 105*

Maritime security, Reporting and recordkeeping requirements, Security measures.

*33 CFR Part 106*

Continental shelf, Maritime security, Reporting and recordkeeping requirements, Security measures.

*33 CFR Part 110*

Anchorage grounds.

*33 CFR Parts 114, 116, and 117*

Bridges.

*33 CFR Part 115*

Administrative practice and procedure, Bridges, Reporting and recordkeeping requirements.

*33 CFR Part 118*

Bridges, Incorporation by reference.

*33 CFR Part 133*

Intergovernmental relations, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 136*

Administrative practice and procedure, Advertising, Claims, Oil pollution, Penalties, Reporting and recordkeeping requirements.

*33 CFR Part 138*

Hazardous materials transportation, Insurance, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

*33 CFR Part 148*

Administrative practice and procedure, Environmental protection, Harbors, Petroleum.

*33 CFR Part 149*

Fire prevention, Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution.

*33 CFR Part 150*

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 151*

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

*33 CFR Part 161*

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

*33 CFR Part 164*

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

*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 parts 1, 3, 6, 13, 72, 80, 83, 101, 103, 104, 105, 106, 110, 114, 115, 116, 117, 118, 133, 136, 138, 148, 149, 150, 151, 161, 164, and 165 as follows:

**PART 1—GENERAL PROVISIONS****Subpart 1.05—Rulemaking**

- 1. The authority citation for subpart 1.05 continues to read as follows:

**Authority:** 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; Department of Homeland Security Delegation No. 0170.1.

**§ 1.05–1 [Amended]**

- 2. In § 1.05–1(j), wherever it appears, remove the text “District Bridge Programs Chief” and add, in its place, the text “District Bridge Manager”.

**§ 1.05–10 [Amended]**

- 3. In § 1.05–10(a), remove the text “District Commanders and Captains of the Port” wherever it appears, and add, in its place, the text “District Commanders, Captains of the Port, and District Bridge Managers”; and following the words “Coast Guard Headquarters”, remove the punctuation “;” and add, in its place, the punctuation “.”.

**PART 3—COAST GUARD AREAS, DISTRICTS, SECTORS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES****Subpart 3.01—General Provisions**

- 4. The authority citation for part 3 continues to read as follows:

**Authority:** 14 U.S.C. 92; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1, para. 2(23).

- 5. Amend § 3.01–1 as follows:

- a. In paragraph (d)(1), before the words “Sector Commander’s authorities include”, remove the word “The” and add, in its place, the words “Unless otherwise specified, the”; and
- b. Add new paragraph (d)(3) to read as follows:

**§ 3.01–1 General description.**

\* \* \* \* \*

(d) \* \* \*

(3) Some specified sectors exercise Search and Rescue Mission Coordinator (SMC) authority over a designated portion of an encompassing sector’s area of responsibility. In such cases, SMC authority is exercised by the encompassed sector, not the encompassing sector. The encompassing sector retains all other authorities (as listed in 33 CFR 3.01–1(d)(1)) over the designated area.

- 6. Add § 3.55–25 to read as follows:

**§ 3.55–25 Sector Humboldt Bay Search and Rescue Mission Coordinator Zone.**

The Sector Humboldt Bay office is located in McKinleyville, CA. The

boundaries of Sector Humboldt Bay’s Search and Rescue Mission Coordinator Zone start in the north by a line bearing 264T from the coastal point of the Oregon-California border (42°00.0’ N./124°13.0’ W.), on the south by a line bearing 270T from the coastal point of the Mendocino-Sonoma County, CA, border (38°47.0’ N./123°30.0’ W.), and on the west by the outermost extent of the exclusive economic zone (EEZ). The inland Area of Responsibility (AOR) includes the entirety of the following California counties: Del Norte, Humboldt, Mendocino, Siskiyou, Trinity, Shasta, Tehama, Glenn, Lake, Colusa, Butte, Plumas, Lassen, and Modoc.

- 7. Add § 3.65–20 to read as follows:

**§ 3.65–20 Sector North Bend Search and Rescue Mission Coordinator Zone.**

The Sector North Bend office is located in North Bend, OR. The boundaries of Sector North Bend’s Search and Rescue Mission Coordinator Zone start at a point 45°12.0’ N. latitude, 123°18.0’ W. longitude and proceeds southward along the 123°18.0’ W. longitude, to a point 42°00.0’ N. latitude, 123°18.0’ W. longitude; thence westerly along 42°0.00’ N. latitude to the sea. The offshore boundary is bounded on the south by the southern boundary of the 13th Coast Guard District, which is described in § 3.65–10, to the outermost extent of the EEZ; thence northerly along the outermost extent of the EEZ to 45°12.0’ N. latitude; thence easterly along 45°12.0’ N. latitude to a point 45°12.0’ N. latitude, 123°18.0’ W. longitude. Sector North Bend’s search and rescue mission coordination responsibilities extend from its eastern most boundary seaward to 50 nautical miles west of the coastline.

**PART 6—PROTECTION AND SECURITY OF VESSELS, HARBORS, AND WATERFRONT FACILITIES****Subpart 6.01—Definitions**

- 8. The authority citation for part 6 continues to read as follows:

**Authority:** 40 Stat. 220, as amended; 50 U.S.C. 191.

- 9. Revise § 6.01–3 to read as follows:

**§ 6.01–3 Captain of the Port.**

*Captain of the Port* as used in this part, means the officer of the Coast Guard, under the command of a District Commander, so designated by the Commandant for the purpose of giving immediate direction to Coast Guard law enforcement activities within his or her assigned area. In addition, the District

Commander will be Captain of the Port with respect to the remaining areas in his or her District not assigned to officers designated by the Commandant as Captain of the Port.

**PART 13—DECORATIONS, MEDALS, RIBBONS AND SIMILAR DEVICES****Subpart 13.01—Gold and Silver Lifesaving Medals, Bars, and Miniatures**

- 10. The authority citation for part 13 continues to read as follows:

**Authority:** Secs. 500, 633, 63 Stat. 536, 545, sec. 6(b)(1), 80 Stat. 938; 14 U.S.C. 500, 633; 49 U.S.C. 1655(b); 49 CFR 1.4 (a)(2) and (f).

**§ 13.01–15 [Amended]**

- 11. In § 13.01–15(d), following the text “such an incident under”, remove the text “Chapter II, of the Coast Guard Supplement to the Manual for Courts-Martial (CG–241)” and add, in its place, the text “Administrative Investigations Manual, COMDTINST M5830.1A (2007)”.

**PART 72—MARINE INFORMATION****Subpart 72.01—Notices to Mariners**

- 12. The authority citation for part 72 continues to read as follows:

**Authority:** 14 U.S.C. 85, 633; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

- 13. In § 72.01–5, remove the Note to § 72.01–5 and revise paragraphs (b) and (c) to read as follows:

**§ 72.01–5 Local Notice to Mariners.**

\* \* \* \* \*

(b) “Local Notice to Mariners” is published weekly by each Coast Guard district or more often if there is a need to notify mariners of local waterway information. Local Notice to Mariners is available for viewing on the Coast Guard Navigation Center Web site (<http://www.navcen.uscg.gov/?pageName=lnmMain>).

(c) Any person may apply to the Coast Guard Navigation Center to receive automatic notices via email when new editions of the Local Notice to Mariners are available. Register at <http://www.navcen.uscg.gov/?pageName=LNMListRegistration>.

- 14. In § 72.01–10, remove the Note to § 72.01–10 and revise paragraphs (b) and (c) to read as follows:

**§ 72.01–10 Notice to Mariners.**

\* \* \* \* \*

(b) “Notice to Mariners” is published weekly by the National Geospatial-

Intelligence Agency. The “Notice to Mariners” is prepared jointly by the:

- (1) Coast Guard;
- (2) National Ocean Service; and
- (3) National Geospatial-Intelligence Agency.

(c) This notice may be accessed through the National Geospatial-Intelligence Agency’s Web site (<http://msi.nga.mil/NGAPortal/MSI.portal>); look for “Notice to Mariners”.

■ 15. In § 72.01–25, revise paragraphs (b) and (c) to read as follows:

**§ 72.01–25 Marine broadcast notice to mariners.**

\* \* \* \* \*

(b) Any person may view or download “Radio Navigational Aids” from the National Geospatial-Intelligence Agency’s Web site (<http://msi.nga.mil/NGAPortal/MSI.portal>); look for “Publications.”

(c) Any person may purchase *United States Coast Pilots* from an authorized agent listed at <http://aeronav.faa.gov/agents.asp> or authorized Print-on-Demand agent listed at <http://www.nauticalcharts.noaa.gov/staff/charts.htm>. Free on-line versions, as well as weekly updates, are available directly from NOAA at <http://www.nauticalcharts.noaa.gov/nsd/cpdownload.htm>.

**§ 72.01–35 [Removed and Reserved]**

■ 16. Remove and reserve § 72.01–35.

**§ 72.01–40 [Amended]**

■ 17. In § 72.01–40(c), remove the words “The National Imagery and Mapping Agency” and add, in their place, the words “The National Geospatial-Intelligence Agency”.

**§ 72.05–5 [Amended]**

■ 18. In § 72.05–5, remove the text “P.O. Box 371954, Pittsburgh, PA 15250–1954” and add, in its place, the text “P.O. Box 979050, St. Louis, MO 63197–9000”.

**§ 72.05–10 [Amended]**

■ 19. In the Note to § 72.05–10, following the text “Coast Guard Light”, remove the text “data through the following National Geospatial-Intelligence Agency’s Web site: ([http://pollux.nss.nima.mil/pubs/USCGLL/pubs\\_j\\_uscgll\\_list.html](http://pollux.nss.nima.mil/pubs/USCGLL/pubs_j_uscgll_list.html))” and add, in its place, the text “List data through the Coast Guard Navigation Center’s Web site: (<http://www.navcen.uscg.gov/?pageName=lightLists>)”.

**PART 80—COLREGS DEMARCATION LINES**

■ 20. The authority citation for part 80 continues to read as follows:

Authority: 14 U.S.C. 2; 14 U.S.C. 633; 33 U.S.C. 151(a).

**§ 80.110 [Amended]**

■ 21. In § 80.110(b), following the coordinates “43°40.6’ N.”, add the punctuation “,”.

**§ 80.115 [Amended]**

■ 22. In § 80.115(b), following the coordinates “43°04.0’ N.”, add the punctuation “,”.

**§ 80.120 [Amended]**

■ 23. In § 80.120(b), following the word “Gloucester”, remove the word “Harbor”; and following the coordinates “42°35.1’ N.”, add the punctuation “,”.

**§ 80.145 [Amended]**

■ 24. Amend § 80.145 as follows:

■ a. In paragraph (b), following the coordinates “41°29.1’ N.”, add the punctuation “,”; and

■ b. In paragraph (c), following the coordinates “41°28.5’ N.”, add the punctuation “,”.

**§ 80.501 [Amended]**

■ 25. In § 80.501(d), following the coordinates “39°18.2’ N.”, add the punctuation “,”; and following the coordinates “39°17.6’ N.”, add the punctuation “,”.

**§ 80.505 [Amended]**

■ 26. In § 80.505(c), following the coordinates “37°52.6’ N.”, add the punctuation “,”.

■ 27. Revise § 80.520 to read as follows:

**§ 80.520 Cape Hatteras, NC to Cape Lookout, NC.**

(a) A line drawn from Hatteras Inlet Lookout Tower at latitude 35°11.85’ N., longitude 75°43.9’ W. 255° true to the eastern end of Ocracoke Island.

(b) A line drawn from the westernmost extremity of Ocracoke Island at latitude 35°04.0’ N., longitude 76°00.8’ W. to the northeasternmost extremity of Portsmouth Island at latitude 35°03.7’ N., longitude 76°02.3’ W.

(c) A line drawn across Drum Inlet parallel with the general trend of the highwater shoreline.

■ 28. Amend § 80.525 as follows:

■ a. In paragraph (c), following the coordinates “34°38.7’ N.”, “77°06.0’ W.”, and “34°38.5’ N.”, add the punctuation “,” after each; and

■ b. Revise paragraphs (d) and (e) to read as follows:

**§ 80.525 Cape Lookout, NC to Cape Fear, NC.**

\* \* \* \* \*

(d) A line drawn from the easternmost extremity on the southern side of New

River Inlet at latitude 34°31.5’ N., longitude 77°20.6’ W., to the seaward tangent of the shoreline on the northeast side on New River Inlet.

(e) A line drawn across New Topsail Inlet between the closest extremities of the shore on either side of the inlet parallel with the general trend of the highwater shoreline.

\* \* \* \* \*

**§ 80.530 [Amended]**

■ 29. In 80.530(a), following the coordinates “33°52.4’ N.” and “78°00.1’ W.”, add the punctuation “,” after each.

■ 30. Revise § 80.703(f) to read as follows:

**§ 80.703 Little River Inlet, SC to Cape Romain, SC.**

\* \* \* \* \*

(f) A north-south line drawn from the northernmost extremity of Cape Island Point to Murphy Island.

■ 31. Revise § 80.707 paragraphs (a) and (b) to read as follows:

**§ 80.707 Cape Romain, SC to Sullivans Island, SC.**

(a) A line drawn from the westernmost point on Cape Romain to the southeasternmost point on Raccoon Key.

(b) A line drawn from the westernmost extremity of Raccoon Key to the northernmost extremity of Northeast Point.

\* \* \* \* \*

■ 32. Revise § 80.712 paragraphs (a) and (f) to read as follows:

**§ 80.712 Morris Island, SC to Hilton Head Island, SC.**

(a) A straight line drawn from the seaward tangent of Folly Island through across Stono River to the shoreline of Sandy Point.

\* \* \* \* \*

(f) A line drawn from the westernmost extremity of Bull Point on Capers Island to Port Royal Sound Channel Range Rear Light, latitude 32°13.7’ N., longitude 80°36.0’ W.; thence 259° true to the easternmost extremity of Hilton Head at latitude 32°13.0’ N., longitude 80°40.1’ W.

■ 33. Revise § 80.715 to read as follows:

**§ 80.715 Savannah River.**

A line drawn from the southernmost tank on Hilton Head Island charted in approximate position latitude 32°06.7’ N., longitude 80°49.3’ W., to Bloody Point Range Rear Light; thence to Tybee Light.

**§ 80.717 [Amended]**

■ 34. Amend § 80.717 as follows:

■ a. In paragraph (c), remove the word “Wassau” and add, in its place, the word “Wassaw”; and

■ b. In paragraph (d), remove the coordinates “81°8.4’ W.”, and add, in their place, the coordinates “81°08.4’ W.”.

■ 35. Amend § 80.720 as follows:

■ a. In paragraph (a), following the coordinate “31°05.9’ N.”, add the punctuation “,”; and

■ b. Revise paragraph (b) to read as follows:

**§ 80.720 St. Simons Island, GA to Amelia Island, FL.**

\* \* \* \* \*

(b) A line drawn from the southernmost tank on Jekyll Island charted in approximate position latitude 31°01.6’ N., longitude 81°25.2’ W., to coordinate latitude 30°59.4’ N., longitude 81°23.7’ W. (0.5 nautical mile east of the charted position of St. Andrew Sound Lighted Buoy 32); thence to the abandoned lighthouse tower on the north end of Little Cumberland Island charted in approximate position latitude 30°58.5’ N., longitude 81°24.8’ W.

\* \* \* \* \*

■ 36. Revise § 80.735 paragraphs (a) and (f) to read as follows:

**§ 80.735 Miami, FL to Long Key, FL.**

(a) A line drawn from the southernmost extremity of Fisher Island 212° true to the point latitude 25°45.0’ N., longitude 80°08.6’ W., on Virginia Key.

\* \* \* \* \*

(f) A line drawn on the centerline of the Overseas Highway (U.S. 1) and bridges from latitude 25°19.3’ N., longitude 80°16.0’ W., at Little Angelfish Creek to the radar dome charted on Long Key at approximate position latitude 24°49.3’ N., longitude 80°49.2’ W.

**§ 80.738 [Amended]**

■ 37. In § 80.738(b), remove the text “18°28’30” N, 066°08’24” W.”, and add, in its place, the text, “18°28.5’ N., 066°08.4’ W.”.

■ 38. Revise § 80.740 to read as follows:

**§ 80.740 Long Key, FL to Cape Sable, FL.**

A line drawn from the microwave tower charted on Long Key at approximate position latitude 24°48.8’ N., longitude 80°49.6’ W., to Long Key Light 1; thence to Arsenic Bank Light 2; thence to Sprigger Bank Light 5; thence to Schooner Bank Light 6; thence to Oxfoot Bank Light 10; thence to East Cape Light 2; thence through East Cape Daybeacon 1A to the shoreline at East Cape.

**§ 80.745 [Amended]**

■ 39. Amend § 80.745 as follows:

■ a. In paragraph (a), following the coordinates “25°41.8’ N.”, add the punctuation “,”; and

■ b. In paragraph (c), following the coordinates “81°20.2’ W.”, add the punctuation “,”.

**§ 80.748 [Amended]**

■ 40. In § 80.748(d) following the coordinates “26°05.7’ N.”, add the punctuation “,”.

■ 41. Revise § 80.757 paragraphs (g) and (h) to read as follows:

**§ 80.757 Suncoast Keys, FL to Horseshoe Point, FL.**

\* \* \* \* \*

(g) A line drawn from position latitude 29°16.6’ N., longitude 83°06.7’ W., 300° true to the shoreline of Hog Island.

(h) A north-south line drawn through Suwannee River Mcgriff Pass Daybeacons 30 and 31 across the Suwannee River.

■ 42. Revise § 80.805(d) to read as follows:

**§ 80.805 Rock Island, FL to Cape San Blas, FL.**

\* \* \* \* \*

(d) A line drawn from the south shore of Southwest Cape at longitude 84°22.7’ W., to Dog Island Reef East Light 1; thence a straight line to the easternmost extremity of Dog Island.

\* \* \* \* \*

■ 43. Revise § 80.830(a) to read as follows:

**§ 80.830 Mississippi Passes, LA to Point Au Fer, LA.**

(a) A line drawn from the seaward extremity of the Southwest Pass West Jetty located at coordinate latitude 28°54.5’ N., longitude 89°26.1’ W.; thence following the general trend of the seaward, highwater jetty and shoreline in a north, northeasterly direction to Old Tower latitude 28°58.8’ N., longitude 89°23.3’ W.; thence to westernmost point near Pass du Bois; thence to coordinate latitude 29°05.2’ N., longitude 89°24.3’ W.; thence a curved line following the general trend of the highwater shoreline to Point Au Fer Island except as otherwise described in this section.

\* \* \* \* \*

■ 44. Revise § 80.835 paragraphs (a) and (f) to read as follows:

**§ 80.835 Point Au Fer, LA to Calcasieu Pass, LA.**

(a) A line drawn from Point Au Fer to Atchafalaya Channel Light 34; thence to

Atchafalaya Channel Light 33; thence to latitude 29°25.0’ N., longitude 91°31.7’ W.; thence to Atchafalaya Bay Light 1 latitude 29°25.3’ N., longitude 91°35.8’ W.; thence to South Point.

\* \* \* \* \*

(f) A line drawn from the radio tower charted in approximate position latitude 29°45.7’ N., longitude 93°06.3’ W., 115° true across Mermentau Pass.

\* \* \* \* \*

**§ 80.1110 [Amended]**

■ 45. In § 80.1110, following the text “Point Jetty Light”, remove the text “6” and add, in its place, the text “4”; and following the text “Breakwater Light”, remove the text “5” and add, in its place, the text “3”.

**PART 83—RULES**

**Subpart B—Steering and Sailing Rules**

■ 46. The authority citation for part 83 continues to read as follows:

**Authority:** Sec. 303, Pub. L. 108–293, 118 Stat. 1028 (33 U.S.C. 2001); Department of Homeland Security Delegation No. 0170.1.

**§ 83.10 [Amended]**

■ 47. In § 83.10(l) following the words “complying with this”, remove the word “rule”, and add, in its place, the word “Rule”.

**§ 83.38 [Amended]**

■ 48. Amend § 83.38 as follows:

■ a. In paragraph (d)(5), following the words “Annex I to these”, add the word “Rules”; and

■ b. In paragraph (d)(6), following the text “light aft visible all”, add the punctuation “-”.

**PART 101—MARITIME SECURITY: GENERAL**

**Subpart A—General**

■ 49. The authority citation for part 101 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

**§ 101.105 [Amended]**

■ 50. Amend § 101.105 as follows:

■ a. In the definition of “*Area Maritime Security (AMS) committee*”, following the text “of the Port (COTP) or at”, remove the text, “<http://www.uscg.mil/hq/g-m/nvic>” and add, in its place, the text “<http://www.uscg.mil/hq/cg5/nvic>” and

■ b. In the definition of “*Secure area*”, following the words “subchapter

located in”, add the words “the Commonwealth of the Northern Mariana Islands and”.

#### § 101.115 [Amended]

■ 51. In § 101.115(a), following the text “Port Security Directorate”, remove the text “(CG-54)” and add, in its place, the text “(CG-5P)”.

#### § 101.120 [Amended]

■ 52. Amend § 101.120 as follows:

■ a. In paragraph (b)(1) following the text “Chapter XI, may meet”, add the text “the requirements of”; and following the text “approved by the Commandant”, remove the text “(CG-54)” and add, in its place, the text “(CG-5P)”;

■ b. In paragraph (c) following the text “submit to the Commandant”, remove the text “(CG-54)” and add, in its place, the text “(CG-5P)”;

■ c. In paragraph (d)(2), remove the text “(CG-54)” wherever it appears, and add, in its place, the text “(CG-5P)”;

■ d. In paragraph (f), remove the text “(CG-54)” and add, in its place, the text “(CG-5P)”.

#### § 101.125 [Removed and Reserved]

■ 53. Remove and reserve § 101.125.

#### § 101.130 [Amended]

In § 101.130(a), remove the text “(CG-54)” wherever it appears, and add, in its place, the text “(CG-5P)”.

■ 54. Revise § 101.200 paragraphs (c) and (d) to read as follows:

#### § 101.200 MARSEC Levels.

\* \* \* \* \*

(c) The Commandant will set (raise or lower) the MARSEC Level commensurate with risk, and in consideration of any maritime nexus to any active National Terrorism Advisory System (NTAS) alerts. Notwithstanding the NTAS, the Commandant retains discretion to adjust the MARSEC Level when necessary to address any particular security concerns or circumstances related to the maritime elements of the national transportation system.

(d) The COTP may raise the MARSEC Level for the port, a specific marine operation within the port, or a specific industry within the port, when necessary to address an exigent circumstance immediately affecting the security of the maritime elements of the transportation in his/her area of responsibility. Application of this delegated authority will be pursuant to policies and procedures specified by the Commandant.

#### § 101.205 [Removed and Reserved]

■ 55. Remove and reserve § 101.205.

#### § 101.420 [Amended]

■ 56. Amend § 101.420 as follows:

■ a. In paragraph (b), following the text “made to the Commandant”, remove the text “(CG-543)” and add, in its place, the text “(CG-CVC)”;

■ b. In paragraphs (b), (c), and (d), remove the text “(CG-54)” wherever it appears, and add, in its place, the text “(CG-5P)”.

#### § 101.510 [Amended]

■ 57. In § 101.510(a), following the text “(NVIC”, remove the text “9-02 change 2”, and add, in its place, the text “9-02 change 3”.

### PART 104—MARITIME SECURITY: VESSELS

■ 58. The authority citation for part 104 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

#### § 104.130 [Amended]

■ 59. In § 104.130, remove the text “(CG-54)” wherever it appears, and add, in its place, the text “(CG-5P)”.

#### § 104.200 [Amended]

■ 60. In § 104.200(b)(7), remove the text “. The text of these treaties can be found at <http://www.marad.dot.gov/Programs/treaties.html>”.

#### § 104.205 [Amended]

■ 61. Amend § 104.205 as follows:

■ a. In paragraph (b)(1), remove the text “[lst-nrcinfo@comdt.uscg.mil](mailto:lst-nrcinfo@comdt.uscg.mil)” and add, in its place, the text “[HQS-DG-lst-NRCINFO@uscg.mil](mailto:HQS-DG-lst-NRCINFO@uscg.mil)”; and

■ b. In paragraph (b)(3), remove the text “(CG-54)”, and add, in its place, the text “(CG-5P)”.

#### § 104.267 [Amended]

■ 62. In § 104.267(b)(2), remove the text “(<http://homeport.uscg.mil>)”, and add, in its place, the text “(<http://homeport.uscg.mil>)”.

#### § 104.410 [Amended]

■ 63. In § 104.410(a)(2) following the words “under an Approved”, add the word “Alternative”.

### PART 105—MARITIME SECURITY: FACILITIES

■ 64. The authority citation for part 105 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-

11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

#### § 105.130 [Amended]

■ 65. In § 105.130, remove the text “(CG-54)” wherever it appears, and add, in its place, the text “(CG-5P)”.

#### § 105.200 [Amended]

■ 66. In § 105.200(b)(9), following the text “U.S. and other nations”, remove the text “. The text of these treaties can be found at <http://www.marad.dot.gov/Programs/treaties.html>”.

#### § 105.257 [Amended]

■ 67. In § 105.257(b)(2), remove the word “facility”, and add, in its place, the word “vessel”; remove the text “FSO” and add, in its place, the text “VSO”; and remove the text “(<http://homeport.uscg.mil>)” and add, in its place, the text “(<http://homeport.uscg.mil>)”.

#### § 105.400 [Amended]

■ 68. In 105.400(b), following the text “can be found at”, remove the text “<http://www.uscg.mil/HQ/MSG>.” and add, in its place, the text “[https://homeport.uscg.mil/cgi-bin/st/portal/uscg\\_docs/MyCG/Editorial/20090220/FSP\\_Submissi\\_FAQ05DEC.pdf?id=00388e15db7e7bf4b1fc3556059dac7c3e063b57&user\\_id=c5535d2497d5d673ff261157e034a1ea](https://homeport.uscg.mil/cgi-bin/st/portal/uscg_docs/MyCG/Editorial/20090220/FSP_Submissi_FAQ05DEC.pdf?id=00388e15db7e7bf4b1fc3556059dac7c3e063b57&user_id=c5535d2497d5d673ff261157e034a1ea)”.

#### § 105.410 [Amended]

■ 69. In § 105.410(a)(2), following the words “under an Approved”, add the word “Alternative”.

### PART 106—MARINE SECURITY: OUTER CONTINENTAL SHELF (OCS) FACILITIES

■ 70. The authority citation for part 106 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-11, 6.14, 6.16, and 6.19; Department Of Homeland Security Delegation No. 0170.1.

#### § 106.410 [Amended]

■ 71. In § 106.410(a)(2), following the words “under an Approved”, add the word “Alternative”.

### PART 110—ANCHORAGE REGULATIONS

■ 72. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

■ 73. In § 110.155, add paragraphs (h)(5) and (h)(6) to read as follows:

**§ 110.155 Port of New York.**

\* \* \* \* \*

(h) \* \* \*

(5) *Anchorage No. 38.* North of the Pennsylvania-Lehigh Valley Railroad bridge; east of lines ranging through a point 200 yards east of the east end of the lift span of the said bridge and the red channel buoys marking the dredged channel in Newark Bay and Hackensack River; and south of the Central Railroad Company of New Jersey bridge.

(6) *Anchorage No. 39.* Between the entrance channels of the Hackensack and Passaic Rivers, northwest of lines from the abutment of the Central Railroad of New Jersey bridge on the west side of the Hackensack River to Hackensack River Light 1, and thence to Newark Bay Light 5, and east of a line from said light ranging toward the southeast corner of the Texas Company wharf, and of a line ranging from the southeast corner of Gross Wharf to the abutment and end of fill of the Central Railroad of New Jersey bridge on the east side of the Passaic River.

\* \* \* \* \*

**PART 114—GENERAL**

■ 74. The authority citation for part 114 continues to read as follows:

**Authority:** 33 U.S.C. 401, 406, 491, 494, 495, 499, 502, 511, 513, 514, 516, 517, 519, 521, 522, 523, 525, 528, 530, 533, and 535(c), (e), and (h); 14 U.S.C. 633; 49 U.S.C. 1655(g); Pub. L. 107–296, 116 Stat. 2135; 33 CFR 1.05–1 and 1.01–60, Department of Homeland Security Delegation Number 0170.1.

**§ 114.01 [Amended]**

■ 75. In § 114.01(b), remove the text “procedures and practices, including forms” and add, in its place, the text “procedures, practices,”.

**§ 114.10 [Amended]**

■ 76. In § 114.10 following the text “laws referenced in”, remove the text “§ 114.01 Purpose,” and add, in its place, the text “the Authority for part 114”.

**§ 114.25 [Amended]**

■ 77. In § 114.25, remove the text “49 U.S.C. 1655(g),”.

**§ 114.50 [Amended]**

■ 78. In § 114.50, remove the text “49 U.S.C. 1655(g),”.

**PART 115—BRIDGE LOCATIONS AND CLEARANCES; ADMINISTRATIVE PROCEDURES**

■ 79. The authority citation for part 115 continues to read as follows:

**Authority:** c. 425, sec. 9, 30 Stat. 1151 (33 U.S.C. 401); c. 1130, sec. 1, 34 Stat. 84 (33 U.S.C. 491); sec. 5, 28 Stat. 362, as amended (33 U.S.C. 499); sec. 11, 54 Stat. 501, as amended (33 U.S.C. 521); c. 753, Title V, sec. 502, 60 Stat. 847, as amended (33 U.S.C. 525); 86 Stat. 732 (33 U.S.C. 535); 14 U.S.C. 633.

**§ 115.60 [Amended]**

■ 80. In § 115.60 following paragraph (e), remove the text “49 U.S.C. 1655(g),”.

**§ 115.70 [Amended]**

■ 81. Amend § 115.70 as follows:

■ a. In paragraph (a) following the text “reasonable needs of navigation.”, add the text “The Coast Guard recommends notice to the District Bridge Manager to ensure that the District has determined that advance approval provision is applicable to the waterway reach over which the bridge is to be constructed.”; and

■ b. Following paragraph (b), remove the text “49 U.S.C. 1655(g);”.

**PART 116—ALTERATION OF UNREASONABLY OBSTRUCTIVE BRIDGES**

■ 82. The authority citation for part 116 continues to read as follows:

**Authority:** 33 U.S.C. 401, 521.

**§ 116.10 [Amended]**

■ 83. In § 116.10(c) following the words “complainant and the”, remove the word “Administrator” and add, in its place, the word “Chief”.

**§ 116.15 [Amended]**

■ 84. In § 116.15 paragraphs (c) and (d), remove the word “Administrator” and add, in its place, the word “Chief”.

**§ 116.20 [Amended]**

■ 85. In § 116.20 in paragraphs (a) and (b), remove the word “Administrator” and add, in its place, the word “Chief”.

**§ 116.25 [Amended]**

■ 86. In § 116.25(a), remove the word “Administrator” and add, in its place, the word “Chief”.

**§ 116.30 [Amended]**

■ 87. In § 116.30, in the section heading and paragraphs (a), (d), (e), and (g) remove the word “Administrator” wherever it appears, and add, in its place, the word “Chief”.

**§ 116.35 [Amended]**

■ 88. In § 116.35(c), remove the word “Administrator” and add, in its place, the word “Chief”.

**§ 116.40 [Amended]**

■ 89. In § 116.40, wherever it appears, remove the word “Administrator” and add, in its place, the word “Chief”.

**§ 116.45 [Amended]**

■ 90. In § 116.45(a), remove the word “Administrator” and add, in its place, the word “Chief”.

**§ 116.55 [Amended]**

■ 91. In § 116.55 paragraphs (a) and (b), remove the word “Administrator” and add, in its place, the word “Chief”.

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

■ 92. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

**§ 117.35 [Amended]**

■ 93. In § 117.35(a), following the text “owner and publish a”, remove the text ““Notice of deviation from drawbridge regulation”” and add, in its place, the text ““Notice of temporary deviation from regulations””.

**§ 117.393 [Amended]**

■ 94. In § 117.393(d), following the text “Elgin, Joliet & Eastern offices in”, remove the text “East Joliet” and add, in its place, the text “Homewood”.

**§ 117.425 [Amended]**

■ 95. In § 117.425, following the text “draw of the”, remove the text “U.S. 90” and add, in its place, the text “U.S. 182”.

■ 96. Revise § 117.585(a) to read as follows:

**§ 117.585 Acushnet River.**

(a) The New Bedford-Fairhaven RT–6 Bridge, mile 0.0, will open promptly, provided proper signal is given, on the following schedule:

\* \* \* \* \*

**§ 117.997 [Amended]**

■ 97. In § 117.997(c)(2)(ii), following the text “Gilmerton Bridge at”, remove the text “(757) 545–1512” and add, in its place, the text “757–485–5567”.

**PART 118—BRIDGE LIGHTING AND OTHER SIGNALS**

■ 98. The authority citation for part 118 continues to read as follows:

**Authority:** 33 U.S.C. 494; 14 U.S.C. 85, 633; Department of Homeland Security Delegation No. 0170.1.

**§ 118.3 [Amended]**

■ 99. In § 118.3(b), following the words “Coast Guard Headquarters,” remove the word “Administrator” and add, in its place, the word “Chief”.

**PART 133—OIL SPILL LIABILITY TRUST FUND; STATE ACCESS**

100. The authority citation for part 133 continues to read as follows:

**Authority:** 33 U.S.C. 2712(a)(1)(B), 2712(d) and 2712(e); Sec. 1512 of the Homeland Security Act of 2002, Pub. L. 107–296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552(d)); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, 68 FR 10619, 3 CFR, 2004 Comp., p. 166; Department of Homeland Security Delegation No. 0170.1, para. 2(80).

■ 101. Amend § 133.5 as follows:

■ a. In paragraph (b), following the words “the State official”, remove the word “shall” and add, in its place, the word “will”; and

■ b. Revise paragraph (c) to read as follows:

**§ 133.5 Requests: General.**

\* \* \* \* \*

(c) The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301–6308), 2 CFR part 3000, 6 CFR part 9, and 49 CFR parts 18 and 90, apply to Fund monies obligated for payment under this part.

**PART 136—OIL SPILL LIABILITY TRUST FUND; CLAIMS PROCEDURES; DESIGNATION OF SOURCE; AND ADVERTISEMENT**

■ 102. The authority citation for part 136 continues to read as follows:

**Authority:** 33 U.S.C. 2713(e) and 2714; Sec. 1512 of the Homeland Security Act of 2002, Pub. L. 107–296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552(d)); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, 68 FR 10619, 3 CFR, 2004 Comp., p.166; Department of Homeland Security Delegation No. 0170.1, para. 2(80).

**§ 136.9 [Amended]**

■ 103. In § 136.9, following the text “as implemented in”, remove the text “49 CFR part 31” and add, in its place, the text, “6 CFR part 13”.

**PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS) AND OPA 90 LIMITS OF LIABILITY (VESSELS AND DEEPWATER PORTS)**

■ 104. The authority citation for part 138 continues to read as follows:

**Authority:** 33 U.S.C. 2704; 33 U.S.C. 2716, 2716a; 42 U.S.C. 9608, 9609; Sec. 1512 of the

Homeland Security Act of 2002, Public Law 107–296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552(d)); E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 198; E.O. 12777, Sec. 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, 68 FR 10619, 3 CFR, 2004 Comp., p.166; Department of Homeland Security Delegation Nos. 0170.1 and 5110. Section 138.30 also issued under the authority of 46 U.S.C. 2103 and 14302.

**§ 138.45 [Amended]**

■ 105. In § 138.45(a), following the text “20598–7100, telephone”, remove the text “(202) 493–6780, Telefax (202) 493–6781” and add, in its place, the text “202–872–6130, fax 703–872–6123”.

**PART 148—DEEPWATER PORTS: GENERAL**

■ 106. The authority citation for part 148 continues to read as follows:

**Authority:** 33 U.S.C. 1504; Department of Homeland Security Delegation No. 0170.1 (75).

**§ 148.1 [Amended]**

■ 107. In § 148.1, remove the text “(33 U.S.C. 1501–1524)” and add, in its place, the text “(codified at 33 U.S.C. 1501 *et seq.*)”.

**§ 148.3 [Amended]**

■ 108. Amend § 148.3 as follows:

■ a. In paragraph (a), remove the text “the Maritime Administration (MARAD)” and add, in its place, the text “MARAD”;

■ b. In paragraph (b), following the text “fees charged by”, remove the text “adjacent coastal” and add, in its place, the text “Adjacent Coastal”; and

■ c. In paragraph (d), following the text “Ocean Energy Management”, remove the text “, Regulation and Enforcement (BOEMRE)” and add, in its place, the text “(BOEM)”.

■ 109. In § 148.5, revise the definitions of “Act”, paragraph (3) of “Adjacent coastal State”, “Approved”, “Certifying entity or CE”, “Commandant (CG–5)”, and paragraph (4) of “Deepwater port” to read as follows:

**§ 148.5 How are terms used in this subchapter defined?**

\* \* \* \* \*

*Act* means the Deepwater Port Act of 1974, as amended (codified at 33 U.S.C. 1501 *et seq.*).

*Adjacent Coastal State* means any coastal State which:

\* \* \* \* \*

(3) Is designated as an Adjacent Coastal State by MARAD under 33 U.S.C. 1508(a)(2).

\* \* \* \* \*

*Approved* means approved by the Commandant (CG–5P).

\* \* \* \* \*

*Certifying entity* or *CE* means any individual or organization, other than the operator, permitted by the Commandant (CG–5P) to act on behalf of the Coast Guard pursuant to section 148.8 of this subpart. The activities may include reviewing plans and calculations for construction of deepwater ports, conducting inspections, witnessing tests, and certifying systems and/or components associated with deepwater ports as safe and suitable for their intended purpose.

\* \* \* \* \*

*Commandant (CG–5P)* means the Assistant Commandant for Prevention, or that individual’s authorized representative, at Commandant (CG–5P), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

\* \* \* \* \*

*Deepwater port:*

\* \* \* \* \*

(4) Must be considered a “new source” for purposes of the Clean Air Act, as amended (codified at 42 U.S.C. 7401 *et seq.*), and the Federal Water Pollution Control Act, as amended (codified at 33 U.S.C. 1251 *et seq.*).

\* \* \* \* \*

**§ 148.8 [Amended]**

■ 110. Amend § 148.8 as follows:

■ a. In paragraph (b)(6) following the words “be associated with”, remove the word “its” and add, in its place, the words “the CE’s”; and

■ b. In paragraph (c) remove the text “(CG–5)” wherever it appears, and add, in its place the text “(CG–5P)”.

■ 111. In § 148.105—

■ a. In paragraph (f), following the text “use of the”, add the word “deepwater”;

■ b. In paragraph (g)(2)(iii), following the text “removal of all”, add the word “deepwater”;

■ c. In paragraph (k)(1), remove the text “OCS” and add, in its place, the text “Outer Continental Shelf”;

■ d. In paragraph (s) introductory text, remove the text “OCS” and add, in its place, the text “Outer Continental Shelf”;

■ e. In paragraph (t)(7), following the text “connect to the”, add the text “deepwater”;

■ f. In paragraph (u)(2), following the text “served by the”, add the text “deepwater”; and

■ g. Revise paragraphs (m)(1)(ii), (o), and (x) to read as follows:

**§ 148.105 What must I include in my application?**

\* \* \* \* \*

(m) \* \* \*

(1) \* \* \*

(ii) Recommended ships' routing measures and proposed vessel traffic patterns in the deepwater port area, including aids to navigation; and

\* \* \* \* \*

(o) *Archeological information.* An analysis of the information from the reconnaissance hydrographic survey by a qualified underwater archeologist to determine the historical or other significance of the area where the site evaluation and pre-construction testing activities were conducted. The analysis must meet standards established by the Bureau of Ocean Energy Management (BOEM) for activities on the Outer Continental Shelf, or an alternative standard that has been submitted to and approved by the Coast Guard. The survey must include the areas potentially affected by the deepwater port, or any other associated platforms, and its pipeline routes.

\* \* \* \* \*

(x) *Operations manual.* A draft of the operations manual for the proposed deepwater port, containing the information under § 150.15 of this subchapter, must demonstrate the applicant's ability to operate the deepwater port safely and effectively. To the extent that circumstances are similar, this demonstration can be in the form of evidence appended to the draft operations manual of the applicant's participation in the safe and effective management or operation of other offshore facilities, for example, evidence of compliance with BOEM requirements for those facilities. If the information required for the manual is not available, state why it is not and when it will be available.

\* \* \* \* \*

#### § 148.107 [Amended]

■ 112. Amend § 148.107 as follows:

■ a. In paragraph (a), remove the text “(CG–5)” and add, in its place, the text “(CG–5P)”; and following the text “or other information”, remove the text “he or she” and add, in its place, the text, “the Commandant (CG–5P)”; and

■ b. In paragraphs (b), (c), and (c)(1) through (c)(3), remove the text “(CG–5)” wherever it appears, and add, in its place, the text “(CG–5P)”.

#### § 148.108 [Amended]

■ 113. In § 148.108 paragraphs (c), (d), and (e), remove the text “(CG–5)” wherever it appears, and add, in its place, the text “(CG–5P)”.

#### § 148.110 [Amended]

■ 114. Amend § 148.110 as follows:

■ a. In paragraph (a) remove the text “(CG–5)” and add, in its place, the text “(CG–5P)”; and following the words “requirements contained in this”, remove the word “rule” and add, in its place, the word “part”; and

■ b. In paragraph (b)(3)(i), following the text “required by § 148.115(a)”, add the text “of this part”.

#### § 148.115 [Amended]

■ 115. Amend § 148.115 as follows:

■ a. In paragraph (a), following the text “Commandant”, remove the text “(CG–522)” and add, in its place, the text “(CG–5P)”; and

■ b. In paragraph (c), following the words “over the proposed”, add the word “deepwater”.

#### § 148.125 [Amended]

■ 116. In § 148.125 paragraphs (b) and (d), following the text “Commandant”, remove the text “(CG–5)” and add, in its place, the text “(CG–5P)”.

#### § 148.200 [Amended]

■ 117. In § 148.200(b), remove the words “adjacent coastal states” and add, in their place, the words “Adjacent Coastal States”.

#### § 148.205 [Amended]

■ 118. In § 148.205 paragraph (a), paragraph (b) introductory text, and paragraph (b)(1), remove the text “(CG–5)”, and add, in its place, the text “(CG–5P)”.

#### § 148.207 [Amended]

■ 119. Amend § 148.207 as follows:

■ a. In paragraph (a) introductory text, following the text “under § 148.205”, add the text “of this part”; remove the text “(CG–5)” wherever it appears, and add, in its place, the text “(CG–5P)”; following the text “§ 148.5”, add the text “of this part”; and following the text “except for”, remove the punctuation “:”, and add, in its place, the punctuation “—”; and

■ b. In paragraph (c), following the text “electronically at the”, remove the text “Department of Transportation Docket Management System” and add, in its place, the text “Federal Docket”; following the text “System Web site at”, remove the text “<http://www.dot.dms.gov>” and add, in its place, the text “[www.regulations.gov](http://www.regulations.gov)”; and following the text “docket number at the”, remove the text “G–PSO–5 Web site: <http://www.uscg.mil/hq/g-m/mso/mso5.htm>.” and add, in its place, the text, “CG–OES–4 Web site: <http://www.uscg.mil/hq/cg5/cg522/cg5225>.”

#### § 148.209 [Amended]

■ 120. Amend § 148.209 as follows:

■ a. In the introductory paragraph, remove the text “(CG–5)” wherever it appears, and add, in its place, the text “(CG–5P)”; following the text “cooperation with”, remove the text “the Maritime Administrator” and add, in its place, the text “MARAD”; following the text “each application and”, remove the text “the Maritime Administration”, and add, in its place, the text “MARAD”; and following the text “of the application to”, remove the punctuation “:”, and add, in its place, the punctuation “—”; and

■ b. In paragraph (b), remove the text “adjacent coastal” and add, in its place, the text “Adjacent Coastal”; and remove the text “those States” and add, in its place, the text “those Adjacent Coastal States”.

#### § 148.213 [Amended]

■ 121. In § 148.213, following the text “to the Commandant”, remove the text “(CG–5)” and add, in its place, the text “(CG–5P)”.

#### § 148.215 [Amended]

■ 122. In § 148.215(b), following the text “to the Commandant”, remove the text “(CG–5)” and add, in its place, the text “(CG–5P)”.

#### § 148.217 [Amended]

■ 123. Amend § 148.217 as follows:

■ a. In the section heading of § 148.217, remove the words “adjacent coastal” and add, in their place, the words “Adjacent Coastal”;

■ b. In paragraph (a), remove the word “coastal” wherever it appears, and add, in its place, the word “Coastal”; and following the words “named as an”, remove the word “adjacent” and add, in its place, the word “Adjacent”;

■ c. In paragraphs (b)(1), (c), and (d), remove the text “(CG–5)” wherever it appears, and add, in its place, the text “(CG–5P)”; and

■ d. In paragraph (d), following the words “be considered an”, remove the words “adjacent coastal” and add, in their place, the words “Adjacent Coastal”.

#### § 148.221 [Amended]

■ 124. In § 148.221 paragraphs (b), (c), and (d), remove the text “(CG–5)” and add, in its place, the text “(CG–5P)”.

#### § 148.222 [Amended]

■ 125. In § 148.222 paragraphs (a) and (b), remove the text “adjacent coastal” wherever it appears, and add, in its place, the text “Adjacent Coastal”.

**§ 148.227 [Amended]**

■ 126. In § 148.227(a), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 148.228 [Amended]**

■ 127. In § 148.228 paragraphs (a), (b), and (c), remove the text “(G-PSO)” wherever it appears, and add, in its place, the text “(CG-5P)”.

**§ 148.230 [Amended]**

■ 128. In § 148.230(a), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 148.232 [Amended]**

■ 129. In § 148.232 paragraphs (a) and (b), remove the text “(CG-5)” wherever it appears and add, in its place, the text “(CG-5P)”.

**§ 148.234 [Amended]**

■ 130. In § 148.234(b), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 148.236 [Amended]**

■ 131. In § 148.236(j), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 148.238 [Amended]**

■ 132. In § 148.238(b), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 148.240 [Amended]**

■ 133. Amend § 148.240 as follows:  
 ■ a. In paragraph (a), remove the words “adjacent coastal” and add, in their place, the words “Adjacent Coastal”; and  
 ■ b. In paragraph (f), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 148.250 [Amended]**

■ 134. In § 148.250(b), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 148.252 [Amended]**

■ 135. In § 148.252(i), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 148.256 [Amended]**

■ 136. In § 148.256, remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 148.276 [Amended]**

■ 137. Amend § 148.276 as follows:  
 ■ a. In paragraph (a) following the text “33 U.S.C. 1504, the”, remove the text “Deepwater Port”;  
 ■ b. In paragraph (b) following the words “hearings in each”, remove the

word “adjacent” and add, in its place, “Adjacent”;

■ c. In paragraph (c) following the text “MARAD issues a”, remove the text “record of decision” and add, in its place, the text “Record of Decision”; and following the words “decommissioning of the”, add the word “deepwater”.

**§ 148.277 [Amended]**

■ 138. Amend § 148.277 as follows:  
 ■ a. In paragraph (a), following the text “Under § 148.209”, add the text “of this part”; and following the text “Federal agencies and”, remove the text “adjacent coastal” and add, in its place, the text “Adjacent Coastal”; and  
 ■ b. In paragraph (b), following the text “Federal agencies and”, remove the text “adjacent coastal” and add, in its place, the text “Adjacent Coastal”; following the text “Commandant” remove the text “(CG-5)” wherever it appears, and add, in its place, the text “(CG-5P)”; and following the text “in § 148.276(b)”, add the text “of this part”.

**§ 148.281 [Amended]**

■ 139. Amend § 148.281 as follows:  
 ■ a. In paragraph (a)(1), remove the words “adjacent coastal” and add, in their place, the words “Adjacent Coastal”;  
 ■ b. In paragraph (b) introductory text, following the words “determines that that”, add the word “deepwater”; and  
 ■ c. In paragraph (b)(3), following the words “operation of the”, add the word “deepwater”.

**§ 148.283 [Amended]**

■ 140. Amend § 148.283 as follows:  
 ■ a. In the introductory paragraph, remove the text “(CG-5)” wherever it appears, and add, in its place, the text “(CG-5P)”; and  
 ■ b. In paragraph (b), remove the text “(CG-5)” wherever it appears, and add, in its place, the text “(CG-5P)”; and following the text “as per § 148.107”, add the text “of this part”.

**§ 148.305 [Amended]**

■ 141. In § 148.305, following the words “licensee and the”, add the word “deepwater”; following the words “or of another” remove the word “agency” and add, in its place, the word “agency’s”; remove the text “Deepwater Ports Act of 1974, as amended,” and add, in its place, the text “Act,”; and following the words “that implement”, remove the word “that” and add, in its place, the word “the”.

■ 142. Revise § 148.307 to read as follows:

**§ 148.307 Who may consult with the Commandant (CG-5P) and MARAD on developing the proposed conditions of a license?**

Federal agencies, the Adjacent Coastal States, and the owner of the deepwater port may consult with the Commandant (CG-5P) and MARAD on the conditions of the license being developed under 33 U.S.C. 1503(e).

**§ 148.315 [Amended]**

■ 143. In § 148.315(b), remove the text “(CG-5)”, and add, in its place, the text “(CG-5P)”.

■ 144. Revise § 148.325 to read as follows:

**§ 148.325 How soon after deepwater port decommissioning must the licensee initiate removal?**

Within 2 years of deepwater port decommissioning, the licensee must initiate removal procedures. The Commandant (CG-5P) will advise and coordinate with appropriate Federal agencies and the States concerning activities covered by this section.

**§ 148.400 [Amended]**

■ 145. Amend § 148.400 as follows:  
 ■ a. In paragraph (a)(2), remove the text “OCS” and add, in its place, the text, “Outer Continental Shelf”; and  
 ■ b. In paragraph (b)(3), following the text “under § 148.105”, add the text “of this part”.

**§ 148.405 [Amended]**

■ 146. In the section heading and in paragraph (a) of § 148.405, remove the text “(CG-5)” wherever it appears, and add, in its place, the text “(CG-5P)”.

**§ 148.410 [Amended]**

■ 147. In § 148.410(b), following the text “under § 148.400(a)”, add the text “of this part”.

**§ 148.415 [Amended]**

■ 148. Amend § 148.415 as follows:  
 ■ a. In paragraphs (a) introductory text, (b) introductory text, and (b)(6), remove the text “(CG-5)” wherever it appears, and add, in its place, the text “(CG-5P)”; and  
 ■ b. In paragraph (a)(3), following the text “uses of the”, remove the text “OCS” and add, in its place, the text “Outer Continental Shelf”.

**§ 148.420 [Amended]**

■ 149. In § 148.420, including its section heading, remove the text “(CG-5)” wherever it appears, and add, in its place, the text “(CG-5P)”.

**§ 148.505 [Amended]**

■ 150. In § 148.505 paragraphs (b) and (c), remove the text “(CG-5)” wherever

it appears, and add, in its place, the text “(CG-5P)”.

#### § 148.510 [Amended]

■ 151. Amend § 148.510, including its section heading, by removing the text “adjacent coastal”, and adding, in its place, the text “Adjacent Coastal”; and following the text “State, the Commandant” remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

#### § 148.515 [Amended]

■ 152. Amend the introductory text of § 148.515 by removing the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

#### § 148.605 [Amended]

■ 153. In § 148.605(b), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

#### § 148.700 [Amended]

■ 154. Amend § 148.700 as follows:

- a. In paragraph (b), following the words “to operate the”, add the word “deepwater”;
- b. In paragraph (c)(3), remove the text “The Mineral Management Service (MMS)” and add, in its place, the text “The Bureau of Ocean Energy Management (BOEM)”;
- c. In paragraph (c)(4), remove the text “(MMS)” and add, in its place, the text “BOEM”.

#### § 148.702 [Amended]

■ 155. Amend § 148.702 as follows:

- a. In the introductory text, remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”;
- b. In paragraph (b), following the text “Security Directive”, remove the text “5100.1” and add, in its place, the text “023-01”; and
- c. In paragraph (c), following the text “Commandant Instruction” remove the text “M16475.1D” and add, in its place, the text “M16475.1 (series)”.

#### § 148.705 [Amended]

■ 156. Amend § 148.705 as follows:

- a. In paragraph (b)(1), remove the text “fabrication,”;
- b. In paragraph (b)(2), following the words “that serve the”, add the word “deepwater”;
- c. In paragraph (b)(3), remove the text “The port’s” and add, in its place, the text “The deepwater port’s”; and
- d. In paragraph (c), remove the text “§ 148.707” and add, in its place, the text “§ 148.705”.

#### § 148.707 [Amended]

■ 157. In § 148.707(a), following the words “effects on the”, add the word “deepwater”.

#### § 148.709 [Amended]

■ 158. In § 148.709, remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”;

and following the text “in accordance with”, remove the text “§ 148.700” and add, in its place, the text “§ 148.705”.

#### § 148.710 [Amended]

■ 159. Amend § 148.710 as follows:

- a. In paragraph (a)(1), following the words “property on the”, add the word “deepwater”; and following the words “crews calling at the”, add the word “deepwater”;
- b. In paragraph (a)(2), following the text “port will be”, remove the text “fabricated,”;
- c. In paragraph (b), following the text “33 U.S.C. 1504(f), these criteria” add the text “in § 148.707 of this part”;
- d. In paragraph (c), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

#### § 148.720 [Amended]

■ 160. In § 148.720 paragraphs (h) and (k), remove the word “port” wherever it appears, and add, in its place the words “deepwater port”.

#### § 148.722 [Amended]

■ 161. In § 148.722 following the text “§ 148.730”, add the text “of this part”.

#### § 148.725 [Amended]

■ 162. In § 148.725 introductory paragraph, following the text “In accordance with”, remove the text “§ 148.720(b),” and add, in its place, the text “§ 148.715(b) of this part,”.

#### § 148.730 [Amended]

■ 163. Amend § 148.730 as follows:

- a. In the introductory text, following the text “§ 148.715(b)”, add the text “of this part”; and
- b. In paragraph (a), following the words “for any designated”, remove the words “adjacent coastal”, and add, in their place, the words “Adjacent Coastal”.

#### § 148.735 [Amended]

■ 164. In § 148.735 introductory text, following the text “§ 148.715(b)”, add the text “of this part”.

#### § 148.737 [Amended]

■ 165. In § 148.737 introductory text, following the words “a deepwater port, the”, add the word “deepwater”.

### PART 149—DEEPWATER PORTS: DESIGN, CONSTRUCTION, AND EQUIPMENT

■ 166. The authority citation for part 149 continues to read as follows:

Authority: 33 U.S.C. 1504; Department of Homeland Security Delegation No. 0170.1 (75).

#### § 149.5 [Amended]

■ 167. In the definition of “Major conversion” in § 149.5, remove the text “(CG-5)”, and add, in its place, the text “(CG-5P)”.

■ 168. Revise § 149.10 to read as follows:

#### § 149.10 Where can the operator obtain a list of Coast Guard-approved equipment?

Where equipment in this subchapter must be of an approved type, the equipment must be specifically approved by the Commandant (CG-5P) and the Coast Guard Marine Safety Center. A list of approved equipment, including all of the approval series, is available at: <http://cgmix.uscg.mil/Equipment/Default.aspx>.

■ 169. Amend § 149.103 as follows:

■ a. Revise paragraph (a) to read as follows; and

■ b. In paragraph (b), following the words “removal equipment for”, add the word “deepwater”.

#### § 149.103 What are the requirements for discharge containment and removal material and equipment?

(a) Each deepwater port must have a facility response plan that meets the requirements outlined in part 154, subpart F, of this chapter, and be approved by the cognizant Sector Commander, or MSU Commander with COTP and OCMI authority.

\* \* \* \* \*

#### § 149.125 [Amended]

■ 170. In § 149.125(c), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

#### § 149.140 [Amended]

■ 171. Amend § 149.140 as follows:

- a. In paragraph (a)(1), following the words “at the” wherever they appear, add the word “deepwater”; and
- b. In paragraph (b), following the words “at an unmanned”, add the word “deepwater”.

#### § 149.145 [Amended]

■ 172. In § 149.145 following the words “according to the”, add the word “deepwater”.

#### § 149.301 [Amended]

■ 173. In § 149.301—

- a. In paragraph (a), before the words “Each deepwater”, add the words “Manned Deepwater Port.”; and
- b. In paragraph (b), before the words “Each deepwater”, add the words “Unmanned Deepwater Port.”.

**§ 149.303 [Amended]**

■ 174. In § 149.303 paragraphs (a)(1), (a)(2), and (b), remove the words “this subpart”, and add, in their place, the words “this part”.

**§ 149.304 [Amended]**

■ 175. Amend § 149.304 as follows:  
 ■ a. In paragraph (a) introductory text, and paragraphs (a)(4) and (a)(5), remove the word “subpart” and add, in its place, the word “part”; and  
 ■ b. In paragraph (b), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 149.305 [Amended]**

■ 176. Amend § 149.305 as follows:  
 ■ a. In paragraphs (a) and (b), remove the word “subpart” and add, in its place, the word “part”; and  
 ■ b. In paragraph (a), following the text “this subpart, the”, add the text “deepwater”.

**§ 149.313 [Amended]**

■ 177. In § 149.313 introductory text, following the text “§ 108.530 and”, add the text “so that they—”.

**§ 149.315 [Amended]**

■ 178. In § 149.315(c), following the text “requirements of § 149.310”, add the text “of this part”.

**§ 149.318 [Amended]**

■ 179. Amend § 149.318 as follows:  
 ■ a. In the section heading, remove the word “port” and add, in its place, the words “deepwater port”; and  
 ■ b. Following the text “§ 149.318 of this”, remove the text “subpart” and add, in its place, the text “part”.  
 ■ 180. Revise § 149.319 to read as follows:

**§ 149.319 What additional lifejackets must the deepwater port have?**

For each person on duty in a location where the lifejacket required by § 149.317 of this part is not readily accessible, an additional lifejacket must be stowed so as to be readily accessible to that location.

**§ 149.322 [Amended]**

■ 181. In § 149.322(a), following the words “each side of the”, add the word “deepwater”.

**§ 149.325 [Amended]**

■ 182. In § 149.325, following the text “outlined in § 149.140”, add the text, “of this part”.

**§ 149.330 [Amended]**

■ 183. In § 149.330(a), following the text “§ 149.326 of this”, remove the text

“subpart” and add, in its place, the text “part”.

**§ 149.336 [Amended]**

■ 184. In § 149.336 paragraph (a) following the text “Except as”, remove the text “under” and add, in its place, the text “provided in”; following the text “§ 149.316 of this”, remove the text “subpart” and add, in its place, the text “part”; and following the words “use on the”, add the word “deepwater”.

**§ 149.337 [Amended]**

■ 185. Amend § 149.337 as follows:  
 ■ a. In paragraph (a), following the text “§ 149.320 to this”, remove the text “subpart” and add, in its place, the text “part”; and  
 ■ b. In paragraph (b), following the words “persons are on the”, add the word “deepwater”.

**§ 149.340 [Amended]**

■ 186. In § 149.340, remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 149.400 [Amended]**

■ 187. In § 149.400, following the words “except unmanned”, add the word “deepwater”.

**§ 149.402 [Amended]**

■ 188. In § 149.402, following the text “or § 149.420”, add the text, “of this part”; and remove the text “Commandant (CG-PSE)” wherever it appears, and add, in its place, the text “Commandant (CG-ENG)”.

**§ 149.403 [Amended]**

■ 189. Amend § 149.403 as follows:  
 ■ a. In paragraphs (b), (c), and (d), remove the text “OCMI” wherever it appears, and add, in its place, the text “Sector Commander, or MSU Commander with COTP and OCMI authority,”; and  
 ■ b. In paragraph (d), remove the text “Commandant (CG-PSE)” and add, in its place, the text “Commandant (CG-ENG)”.

**§ 149.404 [Amended]**

■ 190. In § 149.404, following the text “pursuant to § 149.403”, add the text “of this part”; and following the text “not endanger the”, add the text “deepwater”.

**§ 149.405 [Amended]**

■ 191. In § 149.405(c), following the text “set forth in table 149.405”, add the following text “of this section”.

**§ 149.407 [Amended]**

■ 192. In § 149.407(a), following the text “§ 149.409 of this”, remove the text

“subpart” and add, in its place, the text “part”.

**§ 149.409 [Amended]**

■ 193. In the introductory text of § 149.409, following the text “extinguishers required by”, remove the text “table 149.409”, and add, in its place, the text “Table 149.409 of this section”.

**§ 149.410 [Amended]**

■ 194. In § 149.410, following the text “fire extinguishers described in”, remove the text “table 149.409” and add, in its place, the text “Table 149.409 of this part”.

**§ 149.411 [Amended]**

■ 195. In § 149.411(b)(2), following the words “than one outfit”, remove the word “shall” and add, in its place, the word “must”.

**§ 149.415 [Amended]**

■ 196. In § 149.415(b)(4), remove the word “port”, and add, in its place, the words “deepwater port”.

**§ 149.417(b) [Amended]**

■ 197. In § 149.417(b), remove the text “table 149.409”, and add, in its place, the text, “Table 149.409 of this part”.

**§ 149.418 [Amended]**

■ 198. In § 149.418, remove the text “table 149.409”, and add, in its place, the text “Table 149.409 of this part”.

**§ 149.419 [Amended]**

■ 199. Amend § 149.419 as follows:  
 ■ a. In paragraph (a) introductory text, following the text “or § 149.421”, add the text “of this part”;  
 ■ b. In paragraph (a)(1), remove the text “Mineral Management Service”, and add, in its place, the text “Bureau of Ocean Energy Management”; and  
 ■ c. In paragraph (a)(2), following the text “under § 149.415”, add the text “of this part”.

**§ 149.505 [Amended]**

■ 200. In § 149.505(a), following the text “under § 149.510”, add the text “of this part”.

**§ 149.510 [Amended]**

■ 201. In § 149.510(a), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 149.570 [Amended]**

■ 202. In 149.570(c), following the text “with § 149.540”, add the text “of this part”.

**§ 149.615 [Amended]**

■ 203. In § 149.615(a) introductory text, remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

**§ 149.620 [Amended]**

■ 204. In § 149.620, amend the section heading, paragraphs (a), (b), and (d), by removing the text “(CG-5)” everywhere it appears, and adding, in its place, the text “(CG-5P)”.

**§ 149.625 [Amended]**

■ 205. Amend § 149.625 as follows:

- a. In paragraph (a), following the text “elsewhere in this subpart”, remove the text “(for example, single point moorings, hoses, and aids to navigation buoys)”; following the words “both on the”, add the word “deepwater”; and following the words “or servicing the”, add the word “deepwater”; and
- b. In paragraph (b), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”; and following the words “and construction of” add the word “deepwater”.

**§ 149.640 [Amended]**

■ 206. In § 149.640 following the text “undergo major conversions”, add the punctuation “;”; and remove the word “subpart”, and add, in its place, the word “part”.

**§ 149.641 [Amended]**

■ 207. Amend § 149.641 as follows:

- a. In paragraph (b) introductory text, remove the words “This requirement” and add, in its place, the words “The requirement in paragraph (a) of this section”;
- b. In paragraph (b)(1), following the text “the hydrocarbon source”, remove the text “(e.g., LNG flanges, send out line, etc.)”;
- c. In paragraph (c) introductory text, following the text “section, the requirement”, remove the text “imposed by” and add, in its place, the text “in paragraph (a) of”; and
- d. In paragraph (c)(1), following the text “and modules on”, add the text “deepwater”.

**§ 149.660 [Amended]**

■ 208. Amend § 149.660 as follows:

- a. In paragraph (a) introductory text, following the words “power equipment including”, add the word “a”; and following the words “equipment, and”, add the word “a”; and
- b. In paragraph (b)(2), following the text “emergency power (”, remove the text “in other words” and add, in its place, the text “i.e.”.

**§ 149.670 [Amended]**

■ 209. In § 149.670(b), following the text “§ 149.665”, add the text “of this part”.

**§ 149.675 [Amended]**

■ 210. In § 149.675(b), following the words “connected to the”, add the word “deepwater”.

**§ 149.680 [Amended]**

■ 211. In § 149.680 introductory text, following the text “room that has”, remove the punctuation “:”, and add, in its place, the punctuation “—”.

**§ 149.690 [Amended]**

■ 212. In § 149.690 following the text “through 149.699”, add the text “of this part”.

**§ 149.691 [Amended]**

- 213. Amend § 149.691 as follows:
  - a. In paragraph (a)(2), following the words “in evacuating the”, add the word “deepwater”; and
  - b. In paragraph (c)(2), following the text “determined by the”, remove the text “Officer in Charge of Marine Inspection (OCMI)” and add, in its place, the text, “Sector Commander, or MSU Commander with COTP and OCMI authority”.

**§ 149.692 [Amended]**

- 214. Amend § 149.692 as follows:
  - a. In paragraphs (d) and (f), remove the text “OCMI”, and add, in its place, the text “Sector Commander, or MSU Commander with COTP and OCMI authority”; and
  - b. In paragraph (e), following the words “deepwater port, the”, add the word “deepwater”.

**PART 150—DEEPWATER PORTS: OPERATIONS**

■ 215. The authority citation for part 150 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), (m)(2); 33 U.S.C. 1509(a); E.O. 12777, sec. 2; E.O. 13286, sec. 34, 68 FR 10619; Department of Homeland Security Delegation No. 0170.1(70), (73), (75), (80).

**§ 150.10 [Amended]**

- 216. Amend § 150.10 as follows:
  - a. In paragraph (a), following the words “conducted at the”, add the word “deepwater”; and following the text “in § 150.15”, add the text “of this part”;
  - b. In paragraph (b), remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”; and following the text “consult with the local”, remove the text “Officer in Charge of Marine Inspection (OCMI)” and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority”; and

■ c. In paragraph (c), remove the text “The OCMI” and add, in its place, the text “The Sector Commander, or MSU Commander, with COTP and OCMI authority”; and “remove the text “(CG-5)” and add, in its place, the text “(CG-5P)”.

■ 217. In § 150.15, revise the introductory text and paragraphs (b), (c), (g), (i)(2), (i)(4)(v), (i)(4)(vi), (i)(7)(iii), (i)(7)(iv), (j) introductory text, (j)(6), (k), (l)(2)(vi), (l)(4), (o), (p) introductory text, (p)(16), (q)(1), (q)(3), (t) introductory text, (t)(4), (v), (x)(2), (x)(4), (x)(5), (y)(6), and (aa)(2) to read as follows:

**§ 150.15 What must the operations manual include?**

The operations manual required by § 150.10 of this part must identify the deepwater port and include the information required in this section.

\* \* \* \* \*

(b) A physical description of the deepwater port.

(c) Engineering and construction information, including all defined codes and standards used for the deepwater port structure and systems. The operator must include schematics of all applicable systems. Schematics must show the location of valves, gauges, system working pressure, relief settings, monitoring systems, and other pertinent information.

\* \* \* \* \*

(g) The size, type, number, and simultaneous operations of tankers that the deepwater port can handle.

\* \* \* \* \*

(i) \* \* \*

(2) The speed limits proposed for tankers in the safety zone and area to be avoided around the deepwater port.

\* \* \* \* \*

(4) \* \* \*

(v) Advisories to each tanker underway in the safety zone regarding the vessel’s position, deepwater port conditions, and status of adjacent vessel traffic;

(vi) Notices that must be made, as outlined in § 150.325 of this part, by the tanker master regarding the vessel’s characteristics and status; and

\* \* \* \* \*

(7) \* \* \*

(iii) Prohibition on mooring at the deepwater port or SPM; and

(iv) Shutdown of all deepwater port operations and evacuation of the deepwater port.

\* \* \* \* \*

(j) *Personnel*. The duties, title, qualifications, and training of all deepwater port personnel responsible for managing and carrying out the

following deepwater port activities and functions:

\* \* \* \* \*

(6) Deepwater port security.

(k) The personnel assigned to supervisory positions must be designated, in writing, by the licensee and have the appropriate experience and training to satisfactorily perform their duties. The Commandant (CG-5P) will review and approve the qualifications for all proposed supervisory positions.

(1) \* \* \*

(2) \* \* \*

(vi) Supervision by a deepwater port person in charge.

\* \* \* \* \*

(4) The duties, title, qualifications, and training of personnel of the deepwater port designated as the person in charge and responsible for managing cargo transfers, including ballasting operations if applicable to the deepwater port, in accordance with subpart D of part 154 for oil, and subpart B (Operations) of part 127 for natural gas, respectively, of this chapter.

\* \* \* \* \*

(o) A waste management plan comparable to § 151.57 of this chapter.

(p) *Occupational health and safety training procedures.* Policy and procedures to address occupational health and safety requirements outlined in §§ 150.600 to 150.632 of this part, including:

\* \* \* \* \*

(16) Initial and periodic training and certification to be documented for each deepwater port employee and for visitors, where appropriate; for example, safety orientation training.

(q) \* \* \*

(1) Names and numbers of key deepwater port personnel;

\* \* \* \* \*

(3) Names and numbers of persons in charge of any Outer Continental Shelf facility that, due to close proximity, could be affected by an incident at the deepwater port.

\* \* \* \* \*

(t) Deepwater port response procedures for:

\* \* \* \* \*

(4) Terrorist activity, as described in the deepwater port security plan.

\* \* \* \* \*

(v) Designation of and assignment of deepwater port personnel to response teams for specific contingencies.

\* \* \* \* \*

(x) \* \* \*

(2) Monitoring and alerting of vessels that approach or enter the deepwater port's security zone;

\* \* \* \* \*

(4) Internal and external notification and response requirements in the event of a perceived threat or an attack on the deepwater port;

(5) Designation of the deepwater port security officer;

\* \* \* \* \*

(y) \* \* \*

(6) Contingency response for events that could affect nearby existing Outer Continental Shelf oil and gas facilities, such as explosions, fires, or product spills.

\* \* \* \* \*

(aa) \* \* \*

(2) A routine re-examination, not less than once every 5 years, of the physical, chemical, and biological factors contained in the deepwater port's environmental impact analysis and baseline study submitted with the license application; and

\* \* \* \* \*

#### § 150.20 [Amended]

■ 218. In § 150.20, following the text “governed by § 148.115”, add the text “of this chapter”; and remove the text “Commandant (CG-5)” and add, in its place, the text “Commandant (CG-5P)”.

#### § 150.25 [Amended]

■ 219. Amend § 150.25 as follows:

■ a. In paragraph (a), remove the text “Captain of the Port (COTP)” and add, in its place, the text, “Sector Commander, or MSU Commander, with COTP and OCMI authority”;

■ b. In paragraphs (c), (d), and (e), remove the text “COTP” wherever it appears, and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority”;

■ c. In paragraph (e), remove the text “(CG-5)” wherever it appears, and add, in its place, the text “(CG-5P)”; and

■ d. In paragraph (f), following the text “If the”, remove the text “COTP” and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority”; following the text “property, the” remove the text “COTP” and add, in its place, the text “he or she”; and following the text “receives it. The” remove the text “COTP” and add, in its place, the text, “Sector Commander, or MSU Commander, with COTP and OCMI authority”.

#### § 150.30 [Amended]

■ 220. Amend § 150.30 as follows:

■ a. In paragraph (a)(1), remove the text “to the Captain of the Port (COTP)”; and following the text “By submitting”, add the text “to the Sector Commander, or to the MSU Commander, with COTP and OCMI authority”; and

■ b. In paragraphs (a)(2) and (b), remove the text “COTP” wherever it appears, and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority”.

■ 221. Revise § 150.35 to read as follows:

#### § 150.35 How may an Adjacent Coastal State request an amendment to the deepwater port operations manual?

(a) An Adjacent Coastal State connected by pipeline to the deepwater port may petition the cognizant Sector Commander, or MSU Commander, with COTP and OCMI authority to amend the operations manual. The petition must include sufficient information to allow the Sector Commander, or MSU Commander, with COTP and OCMI authority to reach a decision concerning the proposed amendment.

(b) After the Sector Commander, or MSU Commander, with COTP and OCMI authority receives a petition, the Sector Commander, or MSU Commander, with COTP and OCMI authority requests comments from the licensee.

(c) After reviewing the petition and comments, and considering the costs and benefits involved, the Sector Commander, or MSU Commander, with COTP and OCMI authority may approve the petition if the proposed amendment will provide equivalent or improved protection and safety. The Adjacent Coastal State may petition the Commandant (CG-5P) to review the decision. Petitions must be made in writing and presented to the Sector Commander, or MSU Commander, with COTP and OCMI authority for forwarding to the Commandant (CG-5P) via the District Commander.

#### § 150.45 [Amended]

■ 222. In § 150.45, following the text “reported to the”, remove the text “Captain of the Port (COTP)” and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority,”.

#### § 150.50 [Amended]

■ 223. Amend § 150.50 as follows:

■ a. In paragraph (a), following the text “approved by the”, remove the text “Captain of the Port (COTP)” and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority”; and

■ b. In paragraph (c), following the text “submitted to the”, remove the text “COTP” and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority”.

**§ 150.100 [Amended]**

■ 224. In § 150.100, following the text “direction of the”, remove the text “Officer in Charge of Marine Inspection (OCMI)” and add, in its place, the text “Sector Commander, or to the MSU Commander, with COTP and OCMI authority”; and following the text “any time the”, remove the text “OCMI” and add, in its place, the text “Sector Commander or MSU Commander.”

**§ 150.105 [Amended]**

■ 225. Amend § 150.105 as follows:

- a. In paragraph (a) following the words “ensure that the”, remove the word “port” and add, in its place, the words “deepwater port”;
- b. In paragraph (b) following the text “self-inspection to the”, remove the text “Captain of the Port (COTP)” and add, in its place, the text “Sector Commander, or to the MSU Commander, with COTP and OCMI authority”; and
- c. In paragraph (c), following the text “self-inspection plan to the”, remove the text “COTP” and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority”.

**§ 150.110 [Amended]**

■ 226. In § 150.110, remove the text “Captain of the Port” and add, in its place, the text, “Sector Commander, or MSU Commander, with COTP and OCMI duties”.

**§ 150.200 [Amended]**

■ 227. Amend § 150.200, including its section heading, by removing the word “port” and adding, in its place, the words “deepwater port”.

**§ 150.205 [Amended]**

■ 228. Amend the section heading of § 150.205 by removing the word “port” and adding, in its place, the words “deepwater port”.

■ 229. Revise § 150.305 to read as follows:

**§ 150.305 How does this subpart apply to unmanned deepwater ports?**

The master of any tanker calling at an unmanned deepwater port is responsible for the safe navigation of the vessel to and from the deepwater port, and for the required notifications in § 150.325 of this part. Once the tanker is connected to the unmanned deepwater port, the master must maintain radar surveillance in compliance with the requirements of § 150.310 of this part.

**§ 150.310 [Amended]**

■ 230. Amend § 150.310 as follows:

■ a. In paragraph (a), following the text “required in § 150.325”, add the text “in this part”; and

■ b. In paragraph (d), following the words “described in the”, add the word “deepwater”.

**§ 150.325 [Amended]**

■ 231. In § 150.325(b) introductory text, following the text “required in § 150.15(i)(4)(vi)”, add the text “of this part”.

**§ 150.340 [Amended]**

■ 232. In § 150.340(a), following the text “described in § 159.15(i)”, add the text “of this part”.

**§ 150.380 [Amended]**

■ 233. In § 150.380(b), following the words “of this section,” remove the word “nor” and add, in its place, the word “or”; and remove the text “Captain of the Port’s” and add, in its place, the text “Sector Commander’s, or MSU Commander’s, with COTP and OCMI authority”.

**§ 150.425 [Amended]**

■ 234. In § 150.425 introductory text, following the words “outlined in the”, add the word “deepwater”.

**§ 150.435 [Amended]**

■ 235. Amend § 150.435 as follows:

- a. In paragraph (a), following the words “duty at the”, add the word “deepwater”;
- b. In paragraph (b), following the words “storm in the”, add the word “deepwater”;
- c. In paragraph (g), remove the text “Captain of the Port” and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority”; and
- d. In paragraph (i), remove the word “port” wherever it appears, and add, in its place, the words “deepwater port”.

■ 236. In § 150.440, revise the section heading and paragraph (a) to read as follows:

**§ 150.440 How may the Sector Commander, or MSU Commander, with COTP and OCMI authority order suspension of cargo transfers?**

(a) In case of emergency, the Sector Commander, or MSU Commander, with COTP and OCMI authority may order the suspension of cargo transfers at a deepwater port to prevent the discharge, or threat of discharge, of oil or natural gas, or to protect the safety of life and property.

\* \* \* \* \*

**§ 150.445 [Amended]**

■ 237. In § 150.445(b), following the text “demonstrate to the”, remove the text “Officer in Charge of Marine Inspection” and add, in its place, the text, “Sector Commander, or MSU Commander, with COTP and OCMI authority”.

**§ 150.501 [Amended]**

■ 238. In § 150.501, following the words “according to the”, add the word “deepwater”.

**§ 150.502 [Amended]**

■ 239. Amend § 150.502 as follows:

- a. In paragraph (a)(2), following the text “required under § 150.513”, add the text “of this part”;
- b. In paragraph (d), remove the text “Officer in Charge of Marine Inspection (OCMI)” and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority”; and
- c. In paragraph (f), remove the text “OCMI” wherever it appears, and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority”.

**§ 150.511 [Amended]**

■ 240. In § 150.511(c), remove the text “The Officer in Charge of Marine Inspection” and add, in its place, the text “The Sector Commander, or MSU Commander, with COTP and OCMI authority”.

**§ 150.517 [Amended]**

■ 241. In § 150.517(b), remove the text “Officer in Charge of Marine Inspection” and add, in its place, the text “Sector Commander, or MSU Commander, with COTP and OCMI authority”.

**§ 150.521 [Amended]**

■ 242. In § 150.521(a), following the text “inspection under § 150.520”, add the text “of this part”.

**§ 150.540 [Amended]**

■ 243. In § 150.540, remove the text “Captain of the Port’s” and add, in its place, the text “Sector Commander, or the MSU Commander with COTP and OCMI authority’s”.

**§ 150.602 [Amended]**

■ 244. Amend § 150.602 as follows:

- a. In paragraph (a), following the words “ensure that all”, add the word “deepwater”; and following the text “outlined in § 150.15(w)”, add the text “of this part”; and
- b. In paragraph (b), following the text “with the Commandant”, remove the

text “(CG–5)” and add, in its place, the text “(CG–5P)”; and following the text “may consult with the”, remove the text “Officer in Charge of Marine Inspection” and add, in its place, the text “Sector Commander, or with the local MSU Commander, with COTP and OCM I authority”.

#### § 150.603 [Amended]

■ 245. In § 160.603, following the words “outlined in the”, add the word “deepwater”.

#### § 150.605 [Amended]

■ 246. In § 150.605 introductory text, remove the text “Officer in Charge of Marine Inspection” and add, in its place, the text “Sector Commander, or the MSU Commander, with COTP and OCM I authority”.

#### § 150.606 [Amended]

■ 247. Amend § 150.606 as follows:

■ a. In the section heading, remove the text “Officer in Charge of Marine Inspection” and add, in its place, the text “Sector Commander, or the MSU Commander, with COTP and OCM I authority”; and

■ b. Following the text “necessary investigation, the” remove the text “OCMI” and add, in its place, the text “Sector Commander, or the MSU Commander, with COTP and OCM I authority”.

#### § 150.615 [Amended]

■ 248. In § 150.615(b), following the text “§§ 150.616 and 150.617”, add the text “of this part”.

#### § 150.616 [Amended]

■ 249. In § 150.616 following the text “described in § 150.615(a)”, add the text “of this part”.

#### § 150.623 [Amended]

■ 250. In § 150.623(b) introductory text, following the words “deepwater port operator”, remove the word “shall” and add, in its place, the word “must”.

#### § 150.625 [Amended]

■ 251. In § 150.625(b)(7), following the text “§§ 150.616 and 150.617”, add the text “of this part”.

#### § 150.805 [Amended]

■ 252. In § 150.805, following the text “submit to the”, remove the text “Officer in Charge of Marine Inspection” and add, in its place, the text “Sector Commander, or to the MSU Commander, with COTP and OCM I authority”.

#### § 150.812 [Amended]

■ 253. In § 150.812, following the text “outlined in § 150.815”, add the text “of this part”.

#### § 150.815 [Amended]

■ 254. In § 150.815(c), following the text “information pertinent to”, remove the text “OCS” and add, in its place, the text “Outer Continental Shelf”; and following the words “regulated by the”, remove the words “Bureau of Ocean Energy Management, Regulation and Enforcement” and add, in their place, the words “Bureau of Ocean Energy Management”.

■ 255. Revise § 150.820 as follows:

■ a. Revise paragraph (a) to read as follows:

■ b. In paragraph (c), following the text “required under § 150.815”, add the text “of this part”; and

■ c. Revise paragraph (d) to read as follows:

#### § 150.820 When must a written report of casualty be submitted, and what must it contain?

(a) In addition to the notice of casualty under § 150.815 of this part, the owner, operator, or person in charge of a deepwater port must submit a written report of the event to the nearest Sector Commander, or the nearest MSU Commander, with COTP and OCM I authority within 5 days of the casualty notice. The report may be on Form 2692, Report of Marine Accident, Injury, or Death, or in narrative form if it contains all of the applicable information requested in Form 2692. Copies of Form 2692 are available from the Sector Commander, or from the MSU Commander, with COTP and OCM I authority.

\* \* \* \* \*

(d) The operator will ensure that the written report is provided to the nearest Bureau of Ocean Energy Management (BOEM) office when the deepwater port is co-located with a BOEM-regulated facility.

#### § 150.825 [Amended]

■ 256. In § 150.825 following the text “§§ 150.815 and 150.820”, add the text “of this part”.

#### § 150.835 [Amended]

■ 257. In § 150.835, following the text “report to the”, remove the text “Captain of the Port”, and add, in its place, the text “Sector Commander, or the MSU Commander, with COTP and OCM I authority”.

#### § 150.840 [Amended]

■ 258. Amend § 150.840 as follows:

■ a. In paragraph (a), following the words “rather than on the”, add the word “deepwater”; and

■ b. In paragraph (c), following the text “under § 150.845”, add the text “of this part”.

#### § 150.850 [Amended]

■ 259. In § 150.850 following the text “required by § 150.430”, add the text “of this part”.

#### § 150.905 [Amended]

■ 260. In § 150.905(d), following the text “boating, fishing, and”, remove the text “OCS” and add, in its place, the text “Outer Continental Shelf”.

#### § 150.915 [Amended]

■ 261. In § 150.915(c), following the text “and Commandant”, remove the text “(CG–5)” and add, in its place, the text “(CG–5P)”.

#### § 150.920 [Amended]

■ 262. In § 150.920, following the words “under § 150.915”, add the text “of this part”.

#### § 150.940 [Amended]

■ 263. Amend § 150.940 as follows:

■ a. In paragraph (a)(1), following the text “Table 150.940(A)”, add the text “of this section”;

■ b. In paragraphs (a)(1)(iii) and (a)(1)(xii), and in paragraph (a)(2)(i), remove the word “port’s” wherever it appears, and add, in its place, the words “deepwater port’s”; and

■ c. In paragraph (a)(2)(ii), following the text “(SPM) at the”, add the text “deepwater”.

#### PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 264. The authority citation for part 151 continues to read as follows:

**Authority:** 33 U.S.C. 1321, 1902, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); Pub. L. 108–293 (118 Stat. 1063), § 623; E.O. 12777, 3 CFR, 1991 Comp. p. 351; DHS Delegation No. 0170.1, sec. 2(77).

■ 265. Amend § 151.05 as follows:

■ a. Revise the definition of “*Oily mixture*” to read as follows; and

■ b. Following the definition of “*Oil tanker*”, remove the second definition of “*Oily mixture*”.

#### § 151.05 Definitions.

\* \* \* \* \*

*Oily mixture* means a mixture, in any form, with any oil content. “*Oily mixture*” includes, but is not limited to—

- (1) Slops from bilges;  
 (2) Slops from oil cargoes (such as cargo tank washings, oily waste, and oily refuse);  
 (3) Oil residue (sludge); and  
 (4) Oily ballast water from cargo or fuel oil tanks.

\* \* \* \* \*

## PART 164—NAVIGATION SAFETY REGULATIONS

■ 266. The authority citation for part 164 continues to read as follows:

**Authority:** 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; Department of Homeland Security Delegation No. 0170.1 (75). Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

### § 164.03 [Amended]

■ 267. In § 164.03(b) in the table under the address for “*Radio Technical Commission for Maritime Services*”, remove the text “655 Fifteenth Street NW., Suite 300, Washington, DC 20005” and add, in its place, the text “(RTCM), 1611 North Kent Street, Suite 605, Arlington, VA 22209”.

Dated: June 19, 2013.

**Kathryn A. Sinniger,**

*Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.*

[FR Doc. 2013-15094 Filed 6-28-13; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 21

[Docket No. FDA-2011-N-0252]

#### Office of the Secretary

#### 45 CFR Part 5b

### Privacy Act, Exempt Record System; Implementation

**AGENCY:** Office of the Secretary, Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) of the Department of Health and Human Services (HHS or Department) is exempting a system of records from certain requirements of the Privacy Act to protect the integrity of FDA’s scientific research misconduct proceedings and to protect the identity of confidential sources in such proceedings.

**DATES:** This rule is effective July 31, 2013.

#### FOR FURTHER INFORMATION CONTACT:

Frederick Sadler, Division of Freedom of Information, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301-796-8975, [Frederick.Sadler@fda.hhs.gov](mailto:Frederick.Sadler@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

HHS/FDA is exempting a system of records, 09-10-0020, “FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC,” under subsections (k)(2) and (k)(5) of the Privacy Act (5 U.S.C. 552a) from notification, access, accounting, and amendment provisions of the Privacy Act.

The purpose of this system of records is to implement FDA’s responsibilities under the Public Health Service (PHS) Policies on Research Misconduct (42 CFR part 93) for research performed by persons who are FDA employees, agents of the Agency, or who are affiliated with the Agency by contract or agreement. The term “research misconduct” is defined at 42 CFR 93.103 to mean “fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.” The general policy of the PHS Policies on Research Misconduct is that “Research misconduct involving PHS support is contrary to the interests of the PHS and the Federal government and to the health and safety of the public, to the integrity of research, and to the conservation of public funds.” (42 CFR 93.100(a)).

Under the Privacy Act, individuals have a right of access to information pertaining to them which is contained in a system of records. At the same time, the Privacy Act permits certain types of systems to be exempt from some of the Privacy Act requirements. For example, section 552a(k)(2) of the Privacy Act allows Agency heads to exempt from certain Privacy Act provisions a system of records containing investigatory material compiled for law enforcement purposes. This exemption’s effect on the record access provision is qualified in that if the maintenance of the material results in the denial of any right, privilege, or benefit that the individual would otherwise be entitled to by Federal law, the individual must be granted access to the material except to the extent that the access would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. In addition, section (k)(5) of the Privacy

Act permits an Agency to exempt investigatory material from certain Privacy Act provisions where such material is compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. This exemption is also limited as it will be applied only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality.

FDA may take administrative action in response to a research misconduct proceeding and, where there is a reasonable indication that a civil or criminal fraud may have taken place, will refer the matter to the appropriate investigative body. As such, FDA’s records related to research misconduct proceedings are compiled for law enforcement purposes, and the subsection (k)(2) exemption is applicable to this system of records. Moreover, where records related to research misconduct proceedings are compiled solely for the purpose of making determinations as to the suitability for appointment as special Government employees or eligibility for Federal contracts from PHS Agencies, the subsection (k)(5) exemption is applicable.

On August 28, 2012, HHS/FDA published a system of records notice (SORN) for this system (77 FR 52036). On the same date, HHS/FDA also published a proposed rule (77 FR 51949) and, anticipating no significant adverse comment, a direct final rule (77 FR 51910) to exempt this system of records under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, access, accounting, and amendment provisions of the Privacy Act. The comment period was open through November 13, 2012. The Agency received three comments regarding the exemptions. One comment was positive and in favor of the exemptions. Another comment appears to have misunderstood the scope and applicability of the exceptions, because it assumed that the purpose of the rule was to exempt these records from access by the general public. The third comment broadly opposed the exemptions as a governmental over-reach restricting citizens’ ability to maintain awareness of the actions of regulatory bodies. FDA construed this last comment as sufficiently adverse to merit withdrawal of the direct final rule on January 10, 2013 (78 FR 2892; January 15, 2013). HHS/FDA now publishes this final rule under the

standard notice and comment rulemaking process.

After considering the comments, HHS/FDA believes the exemptions at issue are necessary to fulfill the Agency's responsibilities for addressing research misconduct. The exemptions are essential in order for FDA to protect the confidentiality of sources who provide information relevant to a research misconduct proceeding and to guard against the premature disclosure of research misconduct records that might obstruct or compromise proceedings. The exemptions will thereby enable FDA to maintain the integrity and effectiveness of research misconduct proceedings.

Failure to adopt the exemptions would jeopardize the integrity and effectiveness of FDA's research misconduct proceedings. FDA's new system of records is modeled after the system of records maintained by HHS' Office of Research Integrity (ORI) entitled "HHS Records Related to Research Misconduct Proceedings, HHS/OS/ORI" System No. 09-37-0021 (59 FR 36776, July 19, 1994; revised most recently at 74 FR 44847, August 31, 2009). ORI has exempted these records under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, access, accounting, and amendment provisions of the Privacy Act, to ensure that these records will not be disclosed inappropriately (59 FR 36717). Likewise, HHS/FDA believes that exempting the new FDA system from the same Privacy Act provisions is essential to ensure that material in FDA's files related to research misconduct proceedings is not disclosed inappropriately.

Subject to its obligations under the PHS Policies on Research Misconduct, 42 CFR Part 93, and other applicable law, HHS/FDA is therefore exempting this system under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, access, and amendment provisions of the Privacy Act (subsections (c)(3), (d)(1) to (d)(4), (e)(4)(G) and (e)(4)(H), and (f)). The specific rationales for applying each of the exemptions are as follows:

- *Subsection (c)(3)*. An exemption from the requirement to provide an accounting of disclosures is needed during the pendency of a research misconduct proceeding. Release of an accounting of disclosures to an individual who is the subject of a pending research misconduct assessment, inquiry, or investigation could prematurely reveal the nature and scope of the assessment, inquiry, or investigation and could result in the altering or destruction of evidence,

improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding.

- *Subsection (d)(1)*. An exemption from the access requirement is needed both during and after a research misconduct proceeding, to avoid revealing the identity of any source who was expressly promised confidentiality. Only material that would reveal a confidential source will be exempt from access. Protecting the identity of a source is necessary when the source is unwilling to report possible research misconduct because of fear of retaliation (e.g., from an employer or coworkers).

- *Subsections (d)(2) through (d)(4)*. An exemption from the amendment provisions is necessary while one or more related research misconduct proceedings are pending. Allowing amendment of investigative records in a pending proceeding could interfere with that proceeding; even after that proceeding is concluded, an amendment could interfere with other pending or prospective research misconduct proceedings, or could significantly delay inquiries or investigations in an attempt to resolve questions of accuracy, relevance, timeliness, and completeness.

- *Subsection (e)(4)(G) and (e)(4)(H)*. An exemption from the Privacy Act notification provisions is necessary during the pendency of a research misconduct proceeding, because notifying an individual who is the subject of an assessment, inquiry, or investigation of the fact of such proceedings could prematurely reveal the nature and scope of the proceedings and result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding. This exemption does not alter FDA's obligations to provide notice to the respondent in a research misconduct proceeding as described in the PHS Policies on Research Misconduct, 42 CFR Part 93.

- *Subsection (f)*. An exemption from the requirement to establish procedures for notification, access to records, amendment of records, or appeals of denials of access to records is appropriate because the procedures would serve no purpose in light of the other exemptions, to the extent that those exemptions apply.

To avoid the unnecessary application of the exemptions, FDA will give case-by-case consideration to requests for notification, access, and amendment submitted to FDA's Research Integrity Officer (System Manager) or Privacy Act Coordinator. Except for information that would reveal the identity of a source

who was expressly promised confidentiality, the access exemption will not prohibit HHS/FDA from granting respondents' access requests consistent with the PHS Policies on Research Misconduct (42 CFR part 93), including in those cases in which a finding of research misconduct has become final and an administrative action has been imposed. The request submission process is described in the SORN previously published for this system (77 FR 52036) and available online at <http://www.fda.gov/RegulatoryInformation/FOI/PrivacyAct/ucm323341.htm>.

## II. Analysis of Impacts

HHS/FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule imposes no duties or obligations on small entities, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any 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 \$100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is \$139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. HHS/FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

List of Subjects

21 CFR Part 21

Privacy.

45 CFR Part 5b

Privacy.

Therefore, the Department of Health and Human Services is amending 21 CFR part 21 and 45 CFR part 5b to read as follows:

Title 21

PART 21—PROTECTION OF PRIVACY

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

Authority: 21 U.S.C. 371; 5 U.S.C. 552, 552a.

■ 2. Section 21.61 is amended by adding paragraph (d) to read as follows:

§ 21.61 Exempt systems.

\* \* \* \* \*

(d) Records in the following Food and Drug Administration Privacy Act Records Systems are exempt under 5 U.S.C. 552a(k)(2) and (k)(5) from the provisions enumerated in paragraph (a)(1) through paragraph (a)(3) of this section: FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC, 09–10–0020.

Title 45

PART 5b—PRIVACY ACT REGULATIONS

■ 3. The authority citation for 45 CFR part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

■ 4. Section 5b.11 is amended by adding paragraph (b)(2)(vii)(C) to read as follows:

§ 5b.11 Exempt systems.

\* \* \* \* \*

- (b) \* \* \*
(2) \* \* \*
(vii) \* \* \*

(C) FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC, 09–10–0020.

\* \* \* \* \*

Dated: June 14, 2013.

Kathleen Sebelius,

Secretary of Health and Human Services.

[FR Doc. 2013–15599 Filed 6–28–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5b

[Docket No. NIH–2011–0001]

Privacy Act; Implementation

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or Department), through the National Institutes of Health (NIH), is exempting a system of records from certain requirements of the Privacy Act to protect the integrity of NIH research misconduct proceedings and to protect the identity of confidential sources in such proceedings.

DATES: Effective Date: This rule is effective July 31, 2013.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, Division of Management Support, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852–7669; telephone 301–496–4607; fax 301–402–0169; email jm40z@nih.gov.

SUPPLEMENTARY INFORMATION: HHS/NIH is exempting a system of records, 09–25–0223, “NIH Records Related to Research Misconduct Proceedings, HHS/NIH,” under subsections (k)(2) and (k)(5) of the Privacy Act (5 U.S.C. 552a) from notification, access, accounting, and amendment provisions of the Privacy Act.

This system of records is part of NIH’s implementation of its responsibilities under the Public Health Service (PHS) Policies on Research Misconduct, 42 CFR Part 93, and applies to alleged or actual research misconduct involving research in the NIH Intramural Research Program (IRP): (1) Carried out in NIH facilities by any person; (2) funded by the NIH IRP in any location; or (3) undertaken by an NIH employee or trainee as part of his or her official NIH duties or NIH training activities, regardless of location. Subject to NIH IRP policy, a person who, at the time of the alleged or actual research misconduct, was employed by, was an agent of, or was affiliated by contract, agreement, or other arrangement with NIH is covered by the system.

The term “research misconduct” is defined at 42 CFR 93.103 to mean “fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.” The general policy of the PHS Policies on Research Misconduct is that “[r]esearch misconduct involving PHS

support is contrary to the interests of the PHS and the Federal government and to the health and safety of the public, to the integrity of research, and to the conservation of public funds” 42 CFR 93.100(a).

Under the Privacy Act, individuals have a right of access to information pertaining to them that is contained in a system of records. At the same time, the Privacy Act permits certain types of systems to be exempt from some of the Privacy Act requirements. For example, section (k)(2) of the Privacy Act allows Agency heads to exempt from certain Privacy Act provisions a system of records containing investigatory material compiled for law enforcement purposes. This exemption’s effect on the record access provision is qualified in that if the maintenance of the material results in the denial of any right, privilege, or benefit that the individual would otherwise be entitled to by federal law, the individual must be granted access to the material except to the extent that the access would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence. In addition, section (k)(5) of the Privacy Act permits an Agency to exempt investigatory material from certain Privacy Act provisions where such material is compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information. This exemption is also limited as it will be applied only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the government under an express promise of confidentiality.

The NIH may take administrative action in response to a research misconduct proceeding and, where there is a reasonable indication that a civil or criminal fraud may have taken place, will refer the matter to the appropriate investigative body. As such, the NIH’s records related to research misconduct proceedings are compiled for law enforcement purposes, and the subsection (k)(2) exemption is applicable to this system of records. Moreover, where records related to research misconduct proceedings are compiled solely for the purpose of making determinations as to the suitability for appointment as special government employees or eligibility for federal contracts from PHS agencies, the subsection (k)(5) exemption is applicable.

On August 28, 2012, HHS/NIH published a System of Records Notice (SORN) for this system (77 FR 52043). On the same date, HHS/NIH also published a proposed rule (77 FR 51954) and, anticipating no significant adverse comment, a direct final rule (77 FR 51933) to exempt this system of records under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, access, accounting, and amendment provisions of the Privacy Act. The comment period was open through November 13, 2012. The Agency received two comments during the rulemaking comment period. One comment, which questioned the privacy interest of scientists who receive grant money and are accused of misconduct, appears to have misunderstood the scope and applicability of the exceptions. The system of records in question pertains to research misconduct proceedings involving the NIH IRP. Thus, NIH grant funding to extramural scientists is unlikely to be involved. Moreover, the exception would not interfere with the public disclosure of findings of research misconduct by HHS' Office of Research Integrity (ORI) on behalf of the agency, including findings that may involve NIH IRP scientists or trainees found to have committed research misconduct. The other comment expressed a general concern about a loss of privacy and appeared to seek a reconsideration of the agency's approach, which was construed as sufficiently adverse to merit withdrawal of the direct final rule on January 10, 2013. HHS/NIH now publishes this final rule under the standard notice and comment rulemaking process.

After considering the comments, HHS/NIH believes the exemptions at issue are necessary to fulfill the Agency's responsibilities for addressing research misconduct. The exemptions are essential for NIH to protect the confidentiality of sources who provide information relevant to a research misconduct proceeding and to guard against the premature disclosure of research misconduct records that might obstruct or compromise proceedings. The exemptions will thereby enable the NIH to maintain the integrity and effectiveness of research misconduct proceedings.

Failure to adopt the exemptions would jeopardize the integrity and effectiveness of the NIH's research misconduct proceedings. The NIH's new system of records is modeled after the system of records maintained by the ORI, entitled "HHS Records Related to Research Misconduct Proceedings, HHS/OS/ORI" System No. 09-37-0021

(59 FR 36717, July 19, 1994; revised most recently at 74 FR 44847, August 31, 2009). The ORI has exempted these records under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, access, accounting, and amendment provisions of the Privacy Act to ensure that these records will not be disclosed inappropriately (59 FR 36717, July 19, 1994). Likewise, HHS/NIH believes that exempting the new NIH system from the same Privacy Act provisions is essential to ensure that material in the NIH's files related to research misconduct proceedings is not disclosed inappropriately.

Subject to its obligations under the PHS Policies on Research Misconduct, 42 CFR Part 93, and other applicable law, HHS/NIH is therefore exempting this system under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, access, and amendment provisions of the Act (subsections (c)(3), (d)(1) to (d)(4), (e)(4)(G) and (e)(4)(H), and (f)). The specific rationales for applying each of the exemptions are as follows:

- Subsection (c)(3). An exemption from the requirement to provide an accounting of disclosures is needed during the pendency of a research misconduct proceeding. Release of an accounting of disclosures to an individual who is the subject of a pending research misconduct assessment, inquiry, or investigation could prematurely reveal the nature and scope of the assessment, inquiry, or investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding.

- Subsection (d)(1). An exemption from the access requirement is needed both during and after a research misconduct proceeding to avoid revealing the identity of any source who was expressly promised confidentiality. Only material that would reveal a confidential source will be exempt from access. Protecting the identity of a source is necessary when the source is unwilling to report possible research misconduct because of fear of retaliation (e.g., from an employer or coworkers).

- Subsections (d)(2) through (d)(4). An exemption from the amendment provisions is necessary while one or more related research misconduct proceedings is pending. Allowing amendment of investigative records in a pending proceeding could interfere with that proceeding. Even after that proceeding is concluded, an amendment could interfere with other pending or prospective research misconduct proceedings or could significantly delay

inquiries or investigations in an attempt to resolve questions of accuracy, relevance, timeliness, and completeness.

- Subsection (e)(4)(G) and (e)(4)(H).

An exemption from the Privacy Act notification provisions is necessary during the pendency of a research misconduct proceeding because notifying an individual who is the subject of an assessment, inquiry, or investigation of the fact of such proceedings could prematurely reveal the nature and scope of the proceedings and result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding. This exemption does not alter NIH's obligations to provide notice to the respondent in a research misconduct proceeding as described in the PHS Policies on Research Misconduct, 42 CFR Part 93.

- Subsection (f). An exemption from the requirement to establish procedures for notification, access to records, amendment of records, or appeals of denials of access to records is appropriate because the procedures would serve no purpose in light of the other exemptions, to the extent that those exemptions apply.

To avoid the unnecessary application of the exemptions, the NIH will give case-by-case consideration to requests for notification, access, and amendment submitted to the NIH Agency Intramural Research Integrity Officer (System Manager) or NIH Privacy Act Officer. Except for information that would reveal the identity of a source who was expressly promised confidentiality, the access exemption will not prohibit HHS/NIH from granting respondents' access requests consistent with the PHS Policies on Research Misconduct, 42 CFR part 93, including in those cases in which a finding of research misconduct has become final and an administrative action has been imposed. The request submission process is described in the SORN previously published for this system (77 FR 52043) and available online at <http://www.gpo.gov/fdsys/pkg/FR-2012-08-28/pdf/2012-20884.pdf>.

#### Analysis of Impacts

HHS/NIH has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule imposes no duties or obligations on small entities, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any 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 \$100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is \$136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. HHS/NIH does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

#### List of Subjects in 45 CFR Part 5b

Privacy.

For the reasons set out in the preamble, the Department of Health and Human Services is amending 45 CFR part 5b Subtitle A to read as follows:

#### PART 5b—PRIVACY ACT REGULATIONS

■ 1. The authority citation for 45 CFR part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a.

■ 2. Section 5b.11 is amended by adding paragraph (b)(2)(vii)(D) to read as follows:

#### § 5b.11 Exempt systems.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vii) \* \* \*

(D) NIH Records Related to Research Misconduct Proceedings, HHS/NIH, 09–25–0223.

\* \* \* \* \*

Dated: June 14, 2013.

**Kathleen Sebelius,**

*Secretary of Health and Human Services.*

[FR Doc. 2013–15596 Filed 6–28–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 100812345–2142–03]

RIN 0648–XC728

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2013 Commercial Accountability Measure and Closure for South Atlantic Gray Triggerfish

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures (AMs) for commercial gray triggerfish in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings for gray triggerfish, as estimated by the Science and Research Director (SRD), are projected to reach the commercial annual catch limit (ACL) on July 7, 2013. Therefore, NMFS closes the commercial sector for gray triggerfish in the South Atlantic EEZ on July 7, 2013, and it will remain closed until the start of the next fishing season, January 1, 2014. This closure is necessary to protect the gray triggerfish resource.

**DATES:** This rule is effective 12:01 a.m., local time, July 7, 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](mailto:Catherine.Hayslip@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes gray triggerfish and 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 by regulations at 50 CFR part 622.

The commercial ACL for gray triggerfish in the South Atlantic is 305,262 lb (138,465 kg), round weight,

for the current fishing year, January 1 through December 31, 2013, as specified in 50 CFR 622.193(q)(1)(i).

Under 50 CFR 622.193(q)(1), NMFS is required to close the commercial sector for gray triggerfish when the commercial ACL is 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 ACL for South Atlantic gray triggerfish will have been reached by July 7, 2013. Accordingly, the commercial sector for South Atlantic gray triggerfish is closed effective 12:01 a.m., local time, July 7, 2013, until 12:01 a.m., local time, January 1, 2014.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having gray triggerfish onboard must have landed and bartered, traded, or sold such gray triggerfish prior to 12:01 a.m., local time, July 7, 2013. During the closure, the bag limit specified in 50 CFR 622.187(b)(8), applies to all harvest or possession of gray triggerfish 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 gray triggerfish in or from the South Atlantic EEZ. During the closure, the sale or purchase of gray triggerfish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of gray triggerfish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, July 7, 2013, and were held in cold storage by a dealer or processor.

For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the bag and possession limit provisions of the commercial closure for gray triggerfish would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.193(q)(1)(i).

#### Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of gray triggerfish and the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

This action is taken under 50 CFR 622.193(q)(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 gray triggerfish 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 gray triggerfish since the capacity of the fishing fleet allows for rapid harvest of the commercial 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 26, 2013.

**Kelly Denit,**

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

[FR Doc. 2013-15698 Filed 6-26-13; 4:15 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 78, No. 126

Monday, July 1, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 26

[NRC-2009-0225]

RIN 3150-A167

### Revisions to Fitness for Duty Programs' Drug Testing Requirements

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory basis.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is making available the regulatory basis for the ongoing proposed rulemaking effort to amend its regulations regarding drug testing requirements in NRC licensees' fitness for duty programs. The regulatory basis documents the reasoning upon which the NRC determined rulemaking was the appropriate course of action. In this regulatory basis, the NRC recommends developing a proposed rule that would enhance the ability of NRC licensees to detect and deter drug use and the alignment of the NRC's regulations with select drug testing provisions in the U.S. Department of Health and Human Services' "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued in 2008.

**DATES:** At this time, the NRC is not soliciting formal public comments on the materials identified in this document. There will be an opportunity for formal public comment on the proposed rule when it is published in the **Federal Register**.

**ADDRESSES:** Please refer to Docket ID NRC-2009-0225 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2009-0225. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668;

email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Scott C. Sloan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1619; email: [Scott.Sloan@nrc.gov](mailto:Scott.Sloan@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### Additional Documents and Public Meetings

As the NRC continues its ongoing proposed rulemaking effort to amend the drug testing requirements of part 26 of Title 10 of the *Code of Federal Regulations* (10 CFR), the NRC will periodically make preliminary draft documents publicly available on the Federal rulemaking Web site, [www.regulations.gov](http://www.regulations.gov), under docket ID NRC-2009-0225. The availability of these documents informs stakeholders of the current status of the NRC's rulemaking development activities and provides preparatory material for future public meetings. The NRC is not instituting a public comment period on these materials, but the public is encouraged to participate in related public meetings. In addition, the public will be given ample opportunity to provide comments on the proposed rule upon its publication in the **Federal Register**. The NRC will post meeting notices to the NRC's Public Meeting

Schedule Web site, <http://www.nrc.gov/public-involve/public-meetings/index.cfm>, 10 days prior to any meeting dates. Additional documents related to this proposed rulemaking, including meeting notices, will be made publically available on the Federal rulemaking Web site at <https://www.regulations.gov>, under Docket ID NRC-2009-0225. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC-2009-0225); (2) click the "Email Alert" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated at Rockville, Maryland, this 19th day of June, 2013.

For the Nuclear Regulatory Commission.

**Lawrence E. Kokajko,**

*Director, Division of Policy and Rulemaking.*

[FR Doc. 2013-15687 Filed 6-28-13; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2013-0543; Directorate Identifier 2012-NM-202-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Airplanes

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 series airplanes. This proposed AD was prompted by a determination that certain special washers used in the retraction jack anchorage fitting bearing installation in the main landing gear (MLG) were incorrectly manufactured. This proposed AD would require an inspection of the left-hand (LH) and right-hand (RH) MLG retraction jack anchorage fitting bearing assemblies to verify that the special washer is seated correctly, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct

installation of incorrectly manufactured special washers, which could lead to a local stress concentration resulting in possible reduction of the fatigue life of the jack fitting, and consequent reduction of the structural integrity of the affected MLG.

**DATES:** We must receive comments on this proposed AD by August 15, 2013.

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

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

#### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone (425) 227-1405; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the

**ADDRESSES** section. Include “Docket No. FAA-2013-0543; Directorate Identifier 2012-NM-202-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012-0223, dated October 23, 2012 (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:

Airbus identified a batch of special washers, Part Number (P/N) D5725260120000 and P/N D5725664320000, which were incorrectly manufactured and delivered as spares from the supplier between October 2006 and January 2010. As a result of these manufacturing defects, the affected washers differ geometrically from the design specifications. The results of further analyses on Airbus A318, A319, A320 and A321 aeroplanes demonstrate that the affected washers could be seated incorrectly when installed on aeroplanes, which could affect the main landing gear (MLG) retraction jack anchorage fitting bearing installation.

This condition, if not detected and corrected, could lead to a local stress concentration which may reduce the fatigue life of the jack fitting, possibly reducing the structural integrity of the affected MLG.

For the reasons described above, this [EASA] AD requires a one-time detailed visual inspection of the left-hand (LH) and right-hand (RH) MLG retraction jack anchorage fitting bearing assemblies to verify that the special washer is seated correctly and, depending on findings, the accomplishment of applicable [related investigative action and] corrective actions.

The related investigative action is a detailed inspection of the jack anchorage fitting for damage, corrosion, cracks or other defects. Corrective actions include replacing the special washer with a new special washer and repairing the jack anchorage fitting if there are signs of damage, corrosion, or other defects. You may obtain further

information by examining the MCAI in the AD docket.

#### Relevant Service Information

Airbus has issued Airbus Service Bulletin A320-57-1169, Revision 01, dated September 18, 2012, and the following tasks in Subject 57-26-13, Attachment—Main Landing Gear, of Chapter 57, Wings, of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual (AMM), Revision 50, dated November 1, 2012.

- Task 57-26-13-400-001-A, Installation of the Bearing Assembly of the Forward Pintle Pin.
- Task 57-26-13-400-002-A, Installation of the Bearing Assembly of the MLG Actuator Attachment.
- Task 57-26-13-400-004-A, Installation of the Bearing Seals of the MLG Actuator Bearing Assembly.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### FAA’s Determination and Requirements of This Proposed AD

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

#### Differences Between This Proposed AD and the MCAI or Service Information

Airbus Service Bulletin A320-57-1169, Revision 01, dated September 18, 2012, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent).

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 851 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be

\$217,005, or \$255 per product. In addition, we estimate that any necessary follow-on actions would take about 15 work-hours, for a cost of \$1,275 per product. We have received no definitive data that would enable us to provide part cost estimates for the on-condition actions specified in this proposed AD. We have no way of determining the number of products that may need these actions.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

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

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

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

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

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

**Airbus:** Docket No. FAA-2013-0543; Directorate Identifier 2012-NM-202-AD.

#### (a) Comments Due Date

You must receive comments by August 15, 2013.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to the Airbus airplanes listed in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

- (1) Model A318-111, -112, -121, and -122 airplanes.
- (2) Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes.
- (3) Model A320-111, -211, -212, -214, -231, -232, and -233 airplanes.
- (4) Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes.

#### (d) Subject

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

#### (e) Reason

This AD was prompted by a determination that certain special washers used in retraction jack anchorage fitting bearing installation in the main landing gear (MLG) were incorrectly manufactured. We are issuing this AD to detect and correct installation of incorrectly manufactured special washers, which could lead to a local stress concentration resulting in possible reduction of the fatigue life of the jack fitting, and consequent reduction of the structural integrity of the affected MLG.

#### (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) Detailed Inspection

Within 21,300 flight cycles after August 1, 2006, or within 30 days after the effective date of this AD, whichever occurs later: Do a detailed inspection of the left-hand (LH)

and right-hand (RH) MLG retraction jack anchorage fitting bearing assemblies for correct installation, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-57-1169, Revision 01, dated September 18, 2012, except as specified in paragraphs (i)(1) and (i)(2) of this AD.

**Note 1 to paragraph (g) of this AD:** The affected special washers having part numbers (P/N) D5725260120000 and P/N D5725664320000 were manufactured between October 2006 and January 2010.

#### (h) Related Investigative and Corrective Actions

If any special washer is found incorrectly seated during the inspection specified in paragraph (g) of this AD: Before further flight, do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-57-1169, Revision 01, dated September 18, 2012, except as specified in paragraph (i)(3) of this AD.

#### (i) Exceptions to Inspections and Service Information

(1) Airplanes on which Airbus modification 39730 or Airbus modification 150311 has been embodied in production, or on which Airbus Service Bulletin A320-57-1157 has been embodied in service, do not have to be inspected as required by paragraph (g) of this AD, unless a special washer having P/N D5725260120000 or P/N D5725664320000 has been installed since the airplane's first flight, or since modification as specified in Airbus Service Bulletin A320-57-1157, as applicable. A review of airplane maintenance records is acceptable to make this determination if the part numbers of the special washers and modification status can be conclusively determined from that review.

(2) MLG retraction jack anchorage fitting bearing assemblies on which no special washer replacement has been accomplished after August 1, 2006; and MLG retraction jack anchorage fitting bearing assemblies on which a special washer replacement has been accomplished as specified in Task 57-26-13-400-001-A, Installation of the Bearing Assembly of the Forward Pintle Pin; Task 57-26-13-400-002-A, Installation of the Bearing Assembly of the MLG Actuator Attachment; and Task 57-26-13-400-004-A, Installation of the Bearing Seals of the MLG Actuator Bearing Assembly; of Subject 57-26-13, Attachment—Main Landing Gear, of Chapter 57, Wings, of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual (AMM), Revision 50, dated November 1, 2012; do not have to be inspected as required by paragraph (g) of this AD. A review of airplane maintenance records is acceptable to make this determination if the status can be conclusively determined from that review.

(3) Where Airbus Service Bulletin A320-57-1169, Revision 01, dated September 18, 2012, specifies to contact Airbus and apply corrective action defined by Airbus: Before further flight, repair the jack anchorage fitting using a method approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

**(j) Parts Installation Limitations**

As of the effective date of this AD, no person may install, on any airplane, a special washer having P/N D5725260120000 or P/N D5725664320000, unless it is installed in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-57-1169, Revision 01, dated September 18, 2012; or in accordance with the instructions specified in the tasks identified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD.

(1) Task 57-26-13-400-001-A, Installation of the Bearing Assembly of the Forward Pintle Pin, in Subject 57-26-13, Attachment—Main Landing Gear, of Chapter 57, Wings, of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual (AMM), Revision 50, dated November 1, 2012.

(2) Task 57-26-13-400-002-A, Installation of the Bearing Assembly of the MLG Actuator Attachment, in Subject 57-26-13, Attachment—Main Landing Gear, of Chapter 57, Wings, of the Airbus A318/A319/A320/A321 AMM, Revision 50, dated November 1, 2012.

(3) Task 57-26-13-400-004-A Installation of the Bearing Seals of the MLG Actuator Bearing Assembly, in Subject 57-26-13, Attachment—Main Landing Gear, of Chapter 57, Wings, of the Airbus A318/A319/A320/A321 AMM, Revision 50, dated November 1, 2012.

**(k) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320-57-1169, dated January 10, 2012, which is not incorporated by reference in this AD.

**(l) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone (425) 227-1405; fax (425) 227-1149. Information may be emailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov). Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority

(or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(m) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012-0223, dated October 23, 2012; Airbus Service Bulletin A320-57-1169, Revision 01, dated September 18, 2012; and the following tasks specified in Subject 57-26-13, of Chapter 57, Wings, of the Airbus A318/A319/A320/A321 AMM, Revision 50, dated November 1, 2012; for related information.

(i) Task 57-26-13-400-001-A, Installation of the Bearing Assembly of the Forward Pintle Pin.

(ii) Task 57-26-13-400-002-A, Installation of the Bearing Assembly of the MLG Actuator Attachment.

(iii) Task 57-26-13-400-004-A, Installation of the Bearing Seals of the MLG Actuator Bearing Assembly.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on June 17, 2013.

**Jeffrey E. Duven,**

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

[FR Doc. 2013-15663 Filed 6-28-13; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA-2013-0542; Directorate Identifier 2011-NM-162-AD]**

**RIN 2120-AA64**

**Airworthiness Directives; The Boeing Company Airplanes**

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

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

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to all The Boeing Company Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. The existing AD currently requires repetitive

inspections for discrepancies of each carriage spindle of the outboard mid-flaps; repetitive gap checks of the inboard and outboard carriages of the outboard mid-flaps to detect fractured carriage spindles; measuring to ensure that any new or serviceable carriage spindle meets minimum allowable diameter measurements taken at three locations; repetitive inspections, measurements, and overhaul of the carriage spindles; replacement of any carriage spindle when it has reached its maximum life limit; and corrective actions if necessary. Since we issued that AD, we received a report of failure of both flap carriages. This proposed AD would require reducing the life limit of the carriages, reducing the repetitive interval for certain inspections and gap checks for certain carriages. This proposed AD would also add an option, for certain replacements, of doing an inspection, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct cracked, corroded, or fractured carriage spindles, which could lead to severe flap asymmetry, and could result in reduced control or loss of controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by August 15, 2013.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://>

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

**FOR FURTHER INFORMATION CONTACT:**

Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: (425) 917-6440; fax: (425)917-6590; email: [nancy.marsh@faa.gov](mailto:nancy.marsh@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the ADDRESSES section. Include "Docket No. FAA-2013-0542; Directorate Identifier 2011-NM-162-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

On July 14, 2010, we issued AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010), for all Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. That AD requires repetitive inspections to find discrepancies (cracks, fractures, and corrosion) of each carriage spindle of the left and right outboard mid-flaps; repetitive gap checks of the inboard and outboard carriages of the outboard mid-flaps to detect fractured carriage spindles; measuring to ensure that any new or serviceable carriage spindle meets minimum allowable diameter measurements taken at three locations; repetitive inspections, measurements, and overhaul of the carriages; replacement of any carriage when it has reached its maximum life limit; and corrective actions if necessary. That AD

resulted from reports of fractures that resulted from stress corrosion and pitting along the length of the carriage spindle and spindle diameter. We issued that AD to detect and correct cracked, corroded, or fractured carriage spindles, and to prevent severe flap asymmetry, which could result in reduced control or loss of controllability of the airplane.

**Actions Since Existing AD (75 FR 43803, July 27, 2010) Was Issued**

Since we issued AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010), we received a report of failure of both flap carriages on an outboard flap of a Model 737 airplane, which indicates that life limits and certain repetitive inspection intervals of the carriages mandated by existing AD 2010-15-08 should be reduced.

**Relevant Service Information**

AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010), referred to Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003; and Boeing Alert Service Bulletin 737-57A1218, Revision 5, dated February 9, 2009; as the appropriate sources of service information for the required actions. Boeing has since revised these service bulletins.

We reviewed Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012, which describes reduced repetitive intervals for the non-destructive test (NDT) ultrasonic inspection and general visual inspection of the carriage spindle, and gap check measurements of the inboard and outboard carriages.

The related investigative actions of Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012, include removing the carriage from service and performing a detailed inspection for corrosion, cracking, or a severed spindle; determining if there is damage that would cause the midflap to move away from the carriage.

Corrective actions of Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012, include installing a new or serviceable inboard or outboard carriage of the outboard mid-flaps.

We also reviewed Boeing Alert Service Bulletin 737-57A1218, Revision 6, dated June 9, 2011, which shortens the life limit and compliance time for the replacement of spindles from 48,000 total flight cycles to 40,000 total accumulated flight cycles.

The related investigative actions of Boeing Alert Service Bulletin 737-57A1218, Revision 6, dated June 9,

2011, include performing a detailed inspection for corrosion and pitting, performing a magnetic particle inspection for cracking, and measuring for minimum allowable spindle diameter. Corrective actions of Boeing Alert Service Bulletin 737-57A1218, Revision 6, dated June 9, 2011, include installing a new or serviceable inboard and outboard carriage of the outboard mid-flaps; overhauling carriages to remove corrosion or repair damage; and replacing any carriage that has cracking, or damage beyond the repair limits for minimum allowable spindle diameters, or reached its life limit.

**Explanation of Changes to Existing Requirements of AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010)**

Paragraphs (i) and (k) of existing AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010), require installing a new or serviceable carriage spindle if certain conditions are found. In this proposed AD, when these certain conditions are found, rather than installing a new or serviceable carriage spindle, operators now have the option to first do a detailed inspection to determine if there is corrosion, cracking, or a severed spindle, and do related investigative and corrective actions if necessary. Therefore, we revised paragraphs (i) and (k) of this proposed AD, to include these optional actions. We have also added an exception to paragraph (i) of this proposed AD to specify that actions in that paragraph are not necessary for carriage spindles on which an ultrasonic inspection of the spindle has been done and the spindle has been confirmed not to be severed.

We have revised paragraph (m) of this AD to remove the reference to Chapter 20-42-09, Electrodeposited Nickel Plating, of the Boeing (737) Standard Overhaul Practices Manual, and we removed the reference that as of August 31, 2010, the effective date of AD 2010-15-08, Amendment 39, 16374 (75 FR 438003) to use only Boeing (737) Standard Overhaul Practices Manual, Revision 25, dated July 1, 2009.

Instead, application of nickel plating done in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, is acceptable for compliance with the actions required by paragraph (m) of this AD. We added Note 1 to paragraph (m) of this AD to specify that guidance on the application of nickel plating can be found in Chapter 20-42-09, Electrodeposited Nickel Plating, of the Boeing (737) Standard Overhaul Practices Manual, Revision 25, dated July 1, 2009.

We have also added paragraph (m)(3) to prohibit the application of any plating to the carriage using any high velocity oxygen fuel (HVOF) thermal spray process.

We have also clarified the compliance time for the repetitive actions specified in paragraph (n) of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010).

#### FAA's Determination

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

#### Proposed AD Requirements

This proposed AD would retain all requirements of AD 2010–15–08, Amendment 39–16374 (75 FR 43803,

July 27, 2010). This proposed AD also would require accomplishing the actions specified in the service information described previously. This proposed AD would also shorten certain compliance times.

#### Costs of Compliance

We estimate that this proposed AD affects 652 airplanes of U.S. registry.

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

#### ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections [retained actions from existing AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010)].	12 work-hours × \$85 per hour = \$1,020.	\$0	\$1,020 per inspection cycle.	\$665,040 per inspection cycle.
Inspections and measurements [retained actions from existing AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010)].	2 work-hours × \$85 per hour = \$170.	0	\$170 per inspection and measurement cycle..	\$110,840 per inspection and measurement cycle
Overhauls [retained actions from existing AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010)].	16 work-hours × \$85 per hour = \$1,360.	128,000	\$29,360 per overhaul cycle.	\$19,142,720 per overhaul cycle.
Replacements [retained actions from existing AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010)].	16 work-hours × \$85 per hour = \$1,360.	260,000	\$61,360 per replacement cycle.	\$40,006,720 per replacement cycle.

<sup>1</sup> \$7,000 per spindle; 4 spindles per airplane.

<sup>2</sup> \$15,000 per spindle; 4 spindles per airplane.

The new requirements of this proposed 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 have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the

States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

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

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

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2013–0542; Directorate Identifier 2011–NM–162–AD.

#### (a) Comments Due Date

The FAA must receive comments on this AD action by August 15, 2013.

#### (b) Affected ADs

This AD supersedes AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010).

#### (c) Applicability

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

#### (d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 57: Wings.

**(e) Unsafe Condition**

This AD was prompted by reports of fractures that resulted from stress corrosion and pitting along the length of the spindle and spindle diameter, and a subsequent report of failure of both flap carriages. We are issuing this AD to detect and correct cracked, corroded, or fractured carriage spindles, which could lead to severe flap asymmetry, and could result in reduced control or loss of controllability of the airplane.

**(f) Compliance**

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

**(g) Compliance Times for Paragraphs (h) and (j) of This AD**

This paragraph restates the requirements of paragraph (g) of AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010), with revised service information that shortens the compliance times for certain inspections. The tables in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003; and Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012; specify the compliance times for paragraphs (g) through (k) of this AD. For carriage spindles that have accumulated the number of flight cycles or years in service specified in the "Threshold" column of the tables in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003, accomplish the gap check, nondestructive test (NDT) inspection, and general visual inspection specified in paragraphs (h) and (j) of this AD within the corresponding interval after December 4, 2003 (the effective date AD 2003-24-08, Amendment 39-16337 (68 FR 67027, December 1, 2003)), as specified in the "Interval" column of the tables in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003, except as specified in paragraphs (g)(1) and (g)(2) of this AD. Repeat the gap check, NDT, and general visual inspections at the intervals specified in the "Interval" column of the tables in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003, except as specified in paragraph (g)(1) and (g)(2) of this AD. As of the effective date of this AD, accomplish the gap check, NDT inspection, and general visual inspections specified in paragraphs (h) and (j) of this AD within the corresponding interval as specified in the "Interval" column of the tables in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003, and thereafter at the intervals specified in Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012, except as specified in paragraphs (g)(1) and (g)(2) of this AD. Repeat the gap check, NDT, and general visual inspections thereafter at the intervals specified in the "Interval" column of the tables in paragraph 1.E., "Compliance," of Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012, except as specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) The gap check does not have to be done at the same time as an NDT inspection; after doing an NDT inspection, the interval for doing the next gap check may be measured from the NDT inspection.

(2) As carriage spindles gain flight cycles or years in service and move from one category in the "Threshold" column to another, they are subject to the repetitive inspection intervals corresponding to the new threshold category.

**(h) Retained Work Package 2: Gap Check**

This paragraph restates the requirements of paragraph (h) of AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010), with revised service information. Perform a gap check of the inboard and outboard carriage of the left and right outboard mid-flaps to determine if there is a positive indication of a severed carriage spindle, in accordance with Work Package 2 of paragraph 3.B., "Work Instructions," of Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003; or Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012. As of the effective date of this AD, only Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012, may be used to perform the actions specified in this paragraph.

**(i) Retained Work Package 2: Corrective Actions With New Optional Actions and Exception**

This paragraph restates the requirements of paragraph (i) of AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010), with revised service information and new optional actions and exception. If there is a positive indication of a severed carriage spindle during the gap check required by paragraph (h) of this AD, before further flight, do the actions specified in paragraph (i)(1) or (i)(2) of this AD, except for carriage spindles on which an ultrasonic inspection has been done in accordance with the "Work Instructions" of Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012; and the spindle has been confirmed not to be severed, no further actions are required by this paragraph for that carriage spindle.

(1) Remove the carriage spindle and install a new or serviceable carriage spindle, in accordance with the "Work Instructions" of any service bulletin specified in paragraph (i)(1)(i), (i)(1)(ii), (i)(1)(iii), or (i)(1)(iv) of this AD. As of the effective date of this AD, only Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012, may be used to perform the actions specified in this paragraph.

(i) Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003.

(ii) Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012.

(iii) Boeing Alert Service Bulletin 737-57A1218, Revision 5, dated February 9, 2009.

(iv) Boeing Alert Service Bulletin 737-57A1218, Revision 6, dated June 9, 2011

(2) Do a detailed inspection of the spindle to determine if there is corrosion, cracking, or a severed spindle, and, before further flight, do all related investigative and corrective actions, in accordance with the

"Work Instructions" of Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003; or Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012. If, during the detailed inspection described in paragraph 4.b. of Work Package 2 of Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003, or Revision 3, dated May 16, 2012, a carriage spindle is found not to be severed, and no corrosion and no cracking is present, it can be reinstalled on the outboard mid-flap, in accordance with any service bulletin specified in paragraph (i)(2)(i), (i)(2)(ii), (i)(2)(iii), or (i)(2)(iv) of this AD. As of the effective date of this AD, only Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012, may be used to perform the actions specified in this paragraph.

(i) Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003.

(ii) Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012.

(iii) Boeing Alert Service Bulletin 737-57A1218, Revision 5, dated February 9, 2009.

(iv) Boeing Alert Service Bulletin 737-57A1218, Revision 6, dated June 9, 2011

**(j) Retained Work Package 1: NDT (Ultrasonic) and General Visual Inspections**

This paragraph restates the requirements of paragraph (j) of AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010), with revised service information. Perform an NDT (ultrasonic) inspection and general visual inspection for each carriage spindle of the left and right outboard mid-flaps to detect cracks, corrosion, or severed carriage spindles, in accordance with "Work Package 1" of the "Work Instructions" of Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003; or Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012. As of the effective date of this AD, only Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012, may be used to perform the actions specified in this paragraph.

**(k) Retained Work Package 1: Corrective Actions and New Optional Action**

This paragraph restates the requirements of paragraph (k) of AD 2010-15-08, Amendment 39-16374 (75 FR 43803, July 27, 2010), with revised service information and new optional action. If any corroded, cracked, or severed carriage spindle is found during any inspection required by paragraph (j) of this AD: Before further flight, do the actions specified in paragraph (k)(1) or (k)(2) of this AD.

(1) Remove the carriage spindle and install a new or serviceable carriage spindle, in accordance any service bulletin identified in paragraph (k)(1)(i), (k)(1)(ii), (k)(1)(iii), or (k)(1)(iv) of this AD. As of the effective date of this AD, only Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012, may be used to perform the actions specified in this paragraph.

(i) Boeing Alert Service Bulletin 737-57A1277, Revision 1, dated November 25, 2003.

(ii) Boeing Service Bulletin 737-57A1277, Revision 3, dated May 16, 2012.

(iii) Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009.

(iv) Boeing Alert Service Bulletin 737–57A1218, Revision 6, dated June 9, 2011

(2) Do a detailed inspection of the spindle to determine if there is corrosion, cracking, or a severed spindle, in accordance with the “Work Instructions” of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; or Boeing Service Bulletin 737–57A1277, Revision 3, dated May 16, 2012. If any corrosion, cracking, or a severed spindle is found, before further flight, install a new or serviceable carriage spindle, in accordance any service bulletin identified in paragraph (k)(1)(i), (k)(1)(ii), (k)(1)(iii), or (k)(1)(iv) of this AD. As of the effective date of this AD, only Boeing Service Bulletin 737–57A1277, Revision 3, dated May 16, 2012, may be used to perform the actions specified in this paragraph.

#### (l) Retained Parts Installation Limitation

This paragraph restates the requirements of paragraph (l) of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010). Except as provided in paragraph (i) of this AD: As of December 4, 2003 (the effective date AD 2003–24–08, Amendment 39–16337 (68 FR 67027, December 1, 2003), no person may install on any airplane a carriage spindle that has been removed as required by paragraph (i) or (k) of this AD, unless it has been overhauled in accordance with the “Work Instructions” of the applicable service bulletin identified in paragraph (l)(1), (l)(2), (l)(3), or (l)(4) of this AD. As of the effective date of this AD, only Boeing Service Bulletin 737–57A1277, Revision 3, dated May 16, 2012; or Boeing Alert Service Bulletin 737–57A1218, Revision 6, dated June 9, 2011; may be used to perform the actions specified in this paragraph. To be eligible for installation under this paragraph, the carriage spindle must have been overhauled in accordance with the requirements of paragraph (m) of this AD.

(1) Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003.

(2) Boeing Service Bulletin 737–57A1277, Revision 3, dated May 16, 2012.

(3) Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009.

(4) Boeing Alert Service Bulletin 737–57A1218, Revision 6, dated June 9, 2011.

#### (m) Retained Electrodeposited Nickel Plating With New Plating Restrictions

This paragraph restates the requirements of paragraph (m) of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010) with revised plating application procedures. As of the effective date of this AD, during accomplishment of any overhaul specified in paragraph (l) or (o) of this AD, follow the requirements specified in paragraphs (m)(1), (m)(2), and (m)(3) of this AD during application of the plating to the carriage spindle, in accordance with a method approved by the Manager, Seattle, Aircraft Certification Office (ACO), FAA. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(1) The maximum deposition rate of the nickel plating in any one plating/baking cycle must not exceed 0.002-inch-per-hour.

(2) Begin the hydrogen embrittlement relief bake within 10 hours after application of the nickel plating, or less than 24 hours after the current was first applied to the part, whichever is first.

(3) The carriage must not be plated using any high velocity oxygen fuel (HVOF) thermal spray process.

#### Note 1 to paragraph (m) of this AD:

Guidance on the application of nickel plating can be found in Chapter 20–42–09, Electrodeposited Nickel Plating, of the Boeing (737) Standard Overhaul Practices Manual, Revision 25, dated July 1, 2009.

#### (n) Retained Exception to Reporting Recommendations

This paragraph restates the provisions of paragraph (n) of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010), with revised service information. Although Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; and Boeing Service Bulletin 737–57A1277, Revision 3, dated May 16, 2012; recommend that operators report inspection findings to the manufacturer, this AD does not require reporting.

#### (o) Retained Inspections, Measurements, and Overhauls of the Carriage Spindle With Clarification of Overhaul Restrictions

This paragraph restates the requirements of paragraph (o) of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010) with clarification of overhaul restrictions. At the applicable times specified in paragraphs (o)(1) and (o)(2) of this AD: Do the detailed inspection for corrosion, pitting, and cracking of the carriage spindle; magnetic particle inspection for cracking of the carriage spindle; measurements of the spindle to determine if it meets the allowable minimum diameter; overhauls of the carriage spindle; and applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009; or Boeing Alert Service Bulletin 737–57A1218, Revision 6, dated June 9, 2011. As of the effective date of this AD, only Boeing Alert Service Bulletin 737–57A1218, Revision 6, dated June 9, 2011, may be used to perform the actions specified in this paragraph. The applicable corrective actions must be done before further flight. Repeat these actions thereafter at intervals not to exceed every 12,000 flight cycles on the carriage spindle or every 8 years since first installation of the carriage spindle on the airplane, whichever comes first. As of the effective date of this AD: For any overhaul required by this paragraph, the carriage spindle must be overhauled in accordance with the requirements of paragraph (m) of this AD.

(1) For Model 737–100, –200, –200C series airplanes: At the later of the times specified in paragraphs (o)(1)(i) and (o)(1)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle since new or overhauled, or within 8 years after the

installation of the new or overhauled part, whichever comes first.

(ii) Within 1 year after August 31, 2010 (the effective date of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010)).

(2) For Model –300, –400, and –500 series airplanes: At the later of the times specified in paragraphs (o)(2)(i) and (o)(2)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle since new or overhauled, or within 8 years after the installation of the new or overhauled part, whichever comes first.

(ii) Within 2 years after August 31, 2010 (the effective date of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010)).

#### (p) Retained Carriage Spindle Replacement for Model 737–100, –200, and –200C Series Airplanes

This paragraph restates the requirements of paragraph (p) of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010), with revised service information and a shortened compliance time. For Model 737–100, –200, –200C series airplanes: Replace the carriage spindle with a new or documented (for which the service life, in total flight cycles, is known) carriage spindle, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009; or Boeing Alert Service Bulletin 737–57A1218, Revision 6, dated June 9, 2011; at the earlier of the times specified in paragraphs (p)(1) and (p)(2) of this AD, except as required by paragraph (r) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 737–57A1218, Revision 6, dated June 9, 2011, may be used to perform the replacement. Overhauling the carriage spindles does not zero-out the flight cycles. Total flight cycles accumulate since new.

(1) At the later of the times specified in paragraphs (p)(1)(i) and (p)(1)(ii) of this AD.

(i) Before the accumulation of 48,000 total flight cycles on the new or overhauled carriage.

(ii) Within 3 years or 7,500 flight cycles after August 31, 2010 (the effective date of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010)), whichever occurs first.

(2) Before the accumulation of 40,000 total flight cycles on the new or overhauled carriage or 6 months after the effective date of this AD, whichever occurs later.

#### (q) Retained Carriage Spindle Replacement for Model 737–300, –400, and –500 Series Airplanes

This paragraph restates the requirements of paragraph (q) of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010), with revised service information and a shortened compliance time. For Model 737–300, –400, and –500 series airplanes: Replace the carriage spindle with a new or documented (for which the service life, in flight cycles, is known) carriage spindle, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin

737–57A1218, Revision 5, dated February 9, 2009; or Boeing Alert Service Bulletin 737–57A1218, Revision 6, dated June 9, 2011; at the later of the times specified in paragraphs (q)(1) and (q)(2) of this AD, except as required by paragraph (r) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 737–57A1218, Revision 6, dated June 9, 2011, may be used to perform the replacement required by this paragraph. Overhauling the carriage spindles does not zero-out the flight cycles. Total flight cycles accumulate since new.

(1) Before the accumulation of 40,000 total flight cycles on the new or overhauled carriage.

(2) Within 6 years or 15,000 flight cycles after August 31, 2010 (the effective date of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010)), whichever occurs first.

**(r) Retained Carriage Spindle Replacement for Airplanes With an Undocumented Carriage**

This paragraph restates the requirements of paragraph (r) of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010). For airplanes with an undocumented carriage: Do the applicable actions specified in paragraph (p) or (q) of this AD at the applicable time specified in paragraph (r)(1) or (r)(2) of this AD.

(1) For Model 737–100, –200, –200C series airplanes: Do the actions specified in paragraph (p) of this AD at the time specified in paragraph (p)(1)(ii) of this AD.

(2) For Model –300, –400, and –500 series airplanes: Do the actions specified in paragraph (q) of this AD at the time specified in paragraph (q)(2) of this AD.

**(s) Retained Repetitive Replacements of Carriage Spindle**

This paragraph restates the requirements of paragraph (s) of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010), with revised compliance times.

(1) For airplanes on which the actions required by paragraph (p) or (q) of this AD, as applicable, have been done as of the effective date of this AD: Repeat the replacement of the carriage spindle specified by paragraph (p) or (q) of this AD, as applicable, one time at the later of the times specified in paragraphs (s)(1)(i) and (s)(1)(ii) of this AD, and thereafter at intervals not to exceed 40,000 total flight cycles on the new or overhauled carriage spindle.

(i) Before the accumulation of 40,000 total flight cycles on the new or overhauled carriage.

(ii) Within 6 years or 15,000 flight cycles after August 31, 2010 (the effective date of AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010)), whichever occurs first.

(2) For airplanes on which the actions required by paragraph (p) or (q) of this AD, as applicable, have not been done as of the effective date of this AD: Repeat the replacement of the carriage spindle specified by paragraph (p) or (q) of this AD, as applicable, thereafter at intervals not to exceed 40,000 total flight cycles on the new or overhauled carriage spindle.

**(t) Exception to Compliance Time**

Where Boeing Service Bulletin 737–57A1277, Revision 3, dated May 16, 2012, and Boeing Alert Service Bulletin 737–57A1218, Revision 6, dated June 9, 2011, specify a compliance time after the dates of those service bulletins, this AD requires compliance within the specified compliance time after the effective date of this AD.

**(u) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraphs (g) through (s) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 737–57A1277, Revision 2, dated June 9, 2011, which is not incorporated by reference in this AD.

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

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

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

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

(4) AMOCs previously approved in accordance with AD 2003–24–08, Amendment 39–13377 (68 FR 67027, December 1, 2003), or AD 2010–15–08, Amendment 39–16374 (75 FR 43803, July 27, 2010), are approved as AMOCs for individual repairs are acceptable for compliance with the corresponding provisions of this AD. All other existing AMOCs are not acceptable.

**(w) Related Information**

(1) For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6440; fax: (425) 917–6590; email: [nancy.marsh@faa.gov](mailto:nancy.marsh@faa.gov).

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email [me.boecom@boeing.com](mailto:me.boecom@boeing.com); Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service

information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 14, 2013.

**Jeffrey E. Duven,**

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

[FR Doc. 2013–15660 Filed 6–28–13; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF DEFENSE**

**Department of the Army, Corps of Engineers**

**33 CFR Part 334**

**Pacific Ocean Off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii; Danger Zone**

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Corps of Engineers is proposing to amend an existing danger zone in waters of the Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii. The U.S. Navy conducts missile defense activities, test missile launches, and training activities at the Pacific Missile Range Facility. The proposed amendment is necessary to protect the public from hazards associated with missile launch operations, training activities, and increased threat conditions. The proposed amendment would expand the existing danger zone and would prohibit any activity by the public within the danger zone without first obtaining permission from the Commanding Officer, Pacific Missile Range Facility, to ensure public safety and/or installation good order during range operations, weapon system testing, training activities, increases in force protection and other mission essential evolutions. The expanded danger zone would extend along approximately seven miles of shoreline adjacent to the Pacific Missile Range Facility, with its seaward extent ranging between 2.96 and 4.16 nautical miles offshore.

**DATES:** Written comments must be submitted on or before July 31, 2013.

**ADDRESSES:** You may submit comments, identified by docket number COE–2013–0007, by any of the following methods:

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

*Email:* [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil). Include the docket number, COE-2013-0007, in the subject line of the message.

*Mail:* U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW., Washington, DC 20314-1000.

*Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

*Instructions:* Direct your comments to docket number COE-2013-0007. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922, or Mr. Farley Watanabe, Corps of Engineers, Honolulu District, Regulatory Branch, at 808-835-4305 or by email at [farley.k.watanabe@usace.army.mil](mailto:farley.k.watanabe@usace.army.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Summary**

The purpose of this regulatory action is to amend the danger zone in waters of the Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii by increasing the water area historically noted on nautical charts as 334.1390.

The Corps authority to amend this danger zone is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3).

##### **Background**

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing to amend the regulations at 33 CFR Part 334 by amending the existing permanent danger zone in the waters of the Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii.

The U.S. Navy conducts missile defense activities, test missile launches, and training activities at the Pacific Missile Range Facility. The proposed amendment is necessary to protect the public from hazards associated with missile launch operations, training activities, and increased threat conditions. The proposed amendment would expand the existing danger zone and would prohibit any activity by the public within the danger zone without first obtaining permission from the Commanding Officer, Pacific Missile Range Facility, to ensure public safety and/or installation good order during range operations, weapon system testing, training activities, increases in force protection and other mission essential evolutions. The expanded danger zone would extend along approximately seven miles of shoreline adjacent to the Pacific Missile Range Facility, with its seaward extent ranging between 2.96 and 4.16 nautical miles offshore.

##### **Procedural Requirements**

###### *a. Review Under Executive Order 12866*

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

###### *b. Review Under the Regulatory Flexibility Act*

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the amendment of this danger zone would have practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

###### *c. Review Under the National Environmental Policy Act*

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

###### *d. Unfunded Mandates Act*

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

##### **List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.1390 to read as follows:

### § 334.1390 Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii; danger zone.

(a) *The danger zone.* All navigable waters within an area beginning at a point on the shore at latitude 22°04'13.65" N, longitude 159°46'30.76" W; and continue south along the shoreline to latitude 21°58'42.77" N, and longitude 159°45'26.35" W. Thence extending southwest to latitude 21°56'6.00" N, and longitude 159°46'55.91" W extending northwest to latitude 21°58'59.81" N and longitude 159°50'51.42" W, continuing north to latitude 22°02'28.09" N, and longitude 159°51'28.15" W, and continuing northeast to latitude 22°06'30.71" N, longitude 159°49'20.43" W; and thence to point of beginning. All coordinates reference 1983 North American Datum (NAD 83).

(b) *The regulations.* (1) Dredging, dragging, seining, and other similar operations within the danger zone are prohibited.

(2) All persons, boats, vessels, or other craft are prohibited from entering, transiting, or remaining within the danger zone during range operations, test and training activities, or increases in force protection that pose a hazard to the general public, as determined by the enforcing agency. The enforcing agency's determination of the necessity of closing the danger zone due to increases in force protection will be based on the Department of Defense Force Protection Condition (FPCON) System. From the lowest security level to the highest, FPCON levels are titled Normal, Alpha, Bravo, Charlie and Delta.

(3) Closure of the danger zone will be indicated by Notice to Mariners, the presence of Pacific Missile Range Facility range boats, beach markings including beach signs along the north and south beach borders alerting shoreline foot traffic, security patrols, and radio transmissions on common ocean frequencies to include Marine band channel 6 (156.300 MHz), Marine band channel 16 (156.800 MHz), and CB channel 22. The enforcing agency will post the danger zone closure schedule on its official Navy Web site, <http://www.cnmc.navy.mil/PMRF/>, and Facebook Web site, <http://www.facebook.com/PacificMissileRangeFacility>.

[www.facebook.com/PacificMissileRangeFacility](http://www.facebook.com/PacificMissileRangeFacility). The danger zone closure schedule may also be obtained by calling the following phone numbers: 808-335-4301, 808-335-4388, and 808-335-4523.

(4) The enforcing agency will authorize the use of some, or all, of the danger zone for civilian waterborne activities when mission-essential evolutions such as range operations, test and training operations, or increases in force protections levels permit it. Such activities include fishing, sightseeing, shelling, surfing, and transit.

(c) *The enforcing agency.* The regulations in this section shall be enforced by the Commanding Officer, Pacific Missile Range Facility, Hawaii and such agencies or persons as he or she may designate.

Dated: June 24, 2013.

Approved:

**James R. Hannon,**

*Chief, Operations and Regulatory Directorate of Civil Works.*

[FR Doc. 2013-15669 Filed 6-28-13; 8:45 am]

**BILLING CODE 3720-58-P**

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. 2013-5]

### Authentication of Electronic Signatures on Electronically Filed Statements of Account

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** The U.S. Copyright Office published a notice of proposed rulemaking in the **Federal Register** of June 26, 2013 (78 FR 38240). The document contained incorrect dates.

**DATES:** Comments must be received in the Copyright Office no later than 5 p.m. Eastern Standard Time (EST) on July 26, 2013. Reply comments must be received in the Copyright Office no later than 5 p.m. Eastern Standard Time (e.s.t.) on August 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** Andrea Zizzi, Office of the General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:**

## Correction

In the **Federal Register** of June 26, 2013 (78 FR 38240), on page 38241, in the first column, the **DATES** caption is corrected to read as set forth above.

Dated: June 26, 2013.

**Maria Strong,**

*Acting General Counsel, U.S. Copyright Office.*

[FR Doc. 2013-15699 Filed 6-28-13; 8:45 am]

**BILLING CODE 1410-30-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2

[ET Docket No. 13-115; RM-11341; FCC 13-65]

### Federal Earth Stations—Non-Federal Fixed Satellite Service Space Stations; Spectrum for Non-Federal Space Launch Operations

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to make spectrum allocation proposals for three different space related purposes. The Commission makes two alternative proposals to modify the Allocation Table to provide interference protection for Fixed-Satellite Service (FSS) and Mobile-Satellite Service (MSS) earth stations operated by Federal agencies under authorizations granted by the National Telecommunications and Information Administration (NTIA) in certain frequency bands. The Commission also proposes to amend a footnote to the Allocation Table to permit a Federal MSS system to operate in the 399.9–400.05 MHz band; also makes alternative proposals to modify the Allocation Table to provide access to spectrum on an interference protected basis to Commission licensees for use during the launch of launch vehicles (i.e. rockets). The Commission also seeks comment broadly on the future spectrum needs of the commercial space sector. The Commission expects that, if adopted, these proposals would advance the commercial space industry and the important role it will play in our nation's economy and technological innovation now and in the future.

**DATES:** Comments must be filed on or before August 30, 2013, and reply comments must be filed on or before September 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Oros, Office of Engineering and Technology, 202-418-0636,

Nicholas.oros@fcc.gov, TTY (202) 418-2989.

**ADDRESSES:** You may submit comments, identified by ET Docket No. 13-115, RM-11341, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Federal Communications Commission's Web site:** <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- **Email:** [Optional: Include the Email address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- **Mail:** [Optional: Include the mailing address for paper, disk or CD-ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket No. 13-115, FCC 13-65, adopted May 9, 2013, and released May 9, 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](http://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 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.

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#### Summary of the Notice of Proposed Rulemaking

1. The National Space Policy recognizes that "[a] robust and competitive commercial space sector is vital to continued progress in space." In the Notice of Proposed Rulemaking (NPRM) the Commission addresses the spectrum needs of two separate, but closely related portions of the commercial space sector: the commercial communications satellite industry and the commercial space launch industry. It is our expectation that, if adopted, these proposals would advance the commercial space industry and the important role it will play in our nation's economy and technological innovation now and in the future.

2. To advance the goals of the National Space Policy, the Commission presents two alternative proposals in the NPRM to provide Federal earth stations that communicate with non-Federal Fixed-Satellite Service (FSS) and Mobile-Satellite Service (MSS) space stations interference protection identical to that afforded to non-Federal earth stations communicating with the same FSS and MSS space stations. Under the

first proposal the Commission proposes to modify the Allocation Table in Section 2.106 of the rules to add a Federal allocation for the FSS bands, along with a footnote restricting Federal use to earth stations communicating with non-Federal space stations. In the second proposal it proposes to place a footnote in the Allocation Table in the FSS bands that provides that Federal earth stations that communicate with non-Federal FSS and MSS space stations would receive interference protection identical to that afforded to non-Federal earth stations communicating with the same FSS and MSS space stations.

3. The Commission also proposes in the NPRM to amend a footnote to the Allocation Table to permit a Federal MSS system to operate in the 399.9-400.05 MHz MSS band. This action would allow traffic to be migrated from Argos, the existing Federal MSS system, to a new Federal satellite system, thereby resulting in less interference and improved service and reliability for users of both the existing and new Federal MSS systems. No Federal or non-Federal MSS systems have been deployed in this band since it was allocated for MSS in 1993, and this proposed Federal allocation will permit long-vacant spectrum to be put to an important use.

4. Finally, in the NPRM the Commission proposes several alternatives for providing spectrum for use during commercial space launches, thereby providing launch vehicles with interference protection. During launches, spectrum in the 420-430 MHz, 2200-2290 MHz, and 5650-5925 MHz bands is typically used to send a self-destruct signal to the launch vehicle (if needed) and information from the launch vehicle to controllers on ground, as well as to track the launch vehicle by radar. Because these frequency bands are allocated only to Federal use for these purposes, the Commission may not issue licenses for these bands that provide interference protection to commercial space launch operators. The Commission seeks comment on two possible options to support commercial space launches by either adding a co-primary non-Federal allocation to these bands or by providing an Allocation Table footnote to allow non-Federal use of these bands to provide commercial entities access to these important spectrum resources. The Commission also seeks comment on ways to ensure the long term sustainability of the commercial launch industry by exploring other alternatives to use of these bands as more commercial

launches are conducted and more private spaceports are established.

#### A. Expanded Federal Use of the Non-Federal FSS and MSS Bands

5. In August 2006, the National Telecommunications and Information Administration (NTIA) filed a petition requesting that the Commission initiate a rulemaking to permit Federal earth stations that are authorized by NTIA and that operate with non-Federal satellites to have primary status in a number of frequency bands currently allocated for non-Federal FSS and non-Federal MSS on a primary basis. Earth stations authorized by NTIA must now operate on a non-interference basis. Alternatively, Federal agencies may lease services from a licensee of an FCC-authorized earth station to operate with interference protection. NTIA requests that the Federal Table be modified to add a primary FSS allocation along with a footnote that would restrict primary Federal use of these bands to Federal earth stations accessing non-Federal satellites. The NTIA petition outlines a means for Federal agencies to deploy their own earth stations to overcome the uncertainties associated with operating on a non-interference basis and the limitations of leasing services through a third party operator. Such a modification would turn certain exclusive non-Federal use frequency bands into shared Federal/non-Federal spectrum, although use of these bands by Federal agencies would be limited by the terms of the footnote. The allocation and footnote that NTIA requests would mirror an existing Federal allocation for a number of MSS bands. These MSS bands have co-primary Federal and non-Federal allocations along with footnote US319, which restricts Federal MSS earth stations in the bands to operating with non-Federal space stations.

6. NTIA's petition identifies 13.275 gigahertz of spectrum in ten frequency bands for which it seeks primary status. As background, spectrum used for satellite communications is divided into different frequency bands which are referred to with letter designations, such as the C-band, Ku-band, or Ka-band. The spectrum which the NTIA petition identifies falls into parts of four of these lettered satellite bands: 3.6–4.2 GHz and 5.85–6.725 GHz (in the C-band); 10.7–12.2 GHz, 12.7–13.25 GHz, and 13.75–14.5 GHz (in the Ku-band); 18.3–19.3 GHz, 19.7–20.2 GHz, and 27.5–30 GHz (in the Ka-band); and 37.5–39.5 GHz and 47.2–50.2 GHz (in the V-band). The Commission notes that all of the bands addressed in the NTIA petition are allocated for the FSS. In the FSS, earth stations in stationary locations

communicate with space stations (*i.e.* satellites). In addition, a portion of the Ka-band from 19.7–20.2 GHz and 29.5–30.0 GHz is also allocated on a primary basis to the MSS with MSS use for most of this spectrum restricted to satellite systems that are also in the FSS. In the MSS mobile earth stations communicate with space stations.

7. Comments received in response to NTIA's petition were generally supportive but did express a number of specific reservations. For example, the Satellite Industry Association (SIA) stated that non-Federal commercial and experimental license applicants should not face delays because of the need for the Commission to coordinate applications with NTIA. The Fixed Wireless Communications Coalition commented that Federal earth stations should be required to conduct coordination with terrestrial stations sharing the same band prior to applying for a license as is required for non-Federal earth station applicants. SIA, Hispasat, and Lockheed Martin believe that Federal earth stations should be subject to the Commission's technical and enforcement rules, which is not normally the case for Federal agencies.

8. The Commission seeks comments generally on the benefits of greater Federal use of commercial satellite networks. For example, would Federal agencies increase their use of commercial satellite networks to accomplish their missions with greater efficiency and reduced costs while meeting the national policy objective requiring the use of commercial satellite systems? Would increased Federal use of commercial satellites serve to strengthen the commercial satellite industry—a vital component of the economy and an important driver of United States productivity?

9. The FSS has operated under a regulatory framework in which the Commission establishes the technical and licensing rules for space stations and earth stations operating as integrated systems, thereby enabling many earth stations to be authorized and operate independently of each other with little risk of interference even if they communicate with the same space station. NTIA requests that Federal earth stations it authorizes be allowed to operate with the same regulatory status as non-Federal earth stations in the same frequency band. In order to accomplish this objective, it requests a modification of the Federal Table to include a co-primary FSS allocation in certain frequency bands for Federal earth stations communicating with commercial satellites. This allocation approach would increase uncertainty

over who is the regulator of the satellite systems that operate in these bands. NTIA states that the Commission would not be required to consult with NTIA or other Federal agencies regarding these bands any more than they currently coordinate. NTIA would utilize the current FCC processes as much as possible, and the current FCC process would remain as it is today for non-Federal earth station applications.

10. Based on the Commission's experience in spectrum management in conjunction with NTIA, and in consideration of the goals of the National Space Policy as well as the comments it received in response to the Public Notice that the Commission issued subsequent to receiving NTIA's petition, the Commission recognizes that a policy guiding Federal use of commercial satellite networks can be successful only if it provides a clear method for establishing and enforcing operational rights and responsibilities that can be applied consistently regardless of whether the user is licensed by the Commission or authorized by NTIA. The Commission has identified and seeks comment on the following four key objectives, which it believe best express this intent:

- To ensure parity between Federal and non-Federal earth stations;
- To provide certainty that the Commission retains regulatory oversight of the satellite network and the FSS even though the Commission would license non-Federal earth stations, and NTIA would authorize Federal earth stations;
- To ensure that the rules and procedures do not hinder the Commission's rulemaking processes or delay the issuance of Commission licenses and coordination in the affected bands; and
- To establish procedures to ensure that both Federal and non-Federal earth stations comply with the Commission's rules for operating in the frequency bands.

11. The Commission seeks comment on the means by which it can provide interference protection to Federal earth stations used to access commercial satellite networks. First, the Commission addressed the commercial satellite frequency bands where NTIA has requested that it should place Federal earth stations on an equal footing with non-Federal earth stations. The Commission then outlined two proposals for providing Federal agencies with interference-protected access to these frequency bands. The first proposal follows NTIA's suggested approach by adding a co-primary Federal FSS and MSS allocation to the

Federal Table as well as a footnote that limits primary Federal use of the bands to earth stations communicating with non-Federal satellites. The second approach retains the existing non-Federal allocation structure in those satellite bands, but adds a footnote to the U.S. Table that recognizes the interference protection status for certain Federal earth stations in communication with non-Federal space stations

12. The Commission proposes to modify the U.S. Table using one of the approaches discussed to provide Federal earth stations interference protection in the frequency bands proposed by NTIA, with the exception of 3600–3700 MHz Band for which it tentatively concluded not to change the Allocation Table because the Commission has recently initiated a proceeding to make the band available for wireless broadband. The Commission seeks comment generally on this proposal. It recognizes that use of some of these bands for commercial satellite services has evolved since the NTIA petition was filed, that Federal agency use of the commercial satellite services may vary among the different frequency bands, and that in some bands Federal access may not be needed at all. The Commission thus seeks comment on whether Federal access should be added for those frequency bands discussed that are most likely to meet the needs of Federal earth station users.

13. In a number of the NTIA requested bands, the FSS shares spectrum with terrestrial services. These include the C-band and the extended Ku-band. In bands shared between terrestrial and satellite users, coordination between terrestrial licensees and earth stations is required to prevent interference. Should the complexity that this coordination adds to licensing of earth stations in these bands affect our decision to add a co-primary Federal allocation to these bands? In addition, portions of the Ka-band and V-band have been designated for terrestrial use. Should the Commission consider modifying the Allocation Table to provide protection to Federal earth stations in the portions of these bands designated for terrestrial services?

14. *Allocation Approach:* The Commission seeks comment on whether it should amend the Federal Table to add a co-primary Federal FSS or MSS allocation to the selected bands. Under this proposal (the “allocation approach”), the Commission would also add a footnote to the Federal Table restricting primary use of Federal earth stations in these bands to communication with non-Federal space

stations. Under the allocation approach, Federal agencies authorized by NTIA to operate earth stations in these bands would have co-primary status with Commission-licensed non-Federal earth stations. The allocation approach mirrors NTIA’s request.

15. Successful implementation of the allocation approach will require agreement by NTIA and the Commission on coordination procedures that Federal agencies would follow for authorizing Federal earth stations. The Commission proposes that Federal users would follow a process similar to that used by Commission applicants to obtain approval to use earth stations in the FSS bands. This process is especially important for preventing interference where the FSS shares the band with terrestrial services, such as the C-band and extended Ku-band. Interference between earth stations communicating with different space stations is largely avoided because the Commission’s rules require that earth stations use directional antennas and that space stations are separated by 2 degrees in the orbital arc. To avoid interference between terrestrial stations and earth stations sharing the same band, the Commission’s rules rely on coordination between operators of these stations prior to issuance of a license. The Commission’s rules require an applicant for an FSS earth station license in bands shared with terrestrial services to conduct a frequency coordination analysis prior to filing an application. This frequency coordination analysis requires the applicant to perform an interference analysis for each “close by” terrestrial station for which a license or construction permit has been granted or an application has been filed. The applicant must provide the interference analysis and technical information about the earth station to each of these terrestrial station licensees, permittees, or applicants. The terrestrial station licensee, permittee, or applicant then responds to the earth station applicant if it has an interference concern. The parties may resolve potential interference by an agreement that is filed with the application. Applicants for fixed point-to-point microwave licenses in bands shared with the FSS must coordinate their proposed links with nearby earth stations prior to filing their applications using a similar process. In addition to the coordination requirements for terrestrial stations, the Commission’s rules also impose coordination requirements on earth stations with antennas that do not meet specified off-axis EIRP envelopes. These earth stations, called non-conforming

earth stations, must be coordinated with satellites within a 6 degree orbital separation of the satellite the earth station will be communicating with. A statement that this coordination has been conducted must be included in the application for the earth station.

16. The Commission proposes the following procedures to be agreed upon and followed by the Commission and NTIA to ensure parity between Federal and non-Federal earth stations. The Federal agency would request approval from NTIA to deploy and operate an earth station. In bands shared with terrestrial users such as the C-band and extended Ku-band, either NTIA or the Federal agency would coordinate with terrestrial stations as required by the Commission’s rules. For non-conforming earth stations in any satellite band, either NTIA or the Federal agency would coordinate the proposed earth stations with other satellites as required by the Commission’s rules. After such coordination, NTIA would send the request to the Commission, providing all technical information that would be provided by a non-Federal applicant, such as station location and basic technical characteristics. The Commission would process the request in the same way as it would process applications for Commission licenses. The Commission would place the request on public notice. Following the public notice period, if the Commission determines that the request meets all technical criteria for licensing (*i.e.*, that the application would be granted if it were submitted by a non-Federal entity), the Commission would notify NTIA and make an entry in the Commission’s database indicating the technical characteristics of the station and its protected status. The Commission’s database entries will facilitate future coordination with terrestrial operations sharing the satellite bands. In bands where there are no terrestrial stations or where the earth stations are conforming, there will be no need to coordinate the earth station application prior to NTIA filing a request with the FCC. In that case, NTIA would file a request with the FCC providing all technical information that would be provided by a non-Federal applicant, such as station location and basic technical characteristics. The Commission would place the request on public notice. Following the public notice period, if the Commission determines that the request meets all technical criteria, the Commission would notify NTIA and make an entry in the Commission’s database indicating the technical

characteristics of the station and its protected status. The Commission seeks comment on these coordination procedures. Because it is proposing that Federal agencies would follow the same technical requirements and procedures as Commission licensees in obtaining authorization to operate earth stations, the Commission believes there would be no negative effect on emergency response communications. The Commission seeks comment on this proposal.

17. Under the proposed allocation approach, these FSS bands would be shared Federal/non-Federal FSS bands. Under existing coordination procedures the Commission routinely coordinates license applications for bands shared with Federal stations with NTIA. The Commission believes that the addition of the Federal earth stations should not require any additional coordination procedures for non-Federal applicants. Accordingly, the Commission proposes that applications for Commission licenses using frequencies currently allocated for exclusive non-Federal use not be coordinated with NTIA. To enable protection of government FSS earth station operations in these new bands, the Commission proposes that the Federal agencies or NTIA monitor Commission public notices regarding filed earth station applications to determine whether proposed non-Federal terrestrial stations raise any interference concerns to existing Federal earth stations. If a proposed non-Federal station will cause interference to an existing Federal earth station, NTIA could file an opposition to the earth station application in accordance with established Commission procedure. The Commission will consider any such opposition in the same manner as oppositions filed by other parties. The Commission seeks comment on these proposals, as well as any other considerations that may impact the process currently used by FCC and NTIA for frequency coordination. For parties proposing additional coordination approaches, the Commission asks that they also include an analysis on timing and cost of such an approach.

18. Under our existing procedures under the MOU, the Commission and NTIA coordinate proposed actions that could potentially cause interference to Federal operations, including changes to our technical or service rules in shared Federal/non-Federal bands. The Commission's *ex parte* rules generally exempt presentations by NTIA in matters over which NTIA and the Commission share jurisdiction. Thus, Federal agencies may be afforded an

opportunity to participate, through NTIA, in rulemakings in a manner unavailable to non-Federal licensees. The Commission invites comment on how it might continue to protect against harmful interference to or from Federal earth station operations in a manner that is consistent with the coordination practice as set forth in the MOU, while at the same time ensuring transparency, fairness, and integrity in the Commission's decision making process.

19. The Commission believes that under an allocation approach, it would need to include in the footnote that we propose to add to the Federal Table a requirement that Federal earth stations in these bands comply with part 25 of the Commission's rules. Are there other ways that the Commission could ensure that Federal agencies exercise only the same rights and obligations that are afforded similarly situated non-Federal entities? For example, if Federal agencies are not required to follow the Commission's technical rules, including coordination procedures, what rules should they follow? The Commission also seeks comment on how to treat Federal agencies operating under a direct allocation but that are not in compliance with the footnote. If interference occurs between Federal earth stations and non-Federal stations, how should it be resolved?

20. The Commission's part 25 rules permit operation of Vehicle Mounted Earth Stations (VMES), Earth Stations on Vessels (ESV), and Earth Stations Aboard Aircraft (ESAA) in a number of FSS bands. VMES, ESV, and ESAA may have either primary or secondary status depending on the particular FSS band or on whether the ESV or VMES is in motion. The Commission notes that under the allocation approach NTIA would be able to authorize Federal agencies to operate VMES, ESV, and ESAA in the bands to which we are adding a Federal FSS allocation to the same extent and with the same restrictions as Commission licensees. Federal agencies would be expected to comply with all of the part 25 rules pertaining to VMES, ESV, and ESAA and with the footnotes to the Allocation Table regarding VMES, ESV, and ESAA. The Commission seeks comment on this proposal.

21. Under the allocation approach, the Commission proposes to amend the Federal Table by adding the following primary allocations: (1) "FIXED-SATELLITE (space-to-Earth)" to the 3700–4200 MHz, 10.7–12.2 GHz, and 37.5–39.5 GHz bands; (2) "FIXED-SATELLITE (Earth-to-space)" to the 5850–6725 MHz, 12.7–13.25 GHz, 13.75–14.5 GHz, 27.5–30 GHz, and

47.2–48.2 GHz bands; (3) "MOBILE-SATELLITE (space-to-Earth)" to the 19.7–20.2 GHz band; and (4) "MOBILE-SATELLITE (Earth-to-space)" to the 29.5–30 GHz band. It also proposes to add new footnote US107 to the Allocation Table that would restrict Federal stations in the FSS to earth stations operating with non-Federal space stations in these ten frequency bands, with the exception of Federal earth stations in three locations that operate in the 18.3–19.3 GHz and 19.7–20.2 GHz bands. In addition, the Commission proposes to amend US319 by adding the 19.7–20.2 GHz (space-to-Earth) and 29.5–30 GHz (Earth-to-space) bands, thereby restricting Federal MSS stations in those bands to earth stations operating with non-Federal space stations. It also takes this opportunity to propose to revise the text of US319 so that it parallels the text of proposed footnote US107 and to renumber footnote US319 in frequency order as footnote US46. The Commission seeks comment on these proposals.

22. Further, if the Commission adopts the allocation approach, it proposes to reclassify all non-Federal footnotes that apply to the non-Federal FSS allocations in the proposed frequency bands (NG52, NG53, NG54, NG55, NG143, NG164, NG165, NG166, NG180, NG181, NG183, NG185, NG187) as U.S. footnotes. In particular, the Commission notes that seven of these non-Federal footnotes (NG52, NG54, NG55, NG180, NG181, NG183, NG187) authorize mobile applications (*i.e.*, ESV, VMES, and ESAA) in the fixed-satellite service. The Commission seeks comment on this proposal.

23. Finally, the Commission proposes to add all international and U.S. footnotes that apply to the non-Federal FSS and MSS allocations in the requested bands to the Federal Table. It requests comment on this proposal.

24. In seeking comment on our proposal to add a primary Federal allocation to the Allocation Table for these satellite bands, the Commission urges commenters to discuss how implementation of the allocation approach can satisfy the four key objectives that it has defined. The Commission likewise seeks comment on the process it proposes for Federal users to obtain approval to operate earth stations in these satellite bands. Can the allocation approach sufficiently protect the interests of non-Federal licensees in both the FSS and other services operating in these bands? Would the approach provide the flexibility needed for Federal users to effectively make use of the commercial satellite services? Are there additional steps we should take to

ensure that non-Federal users are protected from harmful interference from Federal earth stations? How could NTIA's "treat the same" request be most effectively realized and how could the concerns that commenters have raised regarding NTIA's petition be addressed? The Commission also seeks comment on the costs and benefits of the allocation approach.

25. *Interference Protection Approach:* Under our second proposal the Commission would add the following U.S. footnote to both the Federal Table and non-Federal Table for each of the FSS bands included in NTIA's petition:

USxxx The following provisions shall apply to Federal earth stations that operate with non-Federal space stations in the fixed-satellite service (FSS), and in the bands 19.7–20.2 GHz and 29.5–30 GHz, the mobile-satellite service (MSS), in accordance with the Commission's rules and regulations (see in particular the technical requirements of 47 CFR part 25) and that are authorized by NTIA:

(a) Federal earth stations that receive signals in the bands 3700–4200 MHz, 10.7–12.2 GHz, and 37.5–39.5 GHz can claim protection from harmful interference from non-Federal stations to which these frequencies are assigned at a later date even though there are no Federal FSS or MSS allocations in these bands.

(b) Federal earth stations that receive signals in the bands 18.3–19.3 GHz and 19.7–20.2 GHz from non-Federal space stations in the FSS can claim protection from harmful interference from non-Federal stations to which these frequencies are assigned at a later date.

(c) Non-Federal stations cannot claim protection from harmful interference from Federal earth stations to which frequencies in the bands 5850–6725 MHz, 12.7–13.25 GHz, 13.75–14.5 GHz, 27.5–30 GHz, and 47.2–48.2 GHz have previously been assigned even though there are no Federal FSS or MSS allocations in these bands.

(d) *Mobile applications in the non-Federal FSS.* Federal Earth Stations on Vessels (ESVs), Vehicle Mounted Earth Stations (VMES), and Earth Stations Aboard Aircraft (ESAA) may also operate in accordance with footnotes NG52, NG54, NG55, NG180, NG181, NG183, NG187, and US133.

26. Under this proposal the Commission would not place Federal FSS and MSS allocations in the Federal Table as shown in Appendix A of the NPRM. The footnote it proposes to add to the Table of Allocations under this approach (the "interference protection approach") would permit Federal earth stations in communication with non-Federal space stations to receive interference protection equivalent to that afforded non-Federal earth stations in the commercial satellite bands requested by NTIA. In addition to restricting Federal earth stations to operating with non-Federal satellites as

the allocation approach does, this footnote would provide interference protection to the Federal earth stations under the condition that they comply with the Commission's technical rules. Under the interference protection approach the bands will not contain a Federal FSS or MSS allocation in the Federal Table and would not be considered shared Federal/non-Federal bands. Federal agencies authorized by NTIA to operate earth stations in these bands would operate on the same basis as Commission-licensed non-Federal earth stations, so long as the Federal agency's operations are consistent with part 25 of the Commission's rules. Federal agencies would, for example, have interference protection against later-entering FCC licensees that they do not currently enjoy. The interference protection approach would entail coordination procedures similar to those proposed under the allocation approach but, under either approach, the Commission seeks to ensure parity in the context of future rulemaking proceedings affecting these bands. It seeks comment on those aspects of the proposed approaches.

27. As with the allocation approach described, successful implementation of the interference protection approach will require agreement by NTIA and the Commission on coordination procedures that Federal agencies would follow for authorizing Federal earth stations. The Commission seeks comment on whether the process described with regard to the allocation approach should be followed for Federal agencies to obtain approval to use an earth station in these bands. This process would require Federal agencies to request approval from NTIA to set up an earth station, NTIA or the Federal agency to coordinate the earth station in bands shared with terrestrial users and for non-conforming earth stations, NTIA to send the request to the Commission, and the Commission to place the request on public notice. The Commission seeks comment on the use of these procedures in association with the interference protection approach.

28. While the Commission recognizes that the interference protection approach differs from the plan suggested in the NTIA petition, it also believes that it will meet the objective of the NTIA petition—to provide interference protection to Federal earth stations and to place Federal earth stations on an equal footing with earth stations licensed by the Commission. Moreover, the Commission believes that the interference protection approach is well suited to meeting the four objectives it believes are necessary for

the success of any policy guiding Federal use of commercial satellite networks and we seek comment on this tentative conclusion.

29. Because Federal and non-Federal earth station operators will be communicating with the same Commission-approved space stations, the Commission seeks to ensure parity between Federal and non-Federal earth stations. The technical and coordination requirements contained in part 25 of the Commission's rules are designed to prevent interference between users of the satellite bands and should apply to all earth station users, both Federal and non-Federal. To facilitate the harmonious sharing of the bands among all users, the proposed footnote explicitly conditions protected operation of Federal earth stations in these bands on the earth stations complying with part 25 of the Commission's rules. The Commission seeks comment on this approach.

30. Under the interference protection approach, no Federal allocation would be added to the satellite bands, and thus those satellite frequency bands that are currently exclusively non-Federal would not become shared Federal/non-Federal spectrum. Because the Federal and non-Federal earth stations both communicate with the same commercial satellites, it is important that the satellite network as a whole remain under the Commission's oversight, even when the authority to operate the Federal and non-Federal earth stations is granted by different entities. This approach would continue to ensure the effective regulation by the Commission of the space and earth segments provided by commercial space stations. The Commission seeks comment on this view.

31. As discussed, under our *ex parte* rules, presentations by NTIA are normally exempt from *ex parte* restrictions in matters involving shared jurisdiction. Unlike other parties, NTIA is able to make presentations to the Commission in its role as a co-regulator without disclosing the content of the presentations on the record at the time it makes each presentation. Even when the Commission makes NTIA materials public, other parties may not have the opportunity to respond to the presentation's content prior to adoption of the Commission's rulemaking action unless NTIA submits the information into the record beforehand. If the Commission adopts the interference protection approach it would not add a Federal allocation to these bands, but Federal agencies would be on an equal footing with non-Federal users. To ensure this parity in the context of

rulemaking proceedings affecting these bands, the Commission seeks comment on whether the exemption from *ex parte* disclosure requirements should apply to any presentations made by NTIA on behalf of Federal agencies using or seeking to use earth stations under our proposed rules herein.

32. The interference protection approach would avoid subjecting non-Federal earth station applicants to new licensing procedures, such as additional approval and coordination requirements. As discussed, license applications in bands shared with Federal users are, in general, coordinated with NTIA. Under the interference protection approach, the satellite bands that are exclusively non-Federal would not acquire a Federal allocation and therefore will not become shared Federal/non-Federal bands. As a result, the Commission proposes not to coordinate license applications with NTIA in these bands. Rather, it proposes that Federal earth stations listed in the Commission's publicly-available database will be protected from interference in the same manner as non-Federal stations. The Commission seeks comment on this approach.

33. There are a number of bands allocated for the FSS included in the NTIA petition that have Federal allocations. For example, the 13.75–14 GHz portion of the extended Ku-band is shared with Federal radars and NASA's Tracking and Data Relay Satellite System. The Ka-band downlink has a Federal co-primary FSS allocation that is restricted to use at three earth station locations. The 48.2–50.2 GHz portion of the V-band has a primary Federal FSS allocation. The Commission is not proposing under the interference protection approach to change the application of the coordination process with NTIA with regard to these and other shared bands with Federal and non-Federal allocations.

34. The Commission believes that the interference protection approach can provide assurance that the Commission's rules and practices will be applied in a consistent manner regardless of whether the applicant is a Federal agency or a non-Federal entity that owns and operates the earth station communicating with a non-Federal space station. Our proposed footnote would condition protected operation of Federal earth stations in these bands on conformance with part 25 of the Commission's rules. If a Federal agency obtains approval from NTIA to operate an earth station in these bands and the earth station does not operate in conformance with our rules, the Commission would remove it from our

database. These non-compliant stations would operate on a non-interference basis and would have to accept any interference from non-Federal stations—just as is the case today. This will provide an incentive for Federal earth stations to comply with the Commission's rules to mitigate the interference potential to both Federal and non-Federal stations. The Commission seeks comment on additional actions the Commission can take to provide assurance that Federal agencies will comply with the Commission's rules when using earth stations in these bands.

35. As mentioned, the Commission's part 25 rules permit operation of VMES, ESV, and ESAA in a number of FSS bands. The footnote it proposes under the interference protection approach would allow Federal agencies to operate VMES, ESV, and ESAA on an interference protected basis to the same extent as non-Federal licensees. Federal agencies would be expected to comply with all of the part 25 rules pertaining to VMES, ESV and ESAA and with the footnotes to the Allocation Table regarding VMES, ESV, and ESAA. The Commission seeks comment on this proposal.

36. The Commission seeks comment on the costs and benefits of the interference protection approach. Do commenters agree with our observation that this interference protection approach would satisfy the four key objectives we believe are necessary to the establishment of a successful policy guiding Federal use of commercial satellite networks? Would this approach meet the needs of Federal users for protected access to the commercial satellite bands? The Commission likewise seeks comment on the process it proposes for Federal users to obtain approval to operate earth stations in these satellite bands. Would the process sufficiently protect the interest of non-Federal licensees in both the FSS and other services operating in these bands? Would the process provide the flexibility needed for Federal users to effectively make use of the commercial satellite services? Should the Commission take additional steps to ensure that non-Federal users are protected from harmful interference from Federal earth stations? Are there economic costs associated with the interference protection approach which should be considered?

#### *B. Federal Space Stations in 399.9–400.05 MHz MSS Band*

37. NTIA has requested that the Commission modify footnote US319 of the Allocation Table to allow Federal

space stations (*i.e.* satellites) to operate in the 399.9–400.05 MHz band. This band is allocated to the MSS and the Radionavigation-Satellite Service on a primary basis in both the Federal and non-Federal Table. US319 prevents Federal space stations from operating in this band even though there is a co-primary Federal MSS allocation. NTIA requests that the footnote be modified to delete the 399.9–400.05 MHz band thereby allowing Federal satellites to operate in this band. According to NTIA, the allocation change will allow some applications to be shifted from the Argos satellite system operated by the National Oceanic and Atmospheric Administration (NOAA) to the 399.9–400.05 MHz band. NTIA claims that this will result in lower interference, higher capacity, and improved reliability and service for both the applications that continue to use Argos as well as the applications on the new satellite network to be deployed in the 399.9–400.05 MHz spectrum. There currently are no Commission licensees or applicants for this band.

38. The Commission proposes to modify US319 and to renumber this footnote in frequency order as US46. No MSS systems have been deployed or authorized in the 399.9–400.05 MHz band since the allocation was made almost twenty years ago and there are no pending applications or other proposed uses for this band. Given that the band has only a 150 kilohertz bandwidth, the band is not suitable for mobile broadband or most other applications. Rather than have the band lie fallow, the Commission tentatively concludes that the public interest is best served by allowing a Federal satellite system to be operated in this band so that the spectrum does not lay fallow. The Commission seeks comment on this proposal.

39. The Commission seeks comment on the cost and benefits of making this amendment to US319. While no MSS systems currently operate in the 399.9–400.05 MHz band, other parties may have interest in operating satellite systems in this band in the future. Given this possibility, the Commission seeks comment on whether operation of a Federal MSS system in this band would preclude operation of non-Federal MSS systems in the band in the future. It also recognizes that interference may occur from a Federal MSS system operating in 399.9–400.05 MHz to other nearby frequency bands. The 400.15–401 MHz band is also allocated for MSS while the 335.4–399.9 MHz band has a Federal fixed and mobile allocation. NTIA would be responsible for ensuring that any new Federal space stations

authorized in the 399.9–400.05 MHz band will not cause harmful interference to Federal systems operating in Federal allocations. The Commission seeks comment on whether a Federal MSS system operating in the 399.9–400.05 MHz band would cause harmful interference to systems operating in frequency bands allocated for use by non-Federal systems and, if so, what mitigation techniques are possible.

### *C. Spectrum Access for Commercial Space Operators*

40. Three frequency bands are commonly used by Federal agencies for communications with and tracking of space launch vehicles: 420–430 MHz, 2200–2290 MHz, and 5650–5925 MHz. These bands currently have Federal, but no non-Federal, allocations supporting launches. Non-Federal use of these bands has been possible by granting Special Temporary Authorizations (STAs) for use of these bands when launches occur at Federal facilities. In this NPRM the Commission broadly seeks comment on the spectrum requirements to support development of the commercial launch sector. It is noted that the Commission has long regulated communication involving satellites. For purposes of this portion of the NPRM, however, our scope is limited to spectrum used during launches.

41. The Commission could take a number of different regulatory approaches to address the spectrum requirements of the commercial space sector. For example, it could modify the Allocation Table to include a non-Federal co-primary allocation for the 2200–2290 MHz and 5650–5925 MHz bands with a footnote providing for coordination with Federal operations in these bands for communications and tracking during launches. Alternatively, it could add a footnote to the Allocation Table to allow non-Federal use of certain Federal bands when supporting Federal launch missions or when conducting launches from Federal facilities. The Commission could also look to the 2360–2395 MHz band to satisfy the commercial launch sector spectrum requirements as this spectrum is currently shared on a co-equal basis for Federal and non-Federal aeronautical mobile telemetry uses. It seeks comment on the relative merits of each of these approaches. It also seeks comment on whether a non-Federal allocation in the 420–430 MHz band is necessary to support commercial launches. The Commission believes this action is necessary to support the forecasted increase in the number of

commercial launches in the future. It seeks comment on these views.

42. Anticipating the need for non-Federal spectrum for communications for commercial launches, the Commission in 1990 set aside spectrum in the 2310–2390 MHz band for telemetry and telecommand use during commercial launches. In the intervening years the Commission has not authorized use of this spectrum for launches. Instead, commercial launches in the United States have continued to rely on Federal spectrum authorized by NTIA.

43. Recently, two launch vehicle manufacturers have applied to the Commission for access to Federal spectrum during commercial launches. The Commission is able to grant special temporary authority (STA) under the part 5 experimental licensing rules to commercial entities to operate in these Federal bands on a non-interference basis for a maximum of six months. This means that the experimental STA grantees are not allowed to cause interference to and must accept interference from Federal users of the band that are operating with authorizations. Because these bands have a Federal allocation, the Commission coordinates these experimental STAs with NTIA. Once these STAs have been coordinated with NTIA, the potential for interference to or from Federal systems to commercial launch operations is minimized.

44. Given the expected increase in commercial space flights, the continued use of experimental STAs for the radio spectrum needed for launches may create uncertainty. Because there is no non-Federal allocation allowing the use of these frequencies, each request to operate on these frequencies must be evaluated on a case-by-case basis, with no guarantee that one can be granted for any given launch. Given that a single launch can cost millions of dollars, commercial launch providers should not have to assume the risk that launches may have to be postponed or cancelled if an experimental STA is not timely granted. Even if an experimental STA is granted, the grantee must contend with the uncertainty of non-interference status. Communications links that operate on a non-interference basis are not likely to be acceptable from a safety standpoint for future manned spaceflights. The experimental STA process also increases the burden on commercial launch providers' time and expense, since each is evaluated on a case by case basis. Allocation status for commercial launch providers would enable the Commission to develop service rules for issuing authorizations

using well-defined application and coordination processes. The Commission seeks comment on these tentative conclusions as well as the cost to the space launch industry of not having a non-Federal allocation in these bands. Consequently, it is proposing, and seeking comment, on adding non-Federal allocations to these three bands to allow Commission licensees to operate in these bands on an interference protected basis. The Commission seeks comment on possible approaches it could take to provide non-Federal entities with interference protection in these bands, such as adding a non-Federal allocation to the bands or the addition of a footnote to the Allocation Table that provides non-Federal entities with interference protection. The Commission notes that even these approaches require coordination with the Federal incumbents in the band.

45. The Commission recognizes that identifying the non-Federal spectrum needs associated with launch of a launch vehicle necessarily raises larger questions about the respective roles of the FCC and NTIA in future launch scenarios. At the most basic level, whether access to spectrum for use during a launch requires authorization from NTIA or a license from the Commission will depend on whether the radio transmitters belong to and are operated by the U.S. government. Making this determination is not always straightforward. As a practical matter, all launch vehicles launched in the past several decades have been built with substantial private company involvement. All regular commercial launches within the United States have been conducted from launch facilities owned by the Federal Government. Payloads launched from Federal launch facilities have included commercial communications satellites and satellites owned and operated by Federal agencies such as the Department of Defense and NOAA. Because multiple satellites can be launched into space on a single launch vehicle, both government and non-government payloads have been included on the same launch. There have also been several instances of Federal Government-owned equipment or sensors on commercial communications satellites. Given that Federal agencies are required to use commercial space services where possible, the Commission believes that there will be increasing Federal reliance on non-Federal operations.

46. The Commission seeks comment on how to determine whether a given launch is non-Federal or Federal for purposes of licensing spectrum for use

during a launch. According to the Communications Act, the Commission has authority to license radio stations except those “belonging to and operated by the United States.” Spectrum use by radio equipment belonging to or operated by Federal agencies is authorized by NTIA instead of licensed by the Commission. How easy or difficult has it been in practice to determine whether use of spectrum during launches should be licensed by the Commission or authorized by NTIA? How should factors such as the nature of the payload, the location of the launch, the provider of the launch vehicle, and whether the FAA classifies the launch as commercial be taken into account in making this determination?

47. Making non-governmental allocations within the 420–430 MHz, 2200–2290 MHz, and 5650–5925 MHz bands would be a first step to issuing licenses to commercial operators for use during launches. After the allocations are adopted, the Commission would have to open a proceeding to create service rules for non-Federal launches. It recognizes the critical nature of some of the Federal operations performed using these frequency bands, and realized that service rules would have to be carefully crafted to ensure that the commercial space launch operations do not interfere with the important Federal operations in these bands, particularly as the commercial launch sector expands. Accordingly, any service rules would be developed in close coordination with NTIA and the Department of Defense to assure the continued certainty that this spectrum remains available for priority use by critical systems. The FCC is committed to ensuring that our rules would require technical specifications, eligibility requirements, and coordination procedures necessary to preserve the nation’s defense capabilities. Adoption of these service rules will allow the Commission to issue licenses to commercial launch operators for spectrum for use during launches without the uncertainty of operating on a non-interference basis. Because the bands would be shared Federal/non-Federal bands, use of spectrum for commercial space launches would be coordinated with the NTIA. In the short term, because the commercial launches will occur at relatively few locations and will not be an everyday occurrence, we believe that service rules and coordination procedures can be adopted that will prevent harmful interference from occurring to the Federal services in these bands or the commercial launch operators. In adopting service and

licensing rules for these bands we must make sure that Federal operations are protected. The Commission seeks comment on these assumptions. Furthermore, it seeks comment on whether the existing Federal bands are able to sustain the anticipated growth of the commercial launch sector. Are there alternatives to use of these bands that may satisfy the commercial launch requirements?

48. What would be the costs and benefits of providing non-governmental access within the 420–430 MHz, 2200–2290 MHz, and 5650–5925 MHz bands? Would having access to portions of these bands meet the needs of commercial launch operators? What costs would be imposed on Federal agencies to coordinate use of the spectrum with commercial launch operators? Would having access to portions of these bands allow commercial launch operators to incur lower development costs because they will be able to use the same communications systems for both Federal and non-Federal launches? How would the costs and benefits of having access to portions of these bands compare with other spectrum bands that could be used instead of these bands? How can we best ensure that the anticipated growth of the commercial launch industry is sustained in the longer term?

49. The 420–430 MHz band is used to transmit a self-destruct signal from ground controllers to a launch vehicle during launch. This signal causes the launch vehicle to self-destruct if it goes off course and would pose a danger to a populated area. For safety reasons this communications link must be extremely reliable. NTIA has authorized a number of frequencies throughout the 420–430 MHz band for self-destruct signals at different Federal launch facilities.

50. Because the only non-Federal allocation for the 420–430 MHz band is for secondary amateur operations, the Commission cannot issue licenses that provide interference protection to commercial entities to use this band for self-destruct signals during launches. Commercial entities have not requested experimental STAs or licenses from the Commission for self-destruct signals in the 420–430 MHz band to date. In this regard, the Commission seeks comment on the requirements associated with command and destruct communications for commercial launch vehicles and whether access to the 420–430 MHz band is necessary. The commercial launch vehicle has only a receiver for the self-destruct signal and therefore does not require a license to transmit. If the self-destruct signal is being

transmitted from a government owned facility using equipment under the control of Federal Government employees, no license from the Commission would be required. Instead, an authorization from NTIA would be needed.

51. The Commission seeks comment on whether it should make a co-primary non-Federal aeronautical mobile allocation for the 420–430 MHz band for use for self-destruct signals during commercial launches. In addition, it seeks comment on whether we should add a footnote to the Allocation Table restricting use of this non-Federal allocation to self-destruct signals during launches. Given that no one has requested an experimental STA from the Commission for this band for self-destruct signals, is there a need for access to the 420–430 MHz band for self-destruct signals and would the current STA process be sufficient to satisfy this need? As private spaceports are developed, use of Federal authorizations for this purpose may no longer be sufficient. Even when launches are conducted from Federal facilities, commercial entities conducting launches may want to use their own equipment for the self-destruct communications link and therefore would need a license from the Commission. Given the necessity of a reliable self-destruct communications link for the safety of the public, the use of a non-interference basis experimental STA would be problematic. The Commission acknowledges that use of this band for non-Federal space activities will require coordination with NTIA and Federal users of the band. The Commission proposes that any non-Federal use of the allocation should be limited to commercial launch activities. It seeks comment on this proposal as well as alternative bands that may be used for this purpose by the commercial launch sector.

52. The 2200–2290 MHz band is used for launch telemetry—*i.e.* the sending of information from the launch vehicle to ground controllers during the launch. The Commission proposes two alternative approaches that would provide commercial launch operators access to spectrum in the 2200–2290 MHz band for launch telemetry. As a first alternative, it proposes to add a footnote to the Allocation Table providing primary non-Federal space operation service allocations to portions of the 2200–2290 MHz band for launch telemetry. This footnote would require successful coordination of the assignment and use of the band for space launches with NTIA, would restrict non-Federal use of the band to

pre-launch testing and to use at Federal ranges, would limit non-Federal use of the band to the 2207–2219 MHz, 2270.5–2274.5 MHz, and 2285–2290 MHz portions of the band, and would limit non-Federal use of the band to channels with bandwidth of less than 5 MHz based on our understanding of current usage. As a second alternative the Commission proposes to amend the Allocation Table to add a non-Federal Space Operations allocation to the 2200–2290 MHz band. This allocation would be accompanied by a footnote to the Allocation Table with the same restrictions specified in the footnote proposed in the first alternative. The Commission seeks comment on these two alternative proposals. Which alternative would be better suited to meeting our goal of providing access to spectrum during launches for launch telemetry?

53. Because the 2200–2290 MHz band has no non-Federal allocation, the Commission does not license frequencies except on a non-interference basis. The primary Federal space operation service allocation enables NTIA to assign frequencies in the 2200–2290 MHz band to Federal agencies for telemetry during launches.

54. The 2200–2290 MHz band is heavily used by Federal agencies. The Commission seeks comment on whether there is sufficient spectrum available in this band for use during commercial launches, and, in particular, whether the use of this band could sustain the anticipated growth of the commercial launch sector. Using the same frequencies for Federal and non-Federal launches has distinct advantages for the commercial space industry. The equipment used for communications during launches has been developed and is reliable. Launch communications have successfully shared this band with the other services present for numerous launches through coordination of the various operations. Many commercial launches will occur from facilities collocated with Federal launch sites such as Cape Canaveral or Vandenberg Air Force Base where this sharing has been accomplished. In the future, the same companies will likely conduct launches for both Federal agencies and private entities and eventually likely transition to commercial space ports that are completely independent of Federal operations. The Commission seeks comment on whether requiring industry to have the capability to conduct communications in different bands depending on whether the launch is considered Federal or non-Federal would place an expensive burden on these companies. Providing access to

spectrum that can sustain the short and long term needs of the commercial launch industry is in accordance with the policy of the United States government to develop a vibrant commercial space industry.

55. In both of the alternative proposals the Commission proposes that non-Federal use of the bands for space launches be limited to the 2207–2219 MHz, 2270.5–2274.5 MHz, and 2285–2290 MHz portions of the band. It has proposed this limitation based on our understanding of current usage. The Commission seeks comment on limiting non-Federal use to these portions of the band for space launches. Can limiting non-Federal use to this portion of the band support the expected growth of the commercial launch industry? It has also proposed to limit non-Federal use of these bands to communication channels with bandwidths of less than 5 megahertz based on our understanding of current usage. The Commission seeks comment on this limitation. In addition, it has proposed to limit non-Federal use of this band for space launches to pre-launch testing and for launches conducted at Federal ranges. The Commission proposes this restriction to limit the potential for interference to Federal operations to a few locations. As the commercial space ports are established that are independent of Federal operations would this restriction unduly limit the future growth of the commercial space launch industry?

56. As mentioned, in 1990 the Commission made six frequencies in the 2310–2390 MHz band available for both Federal and non-Federal use for telemetry and telecommand of launch and reentry vehicles. The Commission later reduced these to three frequencies in the 2360–2395 MHz band. The 2360–2395 MHz band is primarily used for aeronautical telemetry and telecommand operations for flight testing of aircraft and missiles. The Commission seeks comment generally on the use of these frequencies as an alternative to the heavily used 2200–2290 MHz band for communications during launches. In the time since the Commission made this spectrum available for launch telemetry, the intensity of use of this band for aeronautical telemetry for flight testing may have significantly changed. Does the current and expected future use of the 2360–2395 MHz band for aeronautical telemetry for flight testing make it unsuitable for communications associated with launch activity? What are the impediments to use of this band for commercial launches in the future? What are the spectrum requirements of

the commercial launch sector in the short and long term and are the available frequencies in this band sufficient to meet, at least in part, these requirements? Because the number of frequencies available for launch vehicle telemetry and telecommand has been halved, would the needed data capacity be available for telemetry and telecommand during commercial launches? Should the Commission make the entire 2360–2395 MHz band available for telemetry and telecommand during commercial launches? Will the development of communications equipment for use on launch vehicles for this band place a significant economic burden on the commercial space industry? Prior to the Commission making frequencies in the 2310–2395 MHz band available for space launch telemetry, several commenters stated that it would be more cost efficient to use the same frequencies for both Federal and non-Federal launches and that the band should not be used until all Federal launch facilities had transitioned to the band. The Commission seeks comment on whether these concerns are still valid. Are there other reasons why the 2360–2395 MHz band is not a viable alternative to the 2200–2290 MHz band for telemetry during launches?

57. Looking beyond the 2360–2395 MHz band, the Commission seeks comment on alternatives to the use of the 2200–2290 MHz band for launch communications. It realizes that as the demand for spectrum increases, finding spectrum for new applications has become more difficult. That is especially the case for an application such as the space operation service, which involves transmitting high powered signals from high altitudes that may result in interference over a large area. Because these communications will take place from space, must the spectrum used be internationally allocated to the space operation service (space-to-Earth)? There is meager spectrum allocated for this purpose. Assuming that another suitable frequency band could be identified, would obtaining an international space allocation be a long process with uncertain success?

58. The 5650–5925 MHz band is used for radar tracking of a launch vehicle during launch. Because the radiolocation allocation in the 5650–5925 MHz band is Federal, the Commission can only license commercial entities to use the band to track launch vehicles on a non-interference basis. Federal radar facilities are able to track launches from government owned launch facilities

under current NTIA authorizations even for commercial launches. However, NTIA may not authorize radar transponders on commercial launch vehicles. In the future private spaceports may need to establish non-Federal radar facilities to track commercial launch vehicles or spacecraft. Even for commercial launches from government run launch sites, the commercial space operator may want to develop and use its own radar facilities to track the launch vehicle. Given the need for radar transponders on commercial launch vehicles or for non-government radar tracking of launch vehicles, the Commission makes two alternative proposals for providing non-Federal access to the 5650–5925 MHz band for tracking of launch vehicles. As a first proposal it proposes to add a footnote to the Allocation Table providing primary non-Federal Radiolocation service allocations to portions of the 2200–2290 MHz band for launch telemetry. This footnote would require successful coordination of the assignment and use of the band for space launches with NTIA and would restrict non-Federal Radiolocation use of the band to the tracking of launch vehicles during launches and for pre-launch testing. The second alternative proposal would add a non-Federal radiolocation allocation to the 5650–5925 MHz band with footnote containing the same restrictions. Is only a portion of the band needed for the tracking during launches? What are the spectrum and operational requirements for radar tracking of commercial launch vehicles in the short and longer term? Could launch vehicles instead be tracked in other radiolocation bands, whether Federal, non-Federal, or shared? Would the addition of a non-Federal radiolocation allocation introduce any compatibility issues with Intelligent Transportation Systems that are significantly different than compatibility with the existing Federal radiolocation allocation? The Commission also proposes to restrict non-Federal use of this band to use for launch activities. It seeks comment on these proposals.

#### Summary of the Notice of Inquiry

59. While the commercial space operations portion of the NPRM has focused on use of the 420–430 MHz, 2200–2290 MHz, and 5650–5925 MHz bands during launches, the Commission understands that the commercial space industry may have additional needs for spectrum in the future. In this *Notice of Inquiry*, the Commission launches an inquiry into the future spectrum

requirements of the commercial space industry. It seeks comment broadly on what other spectrum needs may be important as the commercial space sector continues to develop. What spectrum will be required as commercial spaceports are developed where the established communications infrastructure that is in place at the government-owned launch facilities is not present? Are there communications needs during other portions of space missions after the launch such as during re-entry or the “on orbit” phase of a mission that require changes in allocations? Are there any other frequency bands, whether Federal, non-Federal, or shared that the commercial space industry will need access to? Can some of the spectrum needs of the commercial space industry be satisfied by purchasing or leasing spectrum from other licensees? Are there any portions of the Commission’s rules that will need to be amended to keep pace with this rapidly changing industry?

60. While previous commercial launches have been conventional rockets, several companies plan to take passengers on suborbital spaceflights using spacecraft that have more in common with planes than rockets. For example, Virgin Galactic’s spacecraft will be carried aloft suspended from a plane. The spacecraft will then be released by the plane and a rocket engine will be fired to propel it into space. The spacecraft will then glide back to earth for an unpowered landing in the same manner as NASA’s space shuttle. XCOR Aerospace’s spacecraft will take off on a horizontal runway like a plane, fire a rocket engine to propel it into space, and then glide back to earth for a horizontal landing. The spacecraft are only expected to reach altitudes of 100 km as compared to orbits of over 300 km for low earth orbit satellites and space stations. Given the airplane-like qualities of these spacecraft and their lower maximum altitudes, they may have different communications needs than conventional launches. Because the spacecraft will glide back to earth will their frequency use have to be coordinated over a much larger area than conventional launches and reentries? Will access to the spectrum used by commercial aviation under the part 87 Aviation Services be more appropriate for all or part of the spacecraft’s flight? Would the Commission need to initiate a proceeding to modify part 87 to meet the needs of these commercial spacecraft? The Commission seeks comment generally on the

communication needs of these spacecraft.

61. Bigelow Aerospace has announced plans to have a commercial space station in orbit as early as 2016. Presumably, a space station with human habitation will need reliable communications with earth based ground stations. The Commission seeks comment generally on the communications needs of such a space station. Will additional allocations of spectrum be necessary to support a commercial space station? What modifications to the Commission’s rules will be needed to support the communication needs of the space station?

#### Procedural Matters

##### Initial Regulatory Flexibility Analysis

62. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (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 this NPRM. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>3</sup>

##### A. Need for, and Objectives of, the Proposed Rules

63. The United States government and commercial entities have filled distinct roles in regard to activities in space. However, in recent years the roles of the Federal Government and private sector have become blurred. Federal policy directs agencies to use commercial satellite services unless specific mission requirements cannot be met, and many Federal agencies now rely on commercial communication satellites for service. NASA has contracted with commercial entities to carry cargo to the International Space Station (ISS), and in the future commercial spacecraft are expected to carry crew members to the ISS. Also, several privately owned spaceports have been licensed for future

<sup>1</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. 603(a).

<sup>3</sup> See *id.*

launches. As a result, the Commission's rules must evolve to reflect the increased reliance of Federal agencies on commercial space services and the continued development of the commercial space sector. The Notice of Proposed Rulemaking (NPRM), proposes several modifications to the Table of Frequency Allocations in Section 2.106 of our rules (Allocation Table) to reflect this new reality.

64. The NPRM makes two alternative proposals to modify the Allocation Table to provide interference protection for Fixed-Satellite Service (FSS) and Mobile-Satellite Service (MSS) earth stations operated by Federal agencies under authorizations granted by the National Telecommunications and Information Administration (NTIA) in certain frequency bands. These frequency bands which are used to provide commercial satellite service are: 3.6–4.2 GHz, 5.85–6.725 GHz, 10.7–12.2 GHz, 12.7–13.25 GHz, 13.75–14.5 GHz, 18.3–19.3 GHz, 19.7–20.2 GHz, 27.5–30.0 GHz, 37.5–39.5 GHz and 47.2–50.2 GHz. Federal agencies are not, for the most part, currently able to operate their own earth stations on an interference-protected basis in these bands to use commercial satellite services. Under a first proposal, the Commission would add a co-primary Federal FSS or Federal MSS allocation in the Allocation Table for these frequency bands. In conjunction with this modification of the Allocation Table, we would add a footnote to the Allocation Table restricting primary use of Federal earth stations in these bands to communication with non-Federal satellites. A second alternative proposal would modify the Allocation Table by adding a footnote that gives Federal earth stations communicating with non-Federal satellites in these frequency bands interference protection equivalent to that afforded to non-Federal earth stations. The Federal earth stations will receive interference protection only if they operate in accordance with the Commission's rules. Either of these proposals would allow Federal agencies to obtain the same rights to interference protection accorded to Commission licensees when using earth stations to communicate with commercial satellite networks.

65. The NPRM also proposes to amend a footnote to the Allocation Table to permit a Federal MSS system to operate in the 399.9–400.05 MHz band. Deployment of this Federal system will allow traffic to be migrated from the existing Argos Federal MSS system, thereby resulting in less interference and improved service and reliability for users of both the existing

Argos and the new Federal MSS systems. No Federal or non-Federal MSS systems have been deployed in this band since it was allocated in 1993. This proposed allocation will permit long vacant spectrum to be put to an important use.

66. The NPRM also makes alternative proposals to modify the Allocation Table to provide access to spectrum on an interference protected basis to Commission licensees for use during the launch of launch vehicles (*i.e.* rockets).<sup>4</sup> During launches, spectrum in three frequency bands is typically used to send information from the launch vehicle to controllers on ground (2200–2290 MHz), send a self-destruct signal to the launch vehicle if needed (420–430 MHz), and to track the launch vehicle by radar (5650–5925 MHz). Because all of these frequency bands have only Federal allocations for these purposes, the Commission can not issue licenses for these bands except on a non-interference basis. As a result, commercial space launch operators are not allowed to cause interference to and must accept interference from Federal users in these bands. Under a first proposal, the Commission would add a footnote to the Allocation Table providing primary non-Federal allocations to the 2200–2290 MHz and 5650–5925 MHz bands. The footnote would restrict the allocations to use during space launches and pre-launch testing at Federal ranges and would require successful coordination of the assignment and use of the band for space launches with NTIA. Under a second proposal the Commission would add a non-Federal allocation to the Allocation Table along with a footnote with the same restrictions as the first proposal. In addition, the NPRM seeks comment on whether to make a non-Federal allocation for the 420–430 MHz band. Co-primary non-Federal allocations for these bands would allow the Commission to later adopt service and technical rules that facilitate the issuance of licenses to commercial entities for these bands that provide them with interference protection. This will provide commercial entities access to these important spectrum resources as more commercial launches are conducted and private spaceports are established.

#### B. Legal Basis

67. The proposed action is authorized under Sections 4(i), 301, 303(c), 303(f), and 303(r) of the Communications Act

<sup>4</sup> A launch vehicle is a rocket used to launch a payload into space.

of 1934, as amended, 47 U.S.C. 154(i), 301, 303(c), 303(f), and 303(r).

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

68. 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.<sup>5</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>6</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> 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.<sup>8</sup>

69. *Satellite Telecommunications and All Other Telecommunications.* 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.<sup>9</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>10</sup>

70. 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.”<sup>11</sup> Census Bureau data for 2007 shows that 512 Satellite Telecommunications firms operated for the entire year.<sup>12</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of

<sup>5</sup> 5 U.S.C. 603(b)(3).

<sup>6</sup> 5 U.S.C. 601(6).

<sup>7</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*.” 5 U.S.C. 601(3).

<sup>8</sup> Small Business Act, 15 U.S.C. 632 (1996).

<sup>9</sup> 13 CFR 121.201, NAICS code 517410.

<sup>10</sup> 13 CFR 121.201, NAICS code 517919.

<sup>11</sup> U.S. Census Bureau, 2007 NAICS Definitions, 517410 Satellite Telecommunications.

<sup>12</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=900&-ds\\_name=ECO751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=ECO751SSSZ4&-lang=en).

\$10 million to \$24,999,999.<sup>13</sup> Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

71. 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.”<sup>14</sup> For this category, Census Bureau data for 2007 shows that there were a total of 2,383 firms that operated for the entire year.<sup>15</sup> Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49,999,999.<sup>16</sup> Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

72. *Commercial Space Transportation.* The North American Industry Classification System does not have a discrete code for commercial space transportation per se. However, it does have the following codes that collectively capture entities engaged in commercial space transportation: 336414, “Guided Missile and Space Vehicle Manufacturing,” 336415, “Guided Missile and Space Vehicle Propulsion Unit and Parts Manufacturing,” and 336419, “Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.” The Small Business Administration (SBA) has defined small business entities engaged in the aforementioned activities as those employing no more than 1,000

employees.<sup>17</sup> Further, the SBA does not apply a size standard based on maximum annual receipts to define small business entities engaged in the above industries.

73. The FCC believes that the following business entities are the principle entities currently comprising the commercial space transportation launch operator industry in the United States: The Boeing Company, Lockheed Martin Corporation, Space Exploration Technologies, Orbital Sciences Corporation, and Sea Launch Company, L.L.C. In addition, Virgin Galactic and XCOR Aerospace have announced plans for suborbital manned space flights.<sup>18</sup> NASA has agreements with three companies to design and develop human space flight capabilities: Sierra Nevada Corporation, Space Exploration Technologies, and The Boeing Company.<sup>19</sup> Because the commercial space industry is a nascent industry, it is difficult to state whether additional entities will enter the industry and how many and which entities will succeed. We do not have data on the size of these entities, and consequently, cannot classify them as large or small entities. We therefore cannot reach definite conclusions as to the number of small entities that will be affected by the rules proposed in this NPRM and we shall assume that a significant number of small entities will be affected by these regulations. We request comment on this assumption.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

74. The NPRM proposes no reporting and recordkeeping requirements.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

75. 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.<sup>20</sup>

76. In a first of two alternative proposals, the NPRM proposes to add a co-primary Federal FSS or Federal MSS allocation in the Table of Frequency Allocations in § 2.106 of our rules (Allocation Table) for a number of spectrum bands used for commercial satellite service. In conjunction with this modification of the Allocation Table, we will add a footnote to the Allocation Table restricting primary use of Federal earth stations in these bands to communication with non-Federal satellites. This will not directly change the regulatory burdens on Commission licensees. Commission licensees will continue to follow the same licensing procedures and be subject to the existing technical rules when operating in these bands. Because the bands will have a co-primary Federal allocation, under existing coordination procedures the Commission would be expected to coordinate license applications in these bands with NTIA. This will result in increased processing time for applications for Commission licenses for these bands. We are not able to quantify the economic impact this increased processing time will have on small entities applying for Commission licenses.

77. Alternatively, the NPRM proposes to modify the Allocation Table by adding a footnote that gives Federal earth stations communicating with non-Federal satellites in a number of bands used for commercial satellite service interference protection equivalent to that afforded to non-Federal earth stations. The Federal earth stations will receive interference protection only if they operate in accordance with the Commission’s rules. This proposal does not change the regulatory burdens on Commission licensees. Commission licensees will continue to follow the same licensing procedures and be subject to the existing technical rules when operating in these bands. Unlike the first proposal, a Federal allocation will not be added to these bands and there will be no new requirement to coordinate Commission licenses with NTIA. This alternate proposal should have no significant economic impact on small entities.

78. The NPRM also proposes to amend a footnote to the Allocation Table to permit a Federal MSS system to operate in the 399.9–400.05 MHz band. Although this band currently has

<sup>13</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=900&-ds\\_name=EC0751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en).

<sup>14</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

<sup>15</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=900&-ds\\_name=EC0751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en).

<sup>16</sup> [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=900&-ds\\_name=EC0751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en).

<sup>17</sup> 13 CFR 121.201, NAICS codes 336414, 336415, 336419.

<sup>18</sup> See Virgin Galactic, <http://www.virgingalactic.com>; XCOR Aerospace: New Technology for Space, <http://www.xcor.com/>.

<sup>19</sup> Bob Granath, *NASA Takes Strides Forward to Launch Americans from U.S. Soil*, Jan. 25, 2013, available at [http://www.nasa.gov/exploration/commercial/crew/cpc\\_apollo\\_5\\_prt.htm](http://www.nasa.gov/exploration/commercial/crew/cpc_apollo_5_prt.htm).

<sup>20</sup> See 5 U.S.C. 603(c).

a non-Federal MSS allocation and the Commission has adopted service and technical rules for the band, the Commission has issued no MSS licenses for the band and no one has applied to use this band. While it is possible that a small entity may apply for a license for this band in the future, considering that it has been allocated for the MSS since 1993 with no interest from satellite operators we believe it is unlikely. However, on the chance that a satellite operator may desire to deploy a system in the band in the future the NPRM does ask whether operation of a Federal MSS system in the band will preclude a non-Federal MSS system from also being licensed. There is a possibility that a Federal MSS system deployed in the band may cause harmful interference to Commission licenses in nearby spectrum. The NPRM asks whether such interference could be an issue. Given the lack of commercial interest in the band we expect that this proposal shall not have a significant economic impact on any small entity.

79. The final section of the NPRM makes several proposals to amend the Allocation Table to provide interference protected access to spectrum for Commission licensees for the launch of launch vehicles (*i.e.* rockets). These bands do not currently have a non-Federal allocation for this purpose. Consequently, the Commission may only issue licenses for these bands on a non-interference basis. A licensee with non-interference status may not cause interference and must accept

interference from those using the band in accordance with the Allocation Table. Adopting any of these proposals would be only a first step toward the Commission issuing licenses for these bands because the Commission would later have to adopt service and technical rules for the bands. However, once the Commission is able to issue licenses for these bands, small entities who manufacture and/or develop launch vehicles and spacecraft will benefit because they will be able to obtain licenses for spectrum that provide them with interference protection during launches. Consequently, we expect that these proposals will provide only a benefit to small entities and will have no significant harmful economic impact on any small entity.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

80. None.

#### Ordering Clauses

81. Pursuant to Sections 4(i), 301, 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(c), 303(f), and 303(r), this Notice of Proposed Rulemaking and Notice of Inquiry *is adopted*.

82. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

83. The National Telecommunications and Infrastructure Administration's Petition for Rulemaking is *granted* to the extent described herein.

#### List of Subjects 47 CFR Parts 2

Communications equipment, Disaster assistance, Radio.

Federal Communications Commission.

**Sheryl D. Todd,**  
*Deputy Secretary.*

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 2 as follows:

### PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Pages 21–22, 26, 33–34, 37–38, 40, 42–43, 47–49, 51–52, 54, 56, and 58 are revised.

■ b. In the list of United States (US) Footnotes, footnotes US46, US107, USyyy, and USzzz are added, and footnote US319 is removed.

#### § 2.106 Table of Frequency Allocations.

The revisions and additions read as follows:

\* \* \* \* \*

Table of Frequency Allocations 137-156.7625 MHz (VHF) Page 21

International Table		United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Non-Federal Table	
137-137.025 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.208B 5.209 SPACE RESEARCH (space-to-Earth) Fixed Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208	137-137.025 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.208B 5.209 SPACE RESEARCH (space-to-Earth) Fixed Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208		137-137.025 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US46 US320 SPACE RESEARCH (space-to-Earth)	Satellite Communications (25)
137.025-137.175 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) 5.208A 5.208B 5.209 Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208	137.025-137.175 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) 5.208A 5.208B 5.209 Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208		137.025-137.175 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Mobile-satellite (space-to-Earth) US46 US320	
137.175-137.825 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.208B 5.209 SPACE RESEARCH (space-to-Earth) Fixed Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208	137.175-137.825 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.208B 5.209 SPACE RESEARCH (space-to-Earth) Fixed Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208		137.175-137.825 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US46 US320 SPACE RESEARCH (space-to-Earth)	
137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) 5.208A 5.208B 5.209 Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208	137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) 5.208A 5.208B 5.209 Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208		137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Mobile-satellite (space-to-Earth) US46 US320	
138-143.6 AERONAUTICAL MOBILE (OR) 5.210 5.211 5.212 5.214 143.6-143.65 AERONAUTICAL MOBILE (OR) SPACE RESEARCH (space-to-Earth) 5.211 5.212 5.214 143.65-144 AERONAUTICAL MOBILE (OR) 5.210 5.211 5.212 5.214	138-143.6 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth) 143.6-143.65 FIXED MOBILE RADIOLOCATION SPACE RESEARCH (space-to-Earth) 143.65-144 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth)	138-143.6 FIXED MOBILE Space research (space-to-Earth) 5.207 5.213 143.6-143.65 FIXED MOBILE SPACE RESEARCH (space-to-Earth) 5.207 5.213 143.65-144 FIXED MOBILE Space research (space-to-Earth) 5.207 5.213	138-144 FIXED MOBILE 138-144	

144-146 AMATEUR AMATEUR-SATELLITE 5.216	144-148 AMATEUR AMATEUR-SATELLITE	144-146 AMATEUR AMATEUR-SATELLITE	Amateur Radio (97)
146-148 FIXED MOBILE except aeronautical mobile (R)	146-148 AMATEUR FIXED MOBILE 5.217	146-148 AMATEUR	
148-149.9 FIXED MOBILE except aeronautical mobile (R) MOBILE-SATELLITE (Earth-to-space) 5.209	148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.209	148-149.9 MOBILE-SATELLITE (Earth-to-space) US46 US320 US323 US325	Satellite Communications (25)
5.218 5.219 5.221 149.9-150.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.224B	5.218 5.219 G30 149.9-150.05 MOBILE-SATELLITE (Earth-to-space) US46 US320 RADIONAVIGATION-SATELLITE 5.223	5.218 5.219	
150.05-153 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY	150.05-150.8 FIXED MOBILE US73 G30 150.8-152.855	150.05-150.8 FIXED MOBILE US73 150.8-152.855 FIXED LAND MOBILE NG4 NG51 NG112 US73 NG124 152.855-154 LAND MOBILE NG4	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
5.149 153-154 FIXED MOBILE except aeronautical mobile (R) Meteorological aids 154-156.4875 FIXED MOBILE except aeronautical mobile (R)	150.05-156.4875 FIXED MOBILE 5.225 5.226	US73 152.855-156.2475 NG124 154-156.2475 FIXED LAND MOBILE NG112 5.226 NG117 NG124 NG148 156.2475-156.7625	Remote Pickup (74D) Private Land Mobile (90)
5.226 156.4875-156.5625 MARITIME MOBILE (distress and calling via DSC)	5.225 5.226	5.226 NG117 NG124 NG148 156.2475-156.7625 MARITIME MOBILE US106 US226 NG117	Maritime (80) Private Land Mobile (90) Personal Radio (95)
5.111 5.226 5.227 156.5625-156.7625 FIXED MOBILE except aeronautical mobile (R)	156.5625-156.7625 FIXED MOBILE 5.225 5.226	5.226 NG117 NG124 NG148 156.2475-156.7625 MARITIME MOBILE US106 US226 NG117	Maritime (80) Aviation (87)
5.226	US77 US106 US226 US266	US77 US266 NG124	Page 22

399.9-400.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.222 5.224B 5.260 5.220	399.9-400.05 MOBILE-SATELLITE (Earth-to-space) US320 RADIONAVIGATION-SATELLITE 5.260	Satellite Communications (25)
400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261 5.262	400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261	Satellite Communications (25)
400.15-401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.208B 5.209 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth)	400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to- Earth) US46 US320 US324 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth) 5.264	Satellite Communications (25)
5.262 5.264 401-402 METEOROLOGICAL AIDS SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) EARTH EXPLORATION- SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US64 US384	MedRadio (95)
402-403 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	402-403 METEOROLOGICAL AIDS (radiosonde) US70 EARTH EXPLORATION- SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US64 US384	
403-406 METEOROLOGICAL AIDS Fixed Mobile except aeronautical mobile	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US64 US384	
406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.266 5.267 406.1-410 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY	406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.266 5.267 406.1-410 FIXED MOBILE RADIO ASTRONOMY US74 US13 US117 G5 G6	Maritime (EPIRBs) (80V) Aviation (ELTs) (87F) Personal Radio (95)  Private Land Mobile (90)





Table of Frequency Allocations		2200-2655 MHz (UHF)		Page 37	
International Table		United States Table		FCC Rule Part(s)	
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only) MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392 US303 USyyy	2200-2290	
5.392			5.392 US303 USyyy	US303 USyyy	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)			2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE 5.384A Amateur Radiolocation	2300-2450 FIXED MOBILE 5.384A RADIOLOCATION Amateur		2300-2305 G122 2305-2310 US97 G122 2310-2320 Fixed Mobile US339 Radiolocation G2 US97 US327 2320-2345 Fixed Radiolocation G2 US327 2345-2360 Fixed Mobile US339 Radiolocation G2 US327 2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed US101	2300-2305 Amateur 2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US97 2310-2320 FIXED MOBILE US339 BROADCASTING-SATELLITE RADIOLOCATION 5.396 US97 US327 2320-2345 BROADCASTING-SATELLITE 5.396 US327 2345-2360 FIXED MOBILE US339 BROADCASTING-SATELLITE RADIOLOCATION 5.396 US327 2360-2390 MOBILE US276 US101	Amateur Radio (97) Wireless Communications (27) Amateur Radio (97) Wireless Communications (27) Aviation (87) Satellite Communications (25) Wireless Communications (27) Aviation (87) Aviation (87) Personal Radio (95)

5.150 5.282 5.395 2450-2483.5 FIXED MOBILE RADIOLOCATION	5.150 5.282 5.393 5.394 5.396 2450-2483.5 FIXED MOBILE RADIOLOCATION	US101 2395-2400 AMATEUR US101 2400-2417 AMATEUR 5.150 G122 2417-2450 RADILOCATION G2 5.150 2450-2483.5	US101 2395-2400 AMATEUR US101 2400-2417 AMATEUR 5.150 5.282 2417-2450 Amateur 5.150 5.282 2450-2483.5 FIXED MOBILE Radiolocation 5.150 US41	Amateur Radio (97) Personal Radio (95) Amateur Radio (97) ISM Equipment (18) Amateur Radio (97)
5.150 5.371 5.397 5.398 5.399 5.400 5.402 2500-2520 FIXED 5.410 MOBILE except aeronautical mobile 5.384A	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) 5.398 RADIOLOCATION	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US46 US380 US391 RADIO DETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 2500-2655	2483.5-2495 MOBILE-SATELLITE (space-to-Earth) US46 US380 RADIO DETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 NG147 2495-2500 FIXED MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) US46 US380 RADIO DETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 US391 NG147 2500-2655 FIXED US205 MOBILE except aeronautical mobile	ISM Equipment (18) TV Auxiliary Broadcasting (74F) Private Land Mobile (90) Fixed Microwave (101) ISM Equipment (18) Satellite Communications (25) ISM Equipment (18) Satellite Communications (25) Wireless Communications (27) Wireless Communications (27)
5.405 5.412 2520-2655 FIXED 5.410 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION RADIOLOCATION	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US46 US380 US391 RADIO DETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 2500-2655	2483.5-2495 MOBILE-SATELLITE (space-to-Earth) US46 US380 RADIO DETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 NG147 2495-2500 FIXED MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) US46 US380 RADIO DETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 US391 NG147 2500-2655 FIXED US205 MOBILE except aeronautical mobile	ISM Equipment (18) Satellite Communications (25) Wireless Communications (27) Wireless Communications (27)
5.339 5.405 5.412 5.417C 5.417D 5.418B 5.418C	5.339 5.417C 5.417D 5.418B 5.418C	5.339 US205	5.339	Page 38

3300-3400 RADIOLOCATION	3300-3400 RADIOLOCATION Amateur Fixed Mobile	3300-3400 RADIOLOCATION Amateur	3300-3500 RADIOLOCATION US108 G2	3300-3500 Amateur Radiolocation US108	Private Land Mobile (90) Amateur Radio (97)
5.149 5.429 5.430	5.149	5.149 5.429	US342	5.282 US342	
3400-3600	3400-3500	3400-3500	3500-3650	3500-3600	
FIXED	FIXED	FIXED	RADIOLOCATION G59	Radiolocation	Private Land Mobile (90)
FIXED-SATELLITE (space-to-Earth)	FIXED-SATELLITE (space-to-Earth)	FIXED-SATELLITE (space-to-Earth)	AERONAUTICAL RADIONAVIGATION (ground-based) G110		
Mobile 5.430A	Amateur Mobile 5.431A	Amateur Mobile 5.432B			
Radiolocation	Radiolocation 5.433	Radiolocation 5.433			
	5.282	5.282 5.432 5.432A			
	3500-3700	3500-3600			
	FIXED	FIXED			
	FIXED-SATELLITE (space-to-Earth)	FIXED-SATELLITE (space-to-Earth)			
	MOBILE except aeronautical mobile	MOBILE except aeronautical mobile			
	Radiolocation 5.433	5.433A			
5.431		Radiolocation 5.433			
3600-4200	3600-3700	3600-3700			
FIXED	FIXED	FIXED			
FIXED-SATELLITE (space-to-Earth)	FIXED-SATELLITE (space-to-Earth)	FIXED-SATELLITE (space-to-Earth)			
Mobile	MOBILE	MOBILE except aeronautical mobile			
		Radiolocation 5.433			
		5.435			
	3700-4200				
	FIXED				
	FIXED-SATELLITE (space-to-Earth)				
	MOBILE except aeronautical mobile				
4200-4400					
AERONAUTICAL RADIONAVIGATION 5.438					
5.439 5.440					
4400-4500					
FIXED					
MOBILE 5.440A					
4500-4800					
FIXED					
FIXED-SATELLITE (space-to-Earth) 5.441					
MOBILE 5.440A					
4800-4990					
FIXED					
MOBILE 5.440A 5.442					
Radio astronomy					
5.149 5.339 5.443					

<p>5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B SPACE RESEARCH (active) 5.448C AERONAUTICAL RADIONAVIGATION 5.449 RADIOLOCATION 5.448D</p>	<p>5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B SPACE RESEARCH (active) 5.448C AERONAUTICAL RADIONAVIGATION 5.449 RADIOLOCATION G56</p>	<p>5350-5460 AERONAUTICAL RADIONAVIGATION 5.449 Earth exploration-satellite (active) 5.448B Space research (active) 5.448B Radiolocation</p>	<p>Aviation (87) Private Land Mobile (90)</p>
<p>5460-5470 RADIONAVIGATION 5.449 EARTH EXPLORATION-SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION 5.448D</p>	<p>5460-5470 RADIONAVIGATION 5.449 US65 EARTH EXPLORATION-SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION G56</p>	<p>5460-5470 RADIONAVIGATION 5.449 US65 Earth exploration-satellite (active) Space research (active) Radiolocation</p>	<p>Maritime (80) Aviation (87) Private Land Mobile (90)</p>
<p>5.448B 5470-5570 MARITIME RADIONAVIGATION MOBILE except aeronautical mobile 5.446A 5.450A EARTH EXPLORATION-SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION 5.450B 5.448B 5.450 5.451</p>	<p>5470-5570 MARITIME RADIONAVIGATION US65 EARTH EXPLORATION-SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION G56</p>	<p>5.448B US49 5470-5570 MARITIME RADIONAVIGATION US65 RADIOLOCATION Earth exploration-satellite (active) Space research (active)</p>	<p>RF Devices (15) Maritime (80) Private Land Mobile (90)</p>
<p>5570-5650 MARITIME RADIONAVIGATION MOBILE except aeronautical mobile 5.446A 5.450A RADIOLOCATION 5.450B</p>	<p>5570-5650 MARITIME RADIONAVIGATION US65 RADIOLOCATION G56</p>	<p>US50 5570-5650 MARITIME RADIONAVIGATION US65 RADIOLOCATION US50</p>	<p>RF Devices (15) Maritime (80) Private Land Mobile (90)</p>
<p>5.450 5.451 5.452 5650-5725 MOBILE except aeronautical mobile 5.446A 5.450A RADIOLOCATION Amateur Space research (deep space)</p>	<p>5.452 US50 G131 5650-5850 RADIOLOCATION G2</p>	<p>5.452 US50 5650-5850 Amateur</p>	<p>RF Devices (15) ISM Equipment (18) Amateur Radio (97)</p>
<p>5.282 5.451 5.453 5.454 5.455 5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur</p>	<p>5.150 5.451 5.453 5.455 5.456 5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur</p>	<p>5.150 5.282 USzzz 5830-5850 Amateur</p>	<p>Amateur-satellite (space-to-Earth)</p>
<p>5.150 5.451 5.453 5.455 5.456 Amateur-satellite (space-to-Earth)</p>	<p>5.150 USzzz</p>	<p>5.150 USzzz</p>	<p>Amateur-satellite (space-to-Earth)</p>

Table of Frequency Allocations 5850-8025 MHz (SHF) Page 43

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Amateur Radiolocation 5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Radiolocation 5.150	5850-5925 FIXED-SATELLITE (Earth-to-space) US107 US245 RADIOLOCATION G2	5850-5925 FIXED-SATELLITE (Earth-to-space) US107 US245 MOBILE NG160 RADIOLOCATION USZZ Amateur	ISM Equipment (18) Private Land Mobile (90) Personal Radio (95) Amateur Radio (97)
5.150 5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.457C	5.150 5.457A 5.457B	5.150	5.150 USZZ 5925-6725 FIXED-SATELLITE (Earth-to-space) US107	5.150 5925-6425 FIXED FIXED-SATELLITE (Earth-to-space) US107 NG181	Satellite Communications (25) Fixed Microwave (101)
5.149 5.440 5.458 6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE			5.440 5.458 US342 6725-7125	6425-6625 FIXED-SATELLITE (Earth-to-space) US107 MOBILE 5.440 5.458 6525-6700 FIXED FIXED-SATELLITE (Earth-to-space) US107 5.458 US342 6700-6875	TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101) Fixed Microwave (101)
5.458 5.458A 5.458B 5.458C 7075-7145 FIXED MOBILE				FIXED FIXED-SATELLITE (Earth-to-space) US107 (space-to-Earth) 5.441 5.458 5.458A 5.458B 6875-7025 FIXED NG118 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE NG171 5.458 5.458A 5.458B 7025-7075 FIXED NG118 FIXED-SATELLITE (Earth-to-space) NG172 MOBILE NG171 5.458 5.458A 5.458B 7075-7125 FIXED NG118 MOBILE NG171 5.458	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) TV Broadcast Auxiliary (74F) Cable TV Relay (78)
5.458 5.459			5.458 7125-7145 FIXED 5.458 G116	5.458 7125-7235	

Table of Frequency Allocations 10-14 GHz (SHF)

Region 1 Table		Region 2 Table		Region 3 Table		United States Table		FCC Rule Part(s)
International Table		Federal Table		Non-Federal Table				
10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.45 RADIOLOCATION Amateur 5.479 5.480	10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.45 Amateur US108 G32	10-10.45 Amateur Radiolocation US108	Private Land Mobile (90) Amateur Radio (97)			
10.45-10.5 RADIOLOCATION Amateur Amateur-satellite 5.481	5.479 5.480	5.479	5.479 US128	5.479 US128 NG50 10.45-10.5 Amateur Amateur-satellite Radiolocation US108 US128 NG50				
10.5-10.55 FIXED MOBILE RADIolocation	10.5-10.55 FIXED MOBILE RADIolocation		10.5-10.55 RADIOLOCATION US59		Private Land Mobile (90)			
10.55-10.6 FIXED MOBILE except aeronautical mobile Radiolocation	10.55-10.6 FIXED MOBILE except aeronautical mobile Radiolocation		10.55-10.6	10.55-10.6 FIXED	Fixed Microwave (101)			
10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482 5.482A	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482 5.482A		10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive)	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED US265 SPACE RESEARCH (passive)				
10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.483	10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.483		US130 US131 US265	US130 US131				
10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A (Earth-to-space) 5.484 MOBILE except aeronautical mobile 11.7-12.5	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile 11.7-12.1	5.441 5.484A	10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US131 US246	10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US131 US246				
FIXED FIXED-SATELLITE (space-to-Earth) 5.485 5.488 MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.492	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile 11.7-12.1	5.441 5.484A	10.7-11.7 FIXED-SATELLITE (space-to-Earth) US107 US211	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) US107 US211 NG52	Satellite Communications (25) Fixed Microwave (101)			
FIXED MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.492	11.7-12.1 FIXED 5.486 FIXED-SATELLITE (space-to-Earth) 5.484A 5.488 MOBILE except aeronautical mobile 5.485 12.1-12.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.488 5.485 5.489	11.7-12.2 FIXED MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.492	11.7-12.2 FIXED-SATELLITE (space-to-Earth) US107	11.7-12.2 FIXED-SATELLITE (space-to-Earth) 5.485 5.488 US107 NG55 NG143 NG183 NG187	Satellite Communications (25)			

5.487 5.487A 12.5-12.75 FIXED-SATELLITE (space-to-Earth) Earth) 5.484A (Earth-to-space)	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492	12.2-12.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile BROADCASTING 5.484A 5.487	12.2-12.7 FIXED BROADCASTING-SATELLITE	Satellite Communications (25) Fixed Microwave (101)
5.487A 5.487 12.5-12.75 FIXED-SATELLITE (space-to-Earth) Earth) 5.484A (Earth-to-space)	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING 5.487A 5.488 5.490	12.5-12.75 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493	5.487A 5.488 5.490 12.7-12.75 FIXED NG118 FIXED-SATELLITE (Earth-to-space) US107 MOBILE	TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
5.494 5.495 5.496 12.75-13.25 FIXED FIXED-SATELLITE (Earth-to-space) Earth) 5.494A (Earth-to-space)	12.7-13.25 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493	12.7-13.25 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493	12.75-13.25 FIXED NG118 FIXED-SATELLITE (Earth-to space) 5.441 US107 NG52 MOBILE	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
5.498A 5.499 13.4-13.75 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active)	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492	12.2-12.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile BROADCASTING 5.484A 5.487	US251 13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A	Aviation (87)
5.499 5.500 5.501 5.501B 13.75-14 FIXED-SATELLITE (Earth-to-space) 5.484A RADIOLOCATION Earth exploration-satellite Standard frequency and time signal-satellite (Earth-to-space) Space research	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492	12.2-12.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile BROADCASTING 5.484A 5.487	13.4-13.75 Earth exploration-satellite (active) Radiolocation Space research Standard frequency and time signal-satellite (Earth-to-space)	Private Land Mobile (90)
5.499 5.500 5.501 5.502 5.503 13.75-14 FIXED-SATELLITE (Earth-to-space) 5.484A RADIOLOCATION Earth exploration-satellite Standard frequency and time signal-satellite (Earth-to-space) Space research	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492	12.2-12.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile BROADCASTING 5.484A 5.487	13.75-14 FIXED-SATELLITE (Earth-to-space) US107 US337 RADIOLOCATION G59 Standard frequency and time signal-satellite (Earth-to-space) Space research US356 US357	Satellite Communications (25) Private Land Mobile (90)



Table of Frequency Allocations 17.7-23.6 GHz (SHF) Page 51

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) 5.517 (Earth-to-space) 5.516 BROADCASTING-SATELLITE Mobile 5.515 17.8-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE 5.519	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8	17.7-17.8 FIXED NG144 FIXED-SATELLITE (Earth-to-space) US271	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B (Earth-to-space) 5.520 MOBILE 5.519 5.521			US519 18.3-18.6 FIXED-SATELLITE (space-to-Earth) US107 US334 G117	US401 17.8-18.3 FIXED NG144	TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE			US519 18.3-18.6 FIXED-SATELLITE (space-to-Earth) US107 US334 G117	US334 US519 18.3-18.6 FIXED-SATELLITE (space-to-Earth) US107 NG164	Satellite Communications (25)
18.6-18.8 EARTH EXPLORATION-SATEL- LITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C 18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.523A MOBILE	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A	18.6-18.8 EARTH EXPLORATION- SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US107 US255 US334 G117 SPACE RESEARCH (passive) US254 18.8-19.3 FIXED-SATELLITE (space-to-Earth) US107 US334 G117	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US107 US255 NG164 SPACE RESEARCH (passive) US254 US334 NG144 18.8-19.3 FIXED-SATELLITE (space-to-Earth) US107 NG165 US334 NG144	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.523B 5.523C 5.523D 5.523E MOBILE			19.3-19.7 FIXED-SATELLITE (space-to-Earth) US334 G117	19.3-19.7 FIXED NG144 FIXED-SATELLITE (space-to-Earth) NG166 US334	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B Mobile-satellite (space-to-Earth) 5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 5.529	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B Mobile-satellite (space-to-Earth) 5.524	19.7-20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	US334 19.3-19.7 FIXED NG144 FIXED-SATELLITE (space-to-Earth) NG166 US334 19.7-20.2 FIXED-SATELLITE (space-to-Earth) US107 MOBILE-SATELLITE (space-to-Earth) US46	Satellite Communications (25)

<p>20.1-20.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth)</p>	<p>5.525 5.526 5.527 5.528 5.529 US334 20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth)</p>	
<p>5.524 21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)</p>	<p>G117 21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263</p>	<p>Fixed Microwave (101)</p>
<p>21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.208B 5.530</p>	<p>21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.208B 5.530 5.531</p>	
<p>22-22.21 FIXED MOBILE except aeronautical mobile 5.149</p>	<p>22-22.21 FIXED MOBILE except aeronautical mobile US342</p>	
<p>22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive)</p>	<p>22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) US263 US342</p>	
<p>5.149 5.532 22.5-22.55 FIXED MOBILE</p>	<p>22.5-22.55 FIXED MOBILE US211</p>	
<p>22.55-23.55 FIXED INTER-SATELLITE 5.338A MOBILE</p>	<p>22.55-23.55 FIXED INTER-SATELLITE US278 MOBILE US342</p>	<p>Satellite Communications (25) Fixed Microwave (101)</p>
<p>5.149 23.55-23.6 FIXED MOBILE</p>	<p>23.55-23.6 FIXED MOBILE</p>	<p>Fixed Microwave (101) Page 52</p>

<p>25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) 5.536B FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) 5.536C Standard frequency and time signal-satellite (Earth-to-space)</p>	<p>25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258</p>	<p>25.5-27 Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space)</p>	<p>25.5-27 Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258</p>
<p>27.5-28.5 FIXED 5.537A FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE</p>	<p>27-27.5 FIXED FIXED-SATELLITE (Earth-to-space) INTER-SATELLITE 5.536 5.537 MOBILE</p>	<p>27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE</p>	<p>27-27.5 Inter-satellite 5.536</p>
<p>5.538 5.540 28.5-29.1 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.523A 5.539 MOBILE Earth exploration-satellite (Earth-to-space) 5.541</p>	<p>27.5-29.5 FIXED-SATELLITE (Earth-to-space) US107</p>	<p>27.5-29.5 FIXED FIXED-SATELLITE (Earth-to-space) US107 MOBILE</p>	<p>27.5-29.5 FIXED FIXED-SATELLITE (Earth-to-space) US107 MOBILE</p>
<p>5.540 29.1-29.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.516B 5.523C 5.523E 5.535A 5.539 5.541A MOBILE Earth exploration-satellite (Earth-to-space) 5.541</p>	<p>29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space)</p>	<p>29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space)</p>	<p>29.5-29.9 FIXED-SATELLITE (Earth-to-space) US107 MOBILE-SATELLITE (Earth-to-space) US46</p>
<p>5.540 5.542 29.9-30 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.543</p>	<p>5.525 5.526 5.527 5.529 5.543</p>	<p>5.525 5.526 5.527 5.529 5.543</p>	<p>5.525 5.526 5.527 5.529 5.543</p>

33.4-34.2 RADIOLOCATION 5.549	33.4-34.2 RADIOLOCATION US360 G117	33.4-34.2 Radiolocation US360	Private Land Mobile (90)
34.2-34.7 RADIOLOCATION SPACE RESEARCH (deep space) (Earth-to-space) 5.549	34.2-34.7 RADIOLOCATION SPACE RESEARCH (deep space) (Earth-to-space) US262 US360 G34 G117	34.2-34.7 Radiolocation Space research (deep space) (Earth-to-space) US262 US360	
34.7-35.2 RADIOLOCATION Space research 5.550 5.549	34.7-35.5 RADIOLOCATION	34.7-35.5 Radiolocation	
35.2-35.5 METEOROLOGICAL AIDS RADIOLOCATION 5.549			
35.5-36 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.549 5.549A	US360 G117 35.5-36 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) US360 G117	US360 35.5-36 Earth exploration-satellite (active) Radiolocation Space research (active) US360	
36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) 5.149 5.550A	36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263 US342		
37-37.5 FIXED MOBILE SPACE RESEARCH (space-to-Earth) 5.547	37-37.5 FIXED MOBILE SPACE RESEARCH (space-to-Earth)	37-37.5 FIXED MOBILE	
37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE SPACE RESEARCH (space-to-Earth) Earth exploration-satellite (space-to-Earth) 5.547	37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) US107 MOBILE SPACE RESEARCH (space-to-Earth)	37.5-38.6 FIXED FIXED-SATELLITE (space-to-Earth) US107 MOBILE	Satellite Communications (25)
38-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Earth exploration-satellite (space-to-Earth) 5.547	38-38.6 FIXED FIXED-SATELLITE (space-to-Earth) US107 MOBILE 38.6-39.5 FIXED-SATELLITE (space-to-Earth) US107	38.6-39.5 FIXED FIXED-SATELLITE (space-to-Earth) US107 MOBILE NG175	Satellite Communications (25) Fixed Microwave (101) Page 56

43.5-47 MOBILE 5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE	43.5-45.5 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) G117	43.5-45.5	
45.5-46.9 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE			RF Devices (15)
5.554 46.9-47 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE	46.9-47 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE	46.9-47 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE	
5.554 47-47.2 AMATEUR AMATEUR-SATELLITE	5.554 47-47.2	5.554 47-47.2 AMATEUR AMATEUR-SATELLITE	Amateur Radio (97)
47.2-47.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE	47.2-48.2 FIXED-SATELLITE (Earth-to-space) US107 US297	47.2-48.2 FIXED FIXED-SATELLITE (Earth-to-space) US107 US297 MOBILE	Satellite Communications (25)
5.552A 47.5-47.9 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B 5.554A MOBILE	47.5-47.9 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE		
47.9-48.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE			
5.552A 48.2-48.54 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B 5.554A 5.555B MOBILE	48.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.338A 5.516B 5.552 MOBILE	48.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE US264	
48.54-49.44 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE			
5.149 5.340 5.555	5.149 5.340 5.555	5.555 US342	Page 58

\* \* \* \* \*

**United States (US) Footnotes**

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US46 In the bands 137–138 MHz, 148–150.05 MHz, 400.15–401 MHz, 1610–1626.5 MHz, 2483.5–2500 MHz, 19.7–20.2 GHz, and 29.5–30 GHz, Federal stations in the mobile-satellite service shall be restricted to earth stations operating with non-Federal space stations and that comply with Part 25 of the Commission's rules.

\* \* \* \* \*

US107 In the bands 3700–4200 MHz, 5850–6725 MHz, 10.7–12.2 GHz, 12.7–13.25 GHz, 13.75–14.5 GHz, 18.3–19.3 GHz (except as provided for in US334), 19.7–20.2 GHz (except as provided for in US334), 27.5–30 GHz, 37.5–39.5 GHz, and 47.2–48.2 GHz, Federal stations in the fixed-satellite service shall be restricted to earth stations operating with non-Federal space stations and that comply with Part 25 of the Commission's rules.

\* \* \* \* \*

USyyy In the band 2200–2290 MHz, non-Federal stations in the space operation service may also be authorized on a primary basis and such use shall be:

(a) Restricted to transmissions in the sub-bands 2207–2219 MHz, 2270.5–2274.5 MHz, and 2285–2290 MHz (necessary bandwidth shall be contained within these ranges);

(b) limited to no greater than 5 MHz necessary bandwidth per channel by launch vehicles during pre-launch testing and launches at Federal ranges; and

(c) subject to successful coordination of the assignment and use with Federal operations through NTIA.

\* \* \* \* \*

USzzz In the band 5650–5925 MHz, non-Federal stations operating in the radiolocation service may also be authorized on a primary basis and such use shall be:

(a) Restricted to use in the tracking of launch vehicles during launches and pre-launch testing of launch vehicles subject to; and

(b) subject to successful coordination of the assignment and use with federal operations through NTIA.

[FR Doc. 2013–15592 Filed 6–28–13; 8:45 am]

BILLING CODE 6712–01–P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 2 and 5****[ET Docket Nos. 10–236 and 06–155; Report No. 2982]****Petition for Reconsideration of Action in Rulemaking Proceeding****AGENCY:** Federal Communications Commission.**ACTION:** Petition for reconsideration.

**SUMMARY:** In this document, Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding by Michael J. Marcus on behalf of Marcus Spectrum Solutions LLC, by Charles S. Farlow on behalf of Medtronic, Inc., and by James S. Blitz on behalf Sirius XM Radio Inc., and EchoStar Technologies Inc.

**DATES:** Oppositions to the Petitions must be filed on or before July 16, 2013. Replies to an opposition must be filed on or before July 26, 2013.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rodney Small, Office of Engineering and Technology, 202–418–2452, [Rodney.Small@fcc.gov](mailto:Rodney.Small@fcc.gov) (mailto: [Rodney.Small@fcc.gov](mailto:Rodney.Small@fcc.gov)).

**SUPPLEMENTARY INFORMATION:** This is a summary of Commission's document, Report No. 2982, released June 7, 2013. The full text of Report No. 2982 is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

*Subjects:* Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules; 2006 Biennial Review of Telecommunications Regulations—Part 2 Administered by the Office of Engineering and Technology, FCC 13–15, published at 78 FR 25138, April 29, 2013, in ET Docket No. 10–236 and ET Docket No. 06–155, published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) of the Commission's rules.

*Number of Petitions Filed:* 3.

Federal Communications Commission.

**Marlene H. Dortch,***Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–15684 Filed 6–28–13; 8:45 am]

BILLING CODE 6712–01–P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 43****[IB Docket No. 04–112; Report No. 2981]****Petition for Reconsideration of Action in Rulemaking Proceeding****AGENCY:** Federal Communications Commission.**ACTION:** Petition for reconsideration.

**SUMMARY:** In this document, a Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding by Glenn S. Richards, on behalf of the Voice on the Net (VON) Coalition.

**DATES:** Oppositions to the Petition must be filed on or before July 16, 2013. Replies to an opposition must be filed on or before July 26, 2013.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** David Krech (202) 418–7443 or John Copes (202) 418–1478, Policy Division, International Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of Commission's document, Report No. 2981, released June 5, 2013. The full text of Report No. 2981 is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

*Subject:* Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules, Second Report and Order, FCC 13–6, published at 78 FR 15615, March 12, 2013, in IB Docket No. 04–112, and published pursuant to 47 CFR 1.429(e). *See also* 1.4(b)(1) of the Commission's rules.

*Number of Petitions Filed:* 1.

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013-15683 Filed 6-28-13; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 51, 53, and 64

[CC Docket Nos. 95-20, 98-10; FCC 13-69]

#### Data Practices, Computer III Further Remand: BOC Provision of Enhanced Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Further notice of proposed rulemaking.

**SUMMARY:** In this Further Notice of Proposed Rulemaking (Further Notice), the Federal Communications Commission (Commission) seeks comment on how to streamline or eliminate legacy regulations contained in the Computer Inquiry proceedings and that are applicable to the Bell Operating Companies (BOCs). The FNPRM: Seeks data on the changing market for narrowband enhanced services, in particular, the extent to which enhanced service providers (ESPs) continue to need access to the BOCs' basic network transmission services offered through comparably efficient interconnection (CEI) and open network architecture (ONA) services; proposes eliminating CEI requirements and seeks comment on whether to retain only limited ONA inputs that ESPs require in areas where there are no competitive alternatives; and seeks comment on the need for the continuing application of the All-Carrier Rule that requires non-BOC incumbent local exchange carriers (LECs) to offer non-discriminatory access to basic network services for unaffiliated ESPs.

**DATES:** Comments are due July 31, 2013, and reply comments are due August 30, 2013. Written comments on the paperwork Reduction Act proposed or modified information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before [date].

**ADDRESSES:** Interested parties may submit comments, identified by CC Docket No. 00-175, by any of the following methods:

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

- *Federal Communications Commission's Web site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto: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:

Jodie May, WCB, CPD, (202) 418-1580 or [Jodie.May@fcc.gov](mailto:Jodie.May@fcc.gov). For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Judith Boley Herman at 202-418-0214.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice in CC Docket Nos. 95-20, 98-10; FCC 13-69, released on May 17, 2013. The full text of this document, which is part of the Commission's *Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking*, is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcp.com>, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

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. All pleadings are to reference CC Docket Nos. 95-20, 98-10; FCC 13-69. 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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

#### Synopsis of Further Notice

##### I. Background

1. In its *Computer II* proceedings, the Commission required AT&T (and subsequently the BOCs) to offer enhanced services through structurally separate subsidiaries. *Amendment of § 64.702 of the Commission's rules and regulations (Computer II Final Decision)*, 77 FCC 2d 384 (1980), *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *affirmed sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (DC Cir. 1982), *cert. denied*, 461 U.S. 938 (1983). In the subsequent *Computer III* proceedings, the Commission determined that the benefits of structural separation were outweighed by the costs and that non-structural safeguards could protect competing

ESPs from improper cost allocation and discrimination by the BOCs while avoiding the inefficiencies of structural separation. The Commission adopted CEI and ONA as non-structural safeguards that require the BOCs to offer nondiscriminatory interconnection to basic transmission services that competitors purchase to provide enhanced services, primarily to end users that use narrowband telephone technology. *Amendment of § 64.702 of the Commission's rules and regulations*, CC Docket No. 85–229, Phase I, 104 FCC 2d 958 (1986) (subsequent history omitted). The Commission has identified examples of narrowband enhanced services as voice mail, store and forward services, fax, data processing, alarm monitoring, and dial-up gateways to on-line databases. BOCs must comply with CEI and ONA requirements in order to offer enhanced services on an “integrated” basis instead of through a structurally separate affiliate as required by § 64.702 of the Commission's rules.

2. The BOCs' CEI plans detail how they provide unaffiliated ESPs with interconnection to basic transmission services on the same terms and conditions that the BOCs use for their own enhanced services offerings. The BOCs' ONA plans, based on the architecture of the BOCs' networks as they existed in the late 1980s, offer ESPs unbundled, tariffed access to basic transmission services regardless of whether the BOCs' affiliated enhanced services offerings use the same components.

3. The Commission has had in place a long-standing examination of the substantive *Computer III* structure and what safeguards are appropriate to ensure the continued competitiveness of the enhanced services market. In 1998, the Commission sought comment on what safeguards for BOC provision of enhanced services made sense in light of technological, market, and legal conditions, particularly the passage of the market opening provisions in the Telecommunications Act of 1996 (1996 Act), such as the section 251 unbundling requirements, 47 U.S.C. 251. 63 FR 9749–01 (Feb. 26, 1998); 66 FR 15064–01 (Mar. 15, 2001).

4. Since 1998, the Commission has modified or eliminated many of the *Computer III* non-structural separation requirements. In 1999, it streamlined the CEI requirements. 64 FR 14141–01 (Mar. 24, 1999). In 2005, the Commission granted the BOCs significant relief from *Computer III* requirements for wireline broadband Internet access services. *Appropriate Framework for Broadband Access to the*

*Internet over Wireline Facilities*, CC Docket No. 02–33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14875–76, para. 41 (2005) (*WBIAS Order*), *aff'd*, *Time Warner Telecom v. FCC*, 507 F.3d 205 (3rd Cir. 2007). The Commission has also granted forbearance from application of *Computer Inquiry* rules to the extent that the carriers offer other broadband services. *See, e.g., Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06–172, Memorandum Opinion and Order, 22 FCC Rcd 21293, 21318, para. 45 (2007). In light of these changes, the *Computer III* requirements currently apply only to the provision of enhanced services using narrowband telephone technology.

## II. Discussion

5. In order to determine how we may streamline or eliminate the remaining legacy *Computer III* obligations, we seek comment on the continued viability of the substantive CEI and ONA narrowband requirements. Recognizing that the enhanced services provider industry may continue to use the BOCs' narrowband networks to serve customers, we seek comment on how we might simplify and modernize efficient access to service elements that competitors still need while at the same time eliminating services that are no longer necessary. Below, we propose to eliminate CEI requirements and seek comment on a specific streamlined process we might adopt to review BOC requests to eliminate or modify their ONA offerings. We expect that this Further Notice will provide data that may allow us to grant some relief from these legacy regulations in an efficient and comprehensive manner.

6. The Commission made clear when it adopted the *Computer III* requirements that a “major goal of ONA is to increase opportunities for ESPs to use the BOCs' regulated networks in highly efficient ways, enabling ESPs to expand their markets for their present services and develop new offerings as well, all to the benefit of consumers.” *Computer III Remand Proceeding*, CC Docket No. 90–368, 5 FCC Rcd 7719, 7720, paras. 7, 11(1990). The Commission intended the ONA framework to evolve. It did not prescribe a specific network design for ONA services and stated that the BOCs, with input from the enhanced services industry, should implement ONA in a way that matched the capabilities of

their networks, “both current and future, with needs of the ESPs.” *Filing and Review of Open Network Architecture Plans*, CC Docket No. 88–2, Phase I, Memorandum Opinion and Order, 4 FCC Rcd 1, 11, para. 3 (1988). The Commission intended originally that CEI plans would be an interim measure until the BOCs fully implemented ONA. Referring to CEI as a “first phase,” the Commission intended CEI to provide ESPs with interconnection to the BOCs' networks that was substantially equivalent to the interconnection the BOCs provided for their own enhanced services until the BOCs fully unbundled their networks to ESPs through ONA. Although the Commission eliminated formal approval of CEI plans, we have continued to require the BOCs to maintain their CEI plans and post them on the Internet.

7. We propose to eliminate the requirement that BOCs maintain and post their CEI plans on the Internet. CEI plans were always intended to be an interim measure, designed to bridge the gap between the Commission's decision to lift structural separation in *Computer III* and the implementation of ONA. In light of the changing market for narrowband enhanced services, we expect that CEI plans are not necessary to protect against access discrimination. We seek comment on this proposal. ONA has provided ESPs a greater level of protection against access discrimination than CEI. Under ONA, not only must the BOCs offer network services to competing ESPs in compliance with the nine CEI “equal access” parameters, but they must also unbundle and tariff key network service elements beyond those they use to provide their own enhanced services offerings. To the extent that we find it necessary to retain any limited ONA requirements, we expect that ESPs will have adequate access to the BOCs' legacy network through those arrangements.

8. We seek current information on whether ONA offerings continue to be an effective means of providing competitive ESPs with access to unbundled network services they need to structure efficient service offerings. To the extent that the requirements or offerings are ineffective, we request that commenters cite to specific instances to support their claims. The Commission is now examining the technological transition of legacy networks and protocols toward modern networks and services in several contexts. *See, e.g., Pleading Cycle Established for AT&T and NTCA Petition*, GN Docket No. 12–353, Public Notice, 27 FCC Rcd 15766 (rel. Dec. 14, 2012) (seeking comment on

AT&T and National Telecommunications Cooperative Association petitions to open proceedings on the transition from TDM to IP networks); *FCC Chairman Julius Genachowski Announces Formation of "Technology Transitions Policy Task Force,"* News Release (Dec. 10, 2012); *Technology Transitions Policy Task Force Seeks Comment on Potential Trials,* GN Docket No. 13–5, Public Notice, DA 13–1016 (rel. May 10, 2013), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-13-1016A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-1016A1.pdf). ONA requirements are legacy regulations aimed at giving competitors wholesale access to narrowband technologies for the provision of enhanced services, and we are therefore interested in whether competitors are using narrowband ONA offerings to offer new services or whether they are transitioning away from narrowband products. We seek comment on that question. We also ask the BOCs to provide information on specific narrowband ONA offerings that they currently provision for unaffiliated ESPs. In particular, we seek information about specific service inputs that ESPs may still require from the BOCs to serve narrowband customers and on whether we should eliminate all other services.

9. We seek comment on the extent to which the BOCs themselves continue to provide narrowband enhanced services and whether there are sufficient alternatives such that the BOCs are prevented, at least in some areas, from engaging in harmful discrimination against unaffiliated ESPs. We seek data on the alternatives available and the specific markets in which such alternatives are available. Do ESPs still rely primarily on narrowband ONA services, or do they use other means to obtain services? We are interested in whether enhanced service competitors use a combination of inputs from different providers.

10. The Commission originally required the BOCs to maintain a sufficient level of uniformity among their ONA services, in part so that ESPs could market national offerings. Is this requirement still necessary today for narrowband offerings or do ESPs seek more tailored arrangements based on their customer base? Commenters should identify what other network platforms, such as cable or broadband, offer viable options for re-structuring existing enhanced services that customers still use and whether ESPs would have access to those options in the areas in which their customers are located, including in rural areas. If alternatives are available, do they enable functionalities that ESPs require for

specific narrowband products, such as alarm monitoring services or voice mail? Commenters should explain whether ESPs use ONA offerings for any public safety related offerings. In addition, we seek comment on whether ESPs obtain from the BOCs unbundled network elements under section 251 of the Act, 47 U.S.C. 251, if the providers are also telecommunications carriers or if they can obtain basic services from competitive telecommunications providers.

11. The ONA framework consists of multiple requirements in addition to the tariffing of basic service offerings. These include the ONA amendment process under which a BOC that seeks to offer an enhanced service that uses a new basic service element, or otherwise uses different configurations of underlying basic services than those in its approved ONA plan, must amend its ONA plan at least 90 days before it offers the new enhanced service. In addition, an ESP can request a new ONA basic service from the BOC and must receive a response from the BOC within 120 days regarding whether the BOC will provide the service. The BOC must evaluate and justify its response using specific factors, including market area demand, utility to ESPs as perceived by the providers themselves, and cost and technical feasibility. We are interested in obtaining information about how often the BOCs received a request under the 120 day process, including the date of the most recent request, and the outcome of the request. The BOCs should also address the last time they amended their ONA plans. ESPs should address whether the 120 day process continues to be of value and whether they contemplate using it in the future. We seek comment on the extent to which the narrowband ONA obligations may increase the BOCs' costs of providing enhanced services. Commenters should identify costs with specificity wherever possible. We also ask commenters to address whether there are continuing benefits associated with the obligations that justify the costs.

12. At the beginning of the ONA implementation process, the Commission found that it would not be reasonable for BOCs to withdraw any services listed in their approved ONA plans and that it would not look favorably on requests for withdrawal. It did, however, outline a process for BOCs to withdraw ONA services. It stated that, once an ONA service element was federally tariffed, the BOC must request and receive advance approval in writing before filing tariff revisions to discontinue offering of that

service. *Filing and Review of Open Network Architecture Plans,* CC Docket No. 88–2, Phase I, Memorandum Opinion and Order, 6 FCC Rcd 7646, 7652–53, para. 10 (1991). The Commission, acting through the Wireline Competition Bureau, has granted such approvals in a few limited circumstances, each involving an extended proceeding. In those proceedings, the Bureau evaluated the reasonableness of the withdrawal request to see if circumstances justified the elimination of specific ONA services. It reviewed criteria including whether the BOC had existing customers for the service and whether suitable alternative services existed. It also accepted BOC proposals that existing customers should have an opportunity to continue to purchase the withdrawn ONA service element on a grandfathered basis. *See BellSouth Open Network Architecture Plan Amendment,* CC Docket No. 88–2, Memorandum Opinion and Order, 18 FCC Rcd 15844, 15847–48, para. 5 (Wireline Comp. Bur. 2003); *Qwest Petition for Permission to Withdraw ONA Services,* WC Docket No. 02–355, Memorandum Opinion and Order, 19 FCC Rcd 7164, 7167, para. 6 (Wireline Comp. Bur. 2004). We seek comment on what type of simplified process might now be feasible for BOCs to use to withdraw ONA service elements that they assert are no longer useful or for which there are alternative offerings. Should we use the same criteria the Bureau relied upon in reviewing past requests? We seek comment on how precisely a BOC should define the service area in which it requests to eliminate services. By requiring BOCs to demonstrate with specificity which ONA services they seek to retire and what alternatives are available, we can move toward an orderly and efficient process for eliminating services that may no longer be necessary.

13. We seek comment on what type of process would be most efficient for us to review requests to reduce or eliminate ONA service offerings that are included in the BOCs' ONA plans and tariffs. Because the elimination of basic narrowband service elements currently available under the ONA plans could impact ESPs that have limited alternatives for these services, we seek comment on adopting a discontinuance process that allows for comments, a notice period, and affirmative action by the Commission. This would allow more time for ESPs to transition to other arrangements whether from the BOCs, themselves, or alternative providers. We seek comment on adopting a process

that is similar to the standard streamlined process for service discontinuance applications under section 214 of the Act, 47 U.S.C. 214. Under the section 214 process, a dominant carrier such as a BOC that seeks to discontinue, reduce, or impair service must notify affected customers and file an application with the Commission. The application is automatically granted on the 60th day after its filing unless the Commission has notified the applicant that the grant will not automatically be effective. 47 CFR 63.71. Specifically, we seek comment on the following proposal:

A BOC that seeks to withdraw and discontinue narrowband Open Network Architecture (ONA)-related services shall be subject to the following procedures:

The BOC shall notify all affected customers of the planned withdrawal and discontinuance in writing. The notification shall include the name and address of the carrier, date of planned service withdrawal and discontinuance, points of geographic areas of service affected, and a brief description of the type of service affected. The notification shall also include a statement to customers as follows:

The FCC will normally authorize this proposed withdrawal and discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, file your comments as soon as possible, but no later than 30 days after the Commission releases public notice of the proposed withdrawal or discontinuance. Comments should include specific information about the impact of this proposed withdrawal and discontinuance on you or your company, including any inability to acquire reasonable substitute service. Comments must be filed electronically using the Internet through the Commission's Electronic Comment Filing System (ECFS) and reference the proceeding number on the public notice. ECFS is accessible at <http://apps.fcc.gov/ecfs/>.

The BOC shall file with this Commission, on or after the date on which it has given notice to all affected customers, an application which shall contain the name and address of the carrier, date of planned service withdrawal and discontinuance, points of geographic areas of service affected, brief description of the type of service affected, brief description of the dates and methods of notice to all affected customers, or a statement that no customers are currently using the service, and any other supplemental information the Commission may require.

The application to withdraw and discontinue ONA services shall be automatically granted on the 60th day after its filing with the Commission without any notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. For purposes of this section, an application will be deemed filed on the date the Commission releases public notice of the filing.

14. Such a process would set a threshold showing for a BOC to withdraw an ONA service and allow ESPs an orderly notice and comment process to object to the withdrawal. We seek comment on whether we should permit BOCs to include multiple services in a single notice for a particular geographic area. The process would also allow affected ESPs the opportunity to address whether they would be unable to serve customers without access to the service.

15. Because we propose to eliminate CEI and seek comment on streamlining or eliminating ONA requirements, it is important for ESPs to have sufficient detail to understand the impact of any possible reduction in availability. BOCs should comment on what types of transition arrangements might be possible to ensure that ESPs can still serve their narrowband customers. We seek comment on whether BOCs would continue to make CEI and ONA service offerings and network functionalities available through alternative means, including through the use of other tariffed services. Would they be available through a transition to unbundled network elements or resold services? We seek information from the BOCs on whether grandfathering arrangements would be available based on existing prices, terms, and conditions. Should we require BOCs to grandfather existing customers for a period of time (e.g., three years), and if so, what would be an appropriate time limit?

16. Non-BOC facilities-based common carriers must provide the basic transmission services underlying their enhanced services on a nondiscriminatory basis pursuant to tariffs under the All-Carrier Rule. Computer II Final Decision, 77 FCC 2d at 474-75, para. 231. The rule requires common carriers to provide basic transmission services at the same prices, terms, and conditions to all ESPs, including themselves. We seek comment on the extent to which ESPs continue to rely on these tariffed transmission services to provide narrowband services to customers and whether there are alternative providers

available. In particular, we seek comment on whether we should retain network access requirements under the All-Carrier Rule beyond the time that CEI and ONA may sunset. Would ESPs, including those offering certain services such as alarm monitoring, continue to require access to incumbent LEC networks in non-BOC territory because there are more limited alternatives in those areas, or do cable, wireless, and VoIP platforms offer ESPs viable alternatives? We also seek comment on whether the incumbent carriers themselves continue to provide narrowband enhanced services such that is important to retain the All-Carrier Rule to prevent discriminatory conduct against unaffiliated ESPs.

#### **Paperwork Reduction Act**

17. This Further Notice seeks comment on a potential new or revised information collection requirements. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

#### **Initial Regulatory Flexibility Analysis**

18. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 601(6). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). SBA defines small telecommunications entities as those with 1,500 or fewer

employees. 15 U.S.C. 632. This proceeding pertains to the BOCs, which, because they would not be deemed a "small business concern" under the Small Business Act and have more than 1,500 employees, do not qualify as small entities under the RFA. Therefore, we certify that the proposals in this Further Notice, if adopted, will not have a significant economic impact on a substantial number of small entities.

19. The Commission will send a copy of the Notice, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

#### Ex Parte Presentations

20. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 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.

#### Ordering Clauses

21. *It is ordered* that, pursuant to §§ 1, 2, 4, 11, 201–205, 251, 272, 274–276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 161, 201–205, 251, 272, 274–276, and 303(r) this Further Notice of Proposed Rulemaking in CC Docket Nos. 95–20 and 98–10 *is adopted*.

22. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking in CC Docket Nos. 95–20 and 98–10, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Sheryl Todd,**

*Deputy Secretary.*

[FR Doc. 2013–15643 Filed 6–28–13; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0042; 4500030114]

RIN 1018–AX13

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Jaguar

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Revised proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the August 20, 2012, proposed designation of critical habitat for the jaguar (*Panthera onca*) under the Endangered Species Act of 1973, as amended (Act), and we announce revisions to our proposed designation of critical habitat for the jaguar. We also announce the availability of a draft economic analysis and draft environmental assessment of the revised proposed designation of critical habitat for jaguar and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated draft economic analysis and

draft environmental assessment, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule. In addition, we announce a public informational session and public hearing on the revised proposed designation of critical habitat for the jaguar.

**DATES:** *Written comments:* The comment period for the proposed rule published August 20, 2012 (77 FR 50214), is reopened. We will consider comments received or postmarked on or before August 9, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date.

*Public informational session and public hearing:* We will hold a public informational session and public hearing on this proposed rule on July 30, 2013, at Buena High School Performing Arts Center, 5225 Buena School Blvd., Sierra Vista, Arizona 85615. There will be an informational meeting from 3:30–5:00 p.m., and the public hearing will occur from 6:30–8:30 p.m. at the same location.

#### ADDRESSES:

*Document availability:* You may obtain copies of the proposed rule, draft economic analysis, and draft environmental assessment on the Internet at <http://www.regulations.gov> at Docket No. FWS–R2–ES–2012–0042 or by mail from the Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

*Written comments:* You may submit written comments by one of the following methods, or at the public hearing:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Submit comments by searching for Docket No. FWS–R2–ES–2012–0042, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0042; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

*Public informational session and public hearing:* The public

informational session and hearing will be held at Buena High School Performing Arts Center, 5225 Buena School Blvd., Sierra Vista, Arizona 85615. People needing reasonable accommodation in order to attend and participate in the public hearing should contact Steve Spangle, Field Supervisor, Arizona Ecological Services Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Fish and Wildlife Office, 2321 West Royal Palm Drive, Suite 103, Phoenix, AZ 85021; by telephone (602-242-0210); or by facsimile (602-242-2513). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments**

We are reopening the comment period for our proposed critical habitat designation for the jaguar that was published in the **Federal Register** on August 20, 2012 (77 FR 50214). We are specifically seeking comments on the revised proposed designation and the draft economic and environmental analyses, which are now available, for the revised proposed critical habitat designation; see **ADDRESSES** for information on how to submit your comments. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of jaguar habitat;

(b) What areas occupied at the time of listing (1972) (or currently occupied) that contain features essential to the conservation of the species we should include in the designation and why;

(c) What period of time surrounding the time of listing (1972) should be used to determine occupancy and why, and whether or not data from 1982 to the present should be used in this determination;

(d) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change;

(e) What areas not occupied at the time of listing (and that do not contain all of the primary constituent elements comprising proposed jaguar critical habitat) are essential for the conservation of the species and why; and

(f) If an area is essential but was not occupied at the time of listing, what are the habitat features that are essential, and which of these features are the most important?

(3) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the jaguar and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas from the proposed designation that exhibit these impacts.

(6) Information on the extent to which the description of economic impacts in the draft economic analysis is complete and accurate and the description of the environmental impacts in the draft environmental assessment is complete and accurate.

(7) If lands owned and managed by Fort Huachuca (Fort) should be considered for exemption because the integrated natural resources management plan for the Fort currently benefits the jaguar, whether or not management activities specifically address the species.

(8) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you submitted comments or information on the proposed rule (77 FR 50214; August 20, 2012) during the initial comment period from August 20, 2012, to October 19, 2012, please do not

resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final rule. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments and other relevant information, we may, during the development of our final determination on the proposed critical habitat designation, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the revised proposed rule, draft economic analysis, or draft environmental assessment by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the revised proposed rule, draft economic analysis, and draft environmental assessment, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0042, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule, the draft economic analysis, and the draft environmental assessment on the Internet at <http://www.regulations.gov> at Docket Number FWS-R2-ES-2012-0042, or by mail from the Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

##### **Background**

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for jaguar in this document. For more information on the species, the species' habitat, and

previous Federal actions concerning the jaguar, refer to the proposed designation of critical habitat, published in the **Federal Register** on August 20, 2012 (77 FR 50214). The proposed rule is available online at <http://www.regulations.gov> (at Docket Number FWS-R2-ES-2012-0042) or from the Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### *Previous Federal Actions*

On August 20, 2012, we published a proposed rule to designate critical habitat for the jaguar (77 FR 50214). In that proposed rule, we proposed to designate approximately 838,232 acres (ac) (339,220 hectares (ha)) as critical habitat in six units located in Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico. That proposal had a 60-day comment period, ending October 19, 2012. We received requests for a public hearing; therefore, a public hearing will be held (see **DATES** and **ADDRESSES**).

In 2013, we received a report from the Jaguar Recovery Team that included a revised habitat model for jaguar in the proposed Northwestern Recovery Unit (Sanderson and Fisher 2013, entire). This report recommended defining habitat patches of less than 100 square kilometers (km) (38.6 square miles (mi)) in size as unsuitable for jaguars; therefore, we incorporated this information into the physical and biological feature for the jaguar, which formerly described areas of less than 84 square km (32.4 square mi) as unsuitable. Additionally, the report recommended slight changes to some of the habitat features we used to describe the primary constituent elements (PCEs) comprising jaguar critical habitat (see **Changes From Previously Proposed Critical Habitat**, below). The revised physical and biological feature and PCEs resulted in changes to the boundaries of our original proposed critical habitat, and we are revising our proposal for jaguar critical habitat in this document. In this revised rule, we propose to designate approximately 858,137 ac (347,277 ha) as critical habitat in six units located in Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico.

#### *Critical Habitat*

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and

that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

#### **Changes From Previously Proposed Critical Habitat**

On August 20, 2012, we published in the **Federal Register** a proposed rule to designate critical habitat for the jaguar (77 FR 50214). We based the physical and biological feature and PCEs on a preliminary report we received from the Jaguar Recovery Team in 2011, in which the habitat features preferred by the jaguar were described based on the best available science and expert opinion of the team at that time.

Since then, the Jaguar Recovery Team continued to revise and refine these habitat features, resulting in a habitat model that we received in 2013. The changes included: (1) Defining habitat patches of less than 100 square km (38.6 square mi) in size as unsuitable (the physical and biological feature formerly described areas of less than 84 square km (32.4 square mi) as unsuitable); (2) delineating areas 2,000 meters (6,562 feet) and higher as unsuitable (previously there was no PCE related to an upper-elevation limit); (3) including a canopy cover from greater than 1 to 50 percent as suitable (PCE 4 formerly included a range of 3 to 40 percent canopy cover); and (4) slightly diminishing the level of human influence tolerated by jaguars in the northern part of the proposed Northwestern Recovery Unit (PCE 6). When combined, these changes added some new areas containing all of the PCEs, while other areas no longer contained all of the PCEs, and therefore were removed. An increase in area was usually due to the increased range in canopy cover (from greater than 1 to 50 percent, instead of 3 to 40 percent), while a decrease in area was usually due to the upper elevation limit of 2,000 meters (6,562 feet).

In addition to the changes described above, recent photos (October 2012 through January 2013) have been taken of a jaguar in the Santa Rita Mountains. While our understanding of the habitat features did not change drastically

between 2012 and 2013, the combination of a slightly different physical and biological feature and several PCEs (as described above) and the new jaguar sightings have resulted in the proposed revisions to our August 20, 2012, proposed critical habitat rule for the jaguar that are described in this document.

#### **Primary Constituent Elements for Jaguars**

Based on our current knowledge of the physical or biological feature and habitat characteristics required to sustain the jaguar's vital life-history functions in the Northwestern Recovery Unit and the United States, we determine that the primary constituent elements specific to jaguars are: Expansive open spaces in the southwestern United States of at least 100 square km (38.6 square mi) in size which:

- (1) Provide connectivity to Mexico;
- (2) Contain adequate levels of native prey species, including deer and javelina, as well as medium-sized prey such as coatis, skunks, raccoons, or jackrabbits;
- (3) Include surface water sources available within 20 km (12.4 mi) of each other;
- (4) Contain from greater than 1 to 50 percent canopy cover within Madrean evergreen woodland, generally recognized by a mixture of oak, juniper, and pine trees on the landscape, or semidesert grassland vegetation communities, usually characterized by *Pleuraphis mutica* (tobosagrass) or *Bouteloua eriopoda* (black grama) along with other grasses;
- (5) Are characterized by intermediately, moderately, or highly rugged terrain;
- (6) Are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-square-km (0.4-square-mi) area; and
- (7) Are below 2,000 m (6,562 feet) in elevation.

#### **Proposed Critical Habitat Designation**

We are proposing six units as critical habitat for the jaguar. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the jaguar. The six units we propose as critical habitat are: (1) Baboquivari Unit divided into subunits (1a) Baboquivari-Coyote Subunit, including the Northern Baboquivari, Saucito, Quinlan, and Coyote Mountains, and (1b) the Southern Baboquivari Subunit; (2) Atascosa Unit, including the Pajarito, Atascosa, and

Tumacacori Mountains; (3) Patagonia Unit, including the Patagonia, Santa Rita, Empire, and Huachuca Mountains, and the Canelo and Grosvenor Hills; (4) Whetstone Unit, divided into subunits (4a) Whetstone Subunit, (4b) Whetstone-Santa Rita Subunit, and (4c) Whetstone-Huachuca Subunit; (5) Peloncillo Unit, including the Peloncillo Mountains both in Arizona and New Mexico; and (6) San Luis Unit, including the northern extent of the San Luis Mountains at the New Mexico-Mexico border. Table 1 lists both the unoccupied units and those that may have been occupied at the time of listing.

TABLE 1—OCCUPANCY OF JAGUARS BY PROPOSED CRITICAL HABITAT UNITS  
[All units are in Arizona unless otherwise noted]

Unit	Occupied at time of listing
1—Baboquivari Unit	
1a—Baboquivari-Coyote Subunit:	
Coyote Mountains .....	Yes.
Quinlan Mountains .....	Yes.
Saucito Mountains .....	Yes.
Northern Baboquivari Mountains .....	Yes.
1b—Southern Baboquivari Subunit:	
Southern Baboquivari Mountains Connection .....	No.
2—Atascosa Unit:	
Tumacacori Mountains .....	Yes.
Atascosa Mountains .....	Yes.
Pajarito Mountains .....	Yes.
3—Patagonia Unit:	
Empire Mountains .....	Yes.
Santa Rita Mountains .....	Yes.
Grosvenor Hills .....	Yes.
Patagonia Mountains .....	Yes.
Canelo Hills .....	Yes.
Huachuca Mountains .....	Yes.
4—Whetstone Unit	
4a—Whetstone Subunit:	
Whetstone Mountains .....	Yes.
4b—Whetstone-Santa Rita Subunit:	
Whetstone-Santa Rita Mountains Connection .....	No.
4c—Whetstone-Huachuca Subunit:	
Whetstone-Huachuca Mountains Connection .....	No.
5—Peloncillo Unit:	
Peloncillo Mountains (Arizona and New Mexico) .....	Yes.
6—San Luis Unit:	
San Luis Mountains (New Mexico) .....	Yes.

The approximate area of each proposed critical habitat unit is shown in Table 2.

TABLE 2—AREA OF PROPOSED CRITICAL HABITAT UNITS FOR THE JAGUAR

Unit or subunit	Federal		State		Tribal		Private		Total	Total
	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac
1a—Baboquivari-Coyote Subunit .....	4,396	10,862	9,239	22,831	20,764	51,308	3,290	8,130	37,689	93,130
1b—Southern Baboquivari Subunit .....	624	1,543	6,157	15,213	10,829	26,759	1,843	4,555	19,453	48,070
2—Atascosa Unit .....	53,807	132,961	2,296	5,672	0	0	2,522	6,231	58,625	144,864
3—Patagonia Unit .....	107,471	265,566	11,847	29,274	0	0	29,046	71,775	148,364	366,615
4a—Whetstone Subunit .....	16,066	39,699	5,445	13,455	0	0	3,774	9,325	25,284	62,478
4b—Whetstone-Santa Rita Subunit .....	532	1,313	4,612	11,396	0	0	0	0	5,143	12,710
4c—Whetstone-Huachuca Subunit .....	1,654	4,088	2,981	7,366	0	0	3,391	8,379	8,026	19,832
5—Peloncillo Unit .....	28,393	70,160	7,861	19,426	0	0	5,317	13,138	41,571	102,723
6—San Luis Unit .....	0	0	0	0	0	0	3,122	7,714	3,122	7,714
Grand Total .....	212,943	526,191	50,437	124,633	31,593	78,067	52,304	129,246	347,277	858,137

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for jaguar, below.

Subunit 1a: Baboquivari-Coyote Subunit

Subunit 1a consists of 37,689 ha (93,130 ac) in the northern Baboquivari, Saucito, Quinlan, and Coyote Mountains in Pima County, Arizona.

This subunit is generally bounded by the eastern side of the Baboquivari Valley to the west, State Highway 86 to the north, the western side of the Altar Valley to the east, and up to and including Leyvas and Bear Canyons to

the south. Land ownership within the unit includes approximately 4,396 ha (10,862 ac) of Federal lands; 20,764 ha (51,308 ac) of Tohono O'odham Nation lands; 9,239 ha (22,831 ac) of Arizona State lands; and 3,290 ha (8,130 ac) of private lands. The Federal land is administered by the Service and Bureau of Land Management. We consider the Baboquivari-Coyote Subunit occupied at the time of listing (37 FR 6476; March 30, 1972) (see "Occupied Area at the Time of Listing" in our August 20, 2012, proposed rule (77 FR 50214)), and it may be currently occupied, based on jaguar photos from 1996 and from 2001–2008. It contains all elements of the physical or biological feature essential to the conservation of the jaguar, except for connectivity to Mexico.

The primary land uses within Subunit 1a include ranching, grazing, border-related activities, Federal land management activities, and recreational activities throughout the year, including, but not limited to, hiking, birding, horseback riding, and hunting. Special management considerations or protections needed within the subunit would need to address threats presented by increased human disturbances in remote locations through construction of impermeable fences and widening or construction of roadways, power lines, or pipelines.

#### Subunit 1b: Southern Baboquivari Subunit

Subunit 1b consists of 19,453 ha (48,070 ac) in the southern Baboquivari Mountains in Pima County, Arizona. This subunit is generally bounded by the eastern side of the Baboquivari Valley to the west, up to but not including Leyvas and Bear Canyons to the north, the western side of the Altar Valley to the east, and the U.S.-Mexico border to the south. Land ownership within the unit includes approximately 624 ha (1,543 ac) of Federal lands; 10,829 ha (26,759 ac) of Tohono O'odham Nation lands; 6,157 ha (15,213 ac) of Arizona State lands; and 1,843 ha (4,555 ac) of private lands. The Federal land is administered by the Service and Bureau of Land Management. The Southern Baboquivari Subunit provides connectivity to Mexico and was not occupied at the time of listing, but is essential to the conservation of the jaguar because it contributes to the species' persistence by providing connectivity to occupied areas.

The primary land uses within Subunit 1b include ranching, grazing, border-related activities, Federal land management activities, and recreational activities throughout the year,

including, but not limited to, hiking, birding, horseback riding, and hunting.

#### Unit 2: Atascosa Unit

Unit 2 consists of 58,625 ha (144,864 ac) in the Pajarito, Atascosa, and Tumacacori Mountains in Pima and Santa Cruz Counties, Arizona. Unit 2 is generally bounded by the eastern side of San Luis Mountains (Arizona) to the west, roughly 4 km (2.5 mi) south of Arivaca Road to the north, Interstate 19 to the east, and the U.S.-Mexico border to the south. Land ownership within the unit includes approximately 53,807 ha (132,961 ac) of Federal lands; 2,296 ha (5,672 ac) of Arizona State lands; and 2,522 ha (6,231 ac) of private lands. The Federal land is administered by the Coronado National Forest and Bureau of Land Management. We consider the Atascosa Unit occupied at the time of listing (37 FR 6476; March 30, 1972) (see "Occupied Area at the Time of Listing" in our August 20, 2012, proposed rule (77 FR 50214)), and it may be currently occupied based on multiple photos of two, or possibly three, jaguars from 2001–2008. It contains all elements of the physical or biological feature essential to the conservation of the jaguar.

The primary land uses within Unit 2 include Federal land management activities, border-related activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Special management considerations or protections needed within the unit would need to address threats posed by increased human disturbances into remote locations through construction of impermeable fences and widening or construction of roadways, power lines, or pipelines.

#### Unit 3: Patagonia Unit

Unit 3 consists of 148,364 ha (366,615 ac) in the Patagonia, Santa Rita, Empire, and Huachuca Mountains, as well as the Canelo and Grosvenor Hills, in Pima, Santa Cruz, and Cochise Counties, Arizona. Unit 3 is generally bounded by a line running roughly 3 km (1.9 mi) east of Interstate 19 to the west; a line running roughly 6 km (3.7 mi) south of Interstate 10 to the north; Cienega Creek and Highways 83, 90, and 92 to the east, including the eastern slopes of the Empire Mountains; and the U.S.-Mexico border to the south. Land ownership within the unit includes approximately 107,471 ha (265,566 ac) of Federal lands; 11,847 ha (29,274 ac) of Arizona State lands; and 29,046 ha (71,775 ac) of private lands. The Federal land is

administered by the Coronado National Forest, Bureau of Land Management, National Park Service, and Fort Huachuca. We consider the Patagonia Unit occupied at the time of listing (37 FR 6476; March 30, 1972) based on the 1965 record from the Patagonia Mountains (see "Occupied Area at the Time of Listing" in our August 20, 2012, proposed rule (77 FR 50214)) and currently occupied based on photos taken from October 2012, through January 2013, of a male jaguar in the Santa Rita Mountains. The mountain ranges within this unit contain all elements of the physical or biological feature essential to the conservation of the jaguar.

The primary land uses within Unit 3 include military activities associated with Fort Huachuca, as well as Federal land management activities, border-related activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Special management considerations or protections needed within the unit would need to address threats posed by human disturbances through such activities as military ground maneuvers and increased human presence in remote locations through mining and development activities, construction of impermeable fences, and widening or construction of roadways, power lines, or pipelines.

#### Subunit 4a: Whetstone Subunit

Subunit 4a consists of 25,284 ha (62,478 ac) in the Whetstone Mountains in Pima, Santa Cruz, and Cochise Counties, Arizona. Subunit 4a is generally bounded by a line running roughly 4 km (2.5 mi) east of Cienega Creek to the west, a line running roughly 6 km (3.7 mi) south of Interstate 10 to the north, Highway 90 to the east, and Highway 82 to the south. Land ownership within the subunit includes approximately 16,066 ha (39,699 ac) of Federal lands; 5,445 ha (13,455 ac) of Arizona State lands; and 3,774 ha (9,325 ac) of private lands. The Federal land is administered by the Coronado National Forest and Bureau of Land Management. We consider the Whetstone Subunit occupied at the time of listing (37 FR 6476; March 30, 1972) (see "Occupied Area at the Time of Listing" in our August 20, 2012, proposed rule (77 FR 50214)), and, based on photographs taken in 2011, it may be currently occupied. The mountain range within this subunit contains all elements of the physical or biological feature essential to the conservation of the jaguar, except for connectivity to Mexico.

The primary land uses within Subunit 4a include Federal land management activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Special management considerations or protections needed within the subunit would need to address threats posed by increased human disturbances as a result of development activities, and widening or construction of roadways, power lines, or pipelines.

#### Subunit 4b: Whetstone-Santa Rita Subunit

Subunit 4b consists of 5,143 ha (12,710 ac) between the Empire Mountains and northern extent of the Whetstone Mountains in Pima County, Arizona. Subunit 4b is generally bounded by (but does not include): The eastern slopes of the Empire Mountains to the west, a line running roughly 6 km (3.7 mi) south of Interstate 10 to the north, the western slopes of the Whetstone Mountains to the east, and Stevenson Canyon to the south. Land ownership within the subunit includes approximately 532 ha (1,313 ac) of Federal lands and 4,612 ha (11,396 ac) of Arizona State lands. The Whetstone-Santa Rita Subunit provides connectivity from the Whetstone Mountains to Mexico and was not occupied at the time of listing, but is essential to the conservation of the jaguar because it contributes to the species' persistence by providing connectivity to occupied areas.

The primary land uses within Subunit 4b include grazing and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting.

#### Subunit 4c: Whetstone-Huachuca Subunit

Subunit 4c consists of 8,026 ha (19,832 ac) between the Huachuca Mountains and southern extent of the Whetstone Mountains in Santa Cruz and Cochise Counties, Arizona. Subunit 4c is generally bounded by Highway 83, Elgin-Canelo Road, and Upper Elgin Road to the west; Highway 82 to the north; a line running roughly 4 km (2.5 mi) west of Highway 90 to the east; and up to but not including the Huachuca Mountains to the south. Land ownership within the subunit includes approximately 1,654 ha (4,088 ac) of Federal lands; 2,981 ha (7,366 ac) of Arizona State lands; and 3,391 ha (8,379 ac) of private lands. The Federal land is administered by the Coronado National Forest, Bureau of Land Management,

and Fort Huachuca. The Whetstone-Huachuca Subunit provides connectivity from the Whetstone Mountains to Mexico and was not occupied at the time of listing, but is essential to the conservation of the jaguar because it contributes to the species' persistence by providing connectivity to occupied areas.

The primary land uses within Subunit 4c include military activities associated with Fort Huachuca, as well as Federal forest management activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting.

#### Unit 5: Peloncillo Unit

Unit 5 consists of 41,571 ha (102,723 ac) in the Peloncillo Mountains in Cochise County, Arizona, and Hidalgo County, New Mexico. Unit 5 is generally bounded by the eastern side of the San Bernardino Valley to the west, Skeleton Canyon Road and the northern boundary of the Coronado National Forest to the north, the western side of the Animas Valley to the east, and the U.S.-Mexico border on the south. Land ownership within the unit includes approximately 28,393 ha (70,160 ac) of Federal lands; 7,861 ha (19,426 ac) of Arizona State lands; and 5,317 ha (13,138 ac) of private lands. The Federal land is administered by the Coronado National Forest and Bureau of Land Management. We consider the Peloncillo Unit occupied at the time of listing (37 FR 6476; March 30, 1972) (see "Occupied Area at the Time of Listing" in our August 20, 2012, proposed rule (77 FR 50214)), and it may be currently occupied based on a track documented in 1995 and photographs taken in 1996. It contains all elements of the physical or biological feature essential to the conservation of the jaguar.

The primary land uses within Unit 5 include Federal land management activities, border-related activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Special management considerations or protections needed within the unit would need to address threats posed by increased human disturbances in remote locations through construction of impermeable fences and widening or construction of roadways, power lines, or pipelines.

#### Unit 6: San Luis Unit

Unit 6 consists of 3,122 ha (7,714 ac) in the northern extent of the San Luis Mountains in Hidalgo County, New Mexico. Unit 6 is generally bounded by the eastern side of the Animas Valley to the west, a line running roughly 1.5 km (0.9 mi) south of Highway 79 to the north, an elevation line at approximately 1,600 m (5,249 ft) on the east side of the San Luis Mountains, and the U.S.-Mexico border to the south. Land within the unit is entirely privately owned. We consider the San Luis Unit occupied at the time of listing (37 FR 6476; March 30, 1972) (see "Occupied Area at the Time of Listing" in our August 20, 2012, proposed rule (77 FR 50214)), and it may be currently occupied based on photographs taken in 2006. Unit 6 contains almost all elements (PCEs 2–7) of the physical or biological feature essential to the conservation of the jaguar except for PCE 1 (expansive open space). This unit is included because, while by itself it does not provide at least 100 square km (38.6 square mi) of jaguar habitat in the United States, additional habitat can be found immediately adjacent south of the U.S.-Mexico border, and therefore this area represents a small portion of a much larger area of habitat.

The primary land uses within Unit 6 include border-related activities, grazing, and some recreational activities throughout the year, including, but not limited to, hiking, horseback riding, and hunting. Special management considerations or protections needed within the unit would need to address threats posed by increased human disturbances into remote locations through construction of impermeable fences and widening or construction of roadways, power lines, or pipelines.

#### *Consideration of Impacts Under Section 4(b)(2) of the Act*

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a

result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. We are considering excluding lands owned and managed by the Tohono O'odham Nation from critical habitat. The Tohono O'odham Nation has indicated that they are preparing a Jaguar Management Plan, which we expect to receive during this comment period. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

#### Draft Economic Analysis

The draft economic analysis describes the economic impacts of all potential conservation efforts for the jaguar; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species.

Most courts have held that the Service only needs to consider the incremental impacts imposed by the critical habitat designation over and above those impacts imposed as a result of listing

the species. For example, the Ninth Circuit Court of Appeals reached this conclusion twice within the last few years, and the U.S. Supreme Court declined to hear any further appeal from those rulings (*Arizona Cattle Growers' Assoc. v. Salazar*, 606 F.3d 116, (9th Cir. June 4, 2010) cert. denied, 179 L. Ed. 2d 300, 2011 U.S. LEXIS 1362, 79 U.S.L.W. 3475 (2011); *Home Builders Association of Northern California v. United States Fish & Wildlife Service*, 616 F. 3rd 983 (9th Cir. 2010) cert. denied, 179 L. Ed. 2d 300, 2011 U.S. LEXIS 1362, 79 U.S.L.W. 3475 (2011)).

However, the prevailing court decisions in the Tenth Circuit Court of Appeals do not allow the incremental analysis approach. Instead, the Tenth Circuit requires that the Service consider both the baseline economic impacts imposed due to listing the species and the additional incremental economic impacts imposed by designating critical habitat (*New Mexico Cattle Growers Ass'n v. FWS*, 248 F.3d 1277 (10th Cir. May 11, 2001)). As a consequence, an economic analysis for critical habitat that is being proposed for designation within States that fall within the jurisdiction of the Tenth Circuit (as this designation does) should include a coextensive cost evaluation which addresses, and quantifies to the extent feasible, all of the conservation-related impacts associated with the regulatory baseline (those resulting under the jeopardy standard under section 7 of the Act, and under sections 9 and 10 of the Act). In other words, the allocation of impacts should show those that are part of the regulatory baseline and those that are unique to the critical habitat designation. For a further description of the methodology of the analysis, see Chapter 2.3, "Analytic Framework and Scope of the Analysis," of the draft economic analysis.

The draft economic analysis provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the jaguar over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The draft economic analysis quantifies economic impacts of jaguar conservation efforts associated with the following categories of activity: (1) Federal land management; (2) border

protection activities; (3) mining; (4) transportation activities; (5) development; (6) military activities; (7) livestock grazing and other activities; and (8) Tohono O'odham Nation activities. Chapter 11 of the draft economic analysis provides the quantification of economic impacts of jaguar conservation efforts.

Given the secretive and transient nature of the jaguar and the fact that Federal land managers already take steps to protect the jaguar even without critical habitat, we do not anticipate recommending incremental conservation measures to avoid adverse modification of critical habitat over and above those recommended to avoid jeopardy of the species, except in cases where an activity could create a situation in which a unit of critical habitat could become inaccessible to jaguars. The loss of one critical habitat unit would not constitute jeopardy to the species, but it may constitute destruction or adverse modification.

Major construction projects (such as new highways, significant widening of existing highways, or construction of large facilities or mines) could sever connectivity within these critical habitat units and subunits, and could constitute adverse modification. However, at this time we are unable to identify the conservation measures that will be requested to avoid adverse modification, and we are therefore unable to quantify these impacts.

Therefore, the total projected incremental costs of administrative efforts resulting from section 7 consultations on the jaguar are approximately \$360,000 over 20 years (\$31,000 on an annualized basis), assuming a 7 percent discount rate. The analysis estimates future potential administrative impacts based on the historical rate of consultations on the jaguar in areas proposed for critical habitat, as discussed in Chapter 2 of the draft economic analysis.

As stated earlier, we are soliciting data and comments from the public on the draft economic analysis and draft environmental assessment, as well as all aspects of the proposed rule, as revised by this document, and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

### Draft Environmental Assessment

The purpose of the draft environmental assessment, prepared pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), is to identify and disclose the environmental consequences resulting from the proposed action of designating critical habitat for the jaguar. In the draft environmental assessment, three alternatives are evaluated: The No Action Alternative; Alternative A, the proposed rule; and Alternative B, the proposed rule with exclusion and exemption areas. The no action alternative is required by NEPA for comparison to the other alternatives analyzed in the draft environmental assessment. The no action alternative is equivalent to no designation of critical habitat for the jaguar. Our preliminary determination is that designation of critical habitat for the jaguar will not have significant impacts on the environment. However, we will further evaluate this issue as we complete our final environmental assessment.

As we stated earlier, we are soliciting data and comments from the public on the draft environmental assessment, as well as all aspects of the proposed rule, the draft economic analysis, and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the comment period on the environmental consequences resulting from our proposed designation of critical habitat.

### Required Determinations—Amended

In our August 20, 2012, proposed rule (77 FR 50214), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. We have now made use of the draft economic analysis data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). However, based on the draft economic analysis data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601

*et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), E.O. 12630 (Takings), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951).

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of

project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the jaguar would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as mining, transportation construction, development, and agriculture and grazing. In order to determine whether it is appropriate for our agency to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Because the jaguar is listed as an endangered species under the Act, in areas where the jaguar is present, Federal agencies are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the draft economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the jaguar. The designation of critical habitat for the jaguar is unlikely to directly affect any small entities. The costs associated with the designation are likely to be limited to the incremental impacts associated with administrative costs of section 7 consultations. Small entities may participate in section 7 consultation as a third party (the primary consulting parties being the Service and the Federal action agency). It is therefore possible that the small entities may spend additional time considering critical habitat due to the need for a section 7 consultation for the jaguar. Additional incremental costs of consultation that would be borne by the Federal action agency and the Service are not relevant to this screening analysis as these entities (Federal agencies) are not small. It is uncertain

whether any third parties involved with mining or transportation would be considered small entities when fully operational; however, assuming that they would qualify as small entities, the cost of consultation represents less than 1 percent of each company's annual revenues. Potential impacts to agriculture and grazing related to foregone Natural Resources Conservation Service (NRCS) funding are not quantified; however, we do not expect small entities to bear a direct burden. Please refer to the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small

entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the jaguar, under the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation. In accordance with the Tenth Circuit, we have completed a draft environmental assessment to identify and disclose the environmental consequences resulting from the proposed designation of critical habitat for the jaguar. Our preliminary determination is that the designation of critical habitat for the jaguar would not have significant impacts on the environment.

*E.O. 12630 (Takings)*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the jaguar in a proposed takings implications assessment. The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the jaguar. Based on information contained in the economic analysis and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the proposed takings implications assessment concludes that

this designation of critical habitat for the jaguar does not pose significant takings implications for lands within or affected by the designation. However, we will further evaluate this issue as we complete our final economic analysis.

*Government-to-Government Relationship With Tribes*

On May 16, 2012, we sent a letter to the Tohono O'odham Nation (the one Tribe that owns and manages land within the proposed designation) and Bureau of Indian Affairs notifying them of our intent to propose critical habitat for the jaguar. On August 24, 2012, we notified all Tribes potentially affected by our proposal to designate jaguar critical habitat via email, then followed up by sending a letter to each Tribal leader on September 28, 2012. Potentially affected Tribes include: The Ak Chin Community, Gila River Indian Community, Hope Tribe, Pascua Yaqui Tribe, Salt River Pima Maricopa Indian Tribe, San Carlos Apache Tribe, Tohono O'odham Tribe, and White Mountain Apache Tribe. Additionally, on September 27, 2012, we met with Tohono O'odham Nation staff to discuss the proposed designation.

**Authors**

The primary authors of this notice are the staff members of the Arizona Ecological Services Fish and Wildlife Office, Southwest Region, U.S. Fish and Wildlife Service.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended on August 20, 2012, at 77 FR 50214, as set forth below:

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.95, the entry proposed for “Jaguar (*Panthera onca*)” at 77 FR 50214, by revising paragraphs (a)(2), (a)(5), (a)(6), and (a)(7) to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*

(a) *Mammals.*

\* \* \* \* \*

Jaguar (*Panthera onca*)

\* \* \* \* \*

(2) Within these areas, the primary constituent elements of the physical or biological feature essential to the conservation of jaguar consist of expansive open spaces in the southwestern United States of at least 100 square kilometers (km) (38.6 square miles (mi)) in size which:

(i) Provide connectivity to Mexico;

(ii) Contain adequate levels of native prey species, including deer and

javelina, as well as medium-sized prey such as coatis, skunks, raccoons, or jackrabbits;

(iii) Include surface water sources available within 20 km (12.4 mi) of each other;

(iv) Contain from greater than 1 to 50 percent canopy cover within Madrean evergreen woodland, generally recognized by a mixture of oak, juniper, and pine trees on the landscape, or semidesert grassland vegetation communities, usually characterized by *Pleuraphis mutica* (tobosagrass) or

*Bouteloua eriopoda* (black grama) along with other grasses;

(v) Are characterized by intermediately, moderately, or highly rugged terrain;

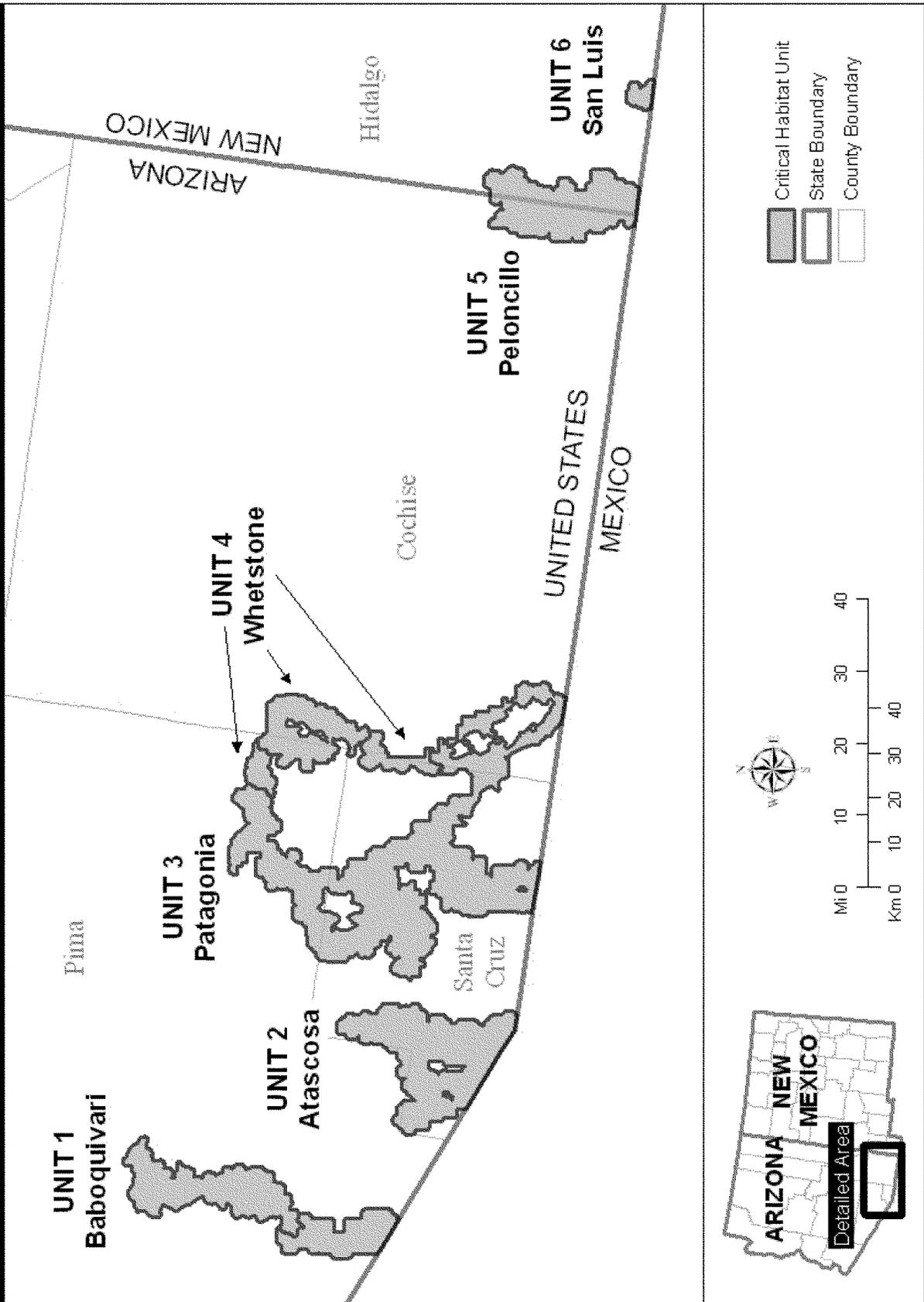
(vi) Are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-square-km (0.4-square-mi) area; and

(vii) Are below 2,000 meters (6,562 feet) in elevation.

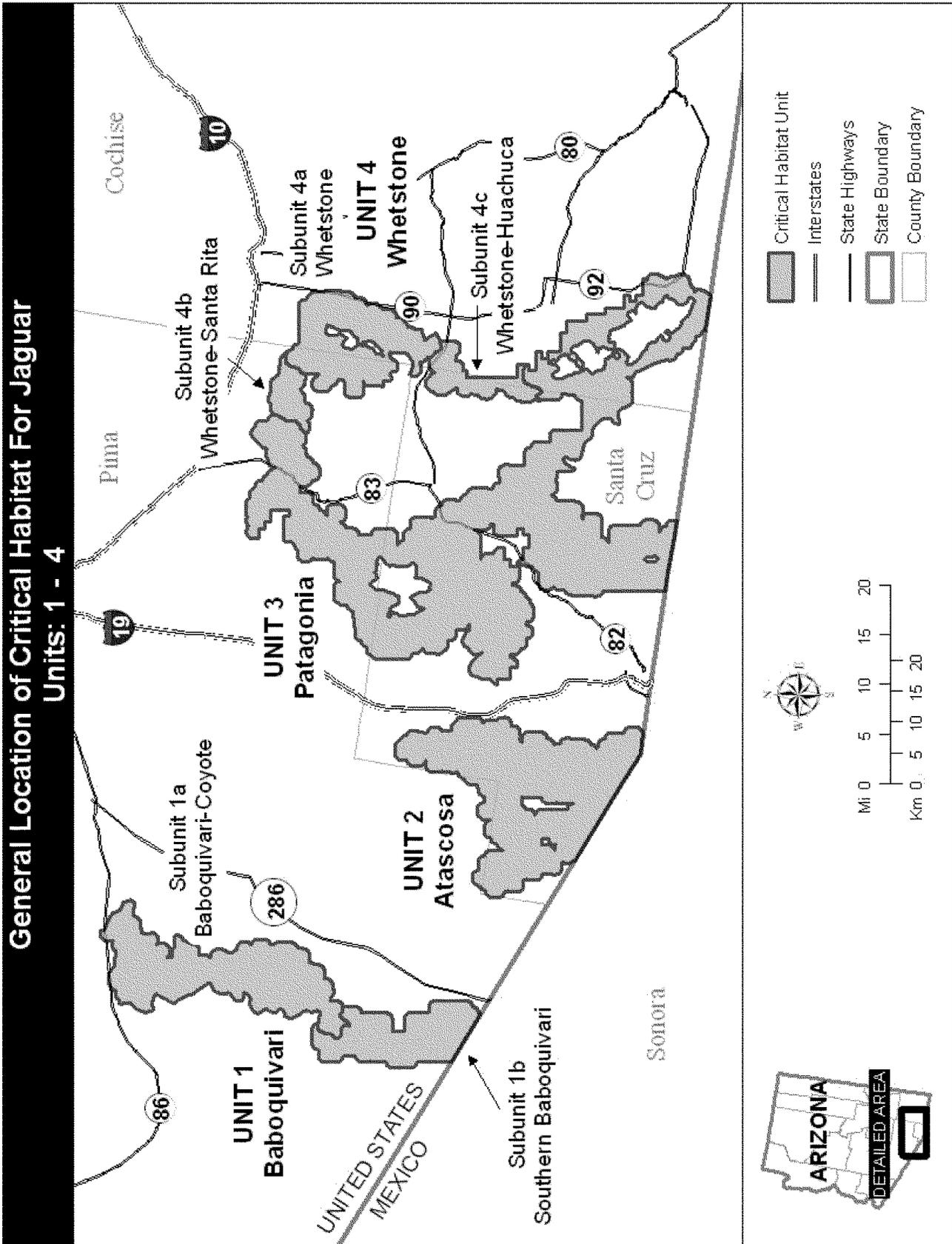
\* \* \* \* \*

(5) Index map follows:

# General Location of Critical Habitat For Jaguar Overview



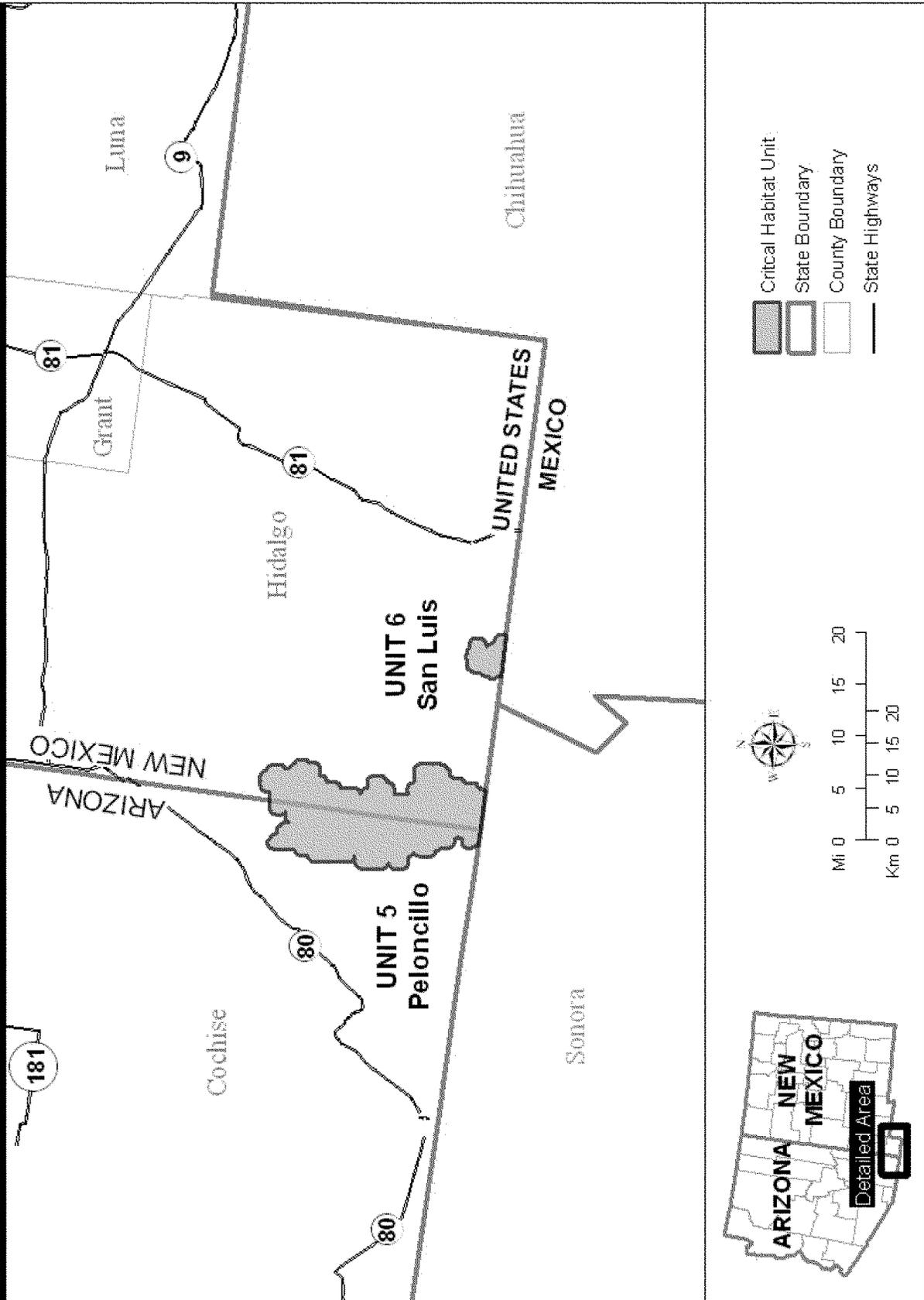
Counties, Arizona. Map of Units 1, 2, 3, and 4 follows:



(7) Units 5 and 6: Peloncillo and San Luis Units, Cochise County, Arizona,

and Hidalgo County, New Mexico. Map of Units 5 and 6 follows:

**General Location of Critical Habitat For Jaguar  
Units: 5 and 6**



\* \* \* \* \*

Dated: June 7, 2013.

**Michael J. Bean,**

*Acting Principal Deputy Assistant Secretary  
for Fish and Wildlife and Parks.*

[FR Doc. 2013-15688 Filed 6-28-13; 8:45 am]

**BILLING CODE 4310-55-C**

# Notices

Federal Register

Vol. 78, No. 126

Monday, July 1, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 21st Century Conservation Service Corps Partnership Opportunity

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The 21st Century Conservation Service Corps (21CSC) National Council is requesting letters of interest from all conservation and youth corps programs that would like to be identified as a 21CSC member organization. We are initiating this outreach in order to catalyze the establishment of a 21st Century Conservation Service Corps (21CSC) to engage young Americans and returning veterans in public lands and water restoration.

This notice seeks to establish the 21CSC by building upon and leveraging the experience and expertise of existing Federal, State, tribal, local and non-profit conservation and youth corps, and veterans programs. This will facilitate conservation and restoration service work on public lands to include all governmental entities of cities, counties, States, and the Federal Government, and encourage a new generation of natural resource managers and environmental stewards.

All principals of interested organizations are invited to submit a letter of interest that outlines the organization's and/or program's criteria. Letters should include the name of your organization; an address and point of contact, including email address; and a description of your organization or program. Organizations that respond to this request may be contacted to provide additional information to support their statements. The 21CSC National Council will oversee the review of all submissions to determine the respondent's alignment with the 21CSC principles. Organizations that are not

recognized as 21CSC member organizations in the initial review process may submit new letters of interest.

This notice is being published by the USDA Forest Service on behalf of the National Council; 21CSC member organizations recognized through this process will be acknowledged by all signatories to the National Council MOU.

**DATES:** Submit letters of interest (maximum 5 pages, double-spaced in Times New Roman, 12 point type) before August 1, 2013. An interagency team will review submissions and respond by September 30, 2013. Organizations may submit letters of interest including new and re-submissions up to 1 year after the date of this notice. Letters will be reviewed quarterly and the member organization directory will also be updated quarterly (October, January, April, and July). Organizations may be removed at any time by submitting a written request to the email or mailing address below. Membership will last through the 2014 calendar year; more information regarding membership beyond this period will be forthcoming after August 2014.

**ADDRESSES:** Letters of interest may be submitted electronically to [21CSC@fs.fed.us](mailto:21CSC@fs.fed.us). If electronic submission is not an option, please send your letter of interest to: USDA Forest Service, Attn: Merlene Mazyck, 1620 Kent Street, RPC, 4th Floor, Arlington, VA 22209.

**FOR FURTHER INFORMATION CONTACT:** USDA Forest Service, Attn: Merlene Mazyck, 1620 Kent Street, RPC, 4th Floor, Arlington, VA 22209 or [21CSC@fs.fed.us](mailto:21CSC@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

#### **SUPPLEMENTARY INFORMATION:**

##### **21CSC National Council**

The implementation of the 21CSC is coordinated by a National Council of representatives from Federal agencies that formalized their mission through the signing a Memorandum of Understanding in January 2013. National Council membership includes

leadership from the Departments of the Army, Interior, Agriculture, Commerce, and Labor, Environmental Protection Agency, the President's Council on Environmental Quality, and the Corporation for National and Community Service. The National Council will work to: Support program expansion, including by matching natural resource management needs with 21CSC opportunities and identifying potential sources of funding and other resources; remove barriers and streamline processes for supporting 21CSC programs; support participant pathways to careers; facilitate technical assistance; develop and support partnerships; coordinate messaging; and ensure national representation.

#### **Background**

The 21CSC is a bold national effort to put America's youth and veterans to work protecting, restoring, and enhancing America's Great Outdoors. Recognizing the need for job opportunities for youth and returning veterans, for restoration of our natural resources, to connect Americans to the country's lands and waters, to effectively recruit the next generation of public employees, and to develop the next generation of conservation stewards, the Secretary of the Department of the Interior, on behalf of the America's Great Outdoors Council, formed a Federal Advisory Committee (FACA) to develop recommendations for the establishment of the 21CSC. The FACA was comprised of representatives from Federal agencies, the outdoor industry, and non-profit youth and conservation corps. In addition to providing recommendations, the FACA also identified 21 CSC goals and principles, which were slightly modified and adopted by the Federal 21CSC National Council.

#### **21CSC Goals**

1. *Build America's future.* Through service to America, the 21CSC will develop a generation of skilled workers, educated and active citizens, future leaders, and stewards of natural and cultural resources, communities, and the nation.

2. *Put Americans to work.* The 21CSC will provide service, training, education, and employment opportunities for thousands of young Americans and veterans, including low income, disadvantaged youth and other

youth with limited access to outdoor work opportunities.

3. *Preserve, protect, and promote America's greatest gifts.* The 21CSC will protect, restore, and enhance public and tribal lands and waters as well as natural, cultural, and historical resources and treasures. With high-quality, cost-effective project work, the 21CSC will increase public access and use while spurring economic development and outdoor recreation.

#### 21CSC Principles

21CSC member organizations must be in alignment with the criteria in each of the following 21CSC Principles:

1. *Population served.* Program serves young people ages 15–25 and/or military veterans up to age 35. Program may serve young people up to age 29 in an advanced capacity.

2. *Participant eligibility.* Participants must be a U.S. citizen, national, or lawful permanent resident alien of the United States, meeting the same citizenship requirements as those for serving in AmeriCorps and Public Lands Corps.

3. *Emphasis on diversity and inclusion.* Participant recruitment should make deliberate outreach efforts to traditionally underserved communities, including low-income and disadvantaged populations.

4. *Term of service.* Program minimum term of service of: 140 hours of on-the-ground, hands-on direct service for full time students and summer only participants; or 300 hours of on-the-ground, hands-on direct service for non-full time student participants. Program maximum term of service of 3,500 hours of on-the-ground, hands-on direct service, with a limited exception for program elements that require more than 3,500 hours to achieve highly advanced outcomes. Service is compensated (not volunteer). Compensation can be in the form of wages, stipend, educational credit, or other appropriate form.

5. *Organization of work.* Program organizes its participants as either: (a) Crew-based where participants work collectively and intensely together directly supervised by trained and experienced crew leaders or conservation professionals, or (b) Individual or small team-based where participants work individually or in coordinated teams under the direction of conservation professionals on initiatives that require specific skills and dedicated attention.

6. *Types of work.* Projects include significant outdoor activity and/or include “hands-on” direct impact and/or helps young people connect with

America's Great Outdoors. Some programs may include work that is primarily indoors—for example, science, policy or program internships—that have a clear benefit to natural, cultural or historic resources.

7. *Participant outcomes.* Program provides:

(a) Job skill development to prepare participants to be successful in the 21st century workforce;

(b) Community skill development to help participants acquire an ethic of service to others and learn to become better resource and community stewards; and

(c) A connection, improvement, or restoration of the natural or cultural/urban environment or a greater understanding of our natural, cultural, or historic resources.

8. *Leveraged investment.* Program leverages public investment through either financial or in-kind support, to the extent possible. Exceptions may be made to support new, smaller, or Federal programs that increase diversity and inclusion.

#### 21CSC Member Organization Benefits and Caveats

Through this “notice of interest” process, all respondents that currently meet each of the criteria listed in all 21CSC principles will be designated as a 21CSC member organization. Designation as a 21CSC member organization is not a commitment of funding or future partnership opportunities; however, this designation may result in the following benefits to and limitations for member organizations and the Federal agencies represented on the 21CSC National Council.

Access to a national network of 21CSC member organizations.

1. Identification on a government Web site as a 21CSC member organization.

2. Ability to utilize the 21CSC logo to promote affiliation as a member organization.

3. Participation and/or acknowledgement in a rollout and launch of 21CSC in the Fall 2013.

4. Career and youth development opportunities with Federal agencies for participants of member organizations, where available.

5. Inclusion with outreach to Public Lands Service Corps programs about Federal partnership and employment opportunities.

6. Opportunities to participate in webinars and other outreach to agency field staff to increase awareness of how agency natural, cultural, or historic resource management needs can be

supported or met by youth and veterans conservation corps, where appropriate.

7. Neither this announcement, nor letters of interest submitted in response to this announcement, obligates any Federal agency represented on the 21CSC National Council to enter into a contractual agreement with any respondent.

8. Federal agencies represented on the 21CSC National Council reserve the right to establish a partnership based on organizational priorities and capabilities found by way of this announcement or other searches, if determined to be in the best interest of the government.

9. This Notice does not preclude any Federal agencies from entering into agreements or partnerships with non-21CSC organizations.

Dated: June 24, 2013.

**Jame M. Pena,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2013–15644 Filed 6–28–13; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Ravalli County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Ravalli County Resource Advisory Committee will meet in Hamilton, MT. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to provide information regarding the monitoring of RAC projects.

**DATES:** The meeting will be held July 23, 2013 6:30 p.m.

**ADDRESSES:** The meeting will be held at the Bitterroot National Forest Supervisor's Office located at 1801 N. 1st, Hamilton, MT. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Bitterroot National Forest Supervisor's

Office. Please call ahead to 406-363-7100 to facilitate entry into the building and to view comments.

**FOR FURTHER INFORMATION CONTACT:** Dan Ritter, Stevensville District Ranger at 406-777-5461 or Joni Lubke, Executive Assistant at 406-363-7100. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed For Further Information.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: Review status of funded RAC projects and an update on campground beetle projects. Contact Joni Lubke at 406-363-7100 for a full agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. Individuals wishing to make an oral statement should request in writing by July 8, 2013 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Joni Lubke at 1801 N. 1st, Hamilton, MT 59840 or by email to [jmlubke@fs.fed.us](mailto:jmlubke@fs.fed.us) or via facsimile to 406-363-7159. A summary of the meeting will be posted at [https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure\\_rural\\_schools.nsf/Web\\_Agendas?OpenView&Count=1000&RestrictToCategory=Ravalli+County](https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Ravalli+County) within 21 days of the meeting.

Dated: June 25, 2013.

**Cole Mayn,**

*Acting Forest Supervisor.*

[FR Doc. 2013-15667 Filed 6-28-13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Office of the Secretary

[Docket No.: 130514469-3562-02]

#### Notice of Extension of Comment Period for Draft Initial Comprehensive Plan and Draft Environmental Assessment

**AGENCY:** Office of the Secretary, U.S. Department of Commerce.

**ACTION:** Notice of Extension of Public Comment Period.

**SUMMARY:** Pursuant to the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies

of the Gulf States Act (RESTORE Act), the Secretary of Commerce, as Chair of the Gulf Coast Ecosystem Restoration Council (Council), announces the extension of the public comment period for the Draft Initial Comprehensive Plan (Draft Plan) to restore and protect the Gulf Coast region and the Draft Programmatic Environmental Assessment (Draft PEA) for the Draft Plan. Council Members also have compiled preliminary lists of ecosystem restoration projects that are “authorized but not yet commenced” and the full Council is in the process of evaluating these lists; the Council announces the availability of these preliminary lists. If you previously submitted comments, please do not resubmit them because the Council has already incorporated them into the public record and will fully consider them.

**DATES:** To ensure consideration, we must receive your written comments by July 8, 2013.

**ADDRESSES:** You may submit comments on the Draft Plan, the preliminary lists of “authorized but not yet commenced” ecosystem restoration projects, and Draft PEA by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via [www.restorethegulf.gov](http://www.restorethegulf.gov).
- *Mail/Commercial Delivery:* Please send a copy of your comments to Gulf Coast Ecosystem Restoration Council, c/o U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4077, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** The Council can be reached at [restorecouncil@doc.gov](mailto:restorecouncil@doc.gov).

**SUPPLEMENTARY INFORMATION:** On May 29, 2013, we published a **Federal Register** notice (78 FR 32237) announcing the availability of the Draft Plan, the preliminary lists of “authorized but not yet commenced” ecosystem restoration projects, and the Draft PEA for the Draft Plan and requesting comments, to be submitted by June 24, 2013. To provide additional time for responses, this notice extends the comment period until July 8, 2013.

The Council is seeking public and tribal comment on all aspects of the Draft Plan. In particular, the Council seeks public and tribal comment on the following:

(1) The Draft Plan includes restoration Priority Criteria established in the RESTORE Act and applicable to the Council’s selection of projects and programs for the first three years after publication of the Initial Comprehensive Plan. The Council is considering further defining these criteria and developing additional criteria for consideration.

a. Should the Council further define the Priority Criteria? If so, how?

b. Should the Council develop additional criteria for consideration now or in the future? If so, what should they be?

(2) The “Objectives” section of the Draft Plan describes the broad types of activities the Council envisions funding in order to achieve its ecosystem restoration goals.

a. Should the Council consider other Objectives at this juncture? If not, at what point, if any, should the Council consider additional Objectives? If so, what should they be?

b. Similarly, should the Council eliminate any of the Objectives? If so, what effect will elimination of the Objective(s) have on the Council’s ability to ensure a regional ecosystem approach to restoration?

c. How should the Council prioritize its restoration Objectives?

(3) The Council is considering establishing or engaging advisory committees as may be necessary, such as a citizens’ advisory committee and/or a science advisory committee, to provide input to the Council in carrying out its responsibilities under the RESTORE Act.

a. Should the Council establish any advisory committees?

b. If so, what type of advisory committees should the Council establish? How should the Council structure such advisory committees? What role should such advisory committees play?

In accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4335, and the Council on Environmental Quality’s regulations implementing NEPA, 40 C.F.R. Parts 1500-1507, the Council has prepared a Draft PEA on the Draft Plan. The Council is also seeking public comment on all aspects of the Draft PEA in addition to all aspects of the Draft Plan and the preliminary list of “authorized but not yet commenced” ecosystem restoration projects compiled by Council Members.

**Document Availability:** Copies of the Draft Plan, the preliminary list of “authorized but not yet commenced” projects and programs, and Draft PEA are available at the following office during regular business hours: Department of Commerce, 1401 Constitution Avenue NW., Room 4077, Washington, DC 20230. Electronic versions of the documents can be viewed and downloaded at [www.restorethegulf.gov](http://www.restorethegulf.gov).

**Legal Authority:** The statutory program authority for the Draft Initial Comprehensive

Plan is found in subtitle F of the Moving Ahead for Progress in the 21st Century Act ("MAP-21"), Pub. L. 112-141, 126 Stat. 405 (Jul. 6, 2012).

Dated: June 25, 2013.

**Cameron F. Kerry,**

*Acting Secretary of Commerce, Chair, Gulf Coast Ecosystem Restoration Council.*

[FR Doc. 2013-15696 Filed 6-28-13; 8:45 am]

**BILLING CODE 3510-EA-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-66-2013]

#### Foreign-Trade Zone 84—Houston, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting authority to expand FTZ 84 to include additional sites in Harris County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on June 25, 2013.

FTZ 84 was approved on July 15, 1983 (Board Order 214, 48 FR 34792, 8/1/83). The zone was expanded on December 24, 1991 (Board Order 551, 57 FR 42, 1/2/92), on December 23, 1993 (Board Order 670, 59 FR 61, 1/3/94), on August 24, 2000 (Board Order 1115, 65 FR 54197, 9/7/00), on March 21, 2003 (Board Order 1271, 68 FR 15431, 3/31/03), on May 14, 2003 (Board Order 1277, 68 FR 27987, 5/22/03), and on April 24, 2009 (Board Order 1611, 74 FR 27777-27778, 6/11/09).

FTZ 84 currently consists of 25 sites (2,756.74 acres total) at port facilities, industrial parks and warehouse facilities in Houston and the Harris County area. The sites—which are in Houston unless otherwise stated—are as follows: *Site 1* (420.70 acres)—Houston Ship Channel Turning Basin, Clinton Drive at Highway 610 East Loop; *Site 2* (97 acres)—Houston Ship Channel (Bulk Materials Handling Plant), north bank between Greens Bayou and Penn City Road; *Site 3* (58.39 acres)—Barbours Cut Turning Basin, Highway 146 at Highway 225; *Site 4* (3.47 acres)—Cargoways Logistics, 1201 Hahlo Street; *Site 5* (7.53 acres)—Timco Scrap Processing, 6747 Avenue W; *Site 6* (73 acres)—Odfjell Terminals, 12211 Port Road; *Site 7* (126 acres)—Jacintoport Terminal, Houston Ship Channel, 16398 Jacintoport Blvd.; *Site 8* (162.5 acres)—Central Green Business Park, 16638 Air Center Boulevard; *Site 9* (72.52 acres)—

Manchester Terminal Corporation, 10000 Manchester; *Site 10* (14.2 acres)—13609 Industrial Road, within the Greens Port Industrial Park along the Houston Ship Channel; *Site 11* (269 acres)—Oiltanking, Inc., 15602 Jacintoport Boulevard; *Site 12* (146 acres)—Kinder Morgan Liquids Terminal LLC, Clinton Drive at Panther Creek and North Witter Street at Bayou Street; *Site 13* (18 acres)—Exel Logistics, Inc., 8833 City Park Loop Street; *Site 14* (22 acres)—George Bush

Intercontinental Airport, Fuel Storage Road, Houston jet fuel storage and distribution system; *Site 15* (196 acres)—Magellan Midstream Partners, liquid bulk facility, 12901 American Petroleum Road, Galena Park, Harris County; *Site 16* (72 acres)—Katoen Natie Gulf Coast Warehousing Complex, Miller Road Cutoff and U.S. Highway 225, Harris County; *Site 17* (172 acres total, 2 parcels, sunset 5/31/2014)—within the Highway 225 Industrial Development: Underwood Industrial Park (162 acres), located at 2820 East 13th Street, Deer Park, and Battleground Business Park (10 acres), located at the corner of Porter Road and Old Underwood Road, La Porte; *Site 18* (106 acres, sunset 5/31/2014)—Bay Area Business Park, located at Red Bluff Road and Bay Area Boulevard, Pasadena; *Site 19* (190 acres, sunset 5/31/2014)—Republic Distribution Center, located on the corner of Red Bluff Road and Choate Road, Pasadena; *Site 20* (299 acres, sunset 5/31/2014)—Port Crossing Industrial Park, located along McCabe Road and State Highway 146, La Porte; *Site 22* (146 acres, sunset 5/31/2014)—Port of Houston Authority's Beltway 8 Tract, located at the corner of East Belt Drive and Jacintoport Boulevard; *Site 23* (16.94 acres)—Katoen Natie Gulf Coast, Inc., 102 Old Underwood Road and 1100 Underwood Drive, Deer Park; *Site 24* (11.32 acres, sunset 5/31/2014)—Kuehne + Nagel, Inc., 15450 Diplomatic Plaza Drive; *Site 25* (11.87 acres, expires 12/31/2014)—Emerson Process Management Valve Automation, Inc., 19200 Northwest Freeway; and, *Site 27* (45.3 acres, expires 5/31/2015)—Mitsubishi Caterpillar Forklift America, Inc., 2121 West Sam Houston Parkway North. (Note: Site 21 was removed from the zone project in December 2012 (S-142-2012).) There is an application currently pending with the FTZ Board to expand the zone to include a site (Proposed Site 26) in Brazos County (Docket B-10-2013).

The applicant is requesting authority to expand the zone to include the following sites: *Proposed Site 28* (199.6 acres)—within the 3,635-acre

Generation Park located at the intersection of Beltway 8 and North Lake Houston Parkway in Houston; and, *Proposed Site 29* (593.935 acres, 2 parcels)—within the 1,080-acre Texas Deepwater Industrial Port located at the northeast and southwest corner of Jacintoport Boulevard and the Beltway 8 Bridge in Harris County. No specific production authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 30, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 16, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz). For further information, contact Camille Evans at [Camille.Evans@trade.gov](mailto:Camille.Evans@trade.gov) or at (202) 482-2350.

Dated: June 25, 2013.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2013-15723 Filed 6-28-13; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-65-2013]

#### Notification of Proposed Production Activity; Subzone 7G; Schering-Plough Products, L.L.C. (Pharmaceutical Products); Las Piedras, Puerto Rico

Schering-Plough Products, L.L.C. (Schering-Plough), operator of Subzone 7G, submitted a notification of proposed production activity to the FTZ Board for its facility in Las Piedras, Puerto Rico. The notification conforming to the requirements of the regulations of the

FTZ Board (15 CFR 400.22) was received on June 17, 2013.

Schering-Plough currently has authority to produce certain pharmaceutical products and their intermediates within Subzone 7G. The current request would add the production of suvorexant pharmaceutical tablets for the treatment of insomnia using a proprietary active ingredient, an orexin receptor antagonist, to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status material and the specific finished product listed in the submitted notification described here and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Schering-Plough from customs duty payments on the foreign status material used in export production. On its domestic sales, Schering-Plough would be able to choose the duty rate during customs entry procedures that applies to the suvorexant tablets (duty-free) for the additional foreign-status active ingredient (duty rate, 6.5%) and for the foreign status inputs in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 12, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

**FOR FURTHER INFORMATION CONTACT:** Diane Finver at [Diane.Finver@trade.gov](mailto:Diane.Finver@trade.gov) or (202) 482-1367.

Dated: June 25, 2013.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2013-15724 Filed 6-28-13; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**Background**

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

**Upcoming Sunset Reviews for August 2013**

The following Sunset Reviews are scheduled for initiation in August 2013 and will appear in that month's Notice of Initiation of Five-Year Sunset Review ("Sunset Review").

Antidumping duty proceedings	Department contact
New Pneumatic Off-The-Road Tires from China (A-570-912) (1st Review) .....	Jennifer Moats (202) 482-5047
Raw Flexible Magnets from China (A-570-922) (1st Review) .....	Jennifer Moats (202) 482-5047
Raw Flexible Magnets from Taiwan (A-583-842) (1st Review) .....	David Goldberger (202) 482-4136
<b>Countervailing Duty Proceedings</b>	
New Pneumatic Off-The-Road Tires from China (C-570-913) (1st Review) .....	Dana Mermelstein (202) 482-1391
Raw Flexible Magnets from China (C-570-923) (1st Review) .....	Jennifer Moats (202) 482-5047
<b>Suspended Investigations</b>	
No Sunset Review of suspended investigations is scheduled for initiation in August 2013.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to

participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 14, 2013.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2013-15721 Filed 6-28-13; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-583-841]

**Polyvinyl Alcohol From Taiwan: Rescission of Antidumping Duty Administrative Review; 2012-2013**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is rescinding its administrative review of the antidumping duty order on polyvinyl alcohol (PVA) from Taiwan for the period March 1, 2012, through February 28, 2013.

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

**FOR FURTHER INFORMATION CONTACT:** Bryan Hansen or Minoo Hatten, AD/CVD Operations Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3683 and (202) 482-1690 respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On March 1, 2013, we published a notice of opportunity to request an administrative review of the antidumping duty order on PVA from Taiwan for the period of review March 1, 2012, through February 28, 2013.<sup>1</sup> On May 1, 2013, in response to a request from Chang Chun Petrochemical Co., Ltd. (CCPC), in accordance with section 751(a) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on PVA from Taiwan with respect to CCPC.<sup>2</sup>

On May 24, 2013, CCPC withdrew its request for an administrative review.<sup>3</sup>

**Rescission of Review**

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, “in whole or in part, if a party that requested a review withdraws the request within 90 days of

the date of publication of notice of initiation of the requested review.” CCPC withdrew its request for review within the 90-day time limit. Because we received no other requests for review of CCPC and no other requests for the review of the order on PVA from Taiwan with respect to other companies subject to the order, we are rescinding the administrative review of the order in full. This rescission is in accordance with 19 CFR 351.213(d)(1).

Accordingly, the Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

**Notifications**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(j)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: June 25, 2013.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2013-15720 Filed 6-28-13; 8:45 am]

**BILLING CODE 3510-DS-P**

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”), the Department of Commerce (“the Department”) is automatically initiating five-year reviews (“Sunset Reviews”) of the antidumping and countervailing duty (“AD/CVD”) orders listed below. The International Trade Commission (“the Commission”) is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

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

**FOR FURTHER INFORMATION CONTACT:** The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

**SUPPLEMENTARY INFORMATION:****Background**

The Department’s procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department’s conduct of Sunset Reviews is set forth in the Department’s Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998), and in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

**Initiation of Review**

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping duty orders:

**DEPARTMENT OF COMMERCE****International Trade Administration****Initiation of Five-Year (“Sunset”) Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 78 FR 13858 (March 1, 2013).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 25418 (May 1, 2013).

<sup>3</sup> See letter from CCPC to the Department, “Polyvinyl Alcohol from Taiwan: Withdrawal of Administrative Review Request” (May 24, 2013).

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A-570-916 .....	731-TA-1122 .....	China .....	Laminated Woven Sacks (1st Review) .....	Jennifer Moats (202) 482-5047
C-570-917 .....	701-TA-450 .....	China .....	Laminated Woven Sacks (1st Review) .....	Dana Mermelstein (202) 482-1391
A-570-875 .....	731-TA-990 .....	China .....	Non-Malleable Cast Iron Pipe Fittings (2nd Review).	Jennifer Moats (202) 482-5047
A-570-925 .....	731-TA-1136 .....	China .....	Sodium Nitrite (1st Review) .....	Jennifer Moats (202) 482-5047
C-570-926 .....	701-TA-453 .....	China .....	Sodium Nitrite (1st Review) .....	Dana Mermelstein (202) 482-1391
A-570-909 .....	731-TA-1114 .....	China .....	Steel Nails (1st Review) .....	Jennifer Moats (202) 482-5047
A-428-841 .....	701-TA-447 .....	Germany .....	Sodium Nitrite (1st Review) .....	Jennifer Moats (202) 482-5047

### Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: "<http://ia.ita.doc.gov/sunset/>." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"), can be found at 19 CFR 351.303. See also *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. See section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011) ("*Interim Final Rule*") amending 19 CFR 351.303(g)(1) and (2) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule*, 76 FR 54697 (September 2, 2011). The formats for the revised

certifications are provided at the end of the *Interim Final Rule*. The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)-(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at [http://ia.ita.doc.gov/frn/2013/1304frn/2013-](http://ia.ita.doc.gov/frn/2013/1304frn/2013-08227.txt)

[08227.txt](http://ia.ita.doc.gov/frn/2013/1304frn/2013-08227.txt), prior to submitting factual information in this segment. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306.

### Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. See 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.<sup>1</sup> Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: June 17, 2013.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2013-15708 Filed 6-28-13; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XC239

#### Marine Mammals; File No. 17355

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that a permit has been issued to National Marine Fisheries Service's Northeast Fisheries Science Center (NEFSC), 166 Water Street, Woods Hole, Massachusetts 02543 [Responsible

<sup>1</sup> In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

Party: William Karp; Principal Investigator: Peter Corkeron] to conduct research on marine mammals and sea turtles.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427-8401; fax (301) 713-0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281-9328; fax (978) 281-9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824-5312; fax (727) 824-5309.

**FOR FURTHER INFORMATION CONTACT:** Kristy Beard or Carrie Hubbard, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:** On September 20, 2012, notice was published in the **Federal Register** (77 FR 58357) that a request for a permit to conduct research on marine mammals and sea turtles had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

A five-year permit was issued to conduct scientific research on 38 species of cetaceans, four species of pinnipeds, and five species of sea turtles in the U.S. EEZ from Florida to Maine and Canadian waters in the Bay of Fundy and Scotian Shelf. Thirteen of the 47 species to be targeted for research are listed as threatened or endangered: blue whale (*Balaenoptera musculus*), fin whale (*B. physalus*), humpback whale (*Megaptera novaeangliae*), North Atlantic right whale (*Eubalaena glacialis*), sei whale (*B. borealis*), sperm whale (*Physeter macrocephalus*), bowhead whale (*Balaena mysticetus*), Western North Pacific stock of gray whale (*Eschrichtius robustus*), green sea turtle (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), loggerhead sea turtle (*Caretta caretta*), Kemp's ridley sea turtle (*Lepidochelys kempii*), and leatherback sea turtle (*Dermochelys coriacea*). Types of take include harassment by survey approach

during aerial and vessel-based surveys, passive acoustic recording, behavioral observations, photo-identification, suction-cup tagging, and biopsy sampling. Research platforms include large ships, small vessels, and aircrafts. Import and export of marine mammal parts from the U.S. and other countries is requested for research purposes.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 26, 2013.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013-15703 Filed 6-28-13; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XC725

#### Endangered Species; File No. 18069

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Jeffrey Schmid, Ph.D., Conservancy of Southwest Florida, 1450 Merrihue Drive, Naples, FL 34102, has applied in due form for a permit to take Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

**DATES:** Written, telefaxed, or email comments must be received on or before July 31, 2013.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting

File No. 18069 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427-8401; fax (301) 713-0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824-5312; fax (727) 824-5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division

- By email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov) (include the File No. in the subject line of the email),

- By facsimile to (301) 713-0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Hapeman or Rosa L. González, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

The applicant requests a five-year research permit to assess aggregations of marine turtles inhabiting the coastal waters of Charlotte Harbor and the Ten Thousand Islands in southwest Florida. Researchers would capture up to 100 Kemp's ridley, 20 green, 30 loggerhead, and five hawksbill sea turtles annually by strike net and perform the following procedures before release: measure, photograph, flipper and passive integrated transponder tag, weigh, and skin, scute and blood sample. A subset of the Kemp's ridleys would be transported to a facility and held for up to 48 hours for fecal collection for diet analysis prior to release. A subset of Kemp's ridleys and loggerheads also would have a satellite transmitter or radio and sonic transmitters attached to the carapace and would be tracked after release to investigate sea turtle migrations, movements, home range, and habitat associations.

Dated: June 25, 2013.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013-15559 Filed 6-28-13; 8:45 am]

**BILLING CODE 3510-22-P**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amendment to the 2013 Tariff Preference Level (TPL) for Nicaragua Under the Central America-Dominican Republic-United States Free Trade Agreement (CAFTA-DR)

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Amending the 2013 TPL for Nicaragua.

Dates: *Effective Date:* July 1, 2013.

**SUMMARY:** This notice reduces the 2013 TPL for Nicaragua to 98,447,866 square meters equivalent to account for the shortfall in meeting the one-to-one commitment for cotton and man-made fiber woven trousers exported from Nicaragua to the United States

**FOR FURTHER INFORMATION CONTACT:** Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2582.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Annex 3.28 of the CAFTA-DR; Section 1634(a)(2) and (c)(2) of the Pension Protection Act of 2006 (Pub. L. 109-280); Presidential Proclamation 8111 of February 28, 2007.

**Background:** Annex 3.28 of the CAFTA-DR establishes a TPL for non-originating apparel goods of Nicaragua. Section 1634(a)(2) of the Pension Protection Act references the exchange of letters between the United States and Nicaragua, which establishes the one-to-one commitment for cotton and man-made fiber trousers. Section 1634(c)(2) of the Pension Protection Act authorizes the President to proclaim a reduction in the overall limit in the TPL if the President determines that Nicaragua has failed to comply with the one-to-one commitment. In Presidential Proclamation 8111, the President delegated to CITA the authority to determine whether Nicaragua had failed to comply with the one-to-one commitment and to reduce the overall limit in the TPL.

In an exchange of letters dated March 24 and 27, 2006, Nicaragua agreed that for each square meter equivalent (SME) of exports of cotton and man-made fiber

woven trousers entered under the TPL, Nicaragua would export to the United States an equal amount of cotton and man-made fiber woven trousers made of U.S. formed fabric of U.S. formed yarn. Any shortfall in meeting this commitment that was not rectified by April 1 of the succeeding year would be applied against the TPL for the succeeding year. For 2012, the shortfall in meeting the one-to-one commitment is 1,552,134 square meters equivalent. This amount is being deducted from the 2013 TPL, resulting in a new TPL level for 2013 of 98,447,866 square meters equivalent.

**Kim Glas,**

*Chairman Committee for the Implementation of Textile Agreements.*

[FR Doc. 2013-15714 Filed 6-28-13; 8:45 am]

**BILLING CODE 3510-DS-P**

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulation System

[Docket No. DARS-2013-0005]

#### Submission for OMB Review; Comment Request; Correction

**ACTION:** Notice; correction.

**SUMMARY:** This document corrects the heading to a notice published in the **Federal Register** on June 18, 2013, 78 FR 36542, regarding the Submission for OMB Review; Comment Request for OMB Control Number 0704-0441. This correction revises the docket number associated with the OMB Control Number.

In the **Federal Register** of June 18, 2013 at 78 FR 36542, in the first column, correct the Docket No. to read: Docket No. DARS-2013-0005.

**Kortnee Stewart,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2013-15682 Filed 6-28-13; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF EDUCATION****Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—State Technical Assistance Projects To Improve Services and Results for Children Who Are Deaf-Blind and National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind**

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

*Overview Information:*

Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—State Technical Assistance Projects to Improve Services and Results for Children Who Are Deaf-Blind and National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326T.

**DATES:**

Applications Available: July 1, 2013.

Deadline for Transmittal of Applications: August 15, 2013.

**Full Text of Announcement****I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified or otherwise authorized in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1463 and 1481(d)).

*Absolute Priority:* For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

*State Technical Assistance Projects to Improve Services and Results for Children Who Are Deaf-Blind and National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind.*

*Background:*

The purpose of this priority is to support State Technical Assistance Projects to Improve Services and Results for Children Who Are Deaf-Blind and to support a National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind. The State Technical Assistance Projects will help State educational agencies (SEAs), Part C lead agencies (LAs), local educational agencies (LEAs), early intervention services (EIS) providers, teachers, service providers, and families to address the educational, related services, transitional, and early intervention needs of children who are deaf-blind to ensure that these children will graduate from high school ready for college and a career.

The National Technical Assistance Center will provide technical assistance and support to the State Technical Assistance Projects in addressing these needs, including by working in concert with States' Deaf-Blind Technical Assistance Projects, as appropriate, to provide specialized TA, training, dissemination, and informational services to agencies and organizations, professionals, families, and others involved in providing services to children who are deaf-blind.

The Individuals with Disabilities Education Act (IDEA) requires that the Secretary reserve a portion of IDEA Part D funds each year to address the needs of children with deaf-blindness (see section 682(d)(1)(A) of IDEA, 20 U.S.C. 1482(d)). Authorized activities include providing TA to professionals and others involved in providing services that promote academic achievement and improved results for children who are deaf-blind. The services to be provided include TA on implementing evidence-based practices to schools and agencies serving children who are deaf-blind and their families to improve educational results and functional outcomes. For purposes of this notice, the term "children who are deaf-blind" refers to infants, toddlers, children, youth, and young adults (birth-21) who are deaf-blind.

Children who are deaf-blind are among the most vulnerable, at-risk students because they have varying degrees of hearing and vision loss that is often complicated by other disabilities or health issues. In the early 1970s, children who were deaf-blind were primarily served in segregated

programs in residential schools and State institutions.

Today, more than 60 percent of children who are deaf-blind attend local schools rather than separate schools or facilities. Sixty-five percent of elementary school-age children who are deaf-blind spend at least a portion of their day in a regular classroom in their local school (National Consortium on Deaf-Blindness, 2012). As a result, direct, targeted, and intensive TA to staff in LEAs, schools, EIS providers, and classrooms is needed to ensure a free appropriate public education (FAPE) for children who are deaf-blind (Kamenopoulou, 2012).

Through the projects that the Office of Special Education Programs (OSEP) has supported and other research, we know that direct and intensive supports and services are critical in order for children who are deaf-blind to succeed in a general education environment. Although improvements have been made in recent years, many of the approximately 10,000 children who are deaf-blind remain isolated and disconnected from people and activities in their homes, schools, and communities because they are not provided the individualized supports necessary to access visual and auditory information and overcome other barriers to social inclusion and participation (Kamenopoulou, 2012). Without these individualized supports to access visual and auditory information (i.e., environmental information, such as who is present, what is being said, and what activities are occurring), children who are deaf-blind are at greater risk for not attaining age-appropriate milestones in communication and language, social skills, and activities of daily living, which in turn affects their educational outcomes (Emerson & Bishop, 2012). Consequently, children who are deaf-blind often exit school at age 22 without viable postsecondary educational opportunities, employment, or independent living options (Smale, 2010).

Further, because deaf-blindness is a very low-incidence disability, most SEAs, LEAs, LAs, and EIS providers lack the necessary program supports and services, and sufficient personnel with the specialized training, experience, and skills, needed to provide appropriate early intervention, special education, and related services to children who are deaf-blind (Bruce, 2007; National Center on Severe and Sensory Disabilities, 2009; National Center on Low-Incidence Disabilities, 2005). In addition, because children who are deaf-blind are living at home instead of in residential settings, their

families, schools, and EIS providers require extensive support to ensure that these children remain in community-based educational and living environments (Kamenopoulou, 2012).

#### **State Deaf-Blind Technical Assistance Projects**

Following the enactment of IDEA in 1975, OSEP developed a national TA system comprised of State Deaf-Blind Technical Assistance Projects that was designed to ensure that support was available for children who are deaf-blind and who attended their local schools.

In 2008, the Department funded 51 five-year State Deaf-Blind Technical Assistance Projects to facilitate collaborative partnerships among family members of children who are deaf-blind; early intervention, special and regular education, and related services personnel; and SEAs, LEAs, LAs, and EIS providers to develop and implement individualized supports designed to improve children's educational results and functional outcomes.

In concert with the National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind (National Center), this direct, targeted, and intensive TA provided by State Deaf-Blind Technical Assistance Projects to EIS providers, LEAs, schools, and classrooms has helped to ensure that family members, EIS providers, special and regular education teachers, and related services personnel have access to the specialized training and tools needed to address the early intervention, educational, related services, and secondary transition needs of children who are deaf-blind.

#### **National Technical Assistance and Dissemination Center**

In 2006, the Department funded the National Center to provide specialized TA, training, dissemination, and informational services to State Deaf-Blind Technical Assistance Projects. In 2011, the Secretary extended the grant to the National Center for an additional two years. Working in concert with State Deaf-Blind Technical Assistance Projects, the National Center provides specialized training and other supports for SEAs, LAs, families of children who are deaf-blind, and other agencies and organizations that are responsible for providing early intervention, special education, related services, and secondary transition services for children through age 26 who are deaf-blind (Notice Inviting Applications for New Awards for FY 2006; 70 FR 76040).

The National Center's activities have led to improvements in direct, targeted,

and intensive TA services. In cooperation with the Department, the National Center developed training for State Deaf-Blind Technical Assistance Project staff in order to increase their participation in a collaborative network of State deaf-blind TA projects. Using advances in communication and social media, the National Center further facilitated, in collaboration with the State Deaf-Blind Technical Assistance Projects, the delivery of TA and training by providing critical tools for teachers and service providers to use at the classroom level. For further information on the current National Center, go to [www.nationaldb.org/](http://www.nationaldb.org/).

This priority seeks to build upon the work of the State Deaf-Blind Technical Assistance Projects and the National Center to further improve services and results for children who are deaf-blind. Specifically, through this priority, our goal is to: Ensure the delivery of high-quality TA and training to personnel in schools, classrooms, and EIS providers where children who are deaf-blind are served to improve their academic and social outcomes; empower children who are deaf-blind to engage in self-advocacy so that they are better positioned for independent living; increase the ability of SEAs, LEAs, LAs, EIS providers, and other agencies to use evidence-based practices to improve outcomes for children who are deaf-blind; increase the ability of SEAs, LEAs, LAs, EIS providers, and other agencies to identify and adopt effective policies and practices to appropriately identify and serve children who are deaf-blind; and ensure that data are gathered and reported to the National Center for the annual National Child Count of children who are deaf-blind.

For the first time, we will also be allowing eligible entities to compete to serve multi-State regions. We hope to improve both the quality of the TA and other services provided through these projects and the efficiency with which the services are provided by giving States the flexibility to apply directly for funding, as they have in the past, to participate as a member of a multi-State consortium, or to participate in a regional TA project.

#### *Priority:*

For the purpose of this competition, we have separated the absolute priority into two focus areas—State and Multi-State Technical Assistance Projects (Focus Area A) and a National Technical Assistance and Dissemination Center (Focus Area B). Applicants must identify whether they are applying under Focus Area A, Focus Area B, or both. As the program and application requirements for the two focus areas are

different, applicants must ensure that they have met all applicable requirements.

#### *Focus Area A: State and Multi-State Technical Assistance Projects to Improve Services and Results for Children Who Are Deaf-Blind.*

Under Focus Area A, the Department will fund grants to establish and operate State or multi-State Deaf-Blind Technical Assistance Projects (projects) to improve services and results for children who are deaf-blind. Grants are available to support projects in all States. The District of Columbia, Puerto Rico, the United States Virgin Islands, and the outlying areas and freely associated States are States for purposes of this priority. Because the Bureau of Indian Affairs is not a State, it will not be eligible for a State grant under this priority. Funds awarded under this priority may not be used to provide direct early intervention services under Part C of IDEA, or direct special education and related services under Part B of IDEA.

Projects funded under this priority must, at a minimum: (1) Deliver TA and training necessary to improve outcomes for children who are deaf-blind to personnel in the schools, classrooms, or EIS providers, where a child who is deaf-blind is served; (2) through collaboration with the federally funded Parent Centers (National and Regional Parent Technical Assistance Centers, Parent Training and Information Centers and Community Parent Resource Centers), provide training and supports to families of children who are deaf-blind so that they can successfully advocate on behalf of their children and help ensure that their children are better positioned for independent living; (3) increase the ability of SEAs, LEAs, LAs, EIS providers, and other agencies to use evidence-based practices to improve outcomes for children who are deaf-blind, including ensuring that these children will graduate from high school ready for college and a career; (4) increase the ability of SEAs, LEAs, LAs, EIS providers, and other agencies to develop policies and practices to improve outcomes for children who are deaf-blind; and (5) provide data to the National Center for the annual National Child Count of children who are deaf-blind.

In addition to these programmatic requirements, to be considered for funding under Focus A of this absolute priority, applicants must meet the following application and administrative requirements. We encourage innovative approaches to meet them:

*Application Requirements.* An applicant must—

(a) Demonstrate, in the narrative section of the application under “Significance of the Project,” how the proposed project will—

(1) Provide EIS providers; special education teachers; regular education teachers; related services personnel; and SEA, LEA, LA, and EIS provider administrators with the training and information needed to develop and implement individualized supports to ensure that children who are deaf-blind have access to the general education curriculum and will graduate from high school ready for college and a career;

(2) Ensure that family members of children who are deaf-blind have the training and information needed to maintain and improve productive partnerships with service providers.

To address the requirements of paragraphs (1) and (2), the applicant must—

(i) Describe applicable State, regional, or local data (and, in the case of an application for a consortium or region, data for each State that the consortium or region proposes to serve) demonstrating the applicant’s knowledge of the training and information needs of EIS providers, special and regular education teachers, related services personnel, and family members identified in paragraphs (1) and (2), taking into account the critical needs of the diverse deaf-blind population and the geographical distribution of children who are deaf-blind;

(ii) Demonstrate knowledge of current educational issues and policy initiatives in educating children who are deaf-blind, including any State-specific policy initiatives and how the applicant will support their implementation; and

(iii) Describe the current state of practice in implementing effective TA for SEAs, LEAs, LAs, and EIS providers and others who provide services that promote academic achievement and improved results for children who are deaf-blind.

(3) Improve educational outcomes for children who are deaf-blind, and the likely magnitude or importance of the outcomes.

(b) Demonstrate, in the narrative section of the application under “Quality of the Project Services,” how the proposed project will—

(1) Identify the TA and training needs of the intended recipients;

(2) Ensure that services meet the needs of the intended recipients and that any products are first approved by the OSEP project officer and then

developed in coordination with the National Center;

(3) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) The theory of action (i.e., logic model) on how the proposed project will achieve its intended outcomes.

(4) Use a conceptual framework to guide the development of project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationship or linkages among these variables, and any empirical support for this framework;

(5) Be based on current research and evidence-based practices. To meet this requirement, the applicant must describe—

(i) The current research and evidence-based practices on ensuring access to the general education curriculum and improving educational results and functional outcomes for children who are deaf-blind, including graduating from high school ready for college and a career;

(ii) How the project will incorporate current research and evidence-based practices on effective training and professional development, and how the project will incorporate the training and TA to the family members and practitioners identified in paragraph (a); and

(iii) The process the proposed project will use to incorporate current research and evidence-based practices in the development and delivery of its products and services.

(6) Develop and provide services that are of sufficient quality, intensity, and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) Its proposed activities to identify or develop a knowledge base of evidence-based practices addressing the early intervention, related services, educational, transitional, and functional needs of children who are deaf-blind;

(ii) Its proposed approach to universal, general TA,<sup>1</sup> including the

<sup>1</sup> Within the context of State or multi-State Deaf-Blind Projects, “universal, general TA” means TA and information provided to independent users through their own initiative resulting in minimal interaction with project staff and including one-time, invited or offered conference presentations by project staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the project’s Web site by independent users. Brief communications by project staff with recipients, either by telephone or email, are also considered universal, general TA.

intended recipients of products and services;

(iii) Its proposed approach to targeted, specialized TA,<sup>2</sup> including the intended recipients of products and services; and

(iv) Its proposed approach to intensive, sustained TA,<sup>3</sup> including the intended recipients of products and services. To address this requirement, the applicant must describe—

(A) Its proposed approach to measure the readiness of the SEAs, LEAs, LAs, EIS providers, and Parent Centers to work with the proposed project, including their commitment to the project initiatives, current infrastructure, available resources, ability to build supports for families, and ability to enable SEAs, LEAs, LAs, and EIS providers to provide TA and training to teachers, EIS providers, and other service providers;

(B) Its proposed plan for assisting LEAs and EIS providers to build professional development systems based on the current research and evidence-based practices on effective training and professional development; and

(C) Its proposed plan for working with individuals and entities at each level of the education system (e.g., SEAs, LEAs, LAs, EIS providers, schools, and families) to ensure communication among the different groups and that there are systems in place to support the use of best practices for educating children who are deaf-blind.

(7) Implement services in collaboration with the National Center to maximize effectiveness of the TA within the State(s) served. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the proposed project outcomes;

<sup>2</sup> Within the context of State or multi-State Deaf-Blind Projects, “targeted, specialized TA” means TA service based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more project staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

<sup>3</sup> Within the context of State or multi-State Deaf-Blind Projects, “intensive, sustained TA” means TA services often provided on-site and requiring a stable, ongoing relationship between the project staff and the TA recipient. “TA services” are defined as a negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity and improved outcomes at one or more systems levels.

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration;

(iii) How the proposed project will use non-project resources to achieve the proposed project outcomes; and

(iv) How the applicant will facilitate States' ability to use and benefit from the National Center's initiatives, products, and TA, including those initiatives that cross regional and consortium boundaries.

(c) Demonstrate, in the narrative section of the application under "Quality of the Evaluation Plan," how—

(1) The proposed project will collect and analyze data on specific and measurable goals, objectives, and outcomes of the project. To address this requirement, the applicant must describe—

(i) The proposed evaluation methodologies, including instruments, data collection methods, and possible analyses;

(ii) The proposed standards or targets for determining effectiveness; and

(iii) The proposed methods for collecting data on implementation supports and fidelity of implementation.

(2) The proposed project will use the evaluation results to examine the effectiveness of the project's implementation strategies and the progress toward achieving intended outcomes; and

(3) The methods of evaluation will produce quantitative and qualitative data that demonstrate whether the project achieved the intended outcomes.

(d) Demonstrate, in the narrative section of the application under "Adequacy of Project Resources," how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, linguistic diversity, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under "Quality of the Management Plan," how—

(1) The proposed management plan will ensure that the project's intended

outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as appropriate; and

(ii) Timelines and milestones for accomplishing the project tasks.

(2) Key project personnel, and any consultants and subcontractors, will be allocated to the project and the appropriateness and adequacy of these time allocations to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality;

(4) The proposed project will benefit from a diversity of perspectives, including families, educators, TA providers, researchers, and policy makers, among others, in its development and operation;

(5) If applicable, the members of a consortium or region will receive appropriate services; and

(6) If applicable, the proposed project will ensure that the distribution of resources is equitable within a consortium or region.

(f) In the narrative under "Required Project Assurances" or appendices as directed, meet the following application requirements—

(1) Include in Appendix A a logic model that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project. A logic model communicates how a project will achieve its intended outcomes and provides a framework for both the formative and summative evaluations of the project.

**Note:** The following Web sites provide more information on logic models: [www.researchutilization.org/matrix/logicmodel\\_resource3c.html](http://www.researchutilization.org/matrix/logicmodel_resource3c.html) and <http://www.tadnet.org/pages/589>;

(2) Include in Appendix A a visual representation of the conceptual framework, if a visual representation is developed;

(3) Include in Appendix A charts and timelines, as appropriate, to illustrate the management plan described in the narrative;

(4) Include in the budget attendance at the following:

(i) A one-day planning meeting preceding the project directors' conference held in Washington, DC, in coordination with the National Center and an annual planning meeting with the OSEP project officer and other relevant staff during each subsequent year of the project period;

(ii) A two and one-half day project directors' conference in Washington,

DC, during each year of the project period.

(5) Maintain a Web site that meets government or industry-recognized standards for accessibility.

**Note:** Any entity applying to provide services for a region is required to propose to serve all of the States in the region. This regional applicant must notify the SEAs in each of the States in the region of its intention to apply for funding, but is not required to obtain approval from all of the SEAs in the region in order to be eligible to apply for funding. A State may choose to be served by the regional applicant in order to participate in the program, or may apply for funding as part of a multi-State consortium or by itself, as discussed in more detail below. Individual States would not have to submit applications if they opted to be served by the regional applicant.

States are also invited to form consortia to apply for funding under Focus Area A of this priority in accordance with EDGAR in 34 CFR 75.127 to 75.129. A consortium may be comprised of any group of States and would not be bound by the previously described predefined regions.

*Focus Area B: National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind.*

Under Focus Area B, the Department will fund a cooperative agreement to establish and operate a National Center on Deaf-Blindness that must, at a minimum: (1) Increase the ability of State and multi-State deaf-blind projects to assist personnel in SEAs, LEAs, LAs, and EIS providers to use evidence-based practices and products to improve outcomes for children who are deaf-blind; (2) develop evidence-based tools and broadly disseminate evidence-based tools to State or multi-State deaf-blind projects and individuals and entities at each level of the education system to improve outcomes for children who are deaf-blind; (3) in collaboration with the Parent Centers, increase the ability of State or multi-State deaf-blind projects to provide training and supports to families of children who are deaf-blind so that they can successfully advocate on behalf of their children and help ensure that their children are better positioned for independent living; (4) enable State or multi-State deaf-blind projects to develop policies and practices to improve outcomes for children who are deaf-blind; and (5) conduct an annual National Child Count of children who are deaf-blind, ensuring that accurate data to inform practice is presented in a way that is useful to States.

To be considered for funding under Focus B of this absolute priority, applicants must meet the application

and administrative requirements contained in this priority. We encourage innovative approaches to meet these requirements, which are as follows:

*Application Requirements.* An applicant must—

(a) Demonstrate, in the narrative section of the application under “Significance of the Project,” how the proposed project will work collaboratively with the State Technical Assistance Projects to—

(1) Ensure that State and multi-state deaf-blind projects, SEAs, LEAs, LAs, EIS providers, and organizations serving family members of children who are deaf-blind have the training and information needed to enable them to maintain and improve productive partnerships with EIS providers, special education teachers, regular education teachers, and related services personnel; and

(2) Provide State and multi-State deaf-blind projects, SEAs, LEAs, LAs, EIS providers, and organizations serving family members of children who are deaf-blind with the training and information needed to ensure that EIS providers; special education teachers; general education teachers; related services personnel; and SEA, LEA, LA, and EIS provider personnel have the skills to develop and implement individualized supports to ensure children who are deaf-blind have access to the general education curriculum and graduate from high school ready for college and a career.

To address the requirements of paragraphs (1) and (2) the applicant must—

(i) Describe applicable national, State, regional, or local data demonstrating knowledge of the training and information needs of family members and EIS providers, special education teachers, regular education teachers, and related services personnel, taking into account the critical needs of the diverse deaf-blind population, the geographical distribution of children who are deaf-blind, and the placement opportunities for these children in inclusive settings;

(ii) Demonstrate knowledge of current educational issues and policy initiatives in educating children who are deaf-blind; and

(iii) Present information about the state of implementation of effective TA systems in SEAs, LEAs, LAs, and EIS providers serving professionals and others involved in providing services that promote academic achievement and improved results for children who are deaf-blind; and

(3) Result in improved educational outcomes for children who are deaf-

blind, and the likely magnitude or importance of the outcomes.

(b) Demonstrate, in the narrative section of the application under “Quality of the Project Services,” how the proposed project will—

(1) Identify the needs of the intended recipients of TA and training;

(2) Ensure that services and products meet the needs of the intended recipients;

(3) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measureable intended project outcomes; and

(ii) The theory of action (i.e., logic model) on how the proposed project will achieve its intended outcomes.

(4) Use a conceptual framework to guide the development of project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories; the presumed relationship or linkages among these variables; and any empirical support for this framework;

(5) Be based on current research and evidence-based practices. To meet this requirement, the applicant must describe—

(i) The current research and evidence-based practices on ensuring access to the general education curriculum and improving educational results and functional outcomes for children who are deaf-blind, including graduating from high school ready for college and a career;

(ii) How the proposed project will incorporate the current research and evidence-based practices on effective training and professional development to support training and TA to the family members and practitioners identified in paragraph (a); and

(iii) The process the proposed project will use to incorporate current research and evidence-based practices in the development and delivery of its products and services;

(6) Develop products and provide services that are of sufficient quality, intensity, and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) Its proposed activities to identify or develop a knowledge base of evidence-based practices addressing the early intervention, related services, educational, transitional, and functional needs of children who are deaf-blind;

(ii) Its proposed approach to universal, general TA,<sup>4</sup> including the

<sup>4</sup> Within the context of the National Center on Deaf-Blindness, “universal, general TA” means TA

intended recipients of products and services;

(iii) Its proposed approach to targeted, specialized TA,<sup>5</sup> including the intended recipients of products and services; and

(iv) Its proposed approach to intensive, sustained TA,<sup>6</sup> including the intended recipients of products and services. To address this requirement, the applicant must describe—

(A) Its proposed approach to measure the readiness of State or multi-State deaf-blind projects to work with the proposed project, including their commitment to the project initiatives, current infrastructure, available resources, ability to build supports for families, and build skills of the LEAs and EIS providers to provide TA and training to teachers, EIS providers, and other service providers;

(B) Its proposed plan for assisting State or multi-State deaf-blind projects to build professional development systems for SEAs, LEAs, LAs, and EIS providers based on the current research and evidence-based practices on effective training and professional development; and

(C) Its proposed plan for working with individuals and entities at each level of the education system (e.g., SEAs, LAs, Regional Resource Centers, Regional Comprehensive Centers, LEAs, EIS providers, schools, and families) to ensure communication among the different groups and that there are systems in place to support the use of

and information provided to independent users through their own initiative resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center’s Web site by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

<sup>5</sup> Within the context of the National Center on Deaf-Blindness, “targeted, specialized TA” means TA service based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

<sup>6</sup> Within the context of the National Center on Deaf-Blindness, “intensive, sustained TA” means services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. “TA services” are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

best practices for educating children who are deaf-blind.

(7) Develop products and implement services to maximize the effectiveness of the TA. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the proposed project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the proposed project outcomes.

(c) Demonstrate, in the narrative section of the application under “Quality of the Evaluation Plan,” how—

(1) The proposed project will collect and analyze data on specific and measurable goals, objectives, and outcomes of the project in addressing the educational, related services, transitional, and early intervention needs of children who are deaf-blind to ensure that these children will graduate from high school ready for college and a career. To address this requirement, the applicant must describe—

(i) The proposed evaluation methodologies, including instruments, data collection methods, and possible analyses;

(ii) The proposed standards or targets for determining effectiveness; and

(iii) The proposed methods for collecting data on implementation supports and fidelity of implementation.

(2) The proposed project will use the evaluation results to examine the effectiveness of the project’s implementation strategies and the progress toward achieving intended outcomes; and

(3) The methods of evaluation will produce quantitative and qualitative data that demonstrate whether the project achieved the intended outcomes.

(d) Demonstrate, in the narrative section of the application under “Adequacy of Project Resources,” how—

(1) The proposed project will ensure equal access and treatment in employment of persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, linguistic diversity, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project’s intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under “Quality of the Management Plan,” how—

(1) The proposed management plan will ensure that the project’s intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as appropriate; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel, and any consultants and subcontractors, will be allocated to the project and the appropriateness and adequacy of these time allocations to achieve the project’s intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality;

(4) The proposed project will dedicate at least one full-time staff member to evaluating the ongoing efforts of State and multi-State projects to ensure children who are deaf-blind have access to the general education curriculum and will graduate from high school ready for college and a career; and

(5) The proposed project will benefit from a diversity of perspectives, including families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) In the narrative under “Required Project Assurances” or appendices as directed, meet the following application requirements—

(1) Include in Appendix A a logic model that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project. A logic model communicates how a project will achieve its intended outcomes and provides a framework for both the formative and summative evaluations of the project.

**Note:** The following Web sites provide more information on logic models: [www.researchutilization.org/matrix/logicmodel\\_resource3c.html](http://www.researchutilization.org/matrix/logicmodel_resource3c.html) and <http://www.tadnet.org/pages/589>;

(2) Include in Appendix A a visual representation of the conceptual framework, if a visual representation is developed;

(3) Include in Appendix A charts and timelines, as appropriate, to illustrate the management plan described in the narrative;

(4) Include in the budget attendance at the following:

(i) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff, during each subsequent year of the project period.

**Note:** Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee’s project director or other authorized representative;

(ii) A two and one-half day project directors’ conference in Washington, DC, during each year of the project period;

(iii) One trip annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive review meeting that will be held during the last half of the second year of the project period.

(5) Include in the budget a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project’s intended outcomes, as those needs are identified in consultation with OSEP.

**Note:** With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period; and

(6) Maintain a Web site that meets government or industry-recognized standards for accessibility.

#### *Fourth and Fifth Years of the Project for Focus Area B:*

In deciding whether to continue funding the project for Focus Area B for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), as well as—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project’s activities and products and the degree to which the project’s activities and products are aligned with the project’s objectives and likely to result in the project achieving its proposed outcomes.

#### *References:*

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National Consortium on Deaf-Blindness. (2012). *The 2011 national child count of children and youth who are deaf-blind*. Retrieved from [www.nationaldb.org/TACHildCount.php](http://www.nationaldb.org/TACHildCount.php).

Smale, K. (2010). Helping students toward independence: The Steps Program at Utah State School for Deaf-Blind. *Odyssey: New Directions in Deaf Education*, 11(1), 47–49.

**Waiver of Proposed Rulemaking:** Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities and requirements in this notice.

**Program Authority:** 20 U.S.C. 1463 and 1481.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

**II. Award Information**

**Type of Award:** Cooperative agreements.

**Estimated Available Funds:** \$11,600,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 from the list of unfunded applicants from this competition.

**Estimated Range of Awards:** Focus Area A: See chart. Focus Area B: \$2,100,000.

**Estimated Average Size of Awards:** Focus Area A: \$176,000. Focus Area B: \$2,100,000.

**Maximum Award:** Focus Area A: The following chart lists the maximum amount of funds for individual States and regions for a single budget period of 12 months. A State may be served by

only one supported project. In determining the maximum funding levels for each State the Secretary considered, among other things, the following factors:

- (1) The total number of children from birth through age 21 in the State.
- (2) The number of people in poverty in the State.
- (3) The previous funding levels.
- (4) The maximum and minimum funding amounts.

**FY 2013 FUNDING LEVELS BY REGION FOR FOCUS AREA A**

Region 1	Total: \$1,770,926
CT	104,751
MA	126,661
ME	65,000
NH	65,807
NJ	268,086
NY	575,000
PA	371,952
RI	79,368
VT	114,301
Region 2	Total: 1,543,279
DC	65,000
DE	83,362
KY	165,145
MD	164,366
NC	313,649
SC	154,204
TN	238,451
VA	234,082
WV	125,020
Region 3	Total: 2,052,453
AL	185,095
AR	118,534
FL	362,027
GA	305,978
LA	145,840
MS	133,605
OK	131,374
PR	65,000
TX	575,000
VI	30,000
Region 4	Total: 1,700,148
IA	97,054
IL	335,444
IN	210,093
MI	256,289
MN	171,335
MO	197,129
OH	259,320
WI	173,484
Region 5	Total: 1,066,830
AZ	175,338
CO	154,079
KS	128,122
MT	106,123
ND	65,000
NE	78,471
NM	100,912
SD	101,746
UT	92,039
WY	65,000
Region 6	Total: 1,366,364
AK	106,971
CA	575,000
HI	77,491
ID	85,303
NV	112,563
OR	121,286

**FY 2013 FUNDING LEVELS BY REGION FOR FOCUS AREA A—Continued**

WA	195,750
Pacific**	92,000

\*\*The areas to be served by this award are the outlying areas of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands as well as the freely associated States of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. An applicant for this award must propose to serve all of these areas.

We will reject an application under Focus Area A of the priority under any of the following circumstances:

(a) A State project that proposes a budget exceeding the funding level listed in this notice for that State for any single budget period of 12 months.

(b) An application for a region that does not include every State specified for that region as described under the Focus Area A priority in this notice.

(c) An application for a region that includes States outside of the predetermined regions as described under the Focus Area A priority in this notice.

(d) An application for a region or consortium that proposes a budget exceeding the funding level for any single budget period of 12 months of the combined funding for each State member of the region or consortium as specified in the *FY 2013 Funding Levels by Region for Focus Area A* chart.

We will reject an application under Focus Area B of the priority under any project that proposes a budget exceeding the funding level listed in this notice for any single budget period of 12 months.

**Note:** The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Estimated Number of Awards:** Focus Area A: 54.

Focus Area B: 1.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 36 months with an optional additional 24 months based on performance. Applications must include plans for both the 36-month award and the 24-month extension.

**III. Eligibility Information**

1. **Eligible Applicants:** SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian tribes or tribal organizations; and for-profit organizations.

With respect to Focus Area A of the priority, in order to provide SEAs with greater flexibility in how TA is

delivered and ensure high-quality TA, individual States have the following options: (1) Participating in a regional project; (2) participating as a member of a multi-State consortium; or (3) applying directly for funds as a single State. Therefore, eligible applicants for funds awarded under Focus Area A of this absolute priority may be an entity serving a predetermined region of States, a multi-State consortium, or a single State. The predetermined regions are the six OSEP Regional Resource Center regions—

Region 1: Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont;

Region 2: District of Columbia, Delaware, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia;

Region 3: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Puerto Rico, Texas, and the Virgin Islands;

Region 4: Iowa, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin;

Region 5: Arizona, Colorado, Kansas, Montana, North Dakota, Nebraska, New Mexico, South Dakota, Utah, and Wyoming;

Region 6: Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, the Commonwealth of the Northern Marianas, States of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Eligible applicants under Focus Area A of this priority are invited to submit single-State applications to provide deaf-blind TA services to individual States, as they have done in the past. If a State is included in more than one application as a member of a consortium or predefined region or submits an individual State application, and more than one application is determined to be fundable for the State, the State will be given the option under which award (individual State, consortium, or region) it will receive funding. It may not be funded under multiple awards. If a State(s) chooses not to participate in a predetermined region, the predetermined region's funding would be reduced by the amount of the award(s) that would be made for the individual State(s) application. The maximum level of funding for a consortium or region will reflect the combined total that the eligible entities comprising the consortium or region would have received if they had applied separately. For States within consortia or regions, no State will be permitted to receive less services or supports than it

would have received under a previously held Deaf-Blind State grant.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other General Requirements:* (a) Recipients of funding under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant for, and recipient of, funding under this program must involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

#### IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: [www.ed.gov/fund/grant/apply/grantapps/index.html](http://www.ed.gov/fund/grant/apply/grantapps/index.html). To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1-877-433-7827. FAX: (703) 605-6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: [www.EDPubs.gov](http://www.EDPubs.gov) or at its email address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.326T.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: July 1, 2013.

Deadline for Transmittal of Applications: August 15, 2013.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.

7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2013.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process may take seven or more business days to complete. If you are currently registered with the SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: [www.grants.gov/applicants/get\\_registered.jsp](http://www.grants.gov/applicants/get_registered.jsp).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the State Technical Assistance Projects to Improve Services and Results for Children Who Are Deaf-Blind and National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind competition, CFDA number 84.326T, must be submitted electronically using the Governmentwide Grants.gov Apply site at [www.Grants.gov](http://www.Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the State Technical Assistance Projects to Improve Services and Results for Children Who Are Deaf-Blind and National Technical Assistance and Dissemination Center for Children Who Are Deaf-Blind competition at [www.Grants.gov](http://www.Grants.gov). You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.326, not 84.326T).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will

notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at [www.G5.gov](http://www.G5.gov).

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that

the Department has received your application and has assigned your application a PR/Award number (a Department-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to the Grants.gov system; and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Jo Ann McCann, U.S. Department of Education, 400 Maryland Avenue SW., Room 4076, Potomac Center Plaza (PCP), Washington, DC 20202-2600. FAX: (202) 245-7617.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326T) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.

- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

- (3) A dated shipping label, invoice, or receipt from a commercial carrier.

- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.

- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326T), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

- (2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires

various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

#### VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other

requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures, including long-term measures, which are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures focus on the extent to which projects provide high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved

application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

#### VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Jo Ann McCann, U.S. Department of Education, 400 Maryland Avenue SW., room 4076, PCP, Washington, DC 20202-2600. Telephone: (202) 245-7434.

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

#### VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202-2550. Telephone: (202) 245-7363. If you use a TDD or a TTY, call the FRS, toll free, at 1-800-877-8339.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 26, 2013.

**Michael K. Yudin,**

*Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2013-15715 Filed 6-28-13; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Educational Technology, Media, and Materials Program for Individuals with Disabilities—Center on Technology and Disability

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

*Overview Information:* Educational Technology, Media, and Materials Program for Individuals with Disabilities—Center on Technology and Disability.

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327F.

**DATES:** *Applications Available:* July 1, 2013.

*Deadline for Transmittal of Applications:* August 15, 2013.

### Full Text of Announcement

#### I. Funding Opportunity Description

*Purpose of Program:* The purpose of the Educational Technology, Media, and Materials for Individuals with Disabilities Program<sup>1</sup> is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom for children with disabilities; (3) provide support for captioning and video description that is appropriate for use in the classroom; and (4) provide accessible educational materials to children with disabilities in a timely manner.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674(b)(1), 674(b)(2)(A), and 681(d) of the

<sup>1</sup> This program was formerly called “Technology and Media Services for Individuals with Disabilities.” The Department has changed the name to “Educational Technology, Media, and Materials for Individuals with Disabilities,” and updated the purposes of the program to more clearly convey that the program includes accessible educational materials. The program’s activities and statutory authorization (20 U.S.C. 1474) remain unchanged.

Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.)).

*Absolute Priority:* For FY 2013, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Educational Technology, Media, and Materials for Individuals with Disabilities—Center on Technology and Disability*

*Background:* The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a Center on Technology and Disability (Center). The Center will increase the capacity<sup>2</sup> of families and providers<sup>3</sup> to advocate for, acquire, and implement effective assistive technology (AT)<sup>4</sup> and instructional technology (IT)<sup>5</sup> to help infants, toddlers, children, and youth with disabilities (collectively, “children with disabilities”) participate fully in daily routines in their natural environments, have increased access to the general education curriculum, improve their functional outcomes and educational results, and meet college- and career-ready standards.

The Center will achieve these results by: (1) Compiling and disseminating accurate and current information on evidence-based AT and IT for families and providers in formats that are usable and accessible and that address the needs of diverse families and providers; (2) providing technical assistance (TA) to State educational agencies (SEAs) to enable SEAs to effectively increase the capacity of their local educational agencies (LEAs) to support families and providers in acquiring and implementing appropriate AT and IT; (3) providing TA to other projects funded by the Office of Special

<sup>2</sup> “Capacity” means possessing essential knowledge, skills, and competencies to act effectively.

<sup>3</sup> “Providers” denotes teachers, therapists, paraprofessionals, and other professionals providing services to children with disabilities under Parts B and C of IDEA. The term includes general educators serving children in inclusive settings.

<sup>4</sup> Section 602 of IDEA defines an “assistive technology device” as “any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability;” and an “assistive technology service” as “any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.” For purposes of this priority, “AT” refers to any assistive technology device or assistive technology service.

<sup>5</sup> IDEA does not provide a definition for IT, but for the purposes of this priority, “IT” is defined as technology processes and resources that facilitate learning and improve student performance for all students.

Education Programs (OSEP) to enable these projects to more effectively train families and providers on how to advocate for, acquire, and implement AT and IT for children with disabilities; and (4) providing TA to personnel development projects funded by OSEP to enable them to better prepare providers on effective AT and IT use by children with disabilities.

Almost 30 years of research and experience have demonstrated that supporting the development and use of AT and IT to maximize accessibility for children with disabilities can enhance the education and development of children with disabilities (section 601(c)(5)(H) of IDEA). With the increased use of appropriate AT and IT, more children with disabilities will to the maximum extent possible participate fully in daily routines in their natural environments, have access to the general education curriculum, be prepared to meet college- and career-ready standards, and lead productive and independent adult lives.

Providers play a key role in ensuring that AT and IT are used effectively by children with disabilities. However, research shows that these providers often lack knowledge about AT and IT; and, furthermore, this lack of knowledge has been identified as a critical barrier to effective technology use by children with disabilities (Smith & Robinson, 2003; Lee & Vega, 2005; Bausch, Ault, Evmenova, & Behrmann, 2008; Zhou, Parker, Smith, & Griffin-Shirley, 2011; U.S. Department of Education, 2010). Families also often lack knowledge of effective AT and IT, and how they can support their children’s use of AT and IT. Informed parents actively involved in their children’s development and education contribute significantly to positive educational outcomes (Casper & Lopez, 2006). Studies suggest that parents of children with disabilities want to be involved in planning AT and IT for their children (Long, Huang, Woodbridge, Woolverton, & Minkel, 2003; Parette & McMahan, 2002; Lee & Templeton, 2008) and that a lack of family involvement may lead to misuse and disuse of AT and IT (Alper & Raharinirina, 2006; Zabala & Carl, 2005).

To increase their knowledge of effective, evidence-based AT and IT and to actively support children’s use of AT and IT, both families and providers need ongoing, reliable, accurate, and current information (Marino, Marino, & Shaw, 2006). The information must help families and providers make sense of the rapid proliferation of new technologies, products, and approaches developed for all users and specifically for children with disabilities. The

information must also help families and providers navigate the growing number of sources of information about AT and IT, including projects and clearinghouses supported by the Department of Education (Department).<sup>6</sup> Lastly, information about AT and IT must be tailored to the specific technologies, audiences, and environments in which the technologies will be used and must also promote the adoption and use of AT and IT (Hazen, Wu, Sankar, & Jones-Farmer, 2011). The Center will provide accurate and current information on evidence-based AT and IT for providers and families. The Center will tailor this information to the particular needs of providers and families.

Knowledge alone, however, is not enough to build capacity and increase the effective use of AT and IT. The Center will also develop a comprehensive approach to providing TA that uses strategies built on the most current evidence base for effective AT and IT use. These strategies will increase the capacity of families and providers to advocate for, acquire, and implement effective AT and IT for children with disabilities to help them participate fully in daily routines in their natural environments, increase their access to the general education curriculum, improve their functional outcomes and educational results, and meet college- and career-ready standards. These strategies are:

First, the Center will build support for scaling up effective practices in LEAs and individual schools through the provision of targeted TA<sup>7</sup> to SEAs. A

<sup>6</sup> Examples of Department projects and clearinghouses include, but are not limited to, the following: (1) Projects partially focused on AT and IT such as the What Works Clearinghouse, the Doing What Works Web site, Comprehensive Centers, Regional Resource Centers, Parent Training and Information Centers (PTIs), and Community Parent Resource Centers (CPRCs); and (2) projects exclusively focused on AT and IT such as the Family Center on Technology and Disability, Center for Implementing Technology in Education (CITED), AbleData, [AT] Connects, National Center on Accessible Instructional Materials (AIM Center), the Center on Technology Implementation, Tots 'n Tech, Stepping-up to Technology Implementation, and Steppingstones of Technology Innovation.

<sup>7</sup> As used in this priority, "targeted TA" means TA service based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national meetings. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA. The following Web site provides more information on levels of TA: [www.tadnet.org](http://www.tadnet.org).

survey of SEAs on their efforts to support LEAs in the provision of education-related AT revealed significant variability among States (Sopko, 2008). Most States provide general information and personnel development regarding AT, while few States provide specific TA on AT and IT. The Center will work with SEAs to effectively increase the capacity of LEAs to provide services to families and providers that increase their skills in advocating for, acquiring, and implementing effective AT and IT for children with disabilities.

Second, the Center will provide targeted TA to OSEP-funded projects, including Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs), to increase the projects' capacity to provide effective training on AT and IT to families, as well as collaborate with providers to foster the effective implementation of AT and IT (Edyburn, 2004).

And third, the Center will provide targeted TA to personnel development projects funded under the Personnel Preparation program authorized under section 662 of IDEA to increase their capacity to prepare providers on the effective use of AT and IT with children with disabilities. One of the objectives of the Personnel Preparation program is to ensure that projects provide training to early intervention and special education personnel, including administrators, on the use of new technologies (section 662(a)(6)(A) of IDEA). Personnel development projects also need to improve the AT and IT content they provide in order to reduce providers' knowledge gaps (Chesley & Jordan, 2012; Manning & Carpenter, 2008). The Center will provide targeted TA to personnel development projects to better enable them to prepare providers on the effective use of AT and IT with children with disabilities.

**Priority:**

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a Center on Technology and Disability. The Center will increase the capacity of families and providers to advocate for, acquire, and implement effective AT and IT to help children with disabilities participate fully in daily routines in their natural environments, have increased access to the general education curriculum, improve their functional outcomes and educational results, and meet college- and career-ready standards.

The Center must provide, at a minimum, the necessary TA to meet the following expected outcomes:

(a) Families and providers will have access to accurate and current information on evidence-based AT and IT for children with disabilities in formats that are relevant to their needs so that they can (1) Advocate for appropriate AT and IT; (2) participate effectively in planning, acquiring, and implementing AT and IT; and (3) make informed decisions about how resources should be spent.

(b) SEAs will increase their capacity to provide TA to LEAs so that LEAs can more effectively support families and providers in the acquisition and implementation of appropriate AT and IT in order to improve educational results and functional outcomes for children with disabilities.

(c) Other OSEP-funded projects, including PTIs and CPRCs, will increase their capacity to train families and providers so that they can effectively advocate for, acquire, and implement AT and IT for children with disabilities.

(d) OSEP-funded personnel development projects will increase their capacity to prepare providers to help children with disabilities use AT and IT more effectively.

To be considered for funding under this absolute priority, applicants must meet the application, programmatic, and administrative requirements specified in this priority.

The requirements of this priority are as follows:

(a) Demonstrate, in the narrative section of the application under "Significance of the Project," how the project—

(1) Addresses families' and providers' need for useful, relevant, and current information and training on evidence-based AT and IT for children with disabilities. To address this requirement the applicant must—

(i) Demonstrate knowledge of the following:

(A) Evidence-based research and effective practices on AT and IT use by children with disabilities and providers;

(B) Information and training currently available on AT and IT through various sources;

(C) Federal and State TA currently available to LEAs on AT and IT; and

(ii) Identify gaps and weaknesses in the information and training on AT and IT that is currently available to SEAs, LEAs, OSEP-funded projects, families, and providers;

(2) Increases families' and providers' understanding of effective strategies to advocate for, acquire, and use appropriate AT and IT for children with disabilities. To address this requirement the applicant must—

(i) Demonstrate knowledge of best practices in providing information to families and providers;

(ii) Identify dissemination strategies that will enable more families and providers to efficiently acquire reliable and up-to-date information on AT and IT, as well as use the acquired information effectively, including families and providers who are underserved or have limited access to information; and

(iii) Identify effective strategies for providing TA to SEAs, LEAs, OSEP-funded projects, families, and providers; and

(3) Increases families' and providers' capacity to advocate for, acquire, and use appropriate AT and IT for children with disabilities.

(b) Demonstrate, in the narrative section of the application under "Quality of the Project Services," how the project will—

(1) Use a conceptual framework and project logic model (see paragraph (f)(1)) to guide the development of project plans and activities describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationship or linkages among these variables, and any empirical support for this framework;

(2) Collect and evaluate information on AT and IT using consistent evidence standards, such as those used by the What Works Clearinghouse (see <http://ies.ed.gov/ncee/wwc>). The information on AT and IT must—

(i) Address a variety of topics, including, but not limited to: emerging technologies; new and available AT and IT products; universally designed alternatives to traditional AT and IT; resources to help families and providers acquire AT and IT; and best practices in the selection, implementation, and use of AT and IT to benefit children with disabilities; and

(ii) Include current and archival information from other projects funded by the Department, such as grants funded under the Educational Technology, Media, and Materials for Individuals with Disabilities Program;

(3) Create new training and information materials for families and providers that—

(i) Synthesize reliable information about evidence-based AT and IT, including advancements in AT and IT;

(ii) Are accessible, usable, and easy for families and others to understand;

(iii) Are available in other languages and address the linguistic needs of English learners (ELs) with disabilities;

(iv) Respond to the changing needs of SEAs, LEAs, OSEP-funded projects, families, and providers; and

(v) Increase parents' and providers' knowledge of AT, IT, and effective practices in the use of technology to improve functional outcomes and educational results for children with disabilities;

(4) Provide universal TA,<sup>8</sup> using information collected in response to paragraph (b)(2), on effective AT and IT for children with disabilities, including how to acquire, use, and implement that AT and IT, that—

(i) Meets the needs of multiple audiences, including, but not limited to: Families, families with limited English proficiency, parent service organizations, providers, administrators, professional organizations, SEAs, LEAs, lead agencies, professional training programs, AT and IT developers, vendors, and researchers;

(ii) Includes a variety of formats that are appropriate to the audience and to the nature of the information, such as Web sites, newsletters, guidebooks, research syntheses, conference presentations, and published articles, among others;

(iii) Uses various dissemination methods (in-person, remote, and Web-based, among others) to reach as many families and providers as possible;

(iv) Uses best practices for training and providing TA to adult learners; and

(v) Uses technology to increase the efficiency and effectiveness of the TA provided;

(5) Provide targeted TA to SEAs that—

(i) Increases SEAs' capacity to help LEAs to support families and providers in the acquisition and implementation of appropriate AT and IT by children with disabilities;

(ii) Includes a variety of formats, such as webinars, workshops, training modules, meetings, communities of practice, and wikis;

(iii) Uses various dissemination methods (in-person, remote, and Web-based, among others) to reach as many families and providers as possible;

(iv) Uses best practices for training and providing TA to adult learners;

(v) Uses technology to increase the efficiency and effectiveness of the TA provided; and

<sup>8</sup> As used in this priority, "universal TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited, or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's Web site by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA. The following Web site provides more information on levels of TA: [www.tadnet.org](http://www.tadnet.org).

(vi) Makes use of existing knowledge and expertise within SEAs;

(6) Provide targeted TA to OSEP-funded personnel development projects, PTIs, CPRCs, and other projects that—

(i) Increases the projects' knowledge of AT and IT and their capacity to more effectively train families and providers on how to advocate for, acquire, and implement effective AT and IT for children with disabilities;

(ii) Uses a variety of formats, such as webinars, workshops, training modules, meetings, communities of practice, and wikis, among others;

(iii) Uses various dissemination methods (in-person, remote, and Web-based, among others) to reach as many families and providers as possible;

(iv) Uses best practices for training and providing TA to adult learners;

(v) Uses technology to increase the efficiency and effectiveness of the TA provided; and

(vi) Makes use of existing knowledge and expertise within personnel development projects, parent training and information centers, deaf-blind projects, TA centers, and State personnel development projects, among others;

(7) Collaborate with other projects and initiatives that can contribute to meeting the Center's outcomes, including, but not limited to: AbleData, [AT] Connects, State projects supported by the AT Act, and AT and IT vendors and researchers;

(8) Disseminate information about the Center's products and services in order to promote their use to improve outcomes for children with disabilities; and

(9) Consult with a group of persons, including, but not limited to:

Representatives from OSEP-funded personnel development and other projects; SEAs, LEAs, and Part C lead agencies; providers and provider associations; families; people with disabilities; and researchers, as appropriate; on the activities and outcomes of the Center; and solicit programmatic support and advice from various participants in the group, as appropriate. The Center must identify the members of this group to OSEP, for its approval, within eight weeks following receipt of the award.

(c) Demonstrate, in the narrative section of the application under "Quality of the Evaluation Plan," how—

(1) The applicant will evaluate the effectiveness of the proposed project by undertaking a formative evaluation and a summative evaluation, including a description of how the applicant will measure the outcomes proposed in the logic model (see paragraph (f)(1)). The description must include—

(i) Evaluation methodologies, including proposed instruments, data collection methods, evaluation questions, and possible analyses;

(ii) Proposed standards or targets for determining effectiveness; and

(iii) A proposed third-party evaluator to carry out the summative evaluation;

(2) The applicant will use the results of the formative evaluation to provide performance feedback for examining the effectiveness of project implementation strategies and progress toward achieving intended outcomes; and

(3) Formative evaluation activities during the project period will complement and inform the summative evaluation. The final summative evaluation will be developed in consultation with the third-party evaluator and the OSEP project officer.

(d) Demonstrate, in the narrative section of the application under "Adequacy of Project Resources," how—

(1) The proposed personnel, consultants, and contractors are highly qualified, experienced, and committed to carrying out the proposed activities and meeting the outcomes identified in the project logic model (see paragraph (f)(1));

(2) The qualifications of the members of the group referred to in paragraph (b)(9) are relevant to the proposed activities and outcomes;

(3) The applicant will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, language, linguistic background, gender, age, or disability, as appropriate; and

(4) The applicant and any key partners will ensure that they have adequate resources to carry out the proposed activities.

(e) Demonstrate, in the narrative section of the application under "Quality of the Management Plan," how—

(1) The proposed management plan will ensure that the project's outcomes, identified in the project logic model (see paragraph (f)(1)), will be achieved on time and within budget;

(2) The time of key personnel, consultants, and contractors will be sufficiently allocated to the project;

(3) The proposed management plan will ensure that the products and services provided are of high quality; and

(4) The proposed project will benefit from a diversity of perspectives, including families, researchers, personnel development projects, parent training and information centers, SEAs

and lead agencies, and other OSEP-funded projects, among others.

(f) Address the following application requirements as directed. The applicant must—

(1) Include, in Appendix A, a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

**NOTE:** The following Web sites provide more information on logic models: [www.researchutilization.org/matrix/logicmodel\\_resource3c.html](http://www.researchutilization.org/matrix/logicmodel_resource3c.html) and [www.tadnet.org/pages/589](http://www.tadnet.org/pages/589);

(2) Include, in Appendix A, a conceptual framework for the project;

(3) Include, in Appendix A, person-loading charts and timelines to illustrate the management plan described in the narrative;

(4) Ensure that the budget includes attendance at all of the following events:

(i) A one and one-half day kick-off meeting to be held in Washington, DC, following receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

**Note:** Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(ii) A three-day project directors' conference in Washington, DC, during each year of the project period.

(iii) One trip annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(5) Ensure that the budget includes—

(i) A line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP;

**NOTE:** With approval from the OSEP project officer, the Center should reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

(ii) A line item for a summative evaluation to be conducted by an independent third party; and

(6) Ensure that the project maintains a Web site that meets government or industry-recognized standards for accessibility.

#### *Fourth and Fifth Years of the Project:*

In deciding whether to continue funding the Center for the fourth and

fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), as well as—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period. The Center must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The quality, relevance, and usefulness of the Center's activities and products and the degree to which the Center's activities and products increase families' and providers' capacity to advocate for, acquire, and implement effective AT and IT for children with disabilities and thereby improve educational and developmental outcomes for children with disabilities.

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**Waiver of Proposed Rulemaking:** Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

**Program Authority:** 20 U.S.C. 1474 and 1481.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

## II. Award Information

**Type of Award:** Cooperative agreement.

**Estimated Available Funds:** \$1,435,500.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 from the list of unfunded applicants from this competition.

**Maximum Award:** We will reject any application that proposes a budget exceeding \$1,435,500 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Estimated Number of Awards:** 1.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 60 months.

## III. Eligibility Information

**Eligible Applicants:** SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. **Cost Sharing or Matching:** This competition does not require cost sharing or matching.

3. **Other:**

(a) **General Requirements.** The projects funded under this competition must make positive efforts to employ, and advance in employment, qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

## IV. Application and Submission Information

1. **Address to Request Application Package:** Education Publications Center (ED Pubs), U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1-877-433-7827. FAX: (703) 605-6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: [www.EDPubs.gov](http://www.EDPubs.gov) or at its email address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327F.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the team listed under **Accessible Format** in section VIII of this notice.

2. **Content and Form of Application Submission:** Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. **Submission Dates and Times:**  
**Applications Available:** July 1, 2013.  
**Deadline for Transmittal of Applications:** August 15, 2013.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. **Other Submission Requirements** of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review*: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2013.

5. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management*: To do business with the Department of Education, you must—

- Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);
- Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;
- Provide your DUNS number and TIN on your application; and
- Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process may take seven or more business days to complete. If you are currently registered with the SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also

note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: [www.grants.gov/applicants/get\\_registered.jsp](http://www.grants.gov/applicants/get_registered.jsp).

7. *Other Submission Requirements*: Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications*.

Applications for grants under the Center on Technology and Disability competition, CFDA number 84.327F, must be submitted electronically using the Governmentwide Grants.gov Apply site at [www.Grants.gov](http://www.Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Center on Technology and Disability competition at [www.Grants.gov](http://www.Grants.gov). You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.327, not 84.327F).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time

stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at [www.G5.gov](http://www.G5.gov).

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

**Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:** If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your

application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

**Exception to Electronic Submission Requirement:** You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4057, Potomac Center Plaza (PCP), Washington, DC 20202-2600. FAX: (202) 245-6595.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

**b. Submission of Paper Applications by Mail.**

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327F) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

**c. Submission of Paper Applications by Hand Delivery.**

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327F) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

**V. Application Review Information**

1. **Selection Criteria:** The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. **Review and Selection Process:** We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous

award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

**3. Additional Review and Selection Process Factors:** In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

**4. Special Conditions:** Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

**1. Award Notices:** If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email

containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

**2. Administrative and National Policy Requirements:** We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

**3. Reporting:** (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

**4. Performance Measures:** Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Educational Technology, Media, and Materials for Individuals with Disabilities program. For purposes of this priority, the Center will use these measures, which focus on the extent to which projects provide high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice. Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

**5. Continuation Awards:** In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4057, PCP, Washington, DC 20202-2600. Telephone: (202) 245-6595.

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

## VIII. Other Information

**Accessible Format:** Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202-2550. Telephone: (202) 245-7363. If you use a TDD or a TTY, call the FRS, toll free, at 1-800-877-8339.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

Dated: June 26, 2013.

**Michael K. Yudin,**

*Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2013-15712 Filed 6-28-13; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2692-055]

#### Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Shoreline Management Plan.
- b. *Project No:* 2692-055.
- c. *Date Filed:* December 6, 2012.
- d. *Applicant:* Duke Energy Carolinas, LLC.
- e. *Name of Project:* Nantahala Hydroelectric Project.
- f. *Location:* The Franklin Hydroelectric Project is located on the Nantahala River in Clay and Macon counties, North Carolina.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.
- h. *Applicant Contact:* Dennis Whitaker, Duke Energy—Lake Services, 526 S. Church St., Charlotte, NC, 28202, (704) 382-1594.
- i. *FERC Contact:* Mark Carter at (678) 245-3083, or email: [mark.carter@ferc.gov](mailto:mark.carter@ferc.gov).
- j. *Deadline for filing comments, motions to intervene, and protests:* July 24, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the

Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P-2692-055) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As required by article 408 of the February 8, 2012 license, Duke Energy Carolinas, LLC requests Commission approval of a proposed shoreline management plan (SMP) for the project. The SMP defines shoreline management classifications for the reservoir shoreline within the project boundary, identifies allowable and prohibited uses within the shoreline areas, and describes the shoreline use permitting process.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P-2692) to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: June 24, 2013.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2013-15666 Filed 6-28-13; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. NJ13-10-000]

#### United States Department of Energy; Bonneville Power Administration; Notice of Petition for Declaratory Order

Take notice that on June 19, 2013, pursuant to sections 35.28(e) and 385.207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 35.28(e) and 18 CFR 385.207, the Bonneville Power Administration (Bonneville), submitted certain amendments to its Open Access Transmission Tariff (OATT) and a Petition for Declaratory Order requesting the Commission find that Bonneville's OATT, as amended by this filing, substantially conform or is superior to the *pro forma* OATT as it

has been amended by Order Nos. 1000, 1000-A, and 1000-B.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on August 5, 2013.

Dated: June 24, 2013.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2013-15665 Filed 6-28-13; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Southwestern Power Administration

#### Integrated System Power Rates

**AGENCY:** Southwestern Power Administration, DOE.

**ACTION:** Notice of public review and comment.

**SUMMARY:** The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2013 Power Repayment Studies which show the need for an increase in annual revenues to meet cost

recovery criteria. Such increased revenues are needed primarily to cover the increased costs associated with increased operations and maintenance and increases to investments and replacements in the hydroelectric generating facilities. The Administrator of Southwestern has developed proposed Integrated System rates, which are supported by the rate design study, to recover the required revenues. The Revised 2013 Study indicates that the proposed rates would increase annual system revenues approximately 4.7 percent from \$184,059,100 to \$192,765,802 effective October 1, 2013 through September 30, 2017.

**DATES:** The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end on August 30, 2013.

If requested, a combined Public Information and Comment Forum (Forum) will be held in Tulsa, Oklahoma at 9:00 a.m. on July 11, 2013. If requested, persons desiring the Forum to be held should indicate in writing to the Southwestern Vice President, Chief Operating Officer (see **FOR FURTHER INFORMATION CONTACT**) by letter, email, or facsimile transmission (918-595-6656) by July 8, 2013, their request for such Forum. If no request is received, no such Forum will be held.

**ADDRESSES:** If requested, the Forum will be held in Southwestern's offices, Room 1460, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103.

**FOR FURTHER INFORMATION CONTACT:** Mr. James K. McDonald, Vice President, Chief Operating Officer, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595-6690, [jim.mcdonald@swpa.gov](mailto:jim.mcdonald@swpa.gov).

**SUPPLEMENTARY INFORMATION:** Originally established by Secretarial Order No. 1865 dated August 31, 1943, Southwestern is an agency within the U.S. Department of Energy created by the Department of Energy Organization Act, Public Law 95-91, dated August 4, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2 entitled Power Marketing Administration Financial Reporting. Procedures for public participation in power and transmission rate adjustments of the Power Marketing Administrations are found at title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR 903). Procedures for the confirmation and approval of rates for the Federal Power Marketing Administrations are

found at title 18, part 300, subpart L of the Code of Federal Regulations (18 CFR 300).

Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers (Corps). These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are those of Southwestern's transmission facilities, which consist of 1,380 miles of high-voltage transmission lines, 25 substations, and 46 microwave and VHF radio sites. Costs associated with the Sam Rayburn and Robert D. Willis Dams, two Corps projects that are isolated hydraulically, electrically, and financially from the Integrated System, are repaid under separate rate schedules and are not addressed in this notice.

Following Department of Energy guidelines, the Administrator of Southwestern, prepared the Current Power Repayment Study using existing system rates.<sup>1</sup> This study indicates that Southwestern's legal requirement to repay the investment in power generating and transmission facilities for power and energy marketed by Southwestern will not be met without an increase in revenues. The need for increased revenues is primarily due to increased costs associated with operations and maintenance and increased investments and replacements in hydroelectric generating facilities for the Corps and Southwestern's transmission system. The Revised Power Repayment Study shows that additional annual revenues of \$8,706,702 (a 4.7 percent increase) are needed to satisfy repayment criteria.

The Rate Design Study which allocates the revenue requirement to the various system rate schedules for recovery and provides for transmission service rates in general conformance with FERC Order No. 888 has also been completed.<sup>2</sup> The proposed new rates

<sup>1</sup> FERC, on March 5, 2012, confirmed and approved the existing Integrated System rate schedules for the period January 1, 2012 through September 30, 2015. See 138 FERC ¶ 62,199.

<sup>2</sup> *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21,540 (5/10/1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12,274 (3/14/1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd*

would increase annual revenues to an estimated \$192,765,802 and would satisfy the present financial criteria for repayment of the project and transmission system investments within the required number of years. As indicated in the Rate Design Study, this revenue would be developed primarily through increases in the charges for power sales capacity and energy and transmission services, including some of the ancillary services for deliveries of both Federal and non-Federal power and associated energy from the transmission system of Southwestern.

A second component of the Integrated System rates for power and energy, the Purchased Power Adder (PPA), produces revenues which are segregated to cover the cost of power purchased to meet contractual obligations. The PPA is established to reflect revenues required

to meet Southwestern's purchased power needs on an average annual basis. The PPA rate will decrease slightly to reflect the declining average cost of purchasing power over the period applied to our projected power needs. The Administrator's authority to adjust the PPA at his discretion with the Purchased Power Adder Adjustment (PPAA) will remain in force.<sup>3</sup> The PPAA is limited to two adjustments per year not to exceed a total of ± 5.9 mills per kilowatthour per year. The PPA will decrease to \$0.0059 per kilowatthour and the PPAA will remain at \$0.0021 per kilowatthour effective October 1, 2013.

A revision to the component for Regulation Purchased Adder service has been proposed to the existing rate schedules to include a four-year transition to a full reimbursement based

on average annual replacement energy costs for supplying regulation service to those customers inside the Balancing Authority Area (BAA). This revision to the Regulation Purchased Adder is being proposed so that all customers receiving regulation service within the BAA are appropriately assessed for their consumption of the service that is purchased to supplement the Federal resource used to support the BAA's requirement to regulate for loads. A copy of the proposed Regulation Purchased Adder language contained within the proposed Rate Schedules can be requested from Mr. James K. McDonald at the address listed above (see **FOR FURTHER INFORMATION CONTACT**).

Below is a general comparison of the existing and proposed system rates:

GENERATION RATES	Existing rates	Proposed rates
	Rate Schedule P-11 (System Peaking)	Rate Schedule P-13 (System Peaking)
<i>Capacity</i>		
Grid or 138-161kV .....	\$4.29/kW/Mo	\$4.50/kW/Mo.
Regulation & Freq. Response (generation in BAA).	\$0.09/kW/Mo	\$0.07/kW/Mo.
Regulation Purchased Adder (load within SWPA BAA).	prorata share of total energy cost	prorata share of total energy cost (includes refinement to procedure).
Reserve Ancillary Services .....	\$0.0224/kW/Mo	\$0.0292/kW/Mo.
Purchased Power Adder .....	\$0.0062/kWh	\$0.0059/kWh.
Administrator's Discretionary Adder Adjustment Limit.	±\$0.0062/kWh annually	±\$0.0059/kWh annually.
Transformation Service 69kV (applied to usage, not reservation).	\$0.42/kW/Mo	\$0.46/kW/Mo.
<i>Energy.</i>		
Peaking Energy .....	\$0.0091/kWh	\$0.0094/kWh.
Supplemental Peaking Energy .....	\$0.0091/kWh	\$0.0094/kWh.
TRANSMISSION RATES .....	Rate Schedule NFTS-11 (Transmission)	Rate Schedule NFTS-13 (Transmission)
<i>Capacity (Firm Reservation with energy)</i> Grid or 138-161 kV.	\$1.28/kW/Mo	\$1.48/kW/Mo.
.....	\$0.320/kW/Week	\$0.370/kW/Week.
.....	\$0.0582/kW/Day	\$0.0673/kW/Day.
Required Ancillary Services (generation in BAA).	\$0.13/kW/Mo, or \$0.033/kW/Week, or \$0.006/kW/Day	\$0.13/kW/Mo, or \$0.033/kW/Week, or \$0.006/kW/Day.
Reserve Ancillary Services (generation in BAA).	\$0.0224/kW/Mo, or \$0.0056/kW/Week, or \$0.00102/kW/Day	\$0.0292/kW/Mo, or \$0.0073/kW/Week, or \$0.00132/kW/Day.
Regulation & Freq Response (deliveries within BAA).	\$0.09/kW/Mo, or \$0.023/kW/Week, or \$0.0041/kW/Day	\$0.07/kW/Mo, or \$0.018/kW/Week, or \$0.0032/kW/Day.
Transformation Service 69 kV and below (applied on usage, not reservation) Weekly and daily rates not applied.	\$0.42/kW/Mo	\$0.46/kW/Mo.
<i>Capacity (Non-firm with energy)</i> .....	80% of firm monthly charge divided by 4 for weekly rate, divided by 22 for daily rate, and divided by 352 for hourly rate	80% of firm monthly charge divided by 4 for weekly rate, divided by 22 for daily rate, and divided by 352 for hourly rate.
<i>Network Service</i> .....	\$1.28/kW/Mo	\$1.48/kW/Mo.
Required Ancillary Services: .....	\$0.13/kW/Mo	\$0.13/kW/Mo.
Reserve Ancillary Services (generation in BAA).	\$0.00224/kW/Mo	\$0.00292/kW/Mo.
Regulation & Freq Response (deliveries within BAA).	\$0.09/kW/Mo	\$0.07/kW/Mo.

in relevant part sub nom. *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir.

2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>3</sup> See 138 FERC ¶ 62,199 (2012).

GENERATION RATES	Existing rates	Proposed rates
	Rate Schedule P-11 (System Peaking)	Rate Schedule P-13 (System Peaking)
EXCESS ENERGY RATES Energy .....	Rate Schedule EE-11 (Excess Energy) \$0.0091/kWh	Rate Schedule EE-13 (Excess Energy) \$0.0094/kWh.

Southwestern’s customers and other interested parties may receive copies of the Integrated System Power Repayment Studies and/or Rate Design Study, by submitting a request to Mr. James K. McDonald (see **FOR FURTHER INFORMATION CONTACT**).

A Public Information and Comment Forum (Forum) is tentatively scheduled to be held on July 11, 2013, to explain to customers and interested parties the proposed rates and supporting studies and to allow for comment. A chairman, who will be responsible for orderly procedure, will conduct the Forum if a Forum is requested. Questions concerning the rates, studies, and information presented at the Forum will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing. Questions involving voluminous data contained in Southwestern’s records may best be answered by consultation and review of pertinent records at Southwestern’s offices.

Persons requesting that a Forum be held should indicate in writing to the Southwestern Vice President and Chief Operating Officer (see **FOR FURTHER INFORMATION CONTACT**) by letter, email, or facsimile transmission (918-595-6656) by July 8, 2013, their request for such a Forum. If no request is received, no such Forum will be held. Persons interested in speaking at the Forum, if held, should submit a request to Mr. James K. McDonald, Vice President and Chief Operating Officer, Southwestern, at least seven (7) calendar days prior to the Forum so that a list of forum participants can be developed. The chairman may allow others to speak if time permits.

A transcript of the Forum, if held, will be made. Copies of the transcript and all documents introduced will be available for review at Southwestern’s offices (see **ADDRESSES**) during normal business hours. Copies of the transcript and all documents introduced may also be obtained, for a fee, from the transcribing service.

All written comments or an electronic copy in MS Word on the proposed Integrated System Rates are due on or before August 30, 2013. Comments

should be submitted to Mr. James K. McDonald, Vice President and Chief Operating Officer, Southwestern, (see **FOR FURTHER INFORMATION CONTACT**).

Following review of the oral and written comments and the information gathered in the course of the proceeding, the Administrator will submit the finalized Integrated System Power Repayment Studies and Rate Design Study in support of the proposed rates to the Deputy Secretary of Energy for confirmation and approval on an interim basis, and subsequently to the Federal Energy Regulatory Commission for confirmation and approval on a final basis. The Commission will allow the public an opportunity to provide written comments on the proposed rate increase before making a final decision.

Dated: June 24, 2013.

**Christopher M. Turner**,  
*Administrator*.

[FR Doc. 2013-15685 Filed 6-28-13; 8:45 am]

**BILLING CODE 6450-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-ORD-2013-0448; FRL-9825-4]

**Proposed Information Collection Request; Comment Request; Willingness to Pay Survey for Salmon Recovery in the Willamette Watershed (New)**

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency is planning to submit an information collection request (ICR), “Willingness to Pay Survey for Salmon Recovery in the Willamette Watershed” (EPA ICR No. 2489.01, OMB Control No. 2080-NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. An Agency may not conduct or sponsor and

a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before August 30, 2013.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA-HQ-ORD-2013-0448 online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA’s policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Michael Papenfus, Environmental Protection Agency, Western Ecology Division, 200 SW 35th St., Corvallis, OR, 97333; telephone number: 541-754-4703; fax number: 541-754-4799; email address: [papenfus.michael@epa.gov](mailto:papenfus.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA’s public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another Federal Register notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:*

The USEPA Office of Research and Development is investigating public values for Chinook salmon and Winter steelhead recovery in the Willamette basin of Oregon. These values will be estimated via a willingness to pay mail survey instrument. There are two effluent-dominated perennial reaches considered in the survey. The primary goal of conducting economic valuation studies should be to improve the way in which communities frame choices regarding the allocation of scarce resources and to clarify the trade-offs between alternative outcomes. This problem is particularly relevant to salmon conservation efforts in the Pacific Northwest. Despite the deep cultural importance of salmon to the citizens of the Pacific Northwest, there is a remarkable lack of valid empirical economic studies quantifying this importance to the general public. This survey will estimate the benefits of salmon and steelhead recovery in the Willamette basin as outlined in the Upper Willamette River Conservation and Recovery Plan.

The public benefits associated with several recovery options will be estimated in this survey. The first option is labeled 'minimum recovery' and represents a permanent increase in the number of wild origin Chinook salmon and steelhead that return annually to the Willamette basin watershed. The increase in fish abundance is also associated with a reduction in the risk of extinction that is great enough to 'de-list' these species from the endangered species list. The second recovery status evaluated in the survey is labeled 'broad-sense recovery'. This recovery option also represents a reduction in extinction risk great enough to remove both species from the

endangered species list but also represents an even larger increase in wild origin fish than under the 'minimal recovery' option. In addition to the different recovery options, public preferences for the time to recovery will be evaluated.

For the survey, a choice experiment framework is used with statistically designed tradeoff questions. Recovery options for wild origin Chinook salmon and steelhead and time to recovery are posed as increases in a yearly household tax for the next 25 years. Each choice question allows a zero cost "opt out" option. A few additional questions to further understand respondent choice motivations, their river-related recreation behavior, and their attitudes towards wild origin versus hatchery origin fish are also included. Several pages of background introduce the issue to respondents. A small number of sociodemographic questions are included to gauge how well the sample respondents represent the target population. A sample from across the state of Oregon will receive the survey. The survey will target three subpopulations of Oregon to be studied—the urban population of the Willamette valley, the rural population within the Willamette valley, and the population residing outside the Willamette valley. The primary reason for the survey is public value research. All survey responses will be kept confidential.

*Form Numbers:* None.

*Respondents/affected entities:* The target respondents for this survey are representatives 18 yrs or older of households across the state of Oregon. A sample of household representatives 18 yrs or older will be contacted by mail following the multiple contact protocol in Dillman (2009). A response rate of 30% will be targeted. To increase response rates from the sample, several contacts will be used, including a prenotice to all recipients, a reminder postcard, and follow-up mailing as needed.

*Respondent's obligation to respond:* Voluntary.

*Estimated number of respondents:* The number of target responses from each subpopulation within Oregon is 250 households each, or 750 households total.

*Frequency of response:* One-time response.

*Total estimated burden:* For a typical respondent, a conservative estimate of their time to review and respond to survey questions is 30 minutes. Assuming the target of 750 people total respond to the survey, the burden is 375 hours.

*Total estimated cost:* The Bureau of Labor Statistics reports average wage rates for Oregon for all occupations (Bureau of Labor Statistics, 2011). The average hourly wage for all occupations in Oregon was \$21.75, or an average cost per participant of \$10.88. Assuming 750 participants fill out the survey, the total estimated respondent labor cost is \$8,160. This would be a one-time expenditure of their time.

*Changes in Estimates:* This is the first notice; there is no change in estimates at this time.

Dated: June 10, 2013.

**Thomas D. Fontaine III,**

*Western Ecology Division Director.*

[FR Doc. 2013–15754 Filed 6–28–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–9829–9]

### Forum on Environmental Measurements Announcement of Competency Policy for Assistance Agreements—Implementation Extension

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

**ACTION:** Notice. Announcement of Implementation Extension for Competency Policy for Assistance Agreements.

**SUMMARY:** As published in the Federal Register on April 29, 2013, the Environmental Protection Agency's Forum on Environmental Measurements (FEM) is implementing a policy requiring organizations generating or using environmental data under certain Agency-funded assistance agreements to submit documentation of their competency prior to award of the agreement, or if that is not practicable, prior to beginning any work involving the generation or use of environmental data under the agreement. The Policy was originally approved on December 12, 2012 by the Science Technology Policy Council (STPC). Because implementation tools are currently being developed by the Agency based on outreach with internal and external stakeholders, EPA is delaying the required effective date of the Policy to October 1, 2013. Webinars and materials to aid with implementation are available on the FEM Web site ([http://www.epa.gov/fem/lab\\_comp.htm](http://www.epa.gov/fem/lab_comp.htm)). Accordingly, this revision means that the policy will apply to:

- Awards made under competitive solicitations issued on or after October

1, 2013\* that are expected to exceed \$200,000 (in federal funding) in maximum value and involve the use or generation of environmental data; and

- Non-competitive assistance agreements awarded on or after October 1, 2013\* that are expected to exceed \$200,000 (in federal funding) in total maximum value and involve the use or generation of environmental data.

\*While the effective date of this policy is being changed to October 1, 2013, EPA offices may apply this policy prior to that date at their discretion.

**FOR FURTHER INFORMATION CONTACT:**

Comments or questions should be sent to Ms. Lara P. Phelps, US EPA (E243-05), 109 T. W. Alexander Drive, Research Triangle Park, NC 27709; emailed to [phelps.lara@epa.gov](mailto:phelps.lara@epa.gov); or call (919) 541-5544.

Dated: June 20, 2013.

**Glenn Paulson,**

*Science Advisor.*

[FR Doc. 2013-15753 Filed 6-28-13; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OA-2013-0320; FRL-9830-1]

**Technical Guidance for Assessing Environmental Justice in Regulatory Analysis**

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

**ACTION:** Notice. Announcement of 60-day extension of public comment period for draft guidance.

**SUMMARY:** On May 9, 2013 the Environmental Protection Agency (EPA) issued for public comment a document entitled, "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis." The purpose of this notice is to extend the public comment period by 60 days. The public comment period will now close on September 6, 2013.

**DATES:** Comments must be received on or before September 6, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OA-2013-0320 by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

- *Email:* [maguire.kelly@epa.gov](mailto:maguire.kelly@epa.gov).

- *Fax:* 202-566-2363.

- *Mail:* Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, Environmental Protection Agency, Mailcode: 1890T,

1200 Pennsylvania Ave. NW., Washington, DC 20460.

- *Hand Delivery:* EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OA-2013-0320. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Technical Guidance for Assessing Environmental Justice in Regulatory Analysis Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. 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 Technical Guidance for Assessing Environmental Justice in Regulatory Analysis is (202) 566-2273.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kelly Maguire, Office of Policy, National Center for Environmental Economics, Mail code 1809T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Mail code 1809T, Washington, DC 20460; telephone number: 202-566-2273; fax number: 202-566-2363; email address: [maguire.kelly@epa.gov](mailto:maguire.kelly@epa.gov).

**SUPPLEMENTARY INFORMATION:** The Technical Guidance for Assessing Environmental Justice in Regulatory Analysis is available in the public docket for this notice. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW. Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

**I. General Information**

EPA is extending the public comment period for the draft *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* by 60 days. The public comment period will now close on September 6, 2013. EPA has been doing environmental justice assessments of its regulatory actions for years. This experience and body of work assessing regulatory actions provide the foundation for this draft guidance. This guidance begins to address the issue of how to analytically consider environmental justice in regulatory analyses. It provides a set of questions to guide analysts in evaluating potential environmental justice concerns in EPA rules, provides a set of recommendations and best practices for analyses, and defines key terms. No new risk assessment or socio-economic assessment methods are required, thus minimizing resource or analytical burdens. This guidance takes into account EPA's past experience in integrating EJ into the rulemaking process and will enable EPA to conduct consistent, better analysis of regulations to inform the public and decision makers.

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

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Dated: June 18, 2013.

**Michael L. Goo,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2013-15736 Filed 6-28-13; 8:45 am]

**BILLING CODE 6560-50-P**

## EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2013-0033]

### Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of \$100 Million: AP088099XX

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice.

**SUMMARY:** This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (“Ex-Im Bank”), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

*Reference:* AP088099XX

#### Purpose and Use

*Brief description of the purpose of the transaction:*

To support the export of U.S.-manufactured aircraft to Ireland.

*Brief non-proprietary description of the anticipated use of the items being exported:*

To be used under operating lease for long-haul service from Brazil and Chile to other countries.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

#### Parties

*Principal Supplier:* The Boeing Company.

*Obligor:* Avolon Aerospace Leasing Limited.

*Guarantor(s):* N/A.

#### Description of Items Being Exported

Boeing 777 aircraft.

*Information On Decision:* Information on the final decision for this transaction will be available in the “Summary Minutes of Meetings of Board of Directors” on <http://exim.gov/newsandevents/boardmeetings/board/>.

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which

would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

**DATES:** Comments must be received on or before July 26, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

**ADDRESSES:** Comments may be submitted through [Regulations.gov](http://Regulations.gov) at [WWW.REGULATIONS.GOV](http://WWW.REGULATIONS.GOV). To submit a comment, enter EIB-2013-0033 under the heading “Enter Keyword or ID” and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB-2013-0033 on any attached document.

**Cristopolis A. Dieguez,**

*Program Specialist, Office of General Counsel.*

[FR Doc. 2013-15593 Filed 6-28-13; 8:45 am]

**BILLING CODE 6690-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501—3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission’s burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 30, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202-395-5167 or via Internet at [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov). To submit your PRA comments to the FCC by email send them to: [PRA@fcc.gov](mailto:PRA@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, FCC, Office of Managing Director, (202) 418-0214.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0384.

*Title:* Sections 64.901, 64.904 and 64.905, Auditor's Attestation and Certification.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 1 respondent; 1 response.

*Estimated Time per Response:* 35 hours to 250 hours.

*Frequency of Response:* On occasion, biennial and annual reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 201-205, 215 and 218-220 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 250 hours per audit requirement and 5 hours for the annual certification = 255 total annual hours.

*Total Annual Cost:* \$1,200,000.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* No assurances of confidentiality have been provided to respondents. If confidentiality is requested, such requests will be processed in accordance with 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission will be submitting this expiring information collection after this comment period to the Office of Management and Budget (OMB) for approval of an extension request (no change in the reporting requirements).

There is no change in the Commission's previous burden estimates.

Section 64.904(a) requires each incumbent LEC required to file a cost allocation manual is to either have an attest engagement performed by an independent auditor every two years, covering the prior two year period, or have a financial audit performed by an independent auditor biennially. In either case, the initial engagement shall be performed in the calendar year after the carrier is first required to file a cost allocation manual. *See* section 904(a)-(c). Instead of requiring mid-sized carriers to incur the expense of a biennial attestation engagement, they now file a certification with the Commission stating that they are in compliance with 47 CFR 64.901 of the Commission's rules. The certification must be signed, under oath, by an officer of the incumbent LEC, and filed with the Commission on an annual basis. Such certifications of compliance represent a less costly means of enforcing compliance with our cost allocation rules. *See* 47 CFR 64.905 of the Commission's rules. The requirements are imposed to ensure that the carriers are properly complying with Commission rules. They serve as an important aid in the Commission's monitoring program.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013-15583 Filed 6-28-13; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502-3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 31, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202-395-5167 or via Internet at [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) <[mailto:Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov)> and Judith B. Herman, Federal Communications Commission, via the Internet at [Judith-b.herman@fcc.gov](mailto:Judith-b.herman@fcc.gov). To submit your PRA comments by email send them to: [PRA@fcc.gov](mailto:PRA@fcc.gov) <<mailto:PRA@fcc.gov>>.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, FCC, at 202-418-0214.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0804.

*Title:* Universal Service—Rural Health Care Program.

*Form Numbers:* FCC Forms 460, 461, 462, 463 (new FCC forms); 465, 466, 466-A and 467.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit, not for profit institutions, federal government and state, local and tribal government.

*Number of Respondents:* 11,000 respondents; 54,041 responses.

*Estimated Time per Response:* 1.21 hours (average).

*Frequency of Response:* On occasion, one time, annual, quarterly and monthly reporting requirements and recordkeeping requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory

authority for this information collection is contained in 47 U.S.C. 151, 154(i), 154(i), 201–205, 214, 254 and 403 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 65,539 hours.

*Total Annual Cost:* N/A.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:*

No assurances of confidentiality are provided to respondents concerning this information collection. Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules. We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the Rural Health Care programs; and must not disclose data in company specific form unless directed to do so by the Commission.

*Needs and Uses:* The Commission will submit this collection to the OMB for approval of a revision in order to obtain the three year clearance from them.

The Commission seeks OMB approval for a revision for: (1) Information collections associated with the new Healthcare Connect Fund; created FCC Forms 460, 461, 462 and 463; information collections associated with a new skilled nursing facilities pilot program; (3) revised reporting requirements associated with an existing pilot program; and (4) extended information collections associated with existing programs. For complete details regarding this revision, please see the 60 day notice that was published in the **Federal Register** on April 1, 2013 (78 FR 19479).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–15585 Filed 6–28–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501—

3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 30, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA questions to Judith B. Herman, Federal Communications Commission. To submit your PRA comments by email send them to: [PRA@fcc.gov](mailto:PRA@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, (202) 418–0214.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0865.

*Title:* Wireless Telecommunications Bureau Universal Licensing System Recordkeeping and Third Party Disclosure Requirements.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households; business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

*Number of Respondents:* 62,500 respondents; 62,500 responses.

*Estimated Time per Response:* .166 hours to 5 hours.

*Frequency of Response:* On occasion reporting requirement, recordkeeping

requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154(i) and 309(j) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 88,940 hours.

*Total Annual Cost:* N/A.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:*

There is a need for confidentiality with respect to all Private Land Mobile Radio service filers in this collection. Pursuant to section 208(b) of the E-Government Act of 2002, 44 U.S.C. section 3501, in conformance with the Privacy Act of 1974, 5 U.S.C. 552(a), the Commission's Wireless Telecommunications Bureau instructs licensees to use the FCC's Universal Licensing System (ULS), Antenna Structure Registration (ASR), Commission Registration System (CORES) and related systems and subsystems to submit information.

Information on the private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, "Wireless Services Licensing Records." The licensee records will be publicly available and routinely used in accordance with subsection b of the Privacy Act. TIN numbers and materials which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 of the Commission's rules will not be available for public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice (SORN).

*Needs and Uses:* The Commission will submit this expiring information collection after this comment period to obtain the full, three year clearance from the Office of Management and Budget (OMB). The Commission is reporting no change in the recordkeeping, reporting and/or third party disclosure requirements. There is a change in the Commission's previous (2010) burdens. We are now reporting a 177 hour burden reduction adjustment. This reduction is due to an adjustment in the number of responses by licensees who operate within the various service categories of this information collection gathered from our ULS and CORES databases.

The purpose of this information collection is to continue to streamline and simplify processes for wireless applicants and licensees, who previously used a myriad of forms for various wireless services and type of

requests, in order to provide the Commission, information that has been collected in separate databases, each for a different group of services. Such processes have resulted in unreliable reporting, duplicate filings for the same licensees/applicants, and high cost burdens to licensees/applicants. By streamlining the ULS, the Commission eliminates the filing of duplicative applications for wireless carriers; increases the accuracy and reliability of licensing information; and enables all wireless applicants and licensees to file all licensing-related applications and other filings electronically, thus increasing the speed and efficiency of the application process.

The ULS also benefits wireless applicants/licensees by reducing the cost of preparing applications, and speeds up the licensing process in that the Commission can introduce new entrants more quickly into this already competitive industry. Finally, ULS enhances the availability of licensing information to the public which has access to all publicly available wireless information on-line, including maps depicting a licensee's geographic service area.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013-15581 Filed 6-28-13; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502-3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the

information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 31, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202-395-5167 or via Internet at [Nicholas\\_A.Fraser@omb.eop.gov](mailto:Nicholas_A.Fraser@omb.eop.gov) [mailto:Nicholas\\_A.Fraser@omb.eop.gov](mailto:Nicholas_A.Fraser@omb.eop.gov) and to Judith B. Herman, Federal Communications Commission, via the Internet at [Judith-b.herman@fcc.gov](mailto:Judith-b.herman@fcc.gov). To submit your PRA comments by email send them to: [PRA@fcc.gov](mailto:PRA@fcc.gov). <mailto:PRA@fcc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, FCC, at 202-418-0214.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0799.

*Title:* FCC Ownership Disclosure Information for the Wireless Telecommunications Services.

*Form Number:* FCC Form 602.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit, not for profit institutions and state, local and tribal government.

*Number of Respondents:* 4,115 respondents; 5,215 responses.

*Estimated Time per Response:* 1.5 hours.

*Frequency of Response:* On occasion reporting requirements and third party disclosure requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 4(i), 154(i), 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 5,215 hours.

*Total Annual Cost:* \$508,200.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:*

Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission will submit this collection to the OMB for approval of a revision in order to obtain the three year clearance from them. There is no change in the Commission's previous burden estimates. The Commission is removing question 1b from the FCC Form 602. The form will be revised upon OMB approval and the availability of IT funds to update the electronic form.

The purpose of the FCC Form 602 is to obtain the identity of the filer and to elicit information required by Section 1.2112 of the Commission's rules regarding:

(1) Persons or entities holding a 10 percent or greater direct or indirect ownership interest or any general partners in a general partnership holding a direct or indirect ownership interest in the applicant ("Disclosable Interest Holders"); and

(2) All FCC-regulated entities in which the filer or any of its Disclosable Interest Holders owns a 10 percent or greater interest.

The data collected on the FCC Form 602 includes the FCC Registration Number (FRN), which serves as a "common link" for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires that entities filing with the Commission use a FRN. The FCC Form 602 was designed for, and must be filed electronically by, all licensees that hold licenses in auctionable services.

The information collected on the form is used by the FCC to determine whether the filer is legally, technically and financially qualified to be a licensee. Without such information, the Commission could not determine whether to issue licenses to applicants that provide telecommunications services to the public and fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013-15582 Filed 6-28-13; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION****Federal Advisory Committee Act; Advisory Committee on Diversity for Communications in the Digital Age**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Advisory Committee on Diversity for Communications in the Digital Age ("Diversity Committee"). The Committee's mission is to provide recommendations to the Commission regarding policies and practices that will further enhance diversity in the telecommunications and related industries. In particular, the Committee will focus primarily on lowering barrier to entry for historically disadvantaged men and women, exploring ways in which to ensure universal access to and adoption of broadband, and creating an environment that enables employment of a diverse workforce within the telecommunications and related industries. The Committee will be charged with gathering the data and information necessary to formulate meaningful recommendations for these objectives.

**DATES:** Tuesday, September 17 at 2:00 p.m.

**ADDRESSES:** Federal Communications Commission, Room TW-C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Barbara Kreisman, 202-418-1605 [Barbara.Kreisman@FCC.gov](mailto:Barbara.Kreisman@FCC.gov).

**SUPPLEMENTARY INFORMATION:** At this meeting the current committees, Supplier Diversity, Market Entry Barriers, Unlicensed Devices and EEO Enforcement will report on their progress. This meeting may also include some discussion of the Federal Communications Commission's former Tax Certificate policy. The goals and approaches of the advisory group will be discussed, including the substantive direction further recommendations should consider.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. The public may submit written comments before the meeting to: Barbara Kreisman, the FCC's Designated

Federal Officer for the Diversity Committee by email: [Barbara.Kreisman@fcc.gov](mailto:Barbara.Kreisman@fcc.gov) or U.S. Postal Service Mail (Barbara Kreisman, Federal Communications Commission, Room 2-A665, 445 12th Street SW., Washington, DC 20554).

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Additional information regarding the Diversity Committee can be found at [www.fcc.gov/DiversityFAC](http://www.fcc.gov/DiversityFAC).

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 2013-15577 Filed 6-28-13; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL DEPOSIT INSURANCE CORPORATION****Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take the opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). On April 17, 2013, the FDIC requested comment for 60 days on a proposal to renew the following information collection: Application to Establish Branch or to Move Main Office or Branch, OMB Control No. 3064-0070. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on this renewal.

**DATES:** Comments must be submitted on or before July 31, 2013.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- <http://www.FDIC.gov/regulations/laws/federal/notices.html>.
- *Email:* [comments@fdic.gov](mailto:comments@fdic.gov) Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA-5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Gary A. Kuiper, at the FDIC address above.

**SUPPLEMENTARY INFORMATION:** Proposal to renew the following currently-approved collection of information:

*Title:* Application to Establish Branch or to Move Main Office or Branch.

*OMB Number:* 3064-0070.

*Form Number:* None.

*Affected Public:* Insured financial institutions.

*Estimated Number of Respondents:* 1540.

*Frequency of Response:* On occasion.

*Estimated Annual Burden Hours per Response:* 5 hours.

*Total estimated annual burden:* 7700 hours.

*General Description of Collection:* Insured depository institutions must obtain the written consent of the FDIC before establishing or moving a main office or branch.

**Request for Comment**

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

All comments will become a matter of public record.

Dated at Washington, DC, this 26th day of June 2013.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**  
*Executive Secretary.*

[FR Doc. 2013-15673 Filed 6-28-13; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Proposed Agency Information Collection Activities: Submission for OMB Review; Comment Request Re Appraisal Standards

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity, as required by the Paperwork Reduction Act of 1995 (4 U.S.S. chapter 35), to comment on renewal of an existing information collection as required by the PRA. On April 23, 2013 (78 FR 23933), the FDIC solicited public comment for a 60-day period on renewal without change of its information collection entitled, "Appraisal Standards" (OMB No. 3064-0103). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

**DATES:** Comments must be submitted on or before July 31, 2013.

**ADDRESSES:** Interested parties are invited to submit written comments. All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- <http://www.FDIC.gov/regulations/laws/federal/notices.html>.

- *Email:* [comments@fdic.gov](mailto:comments@fdic.gov).

- *Mail:* Leneta G. Gregorie (202.898.3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street NW., Room NY-5050, Washington, DC 20429.

- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For further information about this information collection, please contact Leneta G. Gregorie, by telephone at (202) 898-3719 or by mail at the address identified above. In addition, copies of the forms contained in the collection can be obtained at the FDIC's Web site: <http://www.fdic.gov/regulations/laws/federal/notices.html>.

**SUPPLEMENTARY INFORMATION:** The FDIC is requesting OMB approval to renew the following information collection:

*Title:* Appraisal Standards.

*OMB Number:* 3064-0103.

*Number of respondents:* 4460.

*Frequency of response:* 58.96.

*Number of responses:* 263,000.

*Burden per respondent:* 45 minutes.

*Total annual burden:* 197,250 hours.

*General Description of Collection:*

This collection is provided for in 12 CFR Part 323 of FDIC's regulations. Part 323 implements a portion of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). Title XI of FIRREA is designed to provide protection for federal financial and public policy interests by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by an appraiser whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

### Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 26th day of June, 2013.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**  
*Executive Secretary.*

[FR Doc. 2013-15672 Filed 6-28-13; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL HOUSING FINANCE AGENCY

[No. 2013-N-08]

### Proposed Collection; Comment Request

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** 30-day Notice of Submission of Information Collection for Approval from Office of Management and Budget.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning the information collection known as the "National Survey of Mortgage Borrowers" (NSMB). This is a new collection that has not yet been assigned a control number by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year control number.

**DATES:** Interested persons may submit comments on or before July 31, 2013.

*Comments:* Submit written comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, *Fax:* (202) 395-6974, *Email address:*

*OIRA\_Submission@omb.eop.gov*. Please also submit them to FHFA using any of the following methods:

- *Email:* [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov). Please include Proposed Collection; Comment Request: Affordable Housing Program (AHP) (No. 2013-N-08) in the subject line of the message.

- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024, ATTENTION: Public Comments/Proposed Collection; Comment Request: Affordable Housing Program (AHP) (No. 2013-N-08).

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *email* to FHFA at [regcomments@fhfa.gov](mailto:regcomments@fhfa.gov) to ensure timely receipt by the agency.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business

days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

**FOR FURTHER INFORMATION CONTACT:**

Theresa DiVenti, Senior Economist, Office of Systemic Risk and Market Surveillance, by email at [Theresa.DiVenti@fhfa.gov](mailto:Theresa.DiVenti@fhfa.gov) or telephone at (202) 649-3113; or Eric Raudenbush, Assistant General Counsel, by email at [Eric.Raudenbush@fhfa.gov](mailto:Eric.Raudenbush@fhfa.gov) or telephone at (202) 649-3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**A. Need For and Use of the Information Collection**

The NSMB will be a quarterly survey of individuals who have recently obtained a loan secured by a first mortgage on single-family residential property. The survey questionnaire will be sent to approximately 7,000 new mortgage borrowers each calendar quarter and will consist of approximately 80–85 multiple choice and short answer questions designed to obtain information about individual residential mortgages and borrowers that is not available elsewhere. The NSMB is one component of a larger project, known as the “National Mortgage Database,” which is a joint effort of FHFA and the Consumer Financial Protection Bureau (CFPB).

Section 1324 of the Housing and Economic Recovery of 2008 (HERA) requires that FHFA conduct a monthly survey to collect data on the characteristics of individual prime and subprime mortgages, and on the borrowers and properties associated with those mortgages. Specifically, FHFA is required to collect data on: the sales price of the mortgaged property; the loan-to-value ratio of the mortgage; the terms of the mortgage; the creditworthiness of the borrowers; whether borrowers on subprime mortgages would have qualified for prime lending; and whether the mortgage was purchased by Fannie Mae or Freddie Mac.<sup>1</sup> The stated purposes of the monthly mortgage survey required under HERA are to enable FHFA to prepare a detailed annual report on the mortgage market activities of Fannie Mae and Freddie Mac relative to the rest

of the market for the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives,<sup>2</sup> and to compile a database of timely and otherwise unavailable residential mortgage market information to be made available to the public.<sup>3</sup> In order to fulfill those statutory mandates, as well as to support policymaking and research efforts, FHFA, along with CFPB, is committed to fund, build and manage the National Mortgage Database. The key purpose of the National Mortgage Database is to make accessible accurate, comprehensive information for monitoring the residential mortgage market by Congress, regulators and other interested parties.

FHFA draws the core data for the National Mortgage Database from a random 1-in-20 sample of mortgages in the database of credit information on individual consumers maintained by one of the three national credit repositories. These core data may be supplemented, for example, with additional information from sources such as the Home Mortgage Disclosure Act database that is maintained by the Federal Financial Institutions Examination Council,<sup>4</sup> property valuation models, and data files maintained by Fannie Mae and Freddie Mac. The purpose of the NSMB is to complete the National Mortgage Database by obtaining critical information that is not available from existing sources.

Under section 1324 of HERA, FHFA must collect information on the characteristics of individual subprime and nontraditional mortgages, as well as on the characteristics of borrowers on such mortgages, including information on the creditworthiness of those borrowers and information sufficient to determine whether those borrowers would have qualified for prime lending.<sup>5</sup> The NSMB questionnaire is designed to elicit this information directly from borrowers, who are likely to be the most reliable and accessible—and, in some cases, the only—source for this information. In addition, the questionnaire is designed to elicit more complete information on mortgage terms, mortgaged properties, and borrowers’ household demographics than can be obtained from the existing sources. The information obtained from the NSMB, in combination with that obtained from the existing sources, will

make the National Mortgage Database a high quality and uniquely comprehensive and timely resource for information on developments in the residential mortgage market. The NSMB will be especially critical in ensuring that the National Mortgage Database contains complete and timely information on the range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed, and the characteristics, and particularly creditworthiness, of borrowers for these types of loans.

The information in the National Mortgage Database, including that obtained through the NSMB, will be used for three primary purposes: (1) To prepare the report to Congress on the mortgage market activities of Fannie Mae and Freddie Mac that FHFA is required to submit under section 1324 of HERA; (2) for research and analysis by FHFA and other federal agencies that have regulatory and supervisory responsibilities/mandates related to mortgage markets; and (3) to provide a resource for research and analysis by academics and other interested parties outside of the government. Generally, the National Mortgage Database will allow Congress, regulators and other interested parties to track emerging trends in the mortgage origination process throughout the United States and will allow them to determine more quickly and accurately when the mortgage origination process is changing in a way that may adversely affect financial markets, borrowers, and consumers. FHFA intends that the availability of this information, as well as the research and analyses derived from it, will provide sufficient warning to allow it and other regulators to take steps to avoid or mitigate major mortgage market crises in the future.

**B. Burden Estimate**

FHFA estimates the total annual average number of survey recipients at 28,000 (7,000 x 4 calendar quarters), with one response per recipient. The estimate for the average amount of time to complete each survey is 30 minutes. The estimate for the total annual hour burden for respondents is 14,000 hours (28,000 respondents x 0.5 hours).

**C. Comment Request**

FHFA published a request for public comments regarding this information collection in the **Federal Register** on April 25, 2013. *See* 78 FR 24420 (Apr. 25, 2013). The 60-day comment period closed on June 24, 2013. FHFA received no public comments. This notice requests written comments on: (1)

<sup>1</sup> *See* 12 U.S.C. 4544(c).

<sup>2</sup> *See* 12 U.S.C. 4544(a), (b).

<sup>3</sup> *See* 12 U.S.C. 4544(c)(3).

<sup>4</sup> *See* 12 U.S.C. 2801–2811.

<sup>5</sup> *See* 12 U.S.C. 4544(c)(2).

Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) The accuracy of FHFA's estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on survey respondents, including through the use of automated collection techniques or other forms of information technology.

Date: June 25, 2013.

**Kevin Winkler,**

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2013-15647 Filed 6-28-13; 8:45 am]

BILLING CODE 8070-01-P

## FEDERAL HOUSING FINANCE AGENCY

[No. 2013-N-09]

### Proposed Collection; Comment Request

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** 60-day Notice of Submission of Information Collection for Approval From the Office of Management and Budget.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning the information collection known as "Capital Requirements for the Federal Home Loan Banks," which has been assigned control number 2590-0002 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on September 30, 2013.

**DATES:** Interested persons may submit comments on or before August 30, 2013.

**ADDRESSES:** Submit comments to FHFA using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by email to FHFA at [Regcomments@fhfa.gov](mailto:Regcomments@fhfa.gov) to ensure timely receipt by the agency.

- *Email:* [Regcomments@fhfa.gov](mailto:Regcomments@fhfa.gov). Please include Proposed Collection; Comment Request: "Capital Requirements for the Federal Home Loan Banks, (No. 2013-N-09)" in the subject line of the message.

- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024, ATTENTION: Public Comments/Proposed Collection; Comment Request: "Capital Requirements for the Federal Home Loan Banks, (No. 2013-N-09)."

We will post all public comments we receive without change, including any personal information you provide, such as your name, address, email address, and telephone number, on the FHFA Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at 202-649-3804.

#### FOR FURTHER INFORMATION CONTACT:

Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, at 202-649-3321 (not a toll free number), [Jonathan.Curtis@fhfa.gov](mailto:Jonathan.Curtis@fhfa.gov), or by regular mail at the Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Deaf is 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### A. Need For and Use of the Information Collection

Each of the twelve regional Federal Home Loan Banks (Banks) is structured as a member-owned cooperative. An institution that is eligible for membership in a particular Bank must purchase and hold a prescribed minimum amount of the Bank's capital stock in order to become and remain a member of that Bank.<sup>1</sup> With few exceptions, only an institution that is a member of a Bank may obtain access to secured loans, known as advances, or other products provided by that Bank.

Section 6 of the Federal Home Loan Bank Act (Bank Act) establishes the capital structure for the Banks and requires FHFA to issue regulations prescribing uniform capital standards applicable to all of the Banks.<sup>2</sup> These implementing regulations are set forth in 12 CFR parts 930, 931, 932, and 933: part 930 contains definitions applicable to the capital regulations; part 931 establishes the requirements for the Banks' capital stock; part 932 establishes risk-based and total capital requirements for the Banks; and part

933 sets forth the requirements for the Banks' "capital structure plans" under which each Bank establishes its own capital structure within the parameters of the statute and FHFA's implementing regulations.

Both the Bank Act and FHFA's regulations state that a Bank's capital structure plan must require its members to maintain a minimum investment in the Bank's capital stock, which is to be determined for each member in a manner prescribed by the board of directors of the Bank and reflected in the Bank's capital structure plan.<sup>3</sup> Although each Bank's capital structure plan establishes a slightly different method for calculating the required minimum stock investment for its members, each Bank's method is tied to some degree to both the level of assets held by the member institution (typically referred to as a "membership stock purchase requirement") and the amount of advances or other business engaged in between the member and the Bank (typically referred to as an "activity-based stock purchase requirement").

The Banks use this information collection to determine the amount of capital stock a member must purchase to maintain membership in and to obtain services from the Bank under its capital structure plan, and to confirm that its members are complying with the Bank's stock purchase requirements. Although the required information and the precise method through which it is collected differ from Bank to Bank, there are for each Bank typically two components to the information collection. First, in order to calculate and monitor compliance with its membership stock purchase requirement, a Bank typically requires each member to provide and/or confirm a quarterly report on the amount and types of assets held by that institution. Second, at the time it engages in a business transaction with a member, each Bank typically confirms with the member the amount of additional Bank capital stock, if any, the member must acquire in order to satisfy the Bank's activity-based stock purchase requirement and the method through which the member will acquire that stock.

The OMB number for the information collection is 2590-0002, which is due to expire on September 30, 2013. The likely respondents include Bank members.

<sup>1</sup> See 12 U.S.C. 1426(c)(1); 12 CFR 931.3, 1263.20

<sup>2</sup> See 12 U.S.C. 1426.

<sup>3</sup> See 12 U.S.C. 1426(c)(1); 12 CFR 933.2(a).

**B. Burden Estimate**

FHFA estimates the total annual average number of “membership stock purchase requirement” respondents at 7,711, with 4 quarterly responses per respondent. The estimate for the average hours per response is .05 hours. The estimate for the annual hour burden for “membership stock purchase requirement” respondents is 1,542 hours (7,711 respondents x 4 responses per respondent x .05 hours per response).

FHFA estimates the total annual average number of “activity-based stock purchase requirement” respondents at 192,500 (770 daily transactions x 250 working days), with 1 response per respondent. The estimate for the average hours per response is 0.05 hours. The estimate for the annual hour burden for “activity-based stock purchase requirement” respondents is 9,625 (192,500 annual borrower responses x 1 response per respondent x 0.05 average hours per response).

The combined estimate for the total annual hour burden for all respondents is 11,167 hours.

**C. Comment Request**

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA’s estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: June 24, 2013.

**Kevin Winkler,**

*Chief Information Officer, Federal Housing Finance Agency.*

[FR Doc. 2013-15579 Filed 6-28-13; 8:45 am]

**BILLING CODE 8070-01-P**

**FEDERAL HOUSING FINANCE AGENCY**

[No. 2013-N-10]

**Proposed Collection; Comment Request**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** 60-day Notice of Submission of Information Collection for Approval from the Office of Management and Budget.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning the information collection known as “Members of the Banks,” which has been assigned control number 2590-0003 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on September 30, 2013.

**DATES:** Interested persons may submit comments on or before August 30, 2013.

**ADDRESSES:** Submit comments to FHFA using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *email* to FHFA at [Regcomments@fhfa.gov](mailto:Regcomments@fhfa.gov) to ensure timely receipt by the agency.

- *Email:* [Regcomments@fhfa.gov](mailto:Regcomments@fhfa.gov). Please include Proposed Collection; Comment Request: “Members of the Banks, (No. 2013-N-10)” in the subject line of the message.

- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024, ATTENTION: Public Comments/Proposed Collection; Comment Request: “Members of the Banks, (No. 2013-N-10).”

We will post all public comments we receive without change, including any personal information you provide, such as your name, address, email address, and telephone number, on the FHFA Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at 202-649-3804.

**FOR FURTHER INFORMATION CONTACT:**

Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, at 202-649-3321 (not a toll free number), [Jonathan.Curtis@fhfa.gov](mailto:Jonathan.Curtis@fhfa.gov), or by regular mail at the Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Deaf is 800-877-8339.

**SUPPLEMENTARY INFORMATION:****A. Need For and Use of the Information Collection**

Section 4 of the Federal Home Loan Bank Act (Bank Act) establishes the eligibility requirements an institution must meet in order to become a member of a Federal Home Loan Bank (Bank).<sup>1</sup> FHFA’s Bank membership regulation, located at 12 CFR part 1263, implements section 4 of the Bank Act by providing uniform requirements an applicant must meet to be approved for Bank membership and review criteria a Bank must apply to determine if an applicant satisfies the statutory and regulatory membership eligibility requirements, and by specifying the information and materials an institution must submit as part of its application.<sup>2</sup> Although the membership regulation authorizes the Banks to approve or deny applications for membership, it also provides institutions that have been denied membership in a Bank the option of appealing the decision to FHFA.<sup>3</sup> The membership regulation also addresses the requirements for withdrawal from Bank membership and for the transfer of an institution’s membership from one Bank to another.<sup>4</sup>

This information collection may require four different types of submissions by Bank members or by institutions wishing to become a Bank member: (I) Applications for membership and supporting materials by institutions wishing to become a member of a Bank; (II) notices of appeal to FHFA by institutions that have been denied membership by a Bank; (III) requests to withdrawal from Bank membership by members wishing to withdraw; and (IV) applications for transfer of membership and supporting materials by current Bank members wishing to become a member of a different Bank. The information collection is necessary to enable a Bank to determine whether prospective and current Bank members, or transferring members of other Banks, satisfy the statutory and regulatory requirements to be certified initially and maintain their status as members eligible to obtain Bank advances. The collection is also necessary to inform a Bank of when to initiate the withdrawal process where a member so desires. On appeals, FHFA uses the information collection to determine whether to uphold or overrule a Bank’s decision to deny Bank membership to an applicant.

The OMB control number for the information collection is 2590-0003,

<sup>1</sup> See 12 U.S.C. 1424.

<sup>2</sup> See 12 CFR part 1263.

<sup>3</sup> See 12 CFR 1263.5.

<sup>4</sup> See 12 CFR 1263.26; 1263.18(d), (e).

which is due to expire on September 30, 2013. The likely respondents are institutions that want to be certified as or are members of a Bank seeking continued certification.

## B. Burden Estimate

### I. Membership Application

FHFA estimates the total annual average number of applicants at 157, with 1 response per applicant. The estimate for the average hours per application is 19.25 hours. The estimate for the annual hour burden for applicants is 3,022 hours (157 applicants x 1 response per applicant x 19.25 hours per response).

### II. Appeal of Membership Denial

FHFA estimates the total annual average number of appellants at 1, with 1 response per appellant. The estimate for the average hours per application for appeal is 10 hours. The estimate for the annual hour burden for appellants is 10 hours (10 appellants x 1 response per appellant x 10 hours per response).

### III. Withdrawals From Membership

FHFA estimates the total annual average number of membership withdrawals at 275, with 1 response per applicant. The estimate for the average hours per application is 3.5 hours. The estimate for the annual hour burden for applicants is 963 hours (275 withdrawals x 1 response per applicant x 3.5 hours per response).

### IV. Transfer of Membership

FHFA estimates the total annual average number of membership transfer requests at 2, with 1 response per applicant. The estimate for the average hours per application is 3.5 hours. The estimate for the annual hour burden for applicants is 7 hours (2 transfers x 1 response per applicant x 3.5 hours per response).

The combined estimate for the total annual hour burden for all respondents is 4,002 hours.

## C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of the FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: June 24, 2013.

**Kevin Winkler,**

*Chief Information Officer, Federal Housing Finance Agency.*

[FR Doc. 2013-15573 Filed 6-28-13; 8:45 am]

**BILLING CODE 8070-01-P**

## FEDERAL RESERVE SYSTEM

### Government in the Sunshine; Meeting Notice

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System

**TIME AND DATE:** 9:30 a.m. on Tuesday, July 2, 2013

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

**STATUS:** Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public Web site. You do not need to register to view the webcast of the meeting. A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public Web site at [www.federalreserve.gov](http://www.federalreserve.gov).

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202-452-2474 or you may register online. You may pre-register until close of business on July 1, 2013. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202-452-2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202-452-3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202-263-4869.

**Privacy Act Notice:** The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act

Notice for BGFRS-32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C 1001 for any false statements you make in your request to enter the Board's premises.

### MATTERS TO BE CONSIDERED

#### Discussion Agenda:

1. Final interagency rulemaking: strengthening and harmonizing the regulatory capital framework for banking organizations, including implementation of Basel III.
2. Proposed rulemaking: changes to conform the market risk capital rule to the final Basel III rule.

**Notes:** 1. The staff memo to the Board will be made available to the public on the day of the meeting in paper and the background material will be made available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202-452-3982. The documentation will not be available until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public Web site <http://www.federalreserve.gov/aboutthefed/boardmeetings/> or if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for \$4 per disc by calling 202-452-3684 or by writing to: Freedom of Information Office,

Board of Governors of the Federal Reserve System, Washington, DC 20551.

**FOR MORE INFORMATION PLEASE CONTACT:** Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202-452-2955.

**SUPPLEMENTARY INFORMATION:** You may access the Board's public Web site at [www.federalreserve.gov](http://www.federalreserve.gov) for an electronic announcement. (The Web site

also includes procedural and other information about the open meeting.)

Dated: June 27, 2013.

**Robert deV. Frierson,**  
Secretary of the Board.

[FR Doc. 2013-15829 Filed 6-27-13; 4:15 pm]

BILLING CODE 6210-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30Day-13-0733]

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call (404) 639-7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

CDC Early Hearing Detection and Intervention Hearing Screening and Follow-up Survey (OMB No. 0920-0733, Expiration 06/30/2013)—Reinstatement with Change—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The National Center on Birth Defects and Developmental Disabilities at CDC promotes the health of babies, children, and adults with disabilities. As part of these efforts the Center is actively involved in addressing hearing loss (HL) among newborns and infants. HL is a

common birth defect that affects approximately 12,000 infants each year and, when left undetected, can result in developmental delays. As awareness about infant HL increases, so does the demand for accurate information about rates of screening, referral, loss to follow-up, and prevalence. This information is important for helping to ensure infants and children are receiving recommended screening and follow-up services, documenting the occurrence of differing degrees of HL among infants, and assessing progress towards national goals. These data will also assist state Early Hearing Detection and Intervention (EHDI) programs with quality improvement activities and provide information that will be helpful in assessing the impact of federal initiatives. The public will be able to access this information via the CDC EHDI Web site ([www.cdc.gov/ncbddd/hearingloss/ehdi-data.html](http://www.cdc.gov/ncbddd/hearingloss/ehdi-data.html)).

Given the lack of a standardized and readily accessible source of data, the CDC EHDI program developed a survey to be used annually that utilizes uniform definitions to collect aggregate, standardized EHDI data from states and territories. The request to complete this survey is planned to be disseminated to respondents via an email, which will include a summary of the request and other relevant information. Minor changes to this survey, based on respondent feedback, are planned in order to make the survey easier to complete and further improve data quality. These changes include splitting the previously combined question about the number of infants that were non-residents or moved out of jurisdiction into two separate questions and adding new questions. These include questions about how many infants were in a neonatal intensive care unit for more than 5 days, transferred without any documentation of a hearing screening, unable to be screened or receive diagnostic testing due to a medical reason, number of cases where a primary care physician did not refer an

infant for diagnostic testing, and cases of permanent hearing loss among non-resident infants. The table for reporting type and severity of hearing loss data has also been updated so this data can be reported using either the classification system from the American Speech and Hearing Association or the current system from the Directors of Speech and Language Programs in State Health and Welfare Agencies.

A total of 59 respondents will be asked to complete the updated data request each year during the 3-year requested data collection approval timeframe. Based on findings from the previous information collection, it is estimated that the burden for individuals to read through the survey and decide whether or not to complete it is 10 minutes per person. The 10 minute calculation was based on feedback received in pre-tests with 5 individuals and confirmed by the experience with the survey since the original Office of Management and Budget (OMB) approval.

It is expected that 55 of the 59 potential respondents will complete the survey and therefore incur an additional burden of up to 4 hours per respondent. However, based on feedback from consulted experts about the length of time required to complete the original information collection, it is anticipated that it will only take some respondents a few minutes to complete the revised data request. This is because jurisdictions often have already gathered and compiled the requested data for their own internal uses. Nevertheless, the more conservative time estimate of 4 hours per response from each of the 55 anticipated participants is shown in the table below. This estimate is identical to the time estimate for the reinstated OMB approved estimate from 2010; the only change is the estimated number of respondents. There are no costs to the respondents other than their time. The estimated annualized burden is 230 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State and territory EHDI Program Coordinators ...	Survey Directions .....	59	1	10/60
State and territory EHDI Program Coordinators ...	Survey .....	55	1	4

**Leroy A. Richardson,**  
Chief, Information Collection Review Office,  
Office of Scientific Integrity, Office of the  
Associate Director for Science, Office of the  
Director, Centers for Disease Control and  
Prevention.

[FR Doc. 2013-15565 Filed 6-28-13; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10486]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare &  
Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by *August 30, 2013*.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection

document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number \_\_\_\_\_, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov).

3. Call the Reports Clearance Office at (410) 786-1326.

**FOR FURTHER INFORMATION CONTACT:** Reports Clearance Office at (410) 786-1326

**SUPPLEMENTARY INFORMATION:** This notice sets out a summary of the use and burden associated with the following information collection. More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

#### CMS-10486 Health Care Sharing Ministries Information Collection

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

#### Information Collections

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Health Care

Sharing Ministries Information Collection; *Use:* In order to facilitate the provision of an exemption for membership in a health care sharing ministry to the members of such ministry, we specify in § 155.615(c)(2) that an organization that believes that it meets the statutory standards to be considered a health care sharing ministry will submit certain information to HHS. We are aware of four organizations that have made public statements regarding their status as a health care sharing ministry, and so have estimated burden for four entities. The burden associated with this process includes the time for the organization to collect and input the necessary information, maintain a copy for recordkeeping by clerical staff, for a manager and legal counsel to review it and for a senior executive to review and sign it. The information would be submitted to CMS electronically at minimal cost. *Form Number:* CMS-10486 (OCN: 0938-NEW); *Frequency:* Once, Yearly; *Affected Public:* Private sector—not-for-profit institutions; *Number of Respondents:* 4; *Number of Responses:* 4; *Total Annual Hours:* 4.25. (For policy questions regarding this collection contact Zach Baron at 301-492-4478.)

Dated: June 26, 2013.

**Martique Jones,**

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013-15757 Filed 6-27-13; 4:15 pm]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Proposed Information Collection Activity; Comment Request

##### Proposed Projects

*Title:* State Abstinence Education Program.

*OMB No.:* 0970-0381.

*Description:* The State Abstinence Program was extended through Fiscal Year 2014 under Patient Protection and Affordable Care Act of 2010 (Affordable Care Act, hereafter), Public Law 111-148.

The Family and Youth Services Bureau (FYSB) is accepting applications from States and Territories for the development and implementation of the State Abstinence Program. The purpose of this program is to support decisions to abstain from sexual activity by providing abstinence programming as

defined by Section 510(b) of the Social Security Act (42 U.S.C. 710(b)) with a focus on those groups that are most likely to bear children out-of-wedlock, such as youth in or aging out of foster care and other vulnerable populations. States are encouraged to develop flexible, medically accurate and effective abstinence-based plans responsive to their specific needs and inclusive of vulnerable populations. These plans must provide abstinence education, and at the option of the State,

where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out-of-wedlock. An expected outcome for all programs is to promote abstinence from sexual activity.

OMB approval is requested to solicit comments from the public on paperwork reduction as it relates to ACYF's receipt of the following documents from applicants and awardees:

**Application for Mandatory Formula Grant**  
**State Plan**  
**Performance Progress Report**

*Respondents:* 50 States and 9 Territories, to include, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands and Palau

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application, to include program narrative .....	59	1	24	1,416
State Plan .....	59	1	40	2,360
Performance Progress Reports .....	59	2	30	3,540

Estimated Total Annual Burden Hours: 7,316

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. Email address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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 within 60 days of this publication.

**Robert Sargis,**  
*Reports Clearance Officer.*  
 [FR Doc. 2013-15674 Filed 6-28-13; 8:45 am]  
**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

**Proposed Projects**

*Title:* State Personal Responsibility Education Program (PREP).

*OMB No.:* 0970-0380.

*Description:* The Patient Protection and Affordable Care Act, 2010, also known as health care reform, amends Title V of the Social Security Act (42 U.S.C. 701 et seq.) as amended by sections 2951 and 2952 (c), by adding section 513, authorizing the Personal

Responsibility Education Program (PREP). The President signed into law the Patient Protection and Affordable Care Act on March 23, 2010, Public Law 111-148, which adds the new PREP formula grant program. The purpose of this program is to educate adolescents on both abstinence and contraception to prevent pregnancy and sexually transmitted infections (STIs); and at least three adulthood preparation subjects. The Personal Responsibility Education grant program funding is available for fiscal years 2010 through 2014.

A request is being made to solicit comments from the public on paperwork reduction as it relates to ACYF's receipt of the following documents from applicants and awardees:

Application for Mandatory Formula Grant  
 State Plan  
 Performance Progress Report

*Respondents:* 50 States and 9 Territories, to include, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands and Palau

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application, to include program narrative .....	59	1	24	1,416
State Plan .....	59	1	40	2,360
Performance Progress Reports .....	59	2	16	1,888

Estimated Total Annual Burden Hours: 5,664.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. Email address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

The Department specifically requests comments 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)

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 within 60 days of this publication.

**Robert Sargis,**  
*Reports Clearance Officer.*  
 [FR Doc. 2013-15675 Filed 6-28-13; 8:45 am]  
**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

**Proposed Projects**

*Title:* 45 CFR 303.7—Provision of Services in Intergovernmental IV–D; Federally Approved Forms.

OMB No.: 0970-0085.

*Description:* Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, amended 42 U.S.C. 666 to require State Child Support Enforcement (CSE) agencies to enact the Uniform Interstate Family Support Act (UIFSA) into State law by January 1, 1998. Section 311(b) of UIFSA requires the States to use forms mandated by Federal law. 45 CFR 303.7 also requires child support programs to use federally-approved forms in intergovernmental IV–D cases unless a country has provided alternative forms as a part of its chapter in a Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries.

*Respondents:* State agencies administering a child support program under title IV–D of the Social Security Act.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Transmittal 1 .....	54	19,392	0.25	261,790.25
Transmittal 2 .....	54	14,544	0.08	62,829.66
Transmittal 3 .....	54	970	0.08	4,188.64
Uniform Petition .....	54	11,635	0.08	50,263.73
General Testimony .....	54	11,635	0.33	207,337.88
Affidavit Paternity .....	54	5818	0.17	53,405.21
Locate Data Sheet .....	54	388	0.08	1,675.46
Notice of Controlling Order .....	54	388	0.08	1,675.46
Registration Statement .....	54	7,757	0.08	33,509.15

Estimated Total Annual Burden Hours: 676,675.44

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. Email address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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 within 60 days of this publication.

**Robert Sargis,**  
*Reports Clearance Officer.*  
 [FR Doc. 2013-15584 Filed 6-28-13; 8:45 am]  
**BILLING CODE 4184-01-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; The NIH Building Infrastructure Leading to Diversity (BUILD) Initiative.

*Date:* July 22–23, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

*Contact Person:* Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301-435-0684, [olufokunbisamd@csr.nih.gov](mailto:olufokunbisamd@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Microbial Pathogens.

*Date:* July 23–24, 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:* Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301-996-5819, [zhengli@csr.nih.gov](mailto:zhengli@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Physics.

*Date:* July 25, 2013.

*Time:* 12:00 p.m. to 1:30 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:* Syed M Quadri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301-435-1211, [quadris@csr.nih.gov](mailto:quadris@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 25, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-15569 Filed 6-28-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; 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 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:* National Institute of Neurological Disorders and Stroke Special, Emphasis Panel, International Traumatic Brain Injury Research Initiative.

*Date:* July 19, 2013.

*Time:* 9:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Ernest W. Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-496-4056, [lyonse@ninds.nih.gov](mailto:lyonse@ninds.nih.gov).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special, Emphasis Panel, Collaborative Research on Chronic Traumatic Encephalopathy and Delayed Effects of Traumatic Brain Injury.

*Date:* July 19, 2013.

*Time:* 1:30 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Ernest W. Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-496-4056, [lyonse@ninds.nih.gov](mailto:lyonse@ninds.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: June 25, 2013.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-15617 Filed 6-28-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Mental Health; Notice of Closed 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 Mental Health Special Emphasis Panel; NIH Summer Research Experience Programs.

*Date:* July 15, 2013.

*Time:* 2:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892-9608, 301-443-9734, [millerda@mail.nih.gov](mailto:millerda@mail.nih.gov).

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Innovative Pilot Studies of Novel Mechanism of Action Compound For Treating Psychiatric Disorders.

*Date:* July 22, 2013.

*Time:* 11:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892-9606, 301-443-1606, [charlesvi@mail.nih.gov](mailto:charlesvi@mail.nih.gov).

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; NAPLS-3.

*Date:* July 31, 2013.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892-9606, 301-443-7861, [dsommers@mail.nih.gov](mailto:dsommers@mail.nih.gov).

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Novel Interventions.

*Date:* August 1, 2013.

*Time:* 2:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892-9606, 301-443-7861, [dsommers@mail.nih.gov](mailto:dsommers@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 25, 2013.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-15618 Filed 6-28-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Opportunities for Collaborative Research at the NIH Clinical Center.

*Date:* July 25, 2013.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892-7924, 301-435-0725, [johnsonwj@nhlbi.nih.gov](mailto:johnsonwj@nhlbi.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep, Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases, Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: June 25, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-15570 Filed 6-28-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Science Education Awards (R25).

*Date:* July 25, 2013.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Maryam Feili-Hariri, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-594-3243, [haririmf@niaid.nih.gov](mailto:haririmf@niaid.nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Application (P01).

*Date:* July 25, 2013.

*Time:* 5:00 p.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-451-2676, [ebuczko1@niaid.nih.gov](mailto:ebuczko1@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 25, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-15571 Filed 6-28-13; 8:45 am]

**BILLING CODE 4140-01-P**

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Notice of Advisory Council on Historic Preservation Quarterly Business Meeting

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice of Advisory Council on Historic Preservation Quarterly Business Meeting.

**SUMMARY:** Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will hold its next quarterly meeting on Thursday, July 18, 2013. The meeting will be held in Room M-09 at the Old Post Office Building at 1100 Pennsylvania Avenue NW., Washington, DC at 8:30 a.m.

**DATES:** The quarterly meeting will take place on Thursday, July 18, 2013, starting at 8:30 a.m. EST.

**ADDRESSES:** The quarterly meeting will be held in Room M-09 at the Old Post Office Building, 1100 Pennsylvania Ave., NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Cindy Bienvenue, 202-606-8521, [cbienvenue@achp.gov](mailto:cbienvenue@achp.gov).

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and productive use of our nation's historic resources, and advises the President and Congress on national historic preservation policy. The goal of the National Historic Preservation Act (NHPA), which established the ACHP in 1966, is to have federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties. The ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into federal project requirements. For more information on the ACHP, please visit our Web site at [www.achp.gov](http://www.achp.gov).

The agenda for the upcoming quarterly meeting of the ACHP is the following:

**Call to Order—8:30 a.m.**

- I. Chairman's Welcome
- II. Swearing In Ceremony
- III. Chairman's Award
- IV. U.S. Marine Corps Poster Presentation
- V. Chairman's Report
- VI. ACHP Management Issues
  - A. ACHP FY 2013 and 2014 Budget
  - B. Alumni Foundation Report
  - C. ACHP Office Relocation Update
- VII. Historic Preservation Policy and Programs
  - A. Building a More Inclusive Preservation Program
    1. Future Directions for the ACHP
    2. Civil War to Civil Rights Initiative
- B. Preserve America at 10: Future Directions
  1. Follow up from Forum
  2. Presidential Heritage Awards
- C. Planning for 50th Anniversary of the National Historic Preservation Act
- D. Rightsizing Task Force Report
- E. Sustainability and the Department of Defense
- F. ACHP Legislative Agenda
  1. Amendments to the National Historic Preservation Act
  2. Recent Legislation Related to Historic Preservation
- VIII. Section 106 Issues
  - A. The ACHP and the Federal Real Property Council
  - B. Section 106 Issues in the Second Term
    1. Presidential Memorandum on Permitting and Transmission
    2. Hurricane Sandy Recovery and Unified Federal Review
  - C. Federal Communications Commission Program Alternative
- IX. New Business

**X. Adjourn**

The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact Cindy Bienvenue, 202-606-8521, at least seven (7) days prior to the meeting.

**Authority:** 16 U.S.C. 470j

Dated: June 26, 2013.

**John M. Fowler,**

*Executive Director.*

[FR Doc. 2013-15752 Filed 6-28-13; 8:45 am]

**BILLING CODE 4310-K6-P**

**DEPARTMENT OF HOMELAND SECURITY**

**[Docket No. DHS-2013-0044]**

**Committee name: Homeland Security Academic Advisory Council**

**AGENCY:** Department of Homeland Security.

**ACTION:** Committee Management; Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Homeland Security Academic Advisory Council (HSAAC) will meet on July 17, 2013 in Washington, DC. The meeting will be open to the public.

**DATES:** The HSAAC will meet Wednesday, July 17, 2013, from 10:00 a.m. to 3:00 p.m. Please note that the meeting may close early if the committee has completed its business.

**ADDRESSES:** The meeting will be held at Ronald Reagan International Trade Center, 1300 Pennsylvania Avenue NW., Floor B, Room B1.5-10, Washington, DC 20004. All visitors to the Ronald Reagan International Trade Center must bring a Government-issued photo ID. Please use the main entrance on 14th Street, NW.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, send an email to [AcademicEngagement@hq.dhs.gov](mailto:AcademicEngagement@hq.dhs.gov) or contact Lindsay Burton at 202-447-4686 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee prior to the adoption of the recommendations as listed in the **SUPPLEMENTARY INFORMATION** section below. Comments must be submitted in writing no later than Tuesday, July 9, 2013; must include DHS-2013-0044 as the identification number; and may be submitted using *one* of the following methods:

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

- **Email:** [AcademicEngagement@hq.dhs.gov](mailto:AcademicEngagement@hq.dhs.gov). Include the docket number in the subject line of the message.

- **Fax:** 202-447-3713

- **Mail:** Academic Engagement; MGMT/Office of Academic Engagement/Mailstop 0440; Department of Homeland Security; 245 Murray Lane SW; Washington, DC 20528-0440

**Instructions:** All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

**Docket:** For access to the docket, to read background documents or comments received by the Homeland Security Academic Advisory Council, go to <http://www.regulations.gov> and search for "HSAAC" then select the notice dated July 1, 2013.

One thirty-minute public comment period will be held during the meeting on July 17, 2013 after the conclusion of the presentation of draft recommendations, but before the HSAAC deliberates. Speakers will be requested to limit their comments to three minutes. Contact the Office of Academic Engagement as indicated below to register as a speaker.

**FOR FURTHER INFORMATION CONTACT:** Lindsay Burton, Office of Academic Engagement/Mailstop 0440; Department of Homeland Security; 245 Murray Lane SW; Washington, DC 20528-0440, email:

[AcademicEngagement@hq.dhs.gov](mailto:AcademicEngagement@hq.dhs.gov), tel: 202-447-4686 and fax: 202-447-3713.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the *Federal Advisory Committee Act*, 5 U.S.C. App. (Pub. L. 92-463). The HSAAC provides advice and recommendations to the Secretary and senior leadership on matters relating to student and recent graduate recruitment; international students; academic research; campus and community resiliency, security and preparedness; faculty exchanges; and cybersecurity.

**Agenda:** The six HSAAC subcommittees (Student and Recent Graduate Recruitment, Homeland Security Academic Programs, Academic Research and Faculty Exchange, International Students, Campus Resilience, and Cybersecurity) will give progress reports. The HSAAC Subcommittee on Cybersecurity may present draft recommendations for action in response to the taskings issued by Secretary Napolitano, including: how to attract students, student veterans and

recent graduates to cybersecurity jobs at DHS; how DHS can better promote the DHS/National Security Agency National Centers of Academic Excellence cybersecurity programs to the higher education community; how to define the core elements of cybersecurity degree and certificate programs to prepare graduates for mission-critical cyber jobs at DHS; how DHS can facilitate and strengthen strategic partnerships with industry, national labs, colleges, universities and others to build the cybersecurity workforce; how DHS can partner with academia to build a pipeline of diverse students in Science, Technology, Engineering and Math (STEM); and how key subcategories in cybersecurity—such as policy, critical infrastructure, human factors, intellectual property, and others—can inform academic pathways to meet national needs.

The meeting materials will be posted to the HSAAC Web site at: <http://www.dhs.gov/homeland-security-academic-advisory-council-hsaac> no later than July 15, 2013.

*Responsible DHS Official:* Lauren Kielsmeier,  
AcademicEngagement@hq.dhs.gov,  
202-447-4686.

Dated: June 25, 2013.

**Lauren Kielsmeier,**

*Executive Director for Academic Engagement.*

[FR Doc. 2013-15656 Filed 6-28-13; 8:45 am]

**BILLING CODE 9110-9B-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID: FEMA-2013-0013; OMB No. 1660-0033]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and

the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before July 31, 2013.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to [oir.submission@omb.eop.gov](mailto:oir.submission@omb.eop.gov) or faxed to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598-3005, facsimile number (202) 646-3347, or email address [FEMA-Information-Collections-Management@dhs.gov](mailto:FEMA-Information-Collections-Management@dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Collection of Information

*Title:* Residential Basement Floodproofing Certification.

*OMB Number:* 1660-0033.

*Type of information collection:* Revision of a currently approved information collection.

*Form Titles and Numbers:* FEMA Form 086-0-24, Residential Basement Floodproofing Certificate.

*Abstract:* The Residential Basement Floodproofing Certification is completed by an engineer or architect and certifies that the basement floodproofing meets the minimum floodproofing specifications of FEMA. This certification is for residential structures located in non-coastal Special Flood Hazard Areas in communities that have received an exception to the requirement that structures be built at or above the Base Flood Elevation (BFE). Residential structures with certification showing the building is flood proofed to at least 1 foot above the BFE are eligible for lower rates on flood insurance.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 100.

*Estimated Total Annual Burden Hours:* 325 hours.

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is \$16,871.00. The annual costs to respondents operations and maintenance costs for technical services is \$35,000.00. There are no annual start-up or capital costs. The cost to the Federal Government is \$4,092.05.

Dated: June 20, 2013.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2013-15654 Filed 6-28-13; 8:45 am]

**BILLING CODE 9110-11-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID: FEMA-2013-0008; OMB No. 1660-0080]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before July 31, 2013.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to [oir.submission@omb.eop.gov](mailto:oir.submission@omb.eop.gov) or faxed to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598-3005, facsimile number (202) 646-3347, or email address [FEMA-Information-Collections-Management@dhs.gov](mailto:FEMA-Information-Collections-Management@dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Collection of Information

*Title:* Application for Surplus Federal Real Property Public Benefit

Conveyance and BRAC Program for Emergency Management Use.

*OMB Number:* 1660-0080.

*Type of information collection:*

Extension, without change, of a currently approved information collection.

*Form Titles and Numbers:* FEMA Form 119-0-1, Surplus Federal Real Property Application for Public Benefit Conveyance.

*Abstract:* Use of the Application for Surplus Federal Real Property Public Benefit Conveyance and Base Realignment and Closure (BRAC) Program for Emergency Management Use is necessary to implement the processes and procedures for the successful, lawful, and expeditious conveyance of real property from the Federal Government to public entities such as State, local, county, city, town, or other like government bodies, as it relates to emergency management response purposes, including fire and rescue services. Utilization of this application will ensure that properties will be fully positioned for use at their highest and best potentials as required by GSA and Department of Defense regulations, public law, Executive Orders, and the Code of Federal Regulations.

*Affected Public:* State, local, or Tribal Government.

*Estimated Number of Respondents:* 100.

*Estimated Total Annual Burden Hours:* 250 hours.

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is \$16,010.00. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is \$2,107.92.

Dated: June 20, 2013.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2013-15646 Filed 6-28-13; 8:45 am]

**BILLING CODE 9111-19-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID: FEMA-2013-0026; OMB No. 1660-0117]

#### Agency Information Collection Activities: Proposed Collection; Comment Request; FEMA's Grants Reporting Tool (GRT)

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, 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 an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of information necessary for the Grants Reporting Tool (GRT).

**DATES:** Comments must be submitted on or before August 30, 2013.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at [www.regulations.gov](http://www.regulations.gov) under Docket ID FEMA-2013-0026. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 840, Washington, DC 20472-3100.

(3) *Facsimile.* Submit comments to (703) 483-2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Mitchell, Program Specialist, FEMA, Grants Programs Directorate, (202) 786-9681. You may contact the Records Management Division for copies of the proposed collection of

information at facsimile number (202) 646-3347 or email address: [FEMA-Information-Collections-Management@dhs.gov](mailto:FEMA-Information-Collections-Management@dhs.gov).

**SUPPLEMENTARY INFORMATION:** Title 44 CFR, Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government establishes uniform administrative rules for Federal grants and cooperative agreements and sub-awards to State, local and Indian tribal governments. FEMA has determined that in order to have consistent implementation of FEMA grant administration policies, to reduce duplicative and tedious data entry, to more effectively measure preparedness gains, and to streamline application submission and management for Grantees, Regions, State and local partners, it is necessary to automate the reporting processes.

The Homeland Security Presidential Directive (HSPD-5) related to the "Management of Domestic Incidents" gives the Secretary the authority to gather information related to domestic incidents and mandates the Secretary provide standardized, quantitative reports on the readiness and preparedness of the Nation—at all levels of government—to prevent, prepare for, respond to, and recover from domestic incidents. The Homeland Security Presidential Directive (HSPD-8) related to "National Preparedness" authorizes the Federal government to deliver Federal preparedness awards to the States. Applicants must apply the funds to the highest priority preparedness requirements at the appropriate level of government. Federal preparedness assistance is based upon the adoption of statewide comprehensive all-hazards preparedness strategies, consistent with the national preparedness goal. HSPD-8 authorizes the Secretary to review and approve strategies submitted by the States and establishes the requirement that applicants must have adopted approved statewide strategies in order to receive Federal grant funds. Further, HSPD-8 authorizes Federal departments and agencies to develop appropriate mechanisms to ensure rapid obligation and disbursement of funds from their programs to the States, such as the GRT. HSPD-8 mandates Federal departments and agencies report annually on the obligation, expenditure status, and the use of funds associated with Federal preparedness assistance programs. Section 430 of the Homeland Security Act of 2002, as amended (6 U.S.C. 238), authorized the Office for Domestic Preparedness (ODP, which was transferred to FEMA by the Post Katrina

Emergency Management Reform Act of 2006, Public Law 109–295) to have primary responsibility for national preparedness, including directing and supervising terrorism preparedness grant programs for emergency response providers and incorporating the Strategy priorities into planning guidance on an agency level for the overall national preparedness efforts. ODP (now FEMA) was authorized to develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

**Collection of Information**

*Title:* FEMA’s Grants Reporting Tool (GRT).

*OMB Number:* 1660–0117.

*Type of Information Collection:*

Extension, without change, of a currently approved information collection.

*FEMA Form:* None.

*Abstract:* The Grants Reporting Tool (GRT) is a web-based reporting system designed to help State Administrative Agencies (SAAs) meet all reporting requirements as identified in the grant guidance of FEMA’s portfolio of preparedness grants sponsored by

FEMA’s Grant Programs Directorate (GPD). The information enables FEMA to evaluate applications and make award decisions, monitor ongoing performance and manage the flow of federal funds, and to appropriately close out grants or cooperative agreements. GRT supports the information collection needs of each grant program processed in the system.

*Affected Public:* State, Local, or Tribal Government.

*Number of Respondents:* 56.

*Number of Responses:* 168.

*Estimated Total Annual Burden Hours:* 2,156 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	Initial Strategy Implementation Plan (ISIP).	56	1	56	8	448	\$32.20	\$14,425.60
State, Local or Tribal Government.	Biannual Strategy Implementation Report (BSIR).	56	2	112	15.25	1,708	32.20	54,997.60
Total .....	.....	56	.....	168	.....	2,156	.....	69,423.20

\*Note: The “Avg. Hourly Wage Rate” for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is \$69,423.20. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is \$2,062,582.02.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: June 20, 2013.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2013–15651 Filed 6–28–13; 8:45 am]

**BILLING CODE 9111–19–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID: FEMA–2013–0027; OMB No. 1660–0119]

**Agency Information Collection Activities: Proposed Collection; Comment Request; FEMA Preparedness Grants: Operation Stonegarden (OPSG)**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, 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 an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of

1995, this notice seeks comments concerning the information collection activities required to administer the Operation Stonegarden (OPSG) Grant Program.

**DATES:** Comments must be submitted on or before August 30, 2013.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at [www.regulations.gov](http://www.regulations.gov) under Docket ID FEMA–2013–0027. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 840, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Alex Mrazik, Program Analyst, FEMA, Grant Programs Directorate, 202-786-9732. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646-3347 or email address: *FEMA-Information-Collections-Management@dhs.gov*.

**SUPPLEMENTARY INFORMATION:** A State Homeland Security Grant Program (SHSP) was established to assist State, local, and tribal governments in preventing, preparing for, protecting against, and responding to acts of terrorism. As a component of the SHSP, Operation Stonegarden grants are established by Section 2004(a) of the Homeland Security Act of 2002 (6 U.S.C. 605), as amended by Section 101, Title I of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-053). Title III of the Consolidated

Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110-329) provides a specific line item within the SHSP appropriation to fund the Operation Stonegarden grant.

**Collection of Information**

*Title:* FEMA Preparedness Grants: Operation Stonegarden (OPSG).

*OMB Number:* 1660-0119.

*Type of Information Collection:* Extension, without change, of a currently approved information collection.

*FEMA Forms:* FEMA Form 089-16, OPSG Operations Order Report; FEMA Form 089-20, Operations Order Prioritization.

*Abstract:* The Operation Stonegarden grant is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist

attacks. FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments. The grant provides funding to designated localities to enhance cooperation and coordination between Federal, State, local, and tribal law enforcement agencies in a joint mission to secure the U.S. borders along routes of ingress from International borders to include travel corridors in States bordering Mexico and Canada, as well as States and territories with international water borders.

*Affected Public:* State, Local or Tribal Government.

*Number of Respondents:* 39.

*Number of Responses:* 78.

*Estimated Total Annual Burden Hours:* 25,038 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ form no.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per re- sponse (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Govern- ment.	OPSG Operations Order Report/ FEMA Form 089-16.	39	1	39	570	22,230	\$37.80	\$840,294.00
State, Local or Tribal Govern- ment.	Operations Order Prioritization/ FEMA Form 089-20.	39	1	39	72 hrs.	2,808	37.80	106,142.40
Total .....	.....	39	.....	78	.....	25,038	.....	946,436.40

Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is \$946,436.40. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is \$388,618.70.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: June 20, 2013.

**Charlene D. Myrthil,**

*Director, Records Management Division,  
Mission Support Bureau, Federal Emergency  
Management Agency, Department of  
Homeland Security.*

[FR Doc. 2013-15652 Filed 6-28-13; 8:45 am]

**BILLING CODE 9111-19-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5683-N-54]

**30-Day Notice of Proposed Information Collection: OSHC Progress Report Template**

**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 31, 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](mailto: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](mailto: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 15, 2013*.

**A. Overview of Information Collection**

*Title of Information Collection:* OSHC Progress Report Template.

*OMB Approval Number:* 2501-New.

*Type of Request:* New collection.

*Form Number:* None.

*Description of the need for the information and proposed use:* The Appropriations Act, provided a total of \$100,000,000 to HUD for a Sustainable Communities Initiative to improve regional planning efforts that integrate housing and transportation decisions, and increase the capacity to improve land use and zoning. Of that total, \$70,000,000 is available for the Sustainable Communities Regional Planning Grant Program, and \$30,000,000 is available for the Community Challenge Planning Grant Program. The Appropriations Act, 2010, provided a total of \$150 million in fiscal year 2010 to HUD for a Sustainable Communities Initiative to improve regional planning efforts that integrate housing and transportation decisions, and increase the capacity to improve land use and zoning. This information collection is necessary to fulfill the reporting requirements of HUD's Sustainable Communities Initiative (SCI) Planning Grant Programs, which comprise of the Sustainable Communities Regional Planning Grant Program, the Community Challenge Planning Grant Program, and the Capacity Building for Sustainable

Communities Grant Program. All grant programs require progress reporting by grantees on a semi-annual basis (i.e. Twice per year: January 30th and July 30th). The grant program terms and conditions require the grantee to submit a semi-annual progress report which reflects activities undertaken, obstacles encountered and solutions achieved, and accomplishments. Progress reports that show progress of the program in meeting approved work plan goals, objectives are to be submitted.

*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 total number of annual burden hours is 226.5. The number of respondents is 151, the number of responses is 302, the frequency of response is semi-annually (6 months), and the burden hour per response is 0.75 (45 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 25, 2013.

**Colette Pollard,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 2013-15689 Filed 6-28-13; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5683-N-53]

**30-Day Notice of Proposed Information Collection:**

Real Estate Settlement Procedures Act (RESPA) Disclosures

**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 31, 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](mailto: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](mailto: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 24, 2013*.

**A. Overview of Information Collection**

*Title of Information Collection:* Real Estate Settlement Procedures Act (RESPA) Disclosures.

*OMB Approval Number:* 2502-0265.

*Type of Request:* Extension without change of a currently approved collection.

*Form Number:* HUD-1 and HUD-1A, and GFE.

*Description of the need for the information and proposed use:* The Real Estate Settlement Procedures Act of 1974, (RESPA), 12 U.S.C. 2601 *et seq.*, and Regulation X, codified at 24 CFR 3500, require real estate settlement service providers to give homebuyers certain disclosure information at and before settlement, and pursuant to the servicing of the loan and escrow account. This includes a Special Information Booklet, a Good Faith Estimate, a Servicing Disclosure Statement, the Form HUD-1 or Form HUD-1A, and when applicable an Initial Escrow Account Statement, an Annual Escrow Account Statement, a Consumer Disclosure for Voluntary Escrow Account Payments, an Affiliated Business Arrangement Disclosure, and a Servicing Transfer Disclosure.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), rulemaking authority for and certain enforcement authorities with respect to the Real Estate Settlement Procedures Act (RESPA) of 1974, as amended by Section 461 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), and other various amendments, transferred from the Department of Housing and Urban Development (HUD) to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011. The Dodd-Frank Act also directed the CFPB to integrate certain disclosures required by the Truth in Lending Act (TILA) with certain disclosures required by the Real Estate Settlement Procedures Act (RESPA) of 1974. The CFPB expects the content and format of information collection forms under this clearance, HUD's existing HUD-1/1A and GFE forms, to be significantly revised or replaced by rulemaking. The CFPB published proposed rules in July and August of 2012 to that effect.

Historically, in order to satisfy information collection requirements under the Paperwork Reduction Act (PRA), the HUD-1/1A and GFE listed HUD's Office of Management and Budget (OMB) control number, 2502-0265. While the CFPB will be, upon OMB approval of this information collection request, the "owner" of this information collection, the CFPB believes that requiring covered persons to modify existing forms solely to replace HUD's OMB control number with the Bureau's OMB control number would impose substantial burden on covered persons with limited or no net benefit to consumers. Accordingly, the CFPB has reached an agreement with OMB and HUD whereby covered persons may continue to list HUD's OMB control number on the HUD-1/1A

and GFE forms until a final rule to the contrary takes effect. Covered persons also have the option of replacing HUD's OMB control number with the Bureau's OMB control number on the HUD-1/1A and GFE forms until a final rule to the contrary takes effect. Once the CFPB's final rule takes effect, regulated industry will no longer be able to use the HUD control number.

*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 total number of annual burden hours needed to prepare the information is 17,183,450; the number of respondents is estimated to be 50,000 generating approximately 149,589,500 responses annually; these are third party disclosures, the frequency of response is annually for one disclosure and as required for others; and the estimated time per response varies from 2 minutes to 35 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.

Date: June 25, 2013.

**Colette Pollard,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 2013-15690 Filed 6-28-13; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

[FWS-HQ-FHC-2013-N044;  
FXFR1336090000-134-FF09F14000]

### National Environmental Policy Act: Implementing Procedures; Addition to Categorical Exclusions for U.S. Fish and Wildlife Service

**AGENCY:** Department of the Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** This notice announces a proposed categorical exclusion under the National Environmental Policy Act (NEPA) for the U.S. Fish and Wildlife Service. The proposed categorical exclusion pertains to adding species to the injurious wildlife list under the Lacey Act. The addition of this categorical exclusion to the Department of the Interior's Departmental Manual will improve conservation activities by making the NEPA process for listing injurious species more efficient.

**DATES:** We will consider comments we receive on or before July 31, 2013.

**ADDRESSES:** *Comment submission:* Send comments to Susan Jewell, by one of the following methods:

- *U.S. mail or hand delivery:* U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 700, Arlington, VA 22203; or

- *Email:* [prevent\\_invasives@fws.gov](mailto:prevent_invasives@fws.gov) (emails must have "Categorical Exclusion" in the subject line).

*Document availability:* You may view the Departmental Manual at <http://elips.doi.gov/elips/>.

**FOR FURTHER INFORMATION CONTACT:** Susan Jewell, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203; telephone 703-358-2416. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800-877-8339.

### SUPPLEMENTARY INFORMATION:

#### Background

Under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*, NEPA), Federal agencies are required to consider the potential environmental impact of agency actions prior to implementation. Agencies are then generally required to prepare either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). However, when a Federal agency identifies classes of actions that under normal circumstances do not have a potentially significant environmental impact, either individually or cumulatively, Council on

Environmental Quality (CEQ) regulations allow the agency to establish a categorical exclusion and to bypass the completion of an EA or an EIS when undertaking those actions (40 CFR 1507.3(b); 40 CFR 1508.4). When appropriately established and applied, categorical exclusions serve a beneficial purpose. They allow Federal agencies to expedite the environmental review process for proposals that typically do not require more resource-intensive EAs or EISs (CEQ 2010).

The U.S. Fish and Wildlife Service (Service) has identified that it would be appropriate to provide for a categorical exclusion for the Federal action of adding species to the list of injurious wildlife under the Lacey Act (18 U.S.C. 42, as amended; the Act). The Act authorizes the Secretary of the Interior, as delegated to the Service, to prescribe by regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, and reptiles, and the offspring or eggs of any of the aforementioned, that are injurious to human beings, or to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. The provisions of the Act regarding injurious species are intended to protect human health and welfare and the human and natural environments of the United States by identifying and reducing the threat posed by certain wildlife species. Listing these species as injurious under the Act subsequently prohibits the species from being imported into the United States or transported across State lines.

The listing of species as injurious is, as an agency action, subject to environmental review under NEPA procedures. The Service has generally prepared EAs for listing rules. A categorical exclusion would allow the Service to exercise its authority to protect human health and welfare, certain human environments, and trust resources from harm caused by injurious species more effectively and efficiently by precluding the need to conduct redundant environmental analyses.

In 2002, the Service used an existing departmental categorical exclusion ("Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case" (43 CFR 46.210(i)) in two listing actions. Upon further review, the Service believes that this is not the best

description of why injurious species listings do not have a significant effect on the human environment. Therefore, the Service is pursuing the addition of a new categorical exclusion for the listing of injurious species under the Act.

### Proposed Categorical Exclusion

The Department of the Interior is proposing to add a categorical exclusion to the Department Manual at 516 DM 8.5 C, which covers "Permit and Regulatory Functions." This section includes approved categorical exclusions that address, among other things, the issuance of regulations pertaining to wildlife. This proposed addition would provide for a categorical exclusion for only the regulatory action of listing species as injurious (that is, adding a species to the list). The regulatory listing action places the species on a prohibited list, which prohibits their importation into the United States and interstate transportation. Thus, the activities covered under the categorical exclusion are simply to keep species out of the country that are injurious or to prevent their spread across State lines.

The categorical exclusion would not cover, for example, control actions (such as constructing barriers) or eradication actions (such as applying pesticides). Any such injurious species management measures conducted by any Federal agency would undergo appropriate NEPA analysis and documentation prior to implementation of the action. The categorical exclusion would also not cover the issuance of permits (available for individual specimens intended for zoological, educational, medical, or scientific use), which is already covered under an existing categorical exclusion (516 DM 8.5 C(1)). The categorical exclusion would not cover the removal of species from the injurious wildlife list under the Act.

Additionally, application of the proposed categorical exclusion would be subject to a review of extraordinary circumstances established in regulation by the Department of the Interior (see 50 CFR 46.215). Extraordinary circumstances would be subject to the factors or circumstances that would cause an otherwise categorically excludable action to require further analysis in an EA or EIS. Thus, notwithstanding the existence of this categorical exclusion, the Service would have to develop an EA or EIS if it found the extraordinary circumstances applied to the listing of a particular injurious species.

### Analysis

The intent of the proposed categorical exclusion is to more effectively protect the human and natural environments of the United States from injurious species by making the listing process under the Act more efficient. The following three justifications support the categorical exclusion:

(1) *Maintaining the environmental status quo.* The listing action preserves the environmental status quo. That is, these listings ensure that certain potential effects associated with introduction of species that have been found to be injurious do not occur. In this way, injurious wildlife listings maintain the state of the affected environment into the future—the state of the environment prior to listing or potential introduction in the absence of a listing. Thus, prohibiting a nonindigenous injurious species from being introduced into an area in which it does not naturally occur cannot have a significant effect on the human environment.

Because the proposed categorical exclusion also serves to make the listing process under the Act more efficient, and the listing process is designed to limit undesirable environmental effects in the future, the categorical exclusion itself supports maintenance of the environmental status quo.

(2) *History of findings of no significant impact.* Every EA prepared for an injurious species listing under the Act since 1982 (the first rule promulgated after environmental-assessment guidance was established under NEPA) as part of a formal NEPA analysis has resulted in a finding of no significant impact (FONSI) without requiring mitigation measures, and, therefore, did not necessitate the preparation of an EIS.

The species listed for which an EA was prepared include the raccoon dog (*Nyctereutes procyonoides*, 1983), the Chinese mitten crab (genus *Eriocheir*, 1989), the brown treesnake (*Boiga irregularis*, 1990), the silver carp (*Hypophthalmichthys molitrix*, 2007), the black carp (*Mylopharyngodon piceus*, 2007), the largescale silver carp (*Mylopharyngodon piceus*, 2007), and four species of large constrictor snakes (Burmese python (*Python molurus*), Northern African python (*Python sebae*), Southern African python (*Python natalensis*), and yellow anaconda (*Eunectes notaeus*), 2012).

The issues addressed in the EAs that were prepared for these species include the biology of the species (countries of origin, native range, habitat requirements, and food species),

introduction and dispersal pathways (how a species was transported), ecological impacts (including effects on native, threatened, and endangered species), human impacts (including effects on recreation and water quality), economic impacts (including industry and agriculture), and cumulative impacts. While these species, when present in a nonnative range, can have a significant effect on the environment, the regulatory action (listing) has no significant effect. That each EA resulted in a FONSI strongly suggests that subsequent listings will also have no significant environmental impacts.

(3) *Consistent with existing approved categorical exclusions.* A categorical exclusion for the injurious listing process is consistent with the Service's existing approved categorical exclusions. Categorical exclusions have been approved that address preventing the introduction of nonindigenous species. For example, research, inventory, and information activities directly related to the conservation of fish and wildlife resources are categorically excluded as long as they do not involve, among other things, "introduction of organisms not indigenous to the affected ecosystem" (516 DM 8.5 B(1)).

#### Next Steps

The establishment of the categorical exclusion is open to public comment. Following review of the comments, the Service will submit the final categorical exclusion to CEQ, which will review it and our responses to public comments for conformity with NEPA and make a recommendation regarding approval of the categorical exclusion. If the categorical exclusion is approved by the Department, the Service will review each subsequent listing rule for the DOI-established extraordinary circumstances that would necessitate the preparation of an EA or an EIS. The Administrative Procedure Act rulemaking procedures and the review of extraordinary circumstances both ensure that the decision to apply the categorical exclusion as part of the NEPA environmental review is informed by input from other Federal agencies, other governmental and Tribal entities, and the public.

#### Public Comments

Any comments to be considered on this proposed addition to the list of categorical exclusions in the Departmental Manual must be received by the date listed in **DATES** at the location listed in **ADDRESSES**. Comments received after that date will be considered only to the extent

practicable. Comments, including names and addresses of respondents, will be posted at <http://www.fws.gov/injuriouswildlife>. Before including your address, telephone 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.

#### Proposed Text for the Departmental Manual

The text we propose to add to 516 DM (see **ADDRESSES**) is set forth below:

Part 516: National Environmental Policy Act of 1969

Chapter 8: Managing the NEPA Process—U.S. Fish and Wildlife Service

\* \* \* \* \*

#### 8.5 Categorical Exclusions.

\* \* \* \* \*

#### C. Permit and Regulatory Functions.

\* \* \* \* \*

(9) The adding of species to the list of injurious wildlife regulated under 50 CFR subchapter B, part 16, which prohibits the importation into the United States and interstate transportation of wildlife found to be injurious.

Dated: May 31, 2013.

**Willie R. Taylor.**

*Director, Office of Environmental Policy and Compliance.*

[FR Doc. 2013-15707 Filed 6-28-13; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS—HQ—MB—2013—N144;  
F09M29000—134—FXMB12320900000]

#### Proposed Information Collection; Depredation Order for Blackbirds, Grackles, Cowbirds, Magpies, and Crows

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to

reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on November 30, 2013. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** To ensure that we are able to consider your comments on this IC, we must receive them by August 30, 2013.

**ADDRESSES:** Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042—PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or [hope\\_grey@fws.gov](mailto:hope_grey@fws.gov) (email). Please include "1018-0146" in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this IC, contact Hope Grey at [hope\\_grey@fws.gov](mailto:hope_grey@fws.gov) (email) or 703-358-2482 (telephone).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703 *et seq.*) implements four treaties concerning migratory birds that the United States has signed with Canada, Mexico, Japan, and Russia. Under the treaties, we must preserve most species of birds in the United States, and activities involving migratory birds are prohibited except as authorized by regulation.

This information collection is associated with our regulations that implement the MBTA. In the Code of Federal Regulations (CFR), 50 CFR 21.43 is a depredation order for blackbirds, cowbirds, grackles, crows, and magpies that authorizes take of these birds "when found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance."

All persons or entities acting under this depredation order must provide an annual report containing the following information for each species:

- Number of birds taken.
- Months and years in which the birds were taken.
- State(s) and county(ies) in which the birds were taken.
- General purpose for which the birds were taken (such as for protection of agriculture, human health and safety, property, or natural resources).

We collect this information so that we will be able to determine how many

birds of each species are taken each year and whether the control actions are likely to affect the populations of those species.

## II. Data

*OMB Control Number:* 1018–0146.

*Title:* Depredation Order for Blackbirds, Grackles, Cowbirds, Magpies, and Crows, 50 CFR 21.43.

*Service Form Number:* None.

*Type of Request:* Extension of a currently approved collection.

*Description of Respondents:* State and Federal wildlife damage management personnel; farmers; and individuals.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Annually.

*Estimated Number of Respondents:* 250.

*Estimated Total Annual Responses:* 250.

*Estimated Completion Time per Response:* 2 hours.

*Estimated Total Annual Burden Hours:* 500.

## III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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 25, 2013.

### Tina A. Campbell,

*Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.*

[FR Doc. 2013–15619 Filed 6–28–13; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### National Park Service

[FWS–R6–R–2013–N132;  
FXRS1265066CCP0—134–FF06R06000]

#### Niobrara Confluence and Ponca Bluffs Conservation Areas, NE and SD; Draft Environmental Impact Statement and Land Protection Plan; Extension of the Public Comment Period

**AGENCY:** Fish and Wildlife Service, National Park Service, Interior.

**ACTION:** Notice of availability; extension of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), advise the public that we are extending the public comment period for the Niobrara Confluence and Ponca Bluffs Conservation Areas Draft Environmental Impact Statement and Land Protection Plan until September 30, 2013. If you have previously submitted comments, please do not resubmit them, because we have already incorporated them in the public record and will fully consider them in our final decision.

**DATES:** To ensure consideration, please send your written comments by September 30, 2013.

**ADDRESSES:** You may submit your comments or a request for copies (hard copies or a CD-ROM) or more information by any of the following methods:

*Agency Web site:* [http://](http://parkplanning.nps.gov/niob-ponca)

[parkplanning.nps.gov/niob-ponca](http://parkplanning.nps.gov/niob-ponca).

*Email:* [niobrara\\_ponca@fws.gov](mailto:niobrara_ponca@fws.gov).

*In-Person Viewing or Pickup:* Call (605) 665–0209 to make an appointment during regular business hours at Missouri River National Recreational River Headquarters, 508 East 2nd Street, Yankton, SD 57078.

*Mail:* Nick Kaczor, USFWS, Division of Refuge Planning, P.O. Box 25486, DFC, Denver, CO 80225.

**FOR FURTHER INFORMATION CONTACT:** Nick Kaczor, Planning Team Leader, at (303) 236–4387, or by mail at Division of Refuge Planning, USFWS, P.O. Box 25486, DFC, Denver, CO 80225.

**SUPPLEMENTARY INFORMATION:** On April 8, 2013, we published a **Federal Register** notice (78 FR 20942) announcing the availability of the Draft Environmental Impact Statement and Land Protection Plan for the proposed Niobrara Confluence and Ponca Bluff Conservation Areas. We are extending the public comment period until September 30, 2013. For background and more information see our April 8, 2013, notice (78 FR 20942).

## Document Availability

Copies of the documents are available online at <http://parkplanning.nps.gov/niob-ponca>. Hard copies of the plan may be requested from the project Web site or from the planning team leader at the contact information listed above.

## 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## Authority

The FWS and NPS are furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997; the National Park Service Organic Act of 1916 (16 U.S.C. 1 et seq.), and amendments thereto, and the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and its implementing regulations.

Dated: June 7, 2013.

### Patricia Trap,

*Deputy Regional Director, Midwest Region, National Park Service.*

Dated: June 10, 2013.

### Matt Hogan,

*Acting, Regional Director, Mountain Prairie Region, U.S. Fish And Wildlife Service.*

[FR Doc. 2013–15657 Filed 6–28–13; 8:45 am]

BILLING CODE 4310–55–P; 4312–51–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS–HQ–R–2013–N025;  
FXFR13350900000–134–FF09F14000]

#### Voluntary Guidelines to Prevent the Introduction and Spread of Aquatic Invasive Species; Recreational Activities and Water Gardening

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service (USFWS), announces the availability of two draft documents for public review:

• *Voluntary Guidelines to Prevent the Introduction and Spread of Aquatic Invasive Species: Recreational Activities*

• *Voluntary Guidelines to Prevent the Introduction and Spread of Aquatic Invasive Species: Water Gardening*

These voluntary guidelines are intended to be used by agencies and organizations to develop materials that inform the public and industry about the risks associated with many everyday activities that may spread aquatic invasive species and harm the environment and the economy. The intent of this information is to encourage the public and industry to take precautions to limit the spread of aquatic invasive species.

**DATES:** To ensure consideration, please send your written comments by July 31, 2013.

**ADDRESSES: Obtaining Documents:** The two draft documents may be obtained online, by mail, or by email:

- <http://anstaskforce.gov/documents.php>;
  - *U.S. mail:* U.S. Fish and Wildlife Service, Branch of Aquatic Invasive Species, 4401 N. Fairfax Drive, Room 740, Arlington, VA 22203; or
  - *Email:* [Laura\\_Norcutt@fws.gov](mailto:Laura_Norcutt@fws.gov).
- Submitting Comments:** Please submit your comments in writing by one of the following methods:

- *U.S. mail:* U.S. Fish and Wildlife Service, Branch of Aquatic Invasive Species, 4401 N. Fairfax Drive, Room 740, Arlington, VA 22203; or
- *Email:* [Laura\\_Norcutt@fws.gov](mailto:Laura_Norcutt@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Laura Norcutt, 703-358-2398.

**SUPPLEMENTARY INFORMATION:**

**Background**

Through provisions in Title 50, part 16, of the Code of Federal Regulations (CFR) 16, the U.S. Fish and Wildlife Service (Service) regulates the importation and interstate transport of certain aquatic species that have been determined to be injurious. The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) established the Aquatic Nuisance Species Task Force (ANSTF), an intergovernmental organization co-chaired by the Service and the National Oceanic and Atmospheric Administration and dedicated to prevent and control the spread of aquatic nuisance species. In 2000, the ANSTF developed *Recommended Voluntary Guidelines for Preventing the Spread of Aquatic Nuisance Species Associated with Recreational Activities* and announced the availability of the guidelines via a **Federal Register** notice (65 FR 82447; December 28, 2000).

**Development of Draft Guidelines Documents**

In 2011 the ANSTF established committees to revise the *Recommended Voluntary Guidelines for Preventing the Spread of Aquatic Nuisance Species Associated with Recreational Activities* and to develop new guidelines that would prevent the spread of aquatic invasive species by water gardening. The goal of the two committees was to develop clear, easy-to-use standardized national guidelines that are easily communicated to user groups and can be incorporated into education and outreach media. An additional benefit to recreationists and water gardeners who follow these guidelines is to avoid possible violation of Federal, Tribal, and State laws that prohibit the transport of aquatic invasive species.

*Recreational Activities*

In July 2011, the ANSTF established a committee of about 50 representatives of Federal and State agencies, nongovernmental organizations, and industry to update the recreational guidelines from 2000. The revised draft document, *Voluntary Guidelines to Prevent the Introduction and Spread of Aquatic Invasive Species: Recreational Activities*, will provide guidance to agencies, organizations, and the public on preventing the spread of aquatic invasive species through activities such as angling, boating, scuba diving, waterfowl hunting, and operating seaplanes.

*Water Gardening*

In November 2011, the ANSTF established a committee to develop guidance to address the potential spread of aquatic invasive species by water gardening. The product, a draft document titled *Voluntary Guidelines to Prevent the Introduction and Spread of Aquatic Invasive Species: Water Gardening*, will provide concise guidelines to be used by agencies, organizations, and the public for education and outreach.

**Request for Public Comments**

The draft revised guidelines are available on the ANSTF Web site (see **ADDRESSES**) for public review and comment.

We request review and comment on our guidelines from local, State, Tribal, and Federal agencies and the public. All comments received by the date specified in **DATES** will be considered in preparing final documents. Methods of submitting comments are in **ADDRESSES**.

**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. You can ask the Service in your comment to withhold your personal identifying information from public review; however, we cannot guarantee that we will be able to do so.

Responses to individual commenters will not be provided, but we will provide the comments we receive and a summary of how we addressed substantive comments in a document on the ANSTF Web site listed above in **ADDRESSES**. Individuals without internet access may request an appointment to inspect the comments during normal business hours at our office (see **ADDRESSES**).

Dated: April 15, 2013.

**Stephen Guertin,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2013-15705 Filed 6-28-13; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[LLORP00000.L1920000.ER0000.  
LRORH1314700-HAG13-0191]

**Notice of Intent To Prepare a Resource Management Plan Amendment and an Associated Environmental Assessment for the Brothers/La Pine Planning Area, Oregon**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** As required under the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Prineville District Office, Prineville, Oregon, intends to prepare a Resource Management Plan (RMP) amendment with an associated Environmental Assessment (EA) in order to analyze the plan-level decision to change the Visual Resource Management (VRM) classification of approximately 45 acres at the top of Glass Buttes from a VRM class 2 to a VRM class 4. The BLM intends to concurrently analyze the implementation-level decision of whether to deny, approve, or approve with stipulations the Bonneville Power Administration's (BPA) and American

Tower Corporation's (AT) requests to construct and maintain communication facilities in an existing communication site plan area atop Glass Buttes in the BLM Prineville District. This notice announces the beginning of the scoping process to solicit public comments and identify issues.

**DATES:** Comments on issues may be submitted in writing until July 31, 2013. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers, and the BLM Web site at: [www.blm.gov/or/districts/prineville/index.php](http://www.blm.gov/or/districts/prineville/index.php). In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation as appropriate.

**ADDRESSES:** You may submit comments on issues and planning criteria related to the Glass Buttes Communication Site and VRM Plan Amendment EA by any of the following methods:

- *Web site:* [www.blm.gov/or/districts/prineville/index.php](http://www.blm.gov/or/districts/prineville/index.php)
- *Email:* [BLM\\_OR\\_PR\\_GB\\_Comm\\_Site\\_and\\_VRM\\_Amendment@blm.gov](mailto:BLM_OR_PR_GB_Comm_Site_and_VRM_Amendment@blm.gov).
- *Fax:* 541-416-6782
- *Mail:* Glass Buttes Communication Site and VRM Plan Amendment EA, 3050 NE. 3rd Street, Prineville, OR 97754

Documents pertinent to this proposal may be examined at the Prineville District Office, 3050 NE. 3rd Street, Prineville, OR 97754.

**FOR FURTHER INFORMATION CONTACT:** Mike Kroll, Realty Specialist; telephone 541-416-6752; address Mike Kroll, 3050 NE. 3rd Street, Prineville, OR 97754; email [mkroll@blm.gov](mailto:mkroll@blm.gov). You may request to have your name added to our mailing list. 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:** This document provides notice that the BLM District Office, Prineville, Oregon, intends to prepare an RMP amendment with an associated EA for the Brothers/La Pine planning area, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The affected portion of the Brothers/La Pine planning area is an approximately 45-acre contiguous

parcel of land located atop Glass Buttes in Lake County in Oregon as follows: Willamette Meridian, Oregon: T. 23 S., R. 22 E., S1/2SW1/4NE1/4SW1/4, NE1/4SW1/4SW1/4, S1/2SW1/4SW1/4, NW1/4SE1/4SW1/4, sec.22.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. The issues include: How would the proposed VRM classification change affect sage-grouse habitat; how would the proposed VRM classification change affect Native American spiritual and traditional uses; and, how would the proposed VRM classification affect recreation. The planning work will be completed in compliance with FLPMA, NEPA, and all other relevant Federal laws, executive orders, and BLM management policies. Where existing planning decisions are still valid, those decisions may remain unchanged and be incorporated into the new amendment. The plans will recognize valid existing rights, Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration. The planning process will include the consideration of any impacts on Indian trust assets. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later.

The BLM will use the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Native American tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources,

will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

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. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, minerals and geology, outdoor recreation, visual resource management, archeology, paleontology, wildlife, botany, lands and realty, hydrology, soils, sociology, and economics.

**Authority:** 40 CFR 1501.7 and 43 CFR 1610.2.

**Jerome E. Perez,**  
BLM State Director, Oregon/Washington.  
[FR Doc. 2013-15680 Filed 6-28-13; 8:45 am]

**BILLING CODE 4310-33-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[LLUTG01100-13-L51010000-ER0000  
LVRWJ13J8060 13X]

**Notice of Intent To Prepare an  
Environmental Impact Statement for  
the Enefit American Oil Utility Corridor  
Project, UT**

**AGENCY:** Bureau of Land Management,  
Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, and the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) Vernal Field Office, Vernal, Utah, intends to prepare an Environmental Impact Statement (EIS) for right-of-way (ROW) applications for the Enefit American Oil Utility Corridor Project (Utility Corridor Project), and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

**DATES:** This notice initiates the public scoping process for the EIS. Comments on issues must be submitted by July 31, 2013. The date(s) and location(s) of any public scoping meetings will be announced at least 15 days in advance through local news media, a project newsletter, and the BLM Web site at: <http://www.blm.gov/ut/st/en/info/newsroom.2.html>. Additional opportunities for public participation will be provided upon publication of the Draft EIS.

**ADDRESSES:** Comments on issues related to the Enefit Utility Corridor Project may be submitted by any of the following methods:

- *Email:*  
[UT\\_Vernal\\_Comments@blm.gov](mailto:UT_Vernal_Comments@blm.gov)
- *Fax:* (435) 781-4410
- *Mail:* 170 South 500 East, Vernal, Utah 84078

Documents pertinent to this proposal may be examined at the BLM Vernal Field Office.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to have your name added to the Utility Corridor Project mailing list, contact Stephanie Howard, BLM Project Manager; telephone 435-781-4469; email: [Stephanie.Howard@blm.gov](mailto:Stephanie.Howard@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 applicant, Enefit American Oil, has filed ROW applications seeking authorization to construct and operate natural gas, electricity, and water utilities on Federal lands. As proposed, 19 miles of water supply pipeline, 8 miles of natural gas supply pipeline, 10 miles of oil product line, 29 miles of single or dual overhead 138-kilovolt H-frame powerlines, and 5 miles of Dragon Road upgrade and pavement would be constructed and operated in 5 separate utility corridors crossing BLM-administered lands within the Project area.

The Utility Corridor Project would provide natural gas, electricity, and water to, and move processed oil from, Enefit American Oil's "South Project," which is planned on private land and minerals owned by Enefit. The Enefit American Oil's planned South Project will include development of a commercial oil shale mining, retorting, and upgrading operation located in Uintah County, Utah. Approval or disapproval of Enefit American Oil's South Project is outside of the BLM's authority because it is located on private lands and minerals; however, since it is a connected and cumulative action to the Utility Corridor Project, the potential indirect and cumulative effects associated with the South Project will be analyzed and disclosed in the Utility Corridor Project EIS.

The Utility Corridor Project area is located within the southern portion of Townships 8-10 South, Ranges 24-25 East, Salt Lake Meridian, in Uintah County, Utah, approximately 12 miles southeast of Bonanza, Utah. Vernal, Utah, is the nearest major municipality, located approximately 40 miles north of the Utility Corridor Project area. The community of Rangely, Colorado, is located approximately 25 miles northeast of the Enefit American Oil's planned South Project site. The requested ROW widths for the Utility Corridor Project range from 50 feet, where a single pipeline would be located, to over 350 feet, where gas, water, and product lines would be located adjacent to overhead transmission lines.

Alternatives identified at this time include the proposed action and the no action alternatives. Additional alternatives will be developed as a result of issues and concerns identified through the scoping process.

The BLM Vernal Field Office Record of Decision and Approved Resource Management Plan (RMP) (October 2008) directs management of the BLM-administered public lands within the Utility Corridor Project area. The RMP provides for issuance of new ROWs (RMP, pp. 96 and 97). An amendment of the RMP is not required.

Pursuant to Section 368 of the Energy Policy Act of 2005 (42 U.S.C. 15926), a Programmatic EIS was prepared by the Department of Energy for energy corridors in the 11 western states (Washington, Oregon, Idaho, Montana, Wyoming, California, Nevada, Utah, Colorado, Arizona, and New Mexico), and notice of its availability was published on November 28, 2008 (73 FR 72521). Records of Decision (ROD) signed January 14, 2009, designated energy corridors and provided guidance, best management practices, and mitigation measures to be used where linear facilities are proposed crossing Federal lands. Designation of corridors does not require their use, nor does such designation exempt the Federal agencies from conducting an environmental review on each project therein. The Final RODs are available at the following Web site: <http://corridoreis.anl.gov/eis/guide/index.cfm>. The Project EIS will take into consideration the use of guidance, best management practices, and mitigation measures described in the RODs.

The BLM is the designated lead Federal agency for preparation of the EIS as defined in 40 CFR 1501.5. Agencies with legal jurisdiction or special expertise have been invited to participate as cooperating agencies in preparation of the EIS including: U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Bureau of Indian Affairs, Utah Public Lands Policy and Coordination Office, and the Ute Indian Tribe. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following resources as potentially being impacted by the project: local and regional air quality and air quality related values; surface water and groundwater resources; floodplains; cultural and paleontological resources; soils; special status plant and animal species; range management; recreation; the White River; regional social programs; and regional economics.

The BLM will use and coordinate the NEPA commenting process to assist in satisfying the public involvement

process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Comments may be submitted in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be considered, comments must be submitted by July 31, 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.

**Authority:** 40 CFR 1501.7.

**Jenna Whitlock,**

*Associate State Director.*

[FR Doc. 2013-15679 Filed 6-28-13; 8:45 am]

**BILLING CODE 4310-DQ-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLAKA02000.L12200000.LXSIWSGK0000.AL0000]

#### Notice of Availability of the Decision Record for the Delta River Special Recreation Management Area and East Alaska Resource Management Plan Amendment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** The Bureau of Land Management (BLM) announces the availability of the Decision Record (DR) for the Delta River Special Recreation Management Area and East Alaska Resource Management Plan Amendment (Approved Plan). The BLM-Alaska State Director, Bud C. Cribley, signed the DR on March 29, 2013. The DR constitutes the final decision of the Department on the plan and is effective immediately.

**ADDRESSES:** The DR is available on the BLM-Alaska Web site at [www.blm.gov/ak/planning](http://www.blm.gov/ak/planning). Hard copies of the DR are available upon request from the BLM Glennallen Field Office, P.O. Box 147, Glennallen, AK 99588 or by calling 907-822-3217. The Environmental Assessment (EA) for the Delta River Special Recreation Management Area (SRMA) Plan and East Alaska Resource Management Plan (RMP) Amendment, which provides the analysis upon which the decision is based, is also available at the above Web site address, the BLM Glennallen Field Office, or by calling the office at 907-822-3217.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Serena Sweet, telephone 909-271-4543 or by email at [sweet@blm.gov](mailto:sweet@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 Delta River SRMA Plan and East Alaska RMP Amendment planning process began in 2005 with a Delta River recreation survey designed to obtain river users' opinions on issues, management actions, and preferences within the Delta River SRMA. In February and March of 2007, the BLM-Alaska Glennallen Field Office conducted a series of Benefits Based Management focus group meetings with Delta River stakeholders and Alaska Native tribes and corporations to discuss primary uses of the Delta River planning area and desired future conditions and management options. A Notice of Intent was published in the **Federal Register** on April 10, 2008 to initiate the formal planning process. A 60-day formal scoping period began July 15, 2008 and ended September 15, 2008. After the scoping period, the BLM, in consultation with the cooperating agencies and tribes, received input from the public, collected information on the resources and uses of the area, developed a range of reasonable future management alternatives, and analyzed the impacts of those alternatives. These analyses were reviewed within the BLM and among the cooperating agencies, and were used to develop the Environmental Assessment for the Delta River SRMA Plan and East Alaska RMP Amendment released on March 23, 2010. The comment period for the EA ended May 6, 2010. Comments received

were used in the development of the Proposed Delta River SRMA Plan and Eastern Alaska RMP Amendment. The Proposed Delta River SRMA Plan and Eastern Alaska RMP Amendment was released August 1, 2011 for a 30-day protest period and a 60-day Governor's Consistency Review (GCR). The protest period ended August 31, 2011 and the GCR ended September 30, 2011. The BLM received two protests, both of which were denied in part. However, in response to issues raised in the protests, the BLM made some minor modifications to clarify terminology in the Approved Plan. On September 20, 2011, the Governor of Alaska submitted a GCR Finding of Inconsistency to the BLM Alaska State Director for the EA and Finding of No Significant Impact for the Delta River SRMA Plan and East Alaska RMP Amendment. On March 28, 2012, the State Director determined the Governor's finding was outside the scope of the GCR process and did not accept the Governor's recommendations. On April 27, 2012, the Governor appealed the BLM-Alaska State Director's decision to the BLM Director. On January 15, 2013, the BLM Director issued a letter to the Governor affirming the BLM-Alaska State Director's decision to reject the Governor's Inconsistency Finding.

The Approved Plan provides for a mix of river recreation uses and users, while managing to protect the environment and the outstandingly remarkable values of the Delta River SRMA. It provides a balanced management approach by emphasizing the protection of river resources from human impacts by utilizing an adaptive management approach to track the implementation and effectiveness of management actions, while still allowing for a wide range of current and future public uses and high quality recreational experiences in the Delta River SRMA. The Approved Plan also provides management direction that will minimize social conflicts, with a strong emphasis on public education and interpretive outreach.

**Authority:** 40 CFR 1506.6.

**Bud C. Cribley,**

*State Director.*

[FR Doc. 2013-15681 Filed 6-28-13; 8:45 am]

**BILLING CODE 4310-JA-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation**

[N12-1852-7904-600-00-0-0-2, 2030000]

**Notice of Availability of the Draft Environmental Impact Statement and Notice of Public Workshops and Hearings for the Shasta Lake Water Resources Investigation, Shasta and Tehama Counties, California****AGENCY:** Bureau of Reclamation, Interior.**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation has made available for public review and comment the Draft Environmental Impact Statement (DEIS) for the Shasta Lake Water Resources Investigation (SLWRI). The purpose of the proposed action is to improve operational flexibility of the Sacramento-San Joaquin Delta watershed system by modifying the existing Shasta Dam and Reservoir to meet specified objectives. Primary objectives are to increase the survival of anadromous fish populations in the upper Sacramento River and increase water supply and water supply reliability. Secondary planning objectives are to: conserve, restore, and enhance ecosystem resources in the primary study area; reduce flood damage along the Sacramento River; develop additional hydropower generation capabilities; maintain and increase recreation opportunities; and maintain or improve water quality conditions in the Sacramento River downstream from Shasta Dam and in the Sacramento-San Joaquin Delta.

**DATES:** Submit written comments on the DEIS on or before September 30, 2013.

Three public workshops and three public hearings will be held. See **SUPPLEMENTARY INFORMATION** section for workshop and hearing dates.

**ADDRESSES:** Please send written comments to Ms. Katrina Chow, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, or by email to [bor-mpr-slwri@usbr.gov](mailto:bor-mpr-slwri@usbr.gov). Written comments also may be submitted during the public hearings. Please see Supplementary Information section for workshop and hearing addresses.

**FOR FURTHER INFORMATION CONTACT:** Ms. Katrina Chow, Reclamation Project Manager, at the above address, at 916-978-5067, TDD 916-978-5608; via fax at 916-978-5094; or by email to [bor-mpr-slwri@usbr.gov](mailto:bor-mpr-slwri@usbr.gov). Further information on the SLWRI can be found on the SLWRI Web site, at [www.usbr.gov/mp/slwri](http://www.usbr.gov/mp/slwri).

**SUPPLEMENTARY INFORMATION:** Shasta Dam was completed in 1945 to serve multiple purposes, including flood control; water supply for agricultural, municipal and industrial, and environmental purposes; and hydropower generation. In addition, extensive recreational opportunities in and around Shasta Lake significantly contribute to the regional economy.

Authorization for the investigation comes from Public Law (Pub. L.) 96-375, 1980, directing the Secretary of the Interior to engage in feasibility studies related to enlarging Shasta Dam and Reservoir. Related legislation includes Title 34 of Public Law 102-575 (the Central Valley Project Improvement Act) and Public Law 108-361, the CALFED Bay-Delta Authorization Act. In addition, enlargement of Shasta Dam was identified in the CALFED Programmatic Environmental Impact Report/Statement and Record of Decision.

In February 2012, the Bureau of Reclamation (Reclamation) released a Draft Feasibility Report and Preliminary DEIS for the SLWRI to inform the public, stakeholders, and decision makers about the results of the SLWRI at that time. The Draft Feasibility Report describes the water resources needs and opportunities, purpose of the proposed action, planning objectives and constraints, the plan formulation and evaluation process and criteria, and the potential effects, costs, and benefits of five action alternatives and the No Action Alternative.

After release of the DEIS for public review and comment, the Final Feasibility Report and EIS will be prepared and processed together to support decision making for any related future recommendations, approvals, or authorizations that may result. The following planning objectives apply to the proposed action/project modification.

**Planning Objectives**

- Primary Planning Objectives. (1) increase the survival of anadromous fish populations in the Sacramento River, primarily upstream from the Red Bluff Diversion Dam, and (2) increase water supply and water supply reliability for agricultural, municipal and industrial, and environmental purposes to help meet future water demands, with a focus on enlarging Shasta Dam and Reservoir. Action alternatives were formulated to address these primary planning objectives.

- Secondary Planning Objectives. The following actions, operations, or features are included to the extent possible and consistent with the

primary planning objectives: (1) Conserve, restore, and enhance ecosystem resources in the Shasta Lake area and along the upper Sacramento River, (2) reduce flood damage along the Sacramento River, (3) develop additional hydropower generation capabilities at Shasta Dam, (4) maintain and increase recreation opportunities at Shasta Lake, and (5) maintain or improve water quality conditions in the Sacramento River downstream from Shasta Dam and in the Sacramento-San Joaquin Delta.

**Draft Environmental Impact Statement**

The DEIS documents a reasonable range of alternatives and evaluates the potential direct, indirect, and cumulative environmental effects of alternative plans. Evaluation of six alternatives is documented in the DEIS, including a No-Action Alternative and five action alternatives. The DEIS displays the potential project-related impacts, including the effects of project construction and operation on the following resource areas: geology, air quality, hydrology, water quality, noise, hazards and hazardous materials, important agricultural lands, fish, vegetation and wildlife, cultural resources, Indian Trust Assets, socioeconomics, land use, recreation, visual resources, traffic and circulation, utilities, public services, power and energy, environmental justice, and wild and scenic rivers.

Potential project-related impacts include the construction-related effects of the dam enlargement, reservoir area relocations, and other alternative features; water operations-related effects within the reservoir area (e.g., including additional inundation areas); and associated effects to operations of other Central Valley Project and State Water Project facilities. Project operations may directly or indirectly affect the resources of the Sacramento River, its tributaries, the San Joaquin River, its tributaries, and the Sacramento-San Joaquin Delta. The DEIS also evaluates potential growth-inducing impacts for the Central Valley Project and State Water Project water service areas. Potential cumulative effects associated with reasonably foreseeable actions are also evaluated for each resource area.

Copies of the DEIS are available for public review at the following locations:

- Bureau of Reclamation, Regional Library, 2800 Cottage Way, Sacramento, CA 95825
- Bureau of Reclamation, Northern California Area Office, 16349 Shasta Dam Boulevard, Shasta Lake, CA 96019
- Natural Resources Library, Department of the Interior, 1849 C Street

NW., Main Interior Building,  
Washington, DC 20240

- Shasta County Main Library, 1855 Shasta Street, Redding, CA 96001

Copies of the DEIS are also available on-line via the SLWRI Web site, at: [www.usbr.gov/mp/slwri](http://www.usbr.gov/mp/slwri).

### Public Workshops and Hearings

Reclamation will hold three public workshops to provide an overview of the project and allow public comment and discussion:

- Tuesday, July 16, 2013, 6:00–8:00 p.m., Holiday Inn Hotel, Palomino Room, 1900 Hilltop Drive, Redding, California 96002.

- Wednesday, July 17, 2013, 1:00–3:00 p.m., Cal Expo Quality Inn Hotel & Suites, 1413 Howe Avenue, Sacramento, California, 95825.

- Thursday, July 18, 2013, 6:00–8:00 p.m., Merced County Fairgrounds, Germino Building, 403 F Street, Los Banos, California, 93635.

Reclamation will also hold three public hearings to receive oral or written comments on the DEIS:

- Tuesday, September 10, 2013, 6:00–8:00 p.m., Holiday Inn Hotel, Palomino Room, 1900 Hilltop Drive, Redding, California 96002.

- Wednesday, September 11, 2013, 1:00–3:00 p.m., Cal Expo Quality Inn Hotel & Suites, 1413 Howe Avenue, Sacramento, California, 95825.

- Thursday, September 12, 2013, 6:00–8:00 p.m., Merced County Fairgrounds, Germino Building, 403 F Street, Los Banos, California, 93635.

### Special Assistance for Public Workshops and Hearings

If special assistance is required to participate in the above public workshops and hearings, please contact Ms. Katrina Chow at 916–978–5067, or by email at [kchow@usbr.gov](mailto:kchow@usbr.gov); or Mr. Louis Moore at 916–978–5106, or by email at [wmoore@usbr.gov](mailto:wmoore@usbr.gov). Please notify Ms. Chow or Mr. Moore as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916–978–5608.

### 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.

Dated: May 30, 2013.

**Pablo R. Arroyave,**

*Deputy Regional Director, Mid-Pacific Region.*

[FR Doc. 2013–15659 Filed 6–28–13; 8:45 am]

**BILLING CODE 4310–MN–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–453 and 731–TA–1136–1137 (Review)]

### Sodium Nitrite From China and Germany; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping and countervailing duty orders on sodium nitrite from China and the antidumping duty order on sodium nitrite from Germany would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;<sup>1</sup> to be assured of consideration, the deadline for responses is July 31, 2013.

Comments on the adequacy of responses may be filed with the Commission by September 13, 2013. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

**FOR FURTHER INFORMATION CONTACT:**

Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

<sup>1</sup> No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 13–5–290, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

### SUPPLEMENTARY INFORMATION:

**Background.**—On August 27, 2008, the Department of Commerce issued antidumping and countervailing duty orders on sodium nitrite from China and an antidumping duty order on sodium nitrite from Germany (73 FR 50593 and 73 FR 50595). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Germany.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined a single *Domestic Like Product* consisting of sodium nitrite, regardless of form or grade, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* consisting of all U.S. sodium nitrite producers.

(5) The *Order Date* is the date that the antidumping and countervailing duty

orders under review became effective. In these reviews, the *Order Date* is August 27, 2008.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the reviews and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized

applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 31, 2013. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 13, 2013. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at <http://edis.usitc.gov>. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section

207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

*Information To Be Provided in Response To This Notice of Institution:* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2012, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating

income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to

operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country(ies)* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country(ies)*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** These reviews are being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 25, 2013.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–15550 Filed 6–28–13; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-450 and 731-TA-1122 (Review)]

### Laminated Woven Sacks From China; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping and countervailing duty orders on laminated woven sacks from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;<sup>1</sup> to be assured of consideration, the deadline for responses is July 31, 2013. Comments on the adequacy of responses may be filed with the Commission by September 13, 2013. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

<sup>1</sup> No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 13-5-288, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

### SUPPLEMENTARY INFORMATION:

**Background.**—On August 7, 2008, the Department of Commerce issued antidumping and countervailing duty orders on imports of laminated woven sacks from China (73 FR 45941 and 73 FR 45955). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined a single domestic like product consisting of laminated woven sacks, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all producers of the domestic like product. Certain Commissioners defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is August 7, 2008.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the reviews and public service list.**—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is

sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification.**—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In

making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

**Written submissions.**—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 31, 2013. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 13, 2013. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at <http://edis.usitc.gov>. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

**Inability to provide requested information.**—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a

complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

**Information To Be Provided in Response To This Notice of Institution:** As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional

prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2012, except as noted (report quantity data in number of sacks and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in number of sacks and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S.

imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in number of sacks and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase

production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** These reviews are being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 25, 2013.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013-15557 Filed 6-28-13; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-990 (Second Review)]

### Non-Malleable Cast Iron Pipe Fittings From China Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on non-malleable cast iron pipe fittings from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;<sup>1</sup> to be assured of

<sup>1</sup>No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 13-5-289,

consideration, the deadline for responses is July 31, 2013. Comments on the adequacy of responses may be filed with the Commission by September 13, 2013. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

### SUPPLEMENTARY INFORMATION:

*Background.* On April 7, 2003, the Department of Commerce issued an antidumping duty order on imports of non-malleable cast iron pipe fittings from China (68 FR 16765). Following the five-year reviews by Commerce and the Commission, effective August 15, 2008, Commerce issued a continuation of the antidumping duty order on imports of non-malleable cast iron pipe fittings from China (73 FR 47887). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.* The following definitions apply to this review:

expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and its expedited first five-year review determination, the Commission defined a single *Domestic Like Product* consisting of non-malleable and ductile cast iron pipe fittings corresponding to the scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of non-malleable cast iron pipe fittings.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.* Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule

201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.* Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.* Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.* Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 31, 2013. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 13, 2013. All written submissions must

conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at <http://edis.usitc.gov>. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.* Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information To Be Provided in Response to this Notice of Institution:* As used below, the term *Afirm@* includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2007.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2012, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal

operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2007, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 25, 2013.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013-15556 Filed 6-28-13; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

[OMB Number 1105-NEW]

### Agency Information Collection Activities; Proposed Collection, Comments Requested; USMS Medical Forms

**ACTION:** 30-day Notice.

The Department of Justice, U.S. Marshals Service will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of 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, pages 22294-22295, 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 comments until July 31, 2013. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Nicole Feuerstein, U.S. Marshals Service, CS-3, 10th Fl., 2604 Jefferson Davis Hwy, Alexandria, VA 22301.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. 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, 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 the use of automated, electronic, mechanical, or other technological collection techniques of 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:* USMS Medical Forms.

3. *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Sponsored by the U.S. Marshals Service. Form Numbers:

—USM-522A Physician Evaluation Report for USMS Operational Employees

—USM-522P Physician Evaluation Report for USMS Operational Employees—Pregnancy Only

—USM-600 Physical Requirements of USMS District Security Officers

—CSO-012 Request to Reevaluate Court Security Officer's Medical Qualification

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

—USM-522A Physician Evaluation Report for USMS Operational Employees

○ Affected public: Private sector (Physicians)

○ Brief abstract: This form is to be used by operational law enforcement employees who are restricted from full performance of their duties for longer than 80 consecutive hours due to injury or illness; or by prospective operational employees who are impacted by medical issues prior to completing the Training Academy. The primary use of this information will be to determine the nature of a medical or physical condition that may affect safe and efficient performance of the work described in the employee's position description.

—USM-522P Physician Evaluation Report for USMS Operational Employees

—(Pregnancy Only)

○ Affected public: Private sector (Physicians)

○ Brief abstract: This form is to be used by operational employees who are temporarily restricted from performing all of their duties due to pregnancy. In accordance with USMS Policy Directive 3.5, after a physician has confirmed the pregnancy, or no later than the completion of the first trimester of

pregnancy (the end of the 13th week), the operational employee is responsible for securing a completed Form USM-522P, or equivalent, from her physician. The primary use of this information will be to determine the nature of a medical or physical condition that may affect safe and efficient performance of the work described in the employee's position description.

—USM-600 Physical Requirements of USMS District Security Officers

○ Affected public: Private sector (Physicians)

○ Brief abstract: It is the policy of the USMS to ensure a law enforcement work force that is medically able to safely perform the required job functions. Annual completion of Form USM-600 is required to ensure that all applicant and incumbent District Security Officers meet the medical standards as outlined in the Statement of Work and are medically qualified to perform all District Security Officer duties.

—CSO-012 Request to Reevaluate Court Security Officer's Medical Qualification

○ Affected public: Private sector (Physicians)

○ Brief abstract: Use of this form is required when a Court Security Officer (CSO) is returning to perform security services after recovering from an injury, illness, outpatient or inpatient surgery/procedure (including such procedures as LASIK), hospitalization or emergency room visits, or extended medical reasons. A Court Security Officer may not resume security services until the USMS Office of Court Services has provided written approval for the individual to resume performing under the applicable contract. Court Security Officers are contractors, not employees of USMS; therefore, Form USM-522A does not apply to CSOs.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

—USM-522A Physician Evaluation Report for USMS Operational Employees

It is estimated that 100 respondents will complete a 20 minute form.

—USM-522P Physician Evaluation Report for USMS Operational Employees (Pregnancy Only)

It is estimated that 12 respondents will complete a 15 minute form.

—USM–600 Physical Requirements of USMS District Security Officers  
It is estimated that 800 respondents will complete a 20 minute form.

—CSO–012 Request to Reevaluate Court Security Officer's Medical Qualification

It is estimated that 300 respondents will complete a 30 minute form.

6. *An estimate of the total public burden (in hours) associated with this collection:*

—USM–522A Physician Evaluation Report for USMS Operational Employees

There are an estimated 33 annual total burden hours associated with this collection.

—USM–522P Physician Evaluation Report for USMS Operational Employees (Pregnancy Only)

There are an estimated 3 annual total burden hours associated with this collection.

—USM–600 Physical Requirements of USMS District Security Officers

There are an estimated 267 annual total burden hours associated with this collection.

—CSO–012 Request to Reevaluate Court Security Officer's Medical Qualification

There are an estimated 150 annual total burden hours associated with this collection.

*Total Annual Time Burden (Hour):* 453.

If additional information is required contact: Jerri Murray, Department of Justice Clearance Officer, Justice Management Division, United States Department of Justice, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 1407B, Washington, DC 20530.

Dated: June 25, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, United States Department of Justice.*

[FR Doc. 2013–15607 Filed 6–28–13; 8:45 am]

BILLING CODE 4410–04–P

## DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

**Agency Information Collection Activities: Proposed Collection; Comments Requested Claims of U.S. Nationals Referred to the Commission by the Department of State Pursuant to Section 4(A)(1)(C) of the International Claims Settlement Act of 1949, as Amended, 22 U.S.C. 1623(a)(1)(C)**

**ACTION:** 60-Day Notice.

The Foreign Claims Settlement Commission (Commission), Department

of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until August 30, 2013.

All comments and suggestions, or questions regarding additional information, including obtaining a copy of the proposed information collection instrument, should be directed to Jeremy LaFrancois, Foreign Claims Settlement Commission, Department of Justice, 600 E Street NW., Suite 6002, Washington DC 20579, or by facsimile (202) 616–6993.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. 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:* New Collection.

(2) *The title of the form/collection:* Statement of Claim for filing of Claims Referred to the Commission under Section 4(a)(1)(C) of the International Claims Settlement Act of 1949.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: FCSC–1. Foreign Claims

Settlement Commission, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Other: Corporations. Information will be used as a basis for the Commission to receive, examine, adjudicate and render final decisions with respect to claims for compensation of U.S. nationals, referred to the Commission by the Department of State pursuant to section 4(a)(1)(C) of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. 1623(A)(1)(C).

(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 500 individual respondents will complete the application, and that the amount of time estimated for an average respondent to reply is approximately two hours each.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual public burden associated with this application is 1,000 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: June 25, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013–15567 Filed 6–28–13; 8:45 am]

BILLING CODE 4410–BA–P

## DEPARTMENT OF JUSTICE

[OMB Number 1122–NEW]

**Agency Information Collection Activities: Revision of a Currently Approved Collection; Certification of Compliance With the Statutory Eligibility Requirements of the Violence Against Women Act as Amended for Applicants to the STOP (Services\* Training\* Officers\* Prosecutors) Violence Against Women Formula Grant Program**

**ACTION:** 60-Day Notice.

The Department of Justice, Office on Violence Against Women (OVW) 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.

Comments are encouraged and will be accepted for “sixty days” until August 30, 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 [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please Cathy Poston, Office on Violence Against Women, at 202–514–5430 or the DOJ Desk Officer at 202–395–3176.

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, 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:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended” for Applicants to the STOP Formula Grant Program.

(2) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0001. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief*

*abstract:* Primary: The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000 and the Violence Against Women Act of 2005. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system’s response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice’s Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to statutory formula (as amended by VAWA 2000 and VAWA 2005).

(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 it will take the approximately 56 respondents (state administrators from the STOP Formula Grant Program) less than one hour to complete a Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act, as Amended.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Certification is less than 56 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: June 25, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013–15568 Filed 6–28–13; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant To the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on May 31, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), the Institute of Electrical and Electronics Engineers (“IEEE”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 26 new standards have been initiated and 19 existing standards are being revised. More detail regarding these changes can be found at <http://standards.ieee.org/about/sba/feb2013.html>, <http://standards.ieee.org/about/sba/mar2013.html> and <http://standards.ieee.org/about/sba/may2013.html>.

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on January 11, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 2013 (78 FR 9069).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2013–15639 Filed 6–28–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant To the National Cooperative Research and Production Act of 1993—Opendaylight Project, Inc.

Notice is hereby given that, on May 23, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), OpenDaylight Project, Inc. (“OpenDaylight”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the

venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Alcatel-Lucent USA Inc., Mountain View, CA; Arista Networks Inc., Santa Clara, CA; Big Switch Networks, Mountain View, CA; Brocade Communications Systems, Inc., San Jose, CA; Ciena Corporation, Hanover, MD; Cisco Systems Inc., San Jose, CA; Citrix Systems, Inc., Santa Clara, CA; Cyan Inc., Petaluma, CA; Dell Inc., Round Rock, TX; Ericsson Inc., San Jose, CA; Fujitsu Limited, Kawasaki, JAPAN; Hewlett Packard Company, Palo Alto, CA; Huawei Technologies Co. Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; International Business Machines Inc., Endicott, NY; Inocybe Technologies Inc., Gatineau, Quebec City, CANADA; Intel Corporation, Santa Clara, CA; Juniper Networks, Sunnyvale, CA; Microsoft Corporation, Redmond, WA; NEC Corporation, Tokyo, JAPAN; PLUMgrid Inc., Sunnyvale, CA; Radware LTD, Telaviv, ISRAEL; Red Hat Inc., Raleigh, NC; and VMware Inc., Palo Alto, CA.

The general area of OpenDaylight's planned activity is to (a) Advance the creation, evolution, promotion, and support of an open source software defined network software platform ("Platform"); (b) support and maintain the strategic framework of the Platform through the technologies made available by the organization to make the Platform a success; (c) support and maintain policies set by the Board; (d) promote such Platform worldwide; and (e) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2013-15640 Filed 6-28-13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on May 31, 2013, pursuant to Section 6(a) of the National Cooperative Research and

Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hakuto Taiwan Ltd., Taipei, TAIWAN, has been added as a party to this venture.

Also, Dongguan ChuDong Electronic Technology Co., Ltd., Guangdong, People's Republic of China; Huizhou Aihua Multimedia Co., Ltd., Guangdong, People's Republic of China; and Kentec, Inc., Taipei, Taiwan, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on February 20, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2013 (78 FR 17431).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2013-15641 Filed 6-28-13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 11-63]

#### Bio Diagnostic International; Denial of Application

On June 8, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Bio Diagnostic International, Inc. (hereinafter, BDI or Respondent), of Brea, California. The Show Cause Order proposed the denial of Respondent's application for a registration as a distributor of list I chemicals, on the ground that Respondent's registration "would be

inconsistent with the public interest." Show Cause Order at 1 (citing 21 U.S.C. 823(h) and 824(a)(4)).

The Show Cause Order specifically alleged that on September 1, 2009, Respondent had applied for a DEA registration as a distributor of iodine, a list I chemical. *Id.* The Order alleged that Mr. Paul Anand, Ph.D., was Respondent's owner and operator, and that during a pre-registration investigation, he had failed to provide a Food and Drug Administration registration, that he had failed to obtain a California Department of Justice Bureau of Narcotic Enforcement Controlled Chemical Substances Permit, and that he had "failed to accurately complete" employee screening forms as requested by Agency Investigators. *Id.* at 1-2. The Order also alleged that during the inspection, "investigators discovered that approximately 50 to 100 expired bottles of Lugol's solution, a product containing . . . [i]odine, were left unsecured on a shelf within BDI's proposed controlled location without a proper registration" and that "BDI failed to record, secure, or dispose of the expired list I chemical products as required by law." *Id.* at 2. Finally, the Order alleged that "[o]n December 8, 2010 . . . state investigators attempted to conduct a site inspection at BDI's business facility" but that they "were not successful because BDI did not cooperate with attempts to conduct this inspection." *Id.*

On June 27, Mr. Anand filed a request for a hearing on behalf of Respondent and the matter was placed on the docket of the Office of Administrative Law Judges (ALJ). Thereafter, the assigned ALJ issued an order for pre-hearing statements; both parties complied with the order.

In its pre-hearing statement, the Government provided notice that one of its witnesses would testify that "Respondent is required to have a valid California Board of Pharmacy license . . . or a California Bureau of Narcotic Enforcement permit . . . and . . . Respondent's state permit expired on June 11, 2011 and was not renewed." Gov. Pre-Hearing Statement, at 6-7. The Government noticed that its witness would further testify that "currently the Respondent is not authorized to handle list I chemicals in the State of California." *Id.* at 7.

Based on the above, the ALJ issued a Memorandum to Parties and Order. Therein, the ALJ ordered the parties to address two issues: (1) whether the "Respondent presently possess[es] a valid . . . state license, registration or other authority to handle listed chemicals, to include list I chemicals,

from the State of California or any other State, territory or U.S. jurisdiction in which Respondent proposes to do business?" and (2) whether, under Agency precedent and applicable law, the proceeding could be resolved on summary disposition? Memorandum to Parties and Order (citing *Jack's Sales, Inc.*, 66 FR 52939 (2001)).

In response, the Government filed a Motion for Summary Disposition. Therein, the Government argued that Respondent is required to hold a California Chemical Substances Permit "in order to purchase or sell Iodine in the State" and that its "permit expired on June 11, 2011 and was not renewed." Mot. for Summ. Disp. at 2. The Government thus contended that because "Respondent is currently without authority to handle list I chemicals in the State of California, the state in which [it] seeks registration with the DEA, [it] is not eligible to possess a DEA registration in that state." *Id.* at 3 (citing 21 U.S.C. 823(h) and 824(a)(3)). The Government further argued that "[t]he Controlled Substances Act (CSA) requires that a list I chemical manufacturer and distributor must be currently authorized to handle list I chemicals in the jurisdiction in which it seeks to maintain a DEA registration," and that because "possessing authority under state law to handle listed chemicals is an essential condition for holding a DEA registration," the CSA requires the denial of Respondent's application. *Id.* at 3–4 (citing numerous cases involving practitioners). Finally, the Government argued that summary disposition was warranted even if "there is the potential that the Respondent's listed chemical privileges may be reinstated, because 'revocation is also appropriate when [a] state license has been suspended, but with the possibility of future reinstatement.'" *Id.* at 4–5 (citing *Roger A. Rodriguez, M.D.*, 70 FR 33207 (2005)).

In its pleading, Respondent did not dispute that its state permit had expired and provided a copy of its expired permit. However, Respondent further stated that it had "already applied to renew the expired certificate." Resp. Pleading (July 14, 2011), at 2.

On July 28, 2011, the Administrative Law Judge (ALJ) granted the Government's motion, holding that because Respondent does not hold authority under California law to handle iodine, it is not entitled to be registered. Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the ALJ (July 28, 2011) (hereinafter, ALJ I). As support for his ruling, the ALJ noted that "[u]nder 21 U.S.C. 824(a)(3), a practitioner's loss of state authority 'to

engage in the manufacturing, distribution or dispensing of controlled substances or a list I chemical' is grounds to revoke a practitioner's registration" and that DEA "has consistently held that a registrant or prospective registrant may not hold a DEA registration if the registrant is without appropriate authority under the laws of the state in which it does business." *Id.* at 5 (citing *Jack's Sales Inc.*, 66 FR 52939 (2001) (holding that "[l]oss of state authority to engage in the distribution of list I chemicals is grounds to revoke a distributor's registration") and numerous cases involving practitioners). The ALJ further explained that "[s]ummary disposition is warranted even if the respondent's lack of state authority is temporary, because 'revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement.'" *Id.* (citing *Stuart A. Bergman, M.D.*, 70 FR 33193 (2005) and *Rodger A. Rodriguez, M.D.*, 70 FR 33206 (2005)).

Finding it undisputed that Respondent had allowed its California Bureau of Narcotic Enforcement Permit for Controlled Chemical Substances to expire and that "there is no genuine dispute as to any material fact," the ALJ concluded that there is "substantial evidence that Respondent is presently without state authority to handle list I chemicals in California, the jurisdiction in which it seeks a DEA [registration] to distribute list I chemicals." *Id.* at 6. The ALJ thus granted the Government's motion and recommended that its application be denied. *Id.*

On review of the record, I remanded the case for further proceedings. Order Remanding For Further Proceedings (Oct. 17, 2011). In the remand order, I noted that in its motion, the Government relied entirely on Respondent's lack of the permit issued by the California Department of Justice, which the Government argued Respondent must have to purchase or sell iodine in California under state law. *Id.* at 2–3 (citing Gov. Motion, at 2–3 (citing Cal. Health & Safety Code § 11106(a)(1)(A)). Under this provision, "[a]ny manufacturer, wholesaler, retailer, or any other person or entity in this state that sells, transfers, or otherwise furnishes [iodine] to a person or business entity in this state or any other state or who obtains [the substance] from a source outside of the state . . . shall submit an application to, and obtain a permit for the conduct of that business from[] the [California] Department of Justice." Cal. Health & Safety Code § 11106(a)(1)(A). I further noted, however, that the statute exempts

from the permit requirement "any manufacturer, wholesaler, or wholesale distributor who is licensed by the California State Board of Pharmacy and also registered with the federal Drug Enforcement Administration." Remand Order, at 3 (quoting Cal. Health & Safety Code § 11106(a)(1)(C)).

On review, I noted that in its motion, the Government did not address the potential applicability of the exemption of subparagraph C and it offered no evidence that Respondent lacks a license issued by the Board of Pharmacy, even though in its pre-hearing statement, it represented that a Diversion Investigator would testify that "the Respondent is required to have a valid California Board of Pharmacy license . . . or a California Bureau of Narcotic Enforcement permit." *Id.* (quoting Gov. Pre-Hearing Statement, at 6).<sup>1</sup> Likewise, the ALJ did not address the applicability of this provision and explain why summary disposition would be appropriate given the Government's failure to present any evidence that Respondent does not hold a license from the pharmacy board.<sup>2</sup>

See ALJ I. Because under settled principles, a party moving for summary disposition "must show, with materials of appropriate evidentiary quality, that

<sup>1</sup> I further explained that this representation of anticipated testimony is not evidence and thus did not support a motion for summary disposition. Cf. *Insoftvision, LLC, v. MB Financial Bank, N.A.*, 2011 WL 4036134, \*5 (N.D. Ill., Sept. 12, 2011) ("In order to establish a fact in support of summary judgment . . . a party must present competent evidence . . . . A] party's expectation of how [a witness] would testify at trial" does not suffice.).

<sup>2</sup> As explained above, in his memorandum to the parties, the ALJ directed both parties to address the issue of whether the "Respondent presently possess[es] a valid, unrevoked and unrestricted state license, registration or other authority to handle listed chemicals, to include List I chemicals, from the State of California or any other State, territory or U.S. jurisdiction in which Respondent proposes to do business," as well as to produce supporting evidence. Memorandum To Parties And Order, at 1. In response, Respondent acknowledged that his state permit for controlled chemical substances had expired. Moreover, Respondent did not make any claim that he possessed a license issued by the pharmacy board.

However, in the remand order, I held that the Government had the burden of proof on the issue of whether Respondent has authority under California law, and on summary disposition, it was required to show, "with materials of appropriate evidentiary quality, that every state of facts is excluded save that which entitles [it] to relief." *Sword v. Fox*, 317 F. Supp. 1055, 1057 (W.D. Va. 1970). I further held that while to defeat the motion, Respondent was required to show a genuine dispute over the material facts, it was not required to do so when no evidence was put forward by the Government on a material fact as to which the Government had the burden of proof. To the extent the ALJ deemed summary disposition appropriate because Respondent produced no evidence that it held a state pharmacy license, this improperly shifted the burden of proof from the Government to Respondent.

every state of facts is excluded save that which entitles [it] to relief,” *Sword v. Fox*, 317 F. Supp. 1055, 1057 (W.D. Va. 1970) (quoted in in Charles Alan Wright, *et al.*, 10B *Federal Practice & Procedure* § 2727 n.1), and the non-moving party has no obligation to come forward with evidence disputing the motion “if the movant fails to meet [its] burden of showing the absence of any genuine issue of material fact,” *Federal Practice & Procedure*, at § 2739; I concluded that summary disposition was inappropriate. Accordingly, I remanded the matter to the ALJ for further proceedings.<sup>3</sup>

On remand, the ALJ issued a second Memorandum to Parties and Order (Memorandum II, Oct. 26, 2011). Therein, the ALJ directed the Government to address “whether Respondent presently possesses a valid, unrevoked and unrestricted state license, registration or other authority, including a license from the California Board of Pharmacy, to handle listed chemicals, including list I chemicals,” as well as “whether Respondent’s application for a DEA Certificate of Registration . . . to distribute list I chemicals should be summarily resolved without a plenary administrative hearing.” Memorandum II, at 2.

On November 2, the Government filed a new Motion for Summary Disposition. Therein, the Government stated that it had contacted the California Department of Justice Bureau of Narcotic Enforcement and determined that Respondent’s Controlled Chemical Substances Permit had expired on June 11, 2011 and had not been renewed. Motion for Summary Disp (II), at 4. The Government further stated that it had contacted the California State Board of Pharmacy and determined that neither Respondent, nor its owner, holds a license issued by the Board. *Id.* As support for these assertions, the Government attached the affidavit of a Diversion Investigator.

In its motion, the Government reiterated its position that because “Respondent is currently without authority to handle list I chemicals in the State of California, the state in which [it] seeks registration with the DEA, [it] is not eligible to possess a DEA registration in that state” and that the CSA “requires that a list I chemical manufacturer and distributor must be currently authorized to handle list I chemicals in the jurisdiction in which it seeks to maintain a DEA registration.” *Id.* at 5. The Government also argued

that “because ‘possessing authority under state law to handle listed chemicals is an essential condition for holding a DEA registration,’ the DEA has consistently held that ‘the CSA requires the revocation [denial] of a registration issued to a [registrant] who lacks [such authority].’” *Id.* (brackets and bracketed text in original) (citing *Jack’s Sales, Inc.*, and numerous practitioner cases). The Government also reiterated its position that summary disposition was warranted even if “there is the potential that the Respondent’s listed chemical privileges may be reinstated.” *Id.* at 6 (citing, *inter alia*, *Roger A. Rodriguez, M.D.*, 70 FR 33206, 33207 (2005)).

On November 9, the ALJ granted the Government’s motion. Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the ALJ (Nov. 9, 2011) (hereinafter, ALJ II). As a preliminary matter, the ALJ noted that Respondent had failed to “respond to the Government’s November 2, 2011 motion for summary disposition, or seek an extension within the deadline for response,<sup>4</sup> and is therefore deemed to waive objection.” ALJ II at 4–5.

Turning to the merits, the ALJ found that it was undisputed that Respondent did not renew his state Permit for Controlled Chemical Substances and that Respondent is not exempt from this requirement because it does not hold a license issued by the California State Board of Pharmacy. ALJ at 6. Noting that under 21 U.S.C. 824(a)(3), the loss of state authority to manufacture or distribute a list I chemical “is grounds to revoke a practitioner’s registration,” *id.*, the ALJ further explained that “this Agency has consistently held that a registrant or prospective registrant may not hold a DEA registration if the registrant is without appropriate authority under the laws of the state in which it does business.” *Id.* (citing *Jack’s Sales*, 66 FR at 52939; also citing five cases involving practitioners). Reasoning that “[s]ummary disposition is warranted even if the respondent’s lack of state authority is temporary, because ‘revocation is also appropriate when a state license had been suspended, but with the possibility of future reinstatement,’” *id.* (citing

*Bergman*, 70 FR at 33193; *Rodriguez*, 70 FR at 33206), the ALJ granted the Government’s motion and recommended that Respondent’s application be denied.<sup>5</sup> *Id.* at 6–7. Alternatively, the ALJ found that Respondent had waived its right to a hearing by failing to comply with his Order for Pre-Hearing Conference and/or failing to respond to Government’s motion. *Id.* at 7, n.4.

Neither party filed exceptions to the ALJ’s recommended decision. Thereafter, the ALJ re-forwarded the record to me for final agency action.

Having considered the entire record, I adopt the ALJ’s factual findings that Respondent does not possess either a California Bureau of Narcotic Enforcement Permit for Controlled Chemical Substances or a license from the California Board of Pharmacy, as well as his legal conclusion that Respondent does not currently possess authority under California law to handle list I chemicals in California. While I also adopt the ALJ’s recommendation that Respondent’s application be denied, for reasons explained below, I do not adopt the ALJ’s reasoning that the Government was entitled to summary disposition on the basis that Respondent lacks state authority. However, I find that two alternative grounds exist to deny Respondent’s application: (1) That Respondent has waived his right to a hearing to contest whether granting his application would be inconsistent with the public interest, and (2) Respondent did not apply for the correct registration and thus would not be in compliance with applicable laws.

As discussed above, the Government maintains that because “Respondent is currently without authority to handle list I chemicals in . . . California, the state in which [it] seeks registration . . . [it] is not eligible to possess a DEA registration in that State” and that the CSA “requires that a list I chemical

<sup>5</sup> In a footnote, the ALJ quoted Cal. Health & Safety Code § 11106(a)(1)(C) and suggested that Respondent was not exempt from the permit requirement, because to be exempt it was required to be both licensed by the Pharmacy Board and hold a DEA registration. See ALJ II, at 3 n.1. The ALJ then reasoned: “Thus, it appears that even if Respondent was licensed by the . . . State Board of Pharmacy, [it] would nonetheless lack state authority to handle list I chemicals because [it] does not maintain any DEA registration.” ALJ II, at 3 n.1. Under the ALJ’s logic, Respondent would not be entitled to a DEA registration because it does not have a DEA registration.

On the other hand, if Respondent did hold the requisite Pharmacy Board license and were the Agency to grant its application, it would immediately have state authority. And as explained in this decision, the CSA does not make possession of state authority a condition precedent to granting a registration for a list I chemical distributor.

<sup>3</sup> This Office served a copy of the Remand Order by First Class Mail on Respondent.

<sup>4</sup> The ALJ also noted that on October 20, 2011, he issued an Order for Prehearing Conference which scheduled a pre-hearing conference for October 26, 2011 and also ordered the parties to contact the Office of Administrative Law Judges no later than 4 p.m. on October 25, 2011 to confirm their participation. The ALJ found that “Respondent failed to comply with this order.” ALJ II, at 3. The ALJ further noted that when his office attempted to contact Respondent’s owner by phone, it “was unable to reach him or any other representative for Respondent.” *Id.* at 3–4.

manufacturer and distributor must be currently authorized to handle list I chemicals in the jurisdiction in which it seeks to maintain a DEA registration.” Mot. for Summary Disp. (II) at 4. The Government further maintains that “because ‘possessing authority under state law to handle listed chemicals is an essential condition for holding a DEA registration,’ [the Agency] has consistently held that ‘the CSA requires the revocation . . . of a registration issued to a registrant [, and the denial of an application for registration submitted by an applicant,] who lacks’” state authority. *Id.* at 5. As noted above, in support of these propositions, the Government cited *Jack’s Sales* and numerous cases involving practitioners. The ALJ adopted the Government’s reasoning. ALJ II at 6.

Contrary to both the Government’s and the ALJ’s understanding, the CSA neither makes the current possession of state authority an essential condition for holding a DEA registration, nor requires that the Agency revoke an existing registration held by, or deny an application submitted by, a list I chemical handler because it is not currently authorized by the State to handle list I chemicals. Indeed, *Jack’s Sales*, the case cited for these propositions, itself acknowledged that the CSA “does not specify that state licensure is a condition precedent to registration as a distributor of lists I chemicals.” 66 FR at 52939. Moreover, while *Jack’s Sales* did uphold the use of summary disposition to deny an application for a list I chemical distributor’s registration, on the ground that the applicant lacked a required state license, as explained below I conclude that its reasoning is flawed for two reasons: (1) It relied on provisions of the CSA which are specifically applicable to practitioners and not to list I chemical distributors, and (2) its reasoning cannot be squared with intervening judicial precedent. See *Penick Corp. v. DEA*, 491 F.3d 483, 490 (D.C. Cir. 2007).

To be sure, in numerous cases involving practitioners, this Agency has held that “a practitioner must be currently authorized to handle controlled substances in the ‘jurisdiction in which [it] practices’ in order to [obtain and] maintain a DEA registration.” *Roots Pharmaceuticals, Inc.*, 76 FR 51430 (2011); see also *Robert Wayne Mosier*, 75 FR 49950 (2010). However, this rule is grounded in the CSA’s specific textual provisions which are applicable to this category of registrant. More specifically, Congress defined the term “practitioner” to “mean[] a physician . . . licensed,

registered, or otherwise permitted, by the . . . jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21) (emphasis added). Likewise, Congress, in setting forth the requirements for obtaining a practitioner’s registration, directed that “[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f) (emphasis added). As these provisions make plain, a practitioner can neither obtain nor maintain a DEA registration unless the practitioner currently has authority under state law to handle controlled substances.

Accordingly, DEA has uniformly denied the applications of practitioners who lack state authority. Moreover, notwithstanding that 21 U.S.C. 824(a)(3), grants the Agency the authority to either suspend or revoke “[a] registration pursuant to section 823,” based on the CSA’s clear requirement that a practitioner must possess state authority to hold a registration, DEA has uniformly revoked the registrations of practitioners who no longer possess state authority to dispense controlled substances and done so without regard to the underlying reason why the practitioner no longer possesses the requisite authority.<sup>6</sup>

By contrast, in defining the term “distributor,” Congress did not impose a requirement that the person engaged in this activity hold state authority. See *id.* § 802(11). Rather, it simply defined the term to “mean[] a person who so delivers [other than by administering or dispensing] a controlled substance or listed chemical.” *Id.* Likewise, Congress did not condition the registration of list I chemical distributors by requiring that they possess state authority. See *id.* § 823(h) (“The Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.”). If Congress had intended to

<sup>6</sup> As explained below, that section 824(a)(3) authorizes revocation where a registrant “has had [its] State license or registration suspended, revoked, or denied by competent state authority and is no longer authorized by State law to engage in the manufacturing [or] distribution of . . . list I chemicals” does not mean that revocation is warranted in all instances. This provision grants the Agency discretionary authority to impose an appropriate sanction; the failure to consider factors such as the egregiousness of the misconduct and mitigating factors in imposing the sanction would render the sanction arbitrary and capricious.

condition the registration of list I chemical distributors on their possession of a state license, it had only to adopt language similar to that it employed in the provisions applicable to practitioners. See *Dean v. United States*, 556 U.S. 568, 573 (2009) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983) (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same enactment, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”)).

To be sure, in section 823(h), Congress directed that “[i]n determining the public interest,” the Agency “shall consider,” *inter alia*, “compliance by the applicant with applicable Federal, State, and local law[.]” *Id.* Thus, where state law requires that an applicant obtain a license to engage in list I chemical activities, DEA can consider an applicant’s compliance (or lack thereof) with such a requirement in the public interest determination. However, as the D.C. Circuit has explained in discussing the public interest determination under section 823, the “enumerated factors represent components of the public interest rather than independent requirements for registration and thus, the . . . Administrator may find a given registration consistent with the public interest even if one (or possibly more) of the public interest factors is not satisfied.” *Penick Corp., Inc., v. DEA*, 491 F.3d 483, 490 (D.C. Cir. 2007) (citing *Johnson Matthey, Inc.*, 60 FR 26050, 26052 (1995) (“It is well established that the . . . Administrator is not required to make findings with respect to each of the . . . factors, but has discretion to give each factor the weight [she] deems appropriate, depending upon the facts and circumstances in each case.”)).

This is not to say that DEA will grant an application for registration notwithstanding an applicant’s failure to obtain a required state license. Indeed, as it does here, an applicant’s failure to obtain a required state license will likely warrant an adverse finding under the compliance factor, see 21 U.S.C. 823(h)(2), and a finding under a single factor can support the conclusion that granting an application for registration would be inconsistent with the public interest and the consequent denial of an application. See *MacKay v. DEA*, 664 F.3d 808, 816 (10th Cir. 2011); *Jayam Krishna-Iyer*, 74 FR 459, 462 (2009).

What it is to say is that summary disposition may not be an appropriate mechanism for resolving such a case

because the applicant/registrant may have a valid explanation for why it is not currently licensed by the state, which would not necessarily support either revocation of an existing registration or the denial of an application. For example, the state licensing authority may have a large backlog in issuing its licenses, the applicant/registrant's application may have been lost or misplaced, there may be minor compliance issues which the applicant/registrant is in the process of correcting and which have delayed the issuance of the license but which would not necessarily warrant a denial or revocation (as the case may be) by DEA, or the applicant/registrant may have simply forgotten to renew its license on time. However, because other than in the case of practitioners, the possession of state authority is not an independent requirement for registration, what is clear is that an applicant/registrant is entitled to rebut the Government's *prima facie* case by showing that its conduct is not sufficiently egregious to warrant denial or revocation and what remedial measures it has undertaken to correct the problem. Thus, upon a proper showing by a respondent, summary disposition would be unwarranted and the respondent would be entitled to put on evidence.

In this matter, it is noted that in his July 14, 2011 filing, Respondent's owner claimed that it had filed for a renewal of its state license. However, since then, Respondent has produced no evidence that it has obtained a new state license. In addition, Respondent failed to comply with the ALJ's order for prehearing conference and failed to respond to the Government's renewed motion for summary disposition. As the First Circuit has noted in language that applies with equal force to administrative proceedings, "[l]itigants must act punctually and not casually or indifferently if a judicial system is to function effectively." *McKinnon v. Kwong Wah Restaurant*, 83 F.3d 498, 504 (1st Cir. 1996) (quoted in *Kamir Garcés-Mejias*, 72 FR 54931, 54933 (2007) (holding that registrant's failure to respond to ALJ's orders constituted waiver of her right to a hearing)). I therefore conclude that Respondent has waived its right to present evidence regarding its compliance with applicable laws. See *Garcés-Mejias*, 72 FR at 54932–33; see also *Pamela Monterosso*, 73 FR 11146, 11147 (2008).

In addition, as I noted in the remand order, Respondent applied for a distributor's registration, and paid the fee for this category of registration (and not the fee for a manufacturer's

registration).<sup>7</sup> However, it is clear from Respondent's application that it sought to engage in the "Preparation 5% Solution (Lugol's Solution)" and then noted that it intended to manufacture iodine in the dosage formulation of "8 ml each." This constitutes manufacturing activity under the CSA. See 21 U.S.C. 802(15) (defining manufacturing to include "the production, preparation . . . or processing of a drug or other substance, either directly or indirectly . . . and includes any packaging or repackaging of such substances or labeling or relabeling of its container").

Under the CSA, "[p]ersons registered . . . to manufacture, distribute, or dispense controlled substances or list I chemicals are authorized to possess, manufacture, distribute, or dispense such substances or chemicals . . . to the extent authorized by their registration." *Id.* § 822(b). Under DEA regulations, the manufacturing and distribution of list I chemicals are activities which "are deemed to be independent of each other" and while the holder of a manufacturer's registration can engage in the distribution of a list I chemical, the holder of a distributor's registration cannot engage in manufacturing. 21 CFR 1309.21(c); *id.* 1309.22(b) & (d). Accordingly, Respondent's proposed activity would not be lawful under the registration it seeks.

Based on Respondent's failure to obtain the required state permit or license, as well as that its proposed activity would not be lawful under the registration for which it applied, I find that the record supports a finding under factor two that granting Respondent's application would be "inconsistent with the public interest." 21 U.S.C. 823(h). Accordingly, Respondent's application will be denied.<sup>8</sup>

<sup>7</sup> In his letter requesting a hearing, Respondent's owner stated that it required a DEA registration "to manufacture iodine 5% solution, called Lugol Solution." Letter of Paul Anand, Ph.D., to Administrator (June 23, 2011). However, according to Respondent's application, it sought registration as a Chemical Distributor and not as a Chemical Manufacturer; consistent with this, it paid the fee for the former and not the latter. Respondent's Application, at 1, 3. Moreover, in Section 3B of the application, which applies to "Manufacturers Only," Dr. Anand wrote: "Preparation 5% Solution (Lugol's Solution)," and in Section 3C, he checked the box for bulk iodine. *Id.* at 1–2.

Under DEA's regulation, the manufacturing of list I chemicals is deemed to be an activity which is independent of distribution (although a registered manufacturer can lawfully engage in distribution), and thus requires a manufacturer's registration. See 21 CFR 1309.22. Because Respondent did not apply for the required registration, its application should have been rejected as defective. See *id.* § 1309.34(a).

<sup>8</sup> As found above, on November 2, the Government filed its second motion for summary disposition by mailing it to Respondent's owner, at

## Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h) and 28 CFR 0.100(b), I order that the application of Bio Diagnostic International, Inc., for a DEA Certificate of Registration as a distributor of list I chemicals, be, and it hereby is, denied. This Order is effective July 31, 2013.

Dated: June 21, 2013.

**Michele M. Leonhart,**  
Administrator.

[FR Doc. 2013–15704 Filed 6–28–13; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Sigríd Sanchez, M.D.; Decision and Order

On February 4, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Sigríd A. Sanchez, M.D. (Respondent), of Sunrise, Florida. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration as a practitioner, on the ground that her "registration would be inconsistent with the public interest." GX 7, at 1 (citing 21 U.S.C. 823(f)).

More specifically, the Show Cause Order alleged that on May 19, 2010, Respondent had surrendered her previous DEA registration, and that on July 29, 2010, she had applied for a new registration. *Id.* The Show Cause Order further alleged that on April 30, 2010, the Florida Department of Health had conducted "a dispensing practitioner's

its address in Brea, California; on November 9, the ALJ issued his recommended decision noting that "Respondent had 'until 4:00 p.m. EDT three business days after the date of service of any motion to file a responsive pleading' and that '[i]n the absence of good cause, failure to file a written response to the moving party's motion after three business days will be deemed a waiver of objection.'" ALJ II, at 4. The ALJ apparently deemed service to have been effectuated with mailing. See *id.* (noting that "[a]s of November 9, 2011, five business days after service of the Government's [motion], Respondent had not yet filed a response"). While courts frequently deem service of a pleading to have occurred on mailing and not upon receipt by the opposing party, see, e.g., F.R.C.P. r. 5(b)(2)(C), due regard must be given to the respective locations of the parties and the vagaries of the mail. While an ALJ is entitled to substantial discretion in managing his/her docket, the amount of time the ALJ allowed here for Respondent to file its responsive pleading was unduly limited and potentially a violation of Due Process.

However, because following issuance of the remand order, Respondent has not filed any pleadings including exceptions, I deem any such error harmless.

inspection” at Respondent’s former registered location, the Mercy Wellness and Recovery Center of Fort Lauderdale, Florida, finding violations of both federal and state law. *Id.*

The Order alleged that the federal violations included, *inter alia*, failing to provide adequate supervision over employees who had access to controlled-substance storage areas, failing to store controlled substances in a securely locked cabinet, taking possession of controlled substances at the clinic upon commencing her employment while failing to conduct an inventory of the controlled substances, failing to supervise the dispensing of controlled substances by clinic employees, authorizing an employee to order schedule II controlled substances without executing a Power of Attorney, and not having “an adequate system for monitoring the receipt, distribution and disposition of controlled substances.” *Id.* at 1–2 (citing 21 CFR 1301.71(a), (b)(11), (b)(14); 1301.75(b); 1304.21(a); 1304.22).

With respect to the state violations, the Show Cause Order alleged that “by the transfer of controlled substances,” Respondent violated various provisions of Florida law. *Id.* at 2 (citing Fla. Stat. Ann. §§ 499.0051(1), 499.006(10), and 499.0121(6) (all 2010)). The Order also alleged that Respondent’s “failure to supervise and review the dispensing of controlled substances” violated both Florida statutes and regulations. *Id.* (citing Fla. Stat. Ann. § 893.04(1)(b) (2010); Fla. Admin. Code Ann. r. 64B16–27.1001(3) & (4) (2010); *id.* r. 64B16–28.140(3) (2010)). Finally, the Show Cause Order alleged that Respondent also violated state controlled substance recordkeeping requirements. *Id.* (citing Fla. Stat. Ann. §§ 893.07(1)(a) & (b); 893.07(2)).<sup>1</sup>

In a letter dated February 16, 2011, Respondent acknowledged service of the Show Cause Order. In her letter, Respondent further stated that she was waiving her right to a hearing but submitting a “written statement regarding [her] position on the matters of fact and law involved.” GX 6. *See also* 21 CFR 1301.43(c). Respondent’s statement was made a part of the record. *See* GX 6. On September 20, 2011, the record was forwarded to my Office for Final Agency Action.

Having considered the entire record (including Respondent’s statement), I conclude that granting Respondent’s application would be inconsistent with

the public interest. Accordingly, Respondent’s application will be denied. I make the following findings.

#### Findings

Respondent previously held a DEA Certificate of Registration as a practitioner in schedules II through V. GX 1, at 1. On April 7, 2010, Respondent changed her registered address to 2001 NE 48th St., Fort Lauderdale, Florida. *Id.* This address was the location of the Mercy Wellness and Recovery Center (hereinafter, Mercy), a pain management clinic. GX 5, at 59. On or about April 13, 2010, Respondent, who is board certified in internal medicine, became the clinic’s medical doctor. *Id.* at 1, 48, 60. According to a sworn statement Respondent gave to Investigators of the Florida Department of Health (DOH), in December 2009, she became a Dispensing Practitioner under Florida law, which authorized her to sell medicinal drugs to patients in her office. *Id.* at 60–61.

On April 30, 2010, DOH Investigators went to the Mercy Wellness clinic to conduct a dispensing practitioner inspection; at the same time, the Ft. Lauderdale Police Department executed a search warrant at the clinic. GX 4, at 1. Upon their arrival, the DOH Investigators observed that the clinic had an armed security guard at both the front and back entrances and that it had “a large waiting area filled with patients.” GX 5, at 47.

DOH Investigators interviewed several employees as well as Respondent. According to an affidavit of one of the DOH Investigators, at the time of the inspection a different doctor, M.W., was listed in DOH’s records as the dispensing practitioner of record and was “the intended subject of the inspection.” GX 5, at 47. However, upon arriving at the clinic, the Investigators determined that Dr. M.W. had stopped working there on April 2nd and that Respondent “was the dispensing practitioner.” *Id.*

According to the Investigator’s affidavit, the clinic had “one examination room and a room directly adjacent to it which” was identified “as the ‘Pharmacy.’” *Id.* The Pharmacy had a “teller like window where the prescription drug products [were] dispensed and sold to the patient” and the room was “accessible to all [clinic] personnel.” *Id.* Inside the dispensing room were two safes, one of which was open and contained drugs; “[t]here were also unlabeled bottles of prescription drug products located on a table in the [dispensing room] which [J.F., a pharmacy technician] had been

preparing to be dispensed to patients.” *Id.* at 55. Inside the dispensing room, the Investigators also observed R.H., who was printing out prescriptions from the patient charts on a computer. *Id.* at 48.

During her interview, Respondent “admitted that she [did] not verify [or] check the medications that [were] dispensed and sold to any of the patients” as this was done by J.F. *Id.* While Respondent stated that she had signed at least three order forms (DEA–222) for schedule II controlled substances, and admitted that she had “no knowledge of the amount of prescription drug products [that were] being ordered,” the forms were completed by the pharmacy technician and then signed by her. *Id.* at 52. Respondent stated, however, that she did not know “when or how often [the] drugs [we]re delivered to the facility,” and “who receive[d] them.” *Id.* In addition, Respondent did not know how the invoices were paid or the combination to the safe where the drugs were stored.<sup>2</sup> *Id.*

During her interview, Respondent initially stated that J.F. was the pharmacist and in charge of the pharmacy. *Id.* at 61. However, Respondent then acknowledged that J.F. was only a pharmacy technician. *Id.*

The DOH Investigators further noted that Dr. W. had left prescription drug products at the clinic when he left its employment and that these were “allegedly transferred to” Respondent. Moreover, Respondent admitted that on April 20, 2010, she signed a DEA 222 form to take possession of the controlled substances left by Dr. W. *Id.* at 37. However, according to a DOH Investigator, “there was no documentation to support that Dr. [W.] authorized such a transaction either personally or through power of attorney.” *Id.* at 7. In addition, the DOH Investigator determined that “DEA 222 forms revealed that C–II prescriptions drugs were received between 04/02/10

<sup>2</sup> Respondent also stated that she saw 60 to 65 patients a day, to whom she prescribed oxycodone 30mg and 15mg, muscle relaxants such as carisoprodol, and Xanax (alprazolam), a combination of drugs which this Agency has encountered in investigations of physicians engaged in blatant drug dealing. *See, e.g., Paul H. Volkman*, 73 FR 30630 (2008); GX 5, at 63–64 (Respondent’s sworn statement to Investigators that she would issue two to four prescriptions to a patient; “It is a combination, anti-inflammatory, muscle relaxers, pain killers. I really believe in them. You know the combination is the key.”). Yet the Government made no allegation that Respondent issued prescriptions outside of the usual course of professional practice and lacking a legitimate medical purpose, 21 CFR 1306.04(a), and produced no evidence that any prescription she issued was unlawful.

<sup>1</sup> The Show Cause Order also notified Respondent of her right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for electing either option, and the consequences for failing to do so. GX 7, at 3.

and 04/13/10 at which time no licensed practitioner was working who could legally possess the prescription drugs.” *Id.* Moreover, because there were no pedigree documents for any of the drugs, the DOH Investigators determined that the drugs were adulterated under Florida law and seized them in place. *Id.* at 9, 38. According to various records, DOH seized several thousand dosage units of controlled substances including oxycodone (in both 30mg and 15mg strength), hydrocodone, alprazolam, diazepam, as well as carisoprodol, a drug which was then controlled under Florida law but not Federal law. *Id.* at 69–72.

Respondent further admitted to a DOH Investigator that she “never completed an inventory of the medication present and did not know of any inventory ever [having been] taken by others.” *Id.* at 38. Respondent also told a DOH Investigator that she did not “know until today that [J.F.] was not a pharmacist—[she] thought he was.” *Id.* However, when the Investigator then told Respondent that “an 8 ½ x 11 printout stating that [J.F.] is a Registered Pharmacy Technician [was] on the wall immediately inside her dispensing room,” Respondent replied that she had “never been in that room.” *Id.*

During the inspection, Respondent agreed to voluntarily surrender her DEA registration. Respondent completed a DEA Form 104 evidencing her agreement. GX 5, at 67. On July 29, 2010, Respondent applied for a new registration. GX 1.

As noted above, following service of the Show Cause Order, Respondent submitted an unsworn written statement of position. GX 6. Therein, Respondent stated that she had been placed at Mercy by All Care Staffing, a temporary staffing agency and had started work there on April 13, 2010. GX 6, at 1. Respondent further stated that she had previously obtained work through All Care and that at the time of her placement at Mercy, she had interviewed with two internal medicine groups and while she was doing due diligence on them, contacted All Care. *Id.* According to Respondent, “All Care assured [her] that [Mercy] was stable and ran an above-board, legitimate, compliant practice.” *Id.* Respondent also stated that because her time at Mercy “was the first time in [her] professional career that [she] had been a dispensing practitioner, [she] was completely unaware that [she] had run afoul of the laws governing dispensing practitioners.” *Id.*

Respondent then addressed the various violations found by the DOH

Investigators. First, she asserted that “[t]o the best of [her] knowledge, the prescription drugs at [Mercy] were at all times stored and otherwise locked in a safe . . . and that access was restricted, in compliance with 21 CFR 1301.75.” *Id.* at 2. She asserted that when she asked whether she should have the safe’s combination, the owners told her that this “was not a legal requirement” and that she “could inspect the safe at any time.” *Id.* She also maintained that she “believed that [Mercy] employed a pharmacist who was responsible for and addressed all pharmacy and prescription issues” and that “[i]t seemed reasonable . . . to rely upon the owners of [Mercy] to employ properly trained and credentialed personnel in the pharmacy.” *Id.*

Respondent further stated that “upon the initial date” of her employment at Mercy, she “did order medications pursuant to a form DEA 222” and did so because she was told that she “could not use the medications that had been ordered by” Dr. W., the previous doctor. *Id.* Respondent maintained that she “was provided with the DEA 222 form by [clinic] personnel, but was unfortunately unaware of my obligations regarding the DEA 222 form at the time.” *Id.* She then explained that she “was informed that Dr. [W.] was responsible for addressing the medications that he left behind as well as the DEA 222 forms associated with him,” and therefore, she “did not address them or to [her] knowledge dispense any medications that had previously been ordered by Dr. [W.]” *Id.* However, Respondent then stated that Mercy “refused to make Dr. [W.] available to [her], so in hindsight, proper transfer may not have been possible.” *Id.*

Respondent stated that because she “worked three days a week for a three week period of time, [she] did not do an inspection or complete an inventory.” *Id.* She then stated that “no prior inventories or logs were made available to” her. *Id.*

Respondent “acknowledge[d] that [she] did not personally check and certify filled prescription[s] for accuracy prior to [the] patient receiving” them. *Id.* Respondent reiterated that she “believed that there was [a] pharmacist employed at [Mercy] that ensured compliance with these issues” and that because of her belief, she “was not always present when medications were dispensed nor did I initial all prescription labels.” *Id.* Regarding the DOH report’s statement that she had denied having been in the “Pharmacy” room, Respondent stated that she “had been in the dispensing room and had

seen the technician enter information into the . . . computer system, prepare labels, count pills and place them in prescription bottles for dispensing.” *Id.* She also stated that she is now aware that she had “an obligation to verify that the personnel where I was providing services were properly licensed to perform certain duties.” *Id.*

Respondent further stated that following the inspection, she terminated her employment at Mercy. However, she again reiterated that she “was improperly led to believe that [Mercy] was properly running its practice, with the appropriate personnel, licenses, and permits,” and that the dispensing of drugs was being “done properly and in full compliance with the law” but that she had concluded that the “many compliance breaches in this matter clearly existed long before [her] locum tenens assignment to” Mercy. *Id.* at 2–3. Respondent further stated that she has “been practicing medicine for twenty-five years, and prior to this, had an unblemished record” and that “[t]he inspection and [her] very brief relationship with [Mercy] has been a very painful and embarrassing learning process for” her. *Id.* at 3. Respondent also stated that the DOH “inspection report evidences that [she] was not evasive and fully answered all the questions asked from the participants of the inspection.” *Id.*

Respondent stated that she “believed that it was not improper for [her] to provide services [for Mercy] and that the practice was operated appropriately” and that she “simply was not fully aware of the obligations discussed in the paragraphs above and believed [she] was in compliance with the laws.” *Id.* Finally, Respondent stated that “[t]his was the first time in [her] professional career that [she] had been a dispensing practitioner and [that she is] not interested in dispensing again after the experience [she] had with” Mercy. *Id.*

## Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that an application for a practitioner’s registration may be denied upon a determination “that the issuance of such registration . . . would be inconsistent with the public interest.” 21 U.S.C. 823(f). In making the public interest determination in the case of a practitioner, Congress directed 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*, 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to deny an application. *Id.* Moreover, I am "not required to make findings as to all of the factors." *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005) (citing *Morall v. DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005)).

In the case of a practitioner, the Government has the burden of proving with substantial evidence that granting an application would be inconsistent with the public interest. However, where the Government makes out a *prima facie* case to deny an application, the burden shifts to the applicant to show why granting the application would be consistent with the public interest.<sup>3</sup>

In this matter, I conclude that the Government's evidence with respect to factors four and five establishes a *prima facie* case to deny Respondent's application.<sup>4</sup> While I have considered

<sup>3</sup> Where, as here, "the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must "present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a 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))), *aff'd*, *Medicine Shoppe-Jonesborough v. DEA*, 300 Fed. Appx. 409 (6th Cir. 2008). "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 [his] actions and demonstrate that [he] will not engage in future misconduct." *Medicine Shoppe, 73 FR* at 387; *accord Jackson*, 72 FR at 23853; *John H. Kennedy*, 71 FR 35705, 35709 (2006); *Prince George Daniels*, 60 FR 62884, 62887 (1995). See also *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).

In addition, "DEA properly considers the candor of the physician and his forthrightness in assisting in the investigation and admitting fault important factors in determining whether the physician's registration" is consistent with the public interest." *Hoxie*, 419 F.3d at 483.

<sup>4</sup> The only evidence in the record as to factor one (the recommendation of the state licensing board) is the approximately one year old DOH report which shows that Respondent still had a state license at that time. However, DEA has repeatedly

Respondent's statement of position, I conclude that she has not provided substantial evidence to show why, at this time, she can be entrusted with a new registration.

#### **Factors Four and Five—Compliance With Applicable Laws Related to Controlled Substances and Other Conduct Which May Threaten Public Health and Safety**

Based on the DOH Inspection, the Government alleges that Respondent committed multiple violations of the CSA, its implementing regulations, as well as Florida law and regulations. These violations include her failure to conduct an initial inventory of the controlled substances, her failure to institute sufficient security/diversion controls, and her improper execution of a DEA 222 form for the transfer of controlled substances from the clinic's prior doctor.

The CSA provides in relevant part that "every registrant . . . shall . . . as soon . . . as such registrant first engages in the manufacture, distribution, or dispensing of controlled substances . . . make a complete and accurate record of all stocks thereof on hand." 21 U.S.C. 827(a)(1).<sup>5</sup> Respondent acknowledged that she failed to comply with this provision. This was also a violation of Florida law. See Fla. Stat. Ann. § 893.07(1)(a).

The Government further argues that Respondent "could not specify what quantity of drugs she received from Dr. [W.'s] stock of controlled substances, thus violating 21 CFR 1304.22." Req. for Final Agency Action, at 5. This, however, is simply the same violation as set forth in the preceding paragraph.<sup>6</sup>

held that while the possession of state licensure is a fundamental condition for obtaining and maintaining a practitioner's registration, it is not dispositive of the public interest inquiry.

As for factor three, the Government raises no contention that Respondent has been convicted of a federal or state law offense related to controlled substances. However, because there are multiple reasons why an applicant or registrant may not have been convicted or even prosecuted for such an offense, the absence of such a conviction "is of considerably less consequence in the public interest inquiry." *Dewey C. MacKay*, 75 FR 49956, 49973 (2010), *pet. for rev. denied* 2011 WL 6739420 (10th Cir., Dec. 23, 2011). See also *Jayam Krishna-Iyer*, 74 FR at 459, 461 (2009); *Edmund Chein*, 72 FR 6580, 6593 n.22 (2007), *pet. for rev. denied* 533 F.3d 828 (DC Cir. 2008). Accordingly, this factor is not dispositive.

<sup>5</sup> While the CSA exempts from the recordkeeping requirements "the prescribing of controlled substances . . . by practitioners acting in the lawful course of professional practice unless such substance is prescribed in the course of maintenance or detoxification treatment of an individual," 21 U.S.C. 827(c)(1)(A), the evidence shows that Respondent was not only prescribing but also dispensing controlled substances.

<sup>6</sup> The Government also alleges that Respondent violated Federal law when she "signed a DEA Form

The Government also contends that Respondent violated Federal regulations because she allowed other persons to order controlled substances on her behalf and did not issue a Power of Attorney. The Government argues that although Respondent signed several Schedule II order forms which were "completed by another individual, she did not order the medications and she was not notified when controlled substances were ordered on her behalf." *Id.* at 5; see also Show Cause Order ¶ 2d (citing 21 CFR 1305.05(a)). As found above, Respondent admitted that she did not know the amount of the drugs that were being ordered under her registration. Yet other evidence establishes that the DEA 222 forms were completed by the pharmacy technician and then signed by Respondent.

Under the CSA, a schedule II controlled substance can only be distributed pursuant to "a written order of the person to whom such substance is distributed, made on a form . . . issued by the Attorney General [DEA–222]." 21 U.S.C. 828(a). DEA regulations further provide, in relevant part, that "[o]nly persons who are registered . . . under section 303 of the [CSA] to handle Schedule I or II controlled substances . . . may obtain and used DEA Form 222 . . . for these substances. Persons not registered to handle Schedule I or II controlled substances . . . are not entitled to obtain Form 222." 21 CFR 1305.04(a). A registrant may, however, "authorize one or more individuals . . . to issue orders for Schedule I and II controlled substances on the registrant's behalf by executing a power of attorney for each such individual." *Id.* 1305.05(a).

The evidence does not, however, establish that Respondent violated either the CSA or the Agency's regulations by signing the order forms because the evidence shows that the forms were completed by the pharmacy technician and then signed by Respondent. Thus, because Respondent signed the form, she and not the pharmacy technician issued the orders,

222 to take possession of controlled substances that were abandoned by a former practitioner at the clinic." Show Cause Order at 2. As noted above, in an affidavit, a DOH Investigator stated that "there was no documentation to support that Dr. [W.] authorized such a transaction either personally or through [a] power of attorney." GX 5, at 53. Given the Government's assertion that the drugs "were abandoned," it is not clear why it was necessary for Dr. W. to authorize the transaction and why Respondent violated Federal law by signing a Form 222. The Government makes no further argument that it was unlawful for Respondent to acquire possession of the controlled substances that were at the clinic when she commenced her employment there because the clinic owners were not registered and could not lawfully distribute the drugs to her.

and Respondent was not required to execute a power of attorney form.

However, Respondent admitted that she did not know what controlled substances were being ordered under her registration as well as when they were being received, and the evidence shows that other scheduled drugs including hydrocodone, alprazolam, and diazepam (which do not require the execution of a Form 222 to order) were found at the clinic. Moreover, other evidence establishes that the clinic did dispense controlled substances (notwithstanding that Respondent had been at the clinic for only seventeen days at the time of the inspection) which were ordered under her registration. Under DEA's regulations applicable to all registrants, a practitioner is required to institute and maintain an adequate system "for monitoring the receipt . . . distribution, and disposition of controlled substances." 21 CFR 1301.71(b)(14). Respondent did not comply with this requirement.

The CSA also requires that "every registrant . . . manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him." *Id.* § 827(a)(3). Florida law imposes a similar obligation on persons engaged in the dispensing of controlled substances. *See Fla. Stat. Ann.* § 893.07(b). However, the record does not establish whether the clinic was maintaining the invoices documenting the receipt of controlled substances or a proper dispensing log.

The Government also alleges that "Respondent failed to store [the] controlled substances in a securely locked cabinet" and that DOH Investigators observed that multiple employees had access to the drug dispensing room. Req. for Final Agency Action, at 4 (citing 21 CFR 1301.71(b)(11) and 1301.75(b)). As for the failure to store the controlled substances in a securely locked cabinet, the DOH Investigators stated that drugs were observed both in an open safe and on a table in the pharmacy area. It is not clear why this would constitute a violation if the clinic was then open and preparing prescriptions for dispensing.

As for the observation that multiple employees had access to the dispensing room, under DEA regulations, "[a]ll applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances." 21 CFR 1301.71(a). Among the factors which

DEA considers is "[t]he adequacy of supervision over employees having access to manufacturing and storage areas." *Id.* at 1301.71(b)(11) (emphasis added). While the affidavits state that multiple employees had access to the dispensing room, the record is devoid of evidence establishing whether the supervision of these employees was adequate.<sup>7</sup>

The evidence also shows that clinic personnel (including Respondent) violated various provisions of State law. More specifically, the evidence showed that the clinic employee who filled the prescriptions and dispensed them was not licensed as a pharmacist, but rather only as a pharmacy technician, and that Respondent, who was registered as a dispensing physician, admitted that she did not verify the prescriptions that were dispensed to the patients. Under Florida law in effect at the time of the events at issue here, "[a] person may not dispense medicinal drugs unless licensed as a pharmacist or otherwise authorized under this chapter to do so, except that a practitioner authorized by law to prescribe drugs may dispense such drugs to her or his patients in the regular course of her or his practice in compliance with this section." Fla. Stat. § 465.0276(1).<sup>8</sup> *See also Fla. Admin. Code r.64B16-27.1001(3)* ("Only a pharmacist may make the final check of the completed prescription thereby assuming the complete responsibility for its preparation and accuracy.").

In her written statement, Respondent repeatedly asserted that she believed that the pharmacy technician was actually a licensed pharmacist. I do not find this credible because the affidavit of one of the DOH Investigators establishes that "on the wall immediately inside the dispensing room," there was an 8½ by 11 printout

<sup>7</sup> Agency regulations explicitly require that non-practitioner registrants limit access to storage areas. *See* 21 CFR 1301.72(d) (security requirements for non-practitioners; "The controlled substances storage areas shall be accessible only to an absolute minimum number of specifically authorized employees."). There is, however, no similar requirement applicable to practitioners.

<sup>8</sup> In addition, under Florida law, "[a] person other than a licensed pharmacist or pharmacy intern may not engage in the practice of the profession of pharmacy, except that a licensed pharmacist may delegate to pharmacy technicians who are registered pursuant to this section duties, tasks, and functions that do not fall within the purview of s. 465.003(13)." Fla. Stat. § 465.014(1). However, "[a]ll such delegated acts shall be performed under the direct supervision of a licensed pharmacist who shall be responsible for all such acts performed by persons under his or her supervision." *Id.* A dispensing practitioner "must . . . [c]omply with and be subject to all laws and rules applicable to pharmacists and pharmacies, including, but not limited to" chapter 465, which regulates the practice of pharmacy. *Id.* § 465.0276(2)(b).

stating that the employee who did the dispensing was a Registered Pharmacy Technician. *See also Fla. Admin. Code r.64B16-27.100(4)* ("The current registration of each registered pharmacy technician shall be displayed, when applicable, in a conspicuous place in or near the prescription department, and in such a manner that can be easily read by patrons of said establishment."). In his affidavit, the Investigator further stated that when Respondent said that she did not "know until today that [J.F.] was not a pharmacist," he confronted her with the information regarding the printout, to which Respondent replied that she had "never been in that room."

However, in her written statement, Respondent stated that she had been in the dispensing room and seen the technician prepare the labels, count the pills and place them in the bottles for dispensing. Unexplained by Respondent is how she could then have been unaware that J.F. was not a licensed pharmacist. I thus reject Respondent's contention that she believed that J.F. was a pharmacist and could lawfully dispense medications. Moreover, it is a violation of the Florida Medical Practice Act to "delegat[e] professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them." Fla. Stat. Ann. § 458.331(w).

The DOH Investigators further found that the clinic did not have pedigree documents for any of the drugs that were on hand. As noted above, Respondent admitted that drugs were ordered under her DEA registration during her time there. Florida law provides in relevant part that "[a] drug or device is adulterated . . . [i]f it is a prescription drug for which the required pedigree paper<sup>9</sup> is nonexistent." *Id.* § 499.006(10). Moreover, under state regulations, "[a] copy of the pedigree paper must be maintained by each recipient," Fla. Admin Code r. 64F-12.012(3)(d), and for a "permittee[] located in the state . . . must be readily available and immediately retrievable, i.e., subject to inspection at the

<sup>9</sup> The pedigree paper "must include either the proprietary name or generic name with the name of the manufacturer, repackager, or distributor as reflected on the label of the product; dosage form; strength; container size; quantity by lot number; the name and address of each owner of the prescription drug that is required to be identified on the pedigree paper; the name and address of each location from which it was shipped if different from the owner's; and the transaction dates." Fla. Admin Code r. 64F-12.012(3)(a)1. In addition, "[t]he pedigree paper must clearly identify the invoice to which it relate[s]." *Id.*

permitted establishment during the inspection.” *Id.* r.64F–12.012(6)(b).

As the forgoing demonstrates, Respondent failed to comply with a variety of federal and state controlled substance laws and regulations as well as state pharmacy laws and rules. As for the latter, while these laws and rules are applicable to all prescription drugs and not just controlled substances, these violations are properly considered under factor five as other conduct which may threaten public health and safety for two reasons. First, the violations involved the dispensing of controlled substances. Second, violations of state pharmacy rules and food and drug safety provisions are relevant (even if the conduct did not involve controlled substances) in assessing the likelihood of an applicant’s future compliance with the CSA. *See Paul Weir Battershell*, 76 FR 44359, 44368 (2011); *Wonderyears, Inc.*, 74 FR 457, 458 n.2 (2009).

On the other hand, the record in this matter establishes that Respondent’s record of non-compliance with the CSA was limited to a seventeen-day period. While it may be that this conduct would have continued but for the DOH inspection, Respondent stated in her letter that following the inspection she terminated her relationship at the clinic and there is no evidence disputing this.<sup>10</sup>

It is also acknowledged that Respondent’s letter demonstrated some degree of contrition. However, I do not find credible Respondent’s numerous assertions that she believed that JF was a licensed pharmacist. In addition, while Respondent emphasizes that her employment at Mercy “was the first time in [her] professional career that [she] had been a dispensing practitioner,” and that she “was completely unaware that [she] had run afoul of the laws governing dispensing practitioners,” GX 6, at 1, ignorance of the law is no excuse. *See Patrick W. Stodola*, 74 FR 20727, 20735 (2009) (quoting *Hageseth v. Superior Ct.*, 59 Cal. Rptr.3d 385, 403 (Ct. App. 2007) (a “licensed health care provider cannot ‘reasonably claim ignorance’ of state provisions regulating medical practice”). Indeed, in her statement, Respondent explained that at the time she took her position, she “was doing

due diligence” on two internal medicine groups. One must wonder why she did not make a similar effort to familiarize herself with the various requirements applicable to the dispensing of controlled substances under both the CSA and state laws, as well as the manner in which Mercy’s business was operated.

DEA can, of course, consider deterrence interests in determining whether to grant or deny an application. *See Joseph Gaudio*, 74 FR 10083, 10094 (2009) (citing *Southwood Pharmaceuticals, Inc.*, 72 FR 36487, 36504 (2007)). As I have previously explained, “even when a proceeding serves a remedial purpose, an administrative agency can properly consider the need to deter others from engaging in similar acts.” *Gaudio*, 74 FR at 10094 (quoting *Southwood*, 72 FR at 36504 (citing *Butz v. Glover Livestock Commission Co., Inc.*, 411 U.S. 182, 187–88 (1973)). “The ‘[c]onsideration of the deterrent effect of a potential sanction is supported by the CSA’s purpose of protecting the public interest,” which is manifested in both 21 U.S.C. 823(f) and 824(a)(4). *Gaudio*, 74 FR at 10094 (quoting 72 FR at 36504).

All registrants are charged with knowledge of the CSA, its implementing regulations, as well as applicable state laws and rules. Moreover, those registrants who contemplate employment in circumstances in which their registrations are used to operate clinics owned by non-registrants need to recognize that there are serious consequences for failing to comply with the Act and that they remain strictly liable for all activities which occur under the authority of their registrations. *See, e.g., Robert Raymond Reppy*, 76 FR 61154, 61157–58 (2011); *Paul Weir Battershell*, 76 FR 44359, 44368 (2011); *Paul Volkman*, 73 FR 30630, 30643–44 (2008), *pet. for rev. denied* 567 F.3d 215 (6th Cir. 2009). It is no excuse that the practitioner is not the employer of those persons who perform controlled substance activities and lacks the power to hire or fire the employee.

Accordingly, having considered the record as a whole, I conclude that Respondent has not sufficiently demonstrated why she should be entrusted with a new registration. I therefore hold that granting Respondent’s application would, at this time, be “inconsistent with the public interest.” 21 U.S.C. 823(f). However, given that the violations proved on this record were limited in both their scope and duration, a new application should be given favorable consideration if submitted no earlier than one year from

the date of this Order, provided that Respondent meets the following conditions: (1) That she does not engage in any further misconduct, and (2) that she takes a certified Continuing Medical Education course on controlled substance handling and dispensing.

**Order**

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I order that the application of Sigrid Sanchez, M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective July 31, 2013

Dated: June 20, 2013.

**Michele M. Leonhart**,  
*Administrator.*

[FR Doc. 2013–15706 Filed 6–28–13; 8:45 am]

**BILLING CODE 4410–09–P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances;  
Notice of Application; Mylan  
Pharmaceuticals, Inc.**

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on March 8, 2013, Mylan Pharmaceuticals, Inc., 3711 Collins Ferry Road, Morgantown, West Virginia 26505, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100) .....	II
Lisdexamfetamine (1205) .....	II
Methylphenidate (1724) .....	II
Pentobarbital (2270) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Hydrocodone (9193) .....	II
Levorphanol (9220) .....	II
Morphine (9300) .....	II
Oxymorphone (9652) .....	II
Remifentanyl (9739) .....	II
Fentanyl (9801) .....	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company’s own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled

<sup>10</sup> Hanging over this matter is the dark cloud of evidence that Mercy was a pain clinic and that Respondent was seeing some 60 to 65 patients a day to whom she was prescribing such drugs as oxycodone 30mg and 15mg, muscle relaxants such as carisoprodol, and Xanax (alprazolam). However, evidence which creates only a suspicion of wrongdoing does not constitute substantial evidence. *See NLRB v. Columbian Enameling & Stamping Co., Inc.*, 306 U.S. 292, 299–300 (1939). I therefore do not rely on it.

substances listed in schedule 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 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than July 31, 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 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 18, 2013.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2013–15587 Filed 6–28–13; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Importer of Controlled Substances; Notice of Application; Akorn, Inc.

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on May 9, 2013, Akorn, Inc., 1222 W. Grand Avenue, Decatur, Illinois 62522, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Remifentanyl (9739), a basic class of controlled substance listed in schedule II.

The company plans to import Remifentanyl in bulk for use in dosage-form manufacturing.

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 or 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 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than July 31, 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 18, 2013.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2013–15600 Filed 6–28–13; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Importer of Controlled Substances, Notice of Application, Boehringer Ingelheim Chemicals

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on May 31, 2013, Boehringer Ingelheim Chemicals, 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to bulk manufacture amphetamine.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance listed in schedule 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 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than July 31, 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 substances in schedule 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 18, 2013.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2013–15602 Filed 6–28–13; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Importer of Controlled Substances; Notice Of Registration; Mallinckrodt, LLC.

By Notice dated February 8, 2013, and published in the **Federal Register** on February 21, 2013, 78 FR 12101, Mallinckrodt, LLC., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Phenylacetone (8501) .....	II
Coca Leaves (9040) .....	II
Opium, raw (9600) .....	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances for the manufacture of controlled substances in bulk for distribution to its customers.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate, 72 FR 3417 (2007). Regarding Phenylacetone (8501), a basic class of controlled substance, no comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and § 952(a), and determined that the registration of Mallinckrodt, LLC., to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Mallinckrodt, LLC., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and § 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: June 18, 2013.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013-15603 Filed 6-28-13; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Registration; Alkermes Gainesville, LLC**

By Notice dated January 16, 2013, and published in the **Federal Register** on January 29, 2013, 78 FR 6132, Alkermes Gainesville, LLC, 1300 Gould Drive, Gainesville, Georgia 30504, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Noroxymorphone (9668), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for analytical research and testing.

The import of the above listed basic class of controlled substance would be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Alkermes Gainesville, LLC, to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

DEA has investigated Alkermes Gainesville, LLC, to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: June 18, 2013.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013-15589 Filed 6-28-13; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Registration; Catalent CTS., Inc.**

By Notice dated April 10, 2013, and published in the **Federal Register** on April 19, 2013, 78 FR 23594, Catalent CTS., Inc., 10245 Hickman Mills Drive, Kansas City, Missouri 64137, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360) .....	I
Poppy Straw Concentrate (9670)	II

The company plans to import a finished pharmaceutical product containing cannabis extracts in dosage form, to package for a clinical trial study. In addition, the company also plans to import an ointment for the treatment of wounds, which contains trace amounts of the controlled substance normally found in poppy straw concentrate for packaging and labeling for clinical trials.

Comments and requests for any hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417(2007).

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Catalent CTS., Inc., to import the basic classes of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

DEA has investigated Catalent CTS., Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: June 18, 2013.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013-15588 Filed 6-28-13; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Registration; Lipomed**

By Notice dated April 16, 2013, and published in the **Federal Register** on April 23, 2013, 78 FR 23957, Lipomed, One Broadway, Cambridge, Massachusetts 02142, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
JWH-250 (6250) .....	I

Drug	Schedule
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-122 (7122)	I
AM-2201 (7201)	I
JWH-203 (7203)	I
2C-T-2 (7385)	I
JWH-398 (7398)	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
AM-694 (7694)	I

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Lipomed, to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Lipomed, to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: June 18, 2013.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013-15601 Filed 6-28-13; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Registration; Clinical Supplies Management, Inc.**

By Notice dated August 17, 2012, and published in the **Federal Register** on

August 20, 2012, 77 FR 50162, Clinical Supplies Management, Inc., 342 42nd Street South, Fargo, North Dakota 58103, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances:

Drug	Schedule
Methylphenidate (1724)	II
Sufentanil (9740)	II

The company plans to import the listed controlled substances for packaging, labeling, and distributing to customers which are qualified clinical sites, conducting FDA-approved clinical trials.

The import of the above listed basic classes of controlled substances would be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Clinical Supplies Management, Inc., to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Clinical Supplies Management, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: June 18, 2013.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013-15575 Filed 6-28-13; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Registration; SA INTL GMBH C/O., Sigma Aldrich Co., LLC**

By Notice dated March 20, 2013, and published in the **Federal Register** on March 28, 2013, 78 FR 19015, SA INTL GMBH C/O., Sigma Aldrich Co. LLC., 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010)	I
Methaqualone (2565)	I
Alpha-ethyltryptamine (7249)	I
lbogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	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
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxy-methamphetamine (MDMA) (7405)	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
N-Benzylpiperazine (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
Phencyclidine (7471)	II

Drug	Schedule
Cocaine (9041) .....	II
Codeine (9050) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Diphenoxylate (9170) .....	II
Ecgonine (9180) .....	II
Ethylmorphine (9190) .....	II
Hydrocodone (9193) .....	II
Levorphanol (9220) .....	II
Meperidine (9230) .....	II
Methadone (9250) .....	II
Morphine (9300) .....	II
Thebaine (9333) .....	II
Opium, powdered (9639) .....	II
Levo-alphaacetylmethadol (9648) ..	II
Oxymorphone (9652) .....	II
Fentanyl (9801) .....	II

The company plans to import the listed controlled substances for sale to research facilities for drug testing and analysis.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of SA INTL GMBH C/O., Sigma Aldrich Co. LLC., to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated SA INTL GMBH C/O., Sigma Aldrich Co. LLC., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: June 18, 2013.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013-15576 Filed 6-28-13; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application; Boehringer Ingelheim Chemicals, Inc.**

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 31, 2013,

Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805-9372, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug Schedule	Amphetamine (1100) II
Methylphenidate (1724) .....	II
Methadone (9250) .....	II
Methadone Intermediate (9254) ...	II
Tapentadol (9780) .....	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers for formulation into finished pharmaceuticals. In reference to Methadone Intermediate (9254) the company plans to produce Methadone HCL active pharmaceutical ingredients (APIs) for sale to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR § 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than August 30, 2013.

Dated: June 18, 2013.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013-15604 Filed 6-28-13; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application; Chemtos, LLC.**

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 21, 2013, Chemtos, LLC., 14101 W. Highway 290, Building 2000B, Austin, Texas 78737-9331, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100) .....	II

Drug	Schedule
Methamphetamine (1105) .....	II
Lisdexamfetamine (1205) .....	II
Methylphenidate (1724) .....	II
Nabilone (7379) .....	II
Phenylacetone (8501) .....	II
Cocaine (9041) .....	II
Codeine (9050) .....	II
Etorphine HCL (9059) .....	II
Dihydrocodeine (9120) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Ecgonine (9180) .....	II
Ethylmorphine (9190) .....	II
Hydrocodone (9193) .....	II
Levomethorphan (9210) .....	II
Levorphanol (9220) .....	II
Isomethadone (9226) .....	II
Meperidine (9230) .....	II
Meperidine-intermediate-A (9232) ..	II
Meperidine-intermediate-B (9233) ..	II
Meperidine-intermediate-C (9234) ..	II
Methadone (9250) .....	II
Methadone intermediate (9254) ...	II
Morphine (9300) .....	II
Thebaine (9333) .....	II
Dihydroetorphine (9334) .....	II
Levo-alphaacetylmethadol (9648) ..	II
Oxymorphone (9652) .....	II
Racemethorphan (9732) .....	II
Racemorphan (9733) .....	II

The company plans to manufacture small quantities of the listed controlled substances in bulk for distribution to its customers for use as reference standards.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than August 30, 2013.

Dated: June 18, 2013.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013-15572 Filed 6-28-13; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration; Patheon Pharmaceuticals, Inc.**

By Notice dated March 20, 2013, and published in the **Federal Register** on March 28, 2013, 78 FR 19016, Patheon

Pharmaceutical, Inc., 2110 E. Galbraith Road, Cincinnati, Ohio 45237, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Gamma Hydroxybutyric Acid (2010), a basic class of controlled substance listed in schedule I.

The company plans to manufacture the listed controlled substance for clinical trials and distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Patheon Pharmaceuticals, Inc., to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Patheon Pharmaceuticals, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: June 18, 2013.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2013-15563 Filed 6-28-13; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

[OMB Number 1110-NEW]

#### Agency Information Collection Activities: Proposed Collection, Comments Requested: Notice of Collection of Information Relative to Customer Service Satisfaction

**ACTION:** 30-day Notice.

The Department of Justice, Federal Bureau of Investigation (FBI), National Center for the Analysis of Violent Crime (NCAVC), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of 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 22332, 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 31, 2013. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Yvonne Muirhead, Federal Bureau of Investigation, NCAVC, Critical Incident Response Group, FBI Academy, 1 Range Road, Quantico, Virginia, 22135.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(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) 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 of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Customer satisfaction ratings regarding the quality and value of the FBI's NCAVC services.

(2) *The title of the form/collection:* FBI-NCAVC Satisfaction Survey.

(3) There is no agency form number applicable to this survey.

(4) The survey will be distributed to state, local and tribal law enforcement agencies to which the NCAVC has provided investigative assistance. The survey is being proposed as a means to assess the effectiveness and efficiency with which the NCAVC serves these agencies in the execution of their

missions. The survey will query respondents as to the agencies' satisfaction with NCAVC services, and concrete achievements which were furthered via NCAVC services.

(5) Time burden anticipated with this collection: It is estimated that 100 respondents per calendar year will be contacted to complete a survey consisting of 11 questions. An approximate non-response rate of 50% is anticipated. It is estimated that a burden of approximately three to five minutes, or .05 to .08 hours, will be cast upon each respondent to complete the survey, with a total estimate of five to 8.3 hours in a calendar year for all respondents combined, if all respondents complete a survey. If the expected non-response rate of 50% holds true, then the combined burden estimate drops to approximately 2.5 to 4.2 hours per calendar year. The NCAVC estimates little to no variability within this time estimate based upon individualized data retrieval systems, availability of requested data, and other variables, because this survey is intended to assess customer satisfaction rather than generate empirical data.

(6) *Methodology:* The survey will be distributed and collected electronically, via electronic mail communication.

*Contact:* If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: June 25, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, United States Department of Justice.*

[FR Doc. 2013-15566 Filed 6-28-13; 8:45 am]

**BILLING CODE 4410-02-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 13-070]

### NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting.

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This

Subcommittee reports to the Science Committee of the NAC. The Meeting will be held via Teleconference and WebEx for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Friday, July 19, 2013, 9:00 a.m. to 12:00 noon, local time.

**ADDRESSES:** This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number 800-857-7040, pass code PSS, to participate in this meeting by telephone. The WebEx link is <https://nasa.webex.com/>, meeting number 994 987 970, and password PSS@Jul19.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-4452, fax (202) or [mnorris@nasa.gov](mailto:mnorris@nasa.gov).

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting includes the following topics:

—Status of Budget and Programmatic Impacts on the Planetary Science Division

—Briefing from the Mars Exploration Program Regarding the Recommendations of the Mars 2020 Science Definition Team

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**Susan M. Burch,**

*Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2013-15677 Filed 6-28-13; 8:45 am]

**BILLING CODE 7510-13-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-608; NRC-2013-0053]

### SHINE Medical Technologies, Inc.

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice; acceptance for docketing.

**SUMMARY:** The NRC staff has determined that the partial application for a construction permit, submitted by SHINE Medical Technologies, Inc., is acceptable for docketing.

**ADDRESSES:** Please refer to Docket ID NRC-2013-0053 when contacting the NRC about the availability of information regarding this document. You may access information related to

this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0053. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The application is available in ADAMS under accession number ML130880226.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Steven Lynch, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001; telephone: 301-415-1524; email: [Steven.Lynch@nrc.gov](mailto:Steven.Lynch@nrc.gov).

**SUPPLEMENTARY INFORMATION:** On March 26, 2013, SHINE Medical Technologies (SHINE) filed with the U.S. Nuclear Regulatory Commission (NRC), pursuant to Section 103 of the Atomic Energy Act and part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), a portion of an application for a construction permit for a medical radioisotope production facility in Janesville, Wisconsin (SMT-2013-012, NRC's ADAMS Accession No. ML13088A192). A notice of receipt and availability of this application was previously published in the **Federal Register** (78 FR 29390) on May 20, 2013.

An exemption from certain requirements of 10 CFR 2.101(a)(5) granted by the Commission on March 20, 2013 (ADAMS Accession No. ML13072B195), in response to a letter from SHINE dated February 18, 2013 (ADAMS Accession No. ML13051A007), allowed for SHINE to submit its construction permit application in two parts. Specifically, the exemption allowed SHINE to submit a portion of its application for a construction permit up

to six months prior to the remainder of the application regardless of whether or not an environmental impact statement or a supplement to an environmental impact statement is prepared during the review of its application. The first part of SHINE's construction permit application consisted of the following information:

- The description and safety assessment of the site required by 10 CFR 50.34(a)(1)
- The environmental report required by 10 CFR 50.30(f)
- The filing fee information required by 10 CFR 50.30(e) and 10 CFR 170.21
- The general information required by 10 CFR 50.33
- The agreement limiting access to classified information required by 10 CFR 50.37

The NRC staff has determined that SHINE has submitted the information listed above in accordance with 10 CFR 2.101(a)(5), and that the partial application is acceptable for docketing. The docket number established for SHINE is 50-608.

The NRC staff will perform a detailed technical review of the partial construction permit application. Docketing of the partial construction permit application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The NRC staff will also perform an acceptance review of the second and final part of the construction permit application when it is tendered. As stated in SHINE's March 26, 2013, letter, the second and final part of SHINE's application for a construction permit will contain the remainder of the preliminary safety analysis report required by 10 CFR 50.34(a) and will be submitted in accordance with the requirements of 10 CFR 2.101(a)(5). If, after completion of the acceptance review of the full construction permit application, the full construction permit application is found acceptable for docketing, the Commission will conduct a hearing in accordance with Subpart L, "Informal Hearing Procedures for NRC Adjudications," of 10 CFR Part 2 and will receive a report on the construction permit application from the Advisory Committee on Reactor Safeguards consistent with 10 CFR 50.58, "Hearings and report of the Advisory Committee on Reactor Safeguards." The Commission will announce in a future **Federal Register** notice, the opportunity to petition for leave to intervene in the hearing required for this application by 10 CFR 50.58, as well as the time and

place of the hearing. If the Commission finds that the full construction permit application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue a construction permit, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the NRC staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Dated at Rockville, Maryland, this 25th day of June, 2013.

For the Nuclear Regulatory Commission.

**Alexander Adams, Jr.,**

*Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2013-15678 Filed 6-28-13; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-608; NRC-2013-0053]

### **SHINE Medical Technologies, Inc.**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Intent to prepare environmental impact statement and conduct scoping process; public meeting.

**SUMMARY:** This notice advises the public that the NRC intends to gather the information necessary to prepare an Environmental Impact Statement for construction and operation of the proposed SHINE radioisotope production facility.

**DATES:** Submit comments by August 30, 2013. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0053. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668;

email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Michelle Moser, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001; telephone: 301-415-6509; email: [Michelle.Moser@nrc.gov](mailto:Michelle.Moser@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Accessing Information and Submitting Comments**

###### *A. Accessing Information*

Please refer to Docket ID NRC-2013-0053 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0053.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ER is available in ADAMS under Accession Number ML130880226. In addition, the ER is available to the public near the site at the Hedberg Public Library, 316 South Main Street, Janesville, Wisconsin 53545.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

###### *B. Submitting Comments*

Please include Docket ID NRC-2013-0053 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

##### **II. Discussion**

SHINE Medical Technologies, Inc. (SHINE) has submitted a partial application for a construction permit to construct a radioisotope production facility. The proposed SHINE facility would be located approximately four miles south of Janesville, Wisconsin.

The first part of the application for the construction permit, dated March 26, 2013, was submitted pursuant to part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) and included an environmental report (ER). A separate notice of receipt and availability of this portion of the application was published in the **Federal Register** on May 20, 2013 (78 FR 29390). A notice of acceptance for docketing of the first part of the construction permit application is also being published separately in the **Federal Register**. The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) related to the review of the construction permit application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29.

As outlined in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," the NRC plans to coordinate compliance with

Section 106 of the National Historic Preservation Act (NHPA) in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA). Pursuant to 36 CFR 800.8(c), the NRC intends to use its process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth at 36 CFR 800.3 through 800.6.

This notice advises the public that the NRC intends to gather the information necessary to prepare an Environmental Impact Statement for construction and operation of the proposed SHINE radioisotope production facility. Possible alternatives to the proposed action (construction and operation of the proposed SHINE facility) include no action, alternative sites, and alternative technologies to produce radioisotopes. This notice is being published in accordance with NEPA and the NRC's regulations found at 10 CFR part 51.

The NRC will first conduct a scoping process for the EIS and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the EIS will be used to accomplish the following:

- a. Define the proposed action, which is to be the subject of the EIS;
- b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth;
- c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;
- d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of, the scope of the EIS being considered;
- e. Identify other environmental review and consultation requirements related to the proposed action;
- f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;
- g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation, and schedules for completing the EIS to the NRC and any cooperating agencies; and
- h. Describe how the EIS will be prepared and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

- a. The applicant, SHINE;

- b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

- c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;
- d. Any affected Indian tribe;
- e. Any person who requests or has requested an opportunity to participate in the scoping process; and

- f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the SHINE environmental review on July 17, 2013. The first meeting will begin with an open house from 12:30 p.m. until 1:30 p.m., followed by an NRC presentation and opportunity to hear public comments from 1:30 p.m. until 3:30 p.m., as necessary. The second meeting will begin with an open house from 6:00 p.m. until 7:00 p.m., followed by a repeat of NRC's earlier presentation and opportunity to hear public comments from 7:00 p.m. until 9:00 p.m., as necessary. Both sessions will be held at the Rotary Botanical Gardens, 1455 Palmer Dr., Janesville, Wisconsin 53545.

Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions during the open house one hour prior to the start of each session at the same location. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed in the ADDRESSES section of this notice.

Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting the NRC Environmental Project Manager, Michelle Moser, by telephone at 800-368-5642, ext. 6509, or by email at [Michelle.Moser@nrc.gov](mailto:Michelle.Moser@nrc.gov),

no later than July 3, 2013. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak if time permits. Public comments will be considered in the scoping process for the EIS. Michelle Moser will need to be contacted no later than July 10, 2013, if special equipment or accommodations are needed to attend or present information at the public meeting so that the NRC staff can determine whether the request can be accommodated.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting. The notice of acceptance for docketing of the application and a description of the hearing process will be published separately in the **Federal Register**.

Dated at Rockville, Maryland, this 24th day of June, 2013.

For the Nuclear Regulatory Commission.

**Melanie Wong,**

*Chief, Environmental Guidance and Review Branch, Division of License Renewal, Office of Nuclear Reactor Regulation.*

[FR Doc. 2013-15686 Filed 6-28-13; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* July 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202-268-3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 25, 2013, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 60 to Competitive Product List*. Documents are available at

*www.prc.gov*, Docket Nos. MC2013–54, CP2013–70.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2013–15649 Filed 6–28–13; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30567; File No. 812–14066]

### ACS Wireless, Inc.; Notice of Application

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice of application under section 3(b)(2) of the Investment Company Act of 1940 (“Act”).

*Summary of Application:* ACS Wireless, Inc. (“ACS Wireless”) seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. ACS Wireless is primarily engaged in providing wireless communications services.

*Applicant:* ACS Wireless, Inc.

**DATES:** *Filing Dates:* The application was filed on August 3, 2012, and amended on January 30, 2013, and June 24, 2013.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 18, 2013, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicant: 600 Telephone Avenue, Anchorage, AK 99503–6091.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

*Applicant’s Representations:*

1. ACS Wireless, an Alaska corporation, was incorporated on July 31, 1995 under the name MACTEL INC. Alaska Communications Systems Group, Inc. (“ACS Group”), an Anchorage, Alaska-based telecommunications company listed on the NASDAQ Stock Market, purchased MACTEL INC. in May 1999 and renamed it ACS Wireless, Inc. ACS Wireless has since operated as a wholly-owned subsidiary of ACS Group, held through ACS Group’s wholly-owned subsidiary Alaska Communications Systems Holdings, Inc. (“ACS Holdings”). ACS Wireless states that it is an Alaska-based telecommunications company that is primarily engaged in providing wireless communications services and is not presently an investment company as defined in section 3(a) of the Act.

2. On June 4, 2012, ACS Group, ACS Wireless, and General Communications, Inc. (“GCI”) and GCI Wireless Holdings, LLC (“GCI Wireless”) agreed to form a joint venture in which each would contribute substantially all the assets used in its wireless businesses (other than its retail wireless business) and certain related telecommunications transport assets to a newly formed limited liability company, The Alaska Wireless Network, LLC (“AWN”) (the “Transaction”). ACS Wireless will sell or license certain assets used primarily in ACS Group’s wireless activities and its related data transport business to GCI for \$100 million in cash. ACS Wireless will transfer to AWN all remaining tangible and intangible assets owned, leased or held by ACS Wireless or any of its affiliates used primarily in connection with the conduct of ACS Group’s wireless activities (other than its retail wireless business) and its related data transport business. Upon completion of the Transaction, ACS Wireless will become a member of AWN, and AWN will be owned 66⅔% by GCI Wireless and 33⅓% by ACS Wireless. Under the terms of the Transaction, AWN will be primarily engaged in providing wholesale wireless communications services to its members. The Transaction agreements contemplate that the Transaction will close no later than the third quarter of 2013.

3. Applicant submits that the Transaction will not change the fundamental nature of its business, which is providing wireless telecommunications services to consumers and businesses in Alaska. Under section 2(a)(9) of the Act, ACS Wireless will presumptively “control” AWN because it will own more than 25% of the company’s voting securities and will exercise a controlling influence over the management or policies of AWN through ACS Group’s position on the board of directors and through certain contractual rights that prevent AWN from taking significant actions without the approval of ACS Wireless.<sup>1</sup>

*Applicant’s Legal Analysis:*

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer’s total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines investment securities to include all securities except Government securities, securities issued by employees’ securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies and which are not excepted from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

2. At present, ACS Wireless is not an investment company as defined in section 3(a) of the Act because none of its total assets (other than U.S. government securities and cash items) on an unconsolidated basis, as of December 31, 2012, consist of investment securities. ACS Wireless states that as a result of the Transaction, however, it will in effect have converted the majority of its existing assets into assets that may constitute an investment security in a controlled, but not primarily controlled, entity. The book value of ACS Wireless’ interest in AWN is anticipated to constitute substantially more than 50% of its total unconsolidated assets, with the remaining portion consisting of its retail-related wireless assets as well as certain directly-owned assets. Applicant states that the assets to be contributed by ACS Wireless to AWN will cause the

<sup>1</sup> Section 2(a)(9) of the Act defines “control” as the power to exercise a controlling influence over the management or policies of a company, and creates a presumption that an owner of more than 25% of the outstanding voting securities of a company controls the company.

total percentage of investment securities held by ACS Wireless to increase to approximately 93.8% of ACS Wireless' total assets on an unconsolidated basis. Thus, as a result of the Transaction, ACS Wireless may be considered an investment company within the meaning of section 3(a)(1)(C) of the Act.

3. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C), the Commission may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities either directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. ACS Wireless requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.<sup>2</sup>

4. In determining whether a company is "primarily engaged" in a non-investment company business under section 3(b)(2), the Commission considers: (a) the company's historical development, (b) its public representations of policy, (c) the activities of its officers and directors, (d) the nature of its present assets, and (e) the sources of its present income.<sup>3</sup>

a. Historical Development. ACS Wireless states that it has been in the business of providing wireless telecommunications services since 1995, including providing facilities-based voice and data services to individual and business customers throughout Alaska, with roaming coverage available in the lower 48 states, Hawaii and Canada.

b. Public Representations of Policy. Applicant states that both ACS Wireless and its parent company, ACS Group, are part of a well-known communications company in Alaska and neither have ever portrayed themselves as anything other than a communications company. Through public statements, reports to shareholders, periodic filings with the Commission, public advertising and information contained on ACS Group's Web site, ACS Wireless and ACS Group have invariably represented that ACS Wireless is primarily engaged in the business of telecommunications services.

c. Activities of Officers and Directors. ACS Wireless states that the board of directors (the "Directors") and executive

officers (the "Officers") of ACS Wireless are primarily engaged in managing ACS Wireless' cellular telephone business and that of its affiliates. The CFO and the Vice President of Finance of ACS Wireless spend less than 10% and 5% of their time, respectively, managing cash and cash equivalents at the holding company level.<sup>4</sup> Officers and Directors of ACS Wireless other than the CFO and the Vice President of Finance spend less than 5% of their time addressing such matters. Neither the Directors nor the Officers otherwise dedicate any time to investing, reinvesting, owning, holding or trading in investment securities.

d. Nature of Assets. Applicant states that, as of December 31, 2012, ACS Wireless' directly-owned assets included: (i) \$20.7 million of current assets including cash, accounts receivable, material, supplies, prepayment and other current assets ("Current Assets"), and (ii) \$74.2 million of property and plant and equipment ("PP&E").<sup>5</sup> Applicant states that many of the assets categorized as Current Assets will remain with ACS Wireless after the Transaction and will not be contributed to AWN, as they are primarily related to ACS Wireless' retail wireless business. Certain receivables, PP&E, and certain Contributed Affiliate Assets<sup>6</sup> will be contributed to AWN. Applicant represents that following the Transaction, a majority of ACS Wireless' assets will be comprised of its interest in AWN, which will be a controlled company engaged in the wireless communications industry. Applicant states that, on a pro forma basis post-Transaction, its assets will consist of approximately 6.2% of directly-owned assets and approximately 93.8% of controlled company assets on an unconsolidated basis.<sup>7</sup>

e. Sources of Income. ACS Wireless states that it derives all of its income from its wireless businesses. For accounting purposes ACS Wireless is not a separate financial reporting segment of ACS Group and therefore ACS Group does not track ACS Wireless' expenses separately, although it does track ACS Wireless' revenue for business purposes. As noted in the

<sup>4</sup> Treasury functions related to the assets of ACS Wireless including the managing and holding of cash and cash equivalents are performed at the holding company level by ACS Holdings.

<sup>5</sup> PP&E includes cell towers, leases, electronic equipment, and other similar assets.

<sup>6</sup> ACS Group will cause certain of its other subsidiaries to transfer wireless spectrum licenses and certain network usage rights assets to ACS Wireless immediately prior to the Transaction (collectively "Contributed Affiliate Assets").

<sup>7</sup> Applicant states that the valuations have been determined in accordance with section 2(a)(41) of the Act.

application, all of ACS Wireless' revenue, as of December 31, 2012, is attributable to the directly-owned assets of its wireless telecommunications business. Dividends, interest and gains, and losses on sales of securities currently constitute no portion of the ACS Wireless' revenue. Applicant states that post-Transaction, on a pro forma basis, for the twelve months ended December 31, 2012, its revenue was \$160,721,000 of which 51.6% would be attributable to directly-owned assets and 48.4% would be attributable to controlled companies.<sup>8</sup> Applicant also states that it will receive distributions from AWN following the Transaction which will include a preferred distribution for the first four years, intended to present a stable cash flow to ACS Wireless, and thereafter will be one-third of AWN's distributions. Distributions from AWN and revenue from operations conducted directly by ACS Wireless are anticipated to be ACS Wireless' only sources of revenue following the Transaction.

5. ACS Wireless thus states that it meets the factors that the Commission considers in determining whether an issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M O'Neill,  
Deputy Secretary.

[FR Doc. 2013-15658 Filed 6-28-13; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69848; File No. SR-Phlx-2013-69]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish an Acceptable Trade Range for Orders and Quotes on PHLX XL

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

<sup>8</sup> Applicant states that this figure represents revenue related to assets to be contributed by ACS Wireless to AWN. This figure does not include revenue related to assets to be contributed to AWN by GCI, as that revenue information is not yet available. Thus, this revenue figure also does not represent the ultimate revenue ACS Wireless will record, which will be applicant's one-third share of AWN's combined net income.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>2</sup> ACS Group's counsel has advised ACS Group that neither it nor ACS Holdings should be deemed an investment company if the requested order is granted to ACS Wireless.

<sup>3</sup> See Tonopah Mining Company of Nevada, 26 SEC 426, 427 (1947).

notice is hereby given that on June 18, 2013, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish an Acceptable Trade Range for orders and quotes on PHLX XL. The Acceptable Trade Range functionality is intended to dampen volatility when necessary in rare cases of unusual market conditions by allowing orders to execute within a succession of price-range steps. At the end of each price-range step, the process allows the market a brief time-period to refresh itself before moving on with the execution process, as described further below. Similar mechanisms operate on other options exchanges.

The text of the proposed rule change is below; proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

#### Rule 1080 Phlx XL and Phlx XL II

\* \* \* \* \*

(p) Acceptable Trade Range.

(A) *After the opening, the System will calculate an Acceptable Trade Range to limit the range of prices at which an order or quote (except an All-or-none order) will be allowed to execute. The Acceptable Trade Range is calculated by taking the Reference Price, plus or minus a value to be determined by the Exchange. (i.e., the Reference Price—(x) for sell orders/quotes and the Reference Price + (x) for buy orders/quotes). Upon receipt of a new order/quote, the Reference Price is the National Best Bid (“NBB”) for sell orders and the National Best Offer (“NBO”) for buy orders/quotes or the last price at which the order/quote is posted whichever is higher for a buy order/quote or lower for a sell order/quote.*

(B) *If an order/quote reaches the outer limit of the Acceptable Trade Range (the “Threshold Price”) without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second (“Posting Period”), to allow more liquidity to be collected, unless a Quote Exhaust has occurred, in*

*which case the Quote Exhaust process in Rule 1082(a)(ii)(B)(3) will ensue, triggering a new Reference Price. Upon posting, either the current Threshold Price of the order or an updated NBB for buy orders or the NBO for sell orders (whichever is higher for a buy order/ lower for a sell order) then becomes the Reference Price for calculating a new Acceptable Trade Range. If the order/quote remains unexecuted, a New Acceptable Trade Range will be calculated and the order/quote will execute, route, or post up to the new Acceptable Trade Range Threshold Price, unless a member organization has requested that their orders be returned if posted at the outer limit of the Acceptable Trade Range (in which case, the order will be returned). This process will repeat until either i) the order/quote is executed, cancelled, or posted at its limit price or ii) the order has been subject to a configurable number of instances of the Acceptable Trade Range as determined by the Exchange (in which case it will be returned).*

(C) *During the Posting Period, the Exchange will disseminate as a quotation: (i) the Threshold Price for the remaining size of the order triggering the Acceptable Trade Range and (ii) on the opposite side of the market, the best price will be displayed using the “non-firm” indicator message in accordance with the specifications of the network processor. Following the Posting Period, the Exchange will return to a normal trading state and disseminate its best bid and offer.*

\* \* \* \* \*

#### Rule 1082 Firm Quotations

(a)(i)–(ii)(B)(3)(g)(v) No change.

(vi) If, after trading at the Phlx and/ or routing, there is a remainder of the initiating order, and such remainder is still marketable, the entire process of evaluating the Best Phlx price and the ABBO will be repeated until: (A) the order size is exhausted, or (B) the order reaches its limit price. If there still remain unexecuted contracts after routing but the order has reached its limit price, the remainder will be posted at the order’s limit price, except that, when the limit price crosses the Acceptable Range Price, the remainder will be posted at the Acceptable Range Price for a period of time not to exceed ten seconds [and then cancelled after such period of time has elapsed, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be

automatically submitted as a new order]. During this up to ten second period, the Phlx XL II system will disseminate on the opposite side of the market from remaining unexecuted contracts: (i) a non-firm bid for the price and size of the next available bid(s) on the Exchange if the remaining size is a seller, or (ii) a non-firm offer for the price and size of the next available offer(s) on the Exchange if the remaining size is a buyer. *After such time period, the Acceptable Range Price becomes the Reference Price and Acceptable Trade Range (pursuant to Rule 1080(p)) is applied to the remaining size of the order.*

(4) No change.

(C) No change.

(iii)–(iv) No change.

(b)–(d) No change.

Commentary:

.01—.03 No change.

\* \* \* \* \*

### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

PHLX is proposing to adopt a mechanism that will prevent the PHLX trading System, Phlx XL, (“System”) from experiencing dramatic price swings. This circumstance can exist if, for example, a market order or aggressively priced limit order/quote is entered that is larger than the total volume of contracts quoted at the top-of-book across all U.S. options exchanges. Currently, without any protections in place, this could result in options executing at prices that have little or no relation to the theoretical price of the option.

For example, in a thinly traded option:

Away Exchange Quotes:

Exchange	Bid size	Bid price	Offer price	Offer size
NOM .....	10	\$1.00	\$1.05	10
NYSE Arca .....	10	1.00	1.05	10
NYSE MKT .....	10	1.00	1.10	10
BOX .....	10	1.00	1.15	10

## PHLX Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
PHLX orders .....	10	\$1.00	\$1.05	10
PHLX orders .....	.....	.....	1.10	10
PHLX orders .....	.....	.....	1.40	10
PHLX orders .....	.....	.....	5.00	10

If PHLX receives a routable market order to buy 80 contracts, the System will respond as described below:

- 10 contracts will be executed at \$1.05 against NOM
- 10 contracts will be executed at \$1.05 against PHLX
- 10 contracts will be executed at \$1.05 against NYSE Arca
- 10 contracts will be executed at \$1.10 against PHLX
- 10 contracts will be executed at \$1.10 against NYSE MKT
- 10 contracts will be executed at \$1.15 against BOX

After these executions, there are no other known valid away exchange quotes. The National Best Bid/Offer (“NBBO”) is therefore comprised of the remaining interest on the PHLX book, specifically 10 contracts at \$1.40 and 10 contracts at \$5.00. In the absence of an Acceptable Trade Range mechanism, the order would execute against the remaining interest at \$1.40 and \$5.00, resulting in potential harm to investors.

To bolster the normal resilience and market behavior that persistently produces robust reference prices, PHLX is proposing to create a level of protection that prevents the market from moving beyond set thresholds. The thresholds consist of a Reference Price plus (minus) set dollar amounts based on the nature of the option and the premium of the option. PHLX is not introducing a new concept. In fact, the NASDAQ Options Market and NASDAQ OMX BX, Inc.’s options market have an Acceptable Trade Range feature.<sup>3</sup>

**System Operation.** The proposed Acceptable Trade Range would work as follows: prior to executing orders received by PHLX, an Acceptable Trade Range is calculated to determine the range of prices at which orders may be executed.<sup>4</sup> When an order is initially

received, the threshold is calculated by adding (for buy orders) or subtracting (for sell orders) a value,<sup>5</sup> as discussed below, to the National Best Offer for buy orders or the National Best Bid for sell orders to determine the range of prices that are valid for execution. A buy (sell) order will be allowed to execute up (down) to and including the maximum (minimum) price within the Acceptable Trade Range.

If an order reaches the outer limit of the Acceptable Trade Range (the “Threshold Price”) without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second (“Posting Period”), to allow the market to refresh and to determine whether or not more liquidity will become available (on PHLX or any other exchange if the order is designated as routable), unless a Quote Exhaust has occurred, in which case the Quote Exhaust process in Rule 1082(a)(ii)(B)(3) will ensue,<sup>6</sup> triggering a new Reference Price.

Upon posting, either the current Threshold Price of the order or an updated NBB for buy orders or the NBO for sell orders (whichever is higher for a buy order/lower for a sell order) then becomes the Reference Price for calculating a new Acceptable Trade Range. If the order remains unexecuted, a new Acceptable Trade Range will be calculated and the order will execute,

<sup>3</sup> 1066(c)(4). The Exchange has determined that it would be difficult, from a technical standpoint, to apply this feature to those orders because their particular contingency makes it difficult to automate their handling. All-or-none orders are often treated differently than other orders. See Options Floor Procedure Advice A–9.

<sup>5</sup> The value that is to be added to/subtracted from the Reference Price will be set by PHLX and posted on its Web site: <http://www.nasdaqtrader.com>.

<sup>6</sup> The Quote Exhaust process occurs when the Exchange’s disseminated market at a particular price level includes a quote, and such market is exhausted by an inbound contra-side quote or order, and following such exhaustion, contracts remain to be executed from such quote or order through the initial execution price.

route, or post up to the new Acceptable Trade Range Threshold Price, unless a member organization has requested that their orders be returned if posted at the outer limit of the Acceptable Trade Range (in which case, the order will be returned). This process will repeat until either (i) the order/quote is executed, cancelled, or posted at its limit price or (ii) the order/quote has been subject to a configurable number of instances of the Acceptable Trade Range as determined by the Exchange.<sup>7</sup> Once the maximum number of instances has been reached, the order is returned.

During the Posting Period, any eligible contra-side interest that is received can trade. If, however a more aggressively-priced same side order is received during the Posting Period, the Posting Period ends, because there is no need to wait for the market to refresh and attract interest to the original order. Such new same side order indicates that the market is moving in that direction so the original order will trade at the current Acceptable Trade Range, with the Acceptable Trade Range recalculated for both orders.

During the Posting Period, PHLX will disseminate the Threshold Price on one side of the market and the best available price on the opposite side of the market using a “non-firm” indicator.<sup>8</sup> This allows the order setting the Acceptable Trade Range Threshold Price to retain priority in the PHLX book and also prevents any later-entered order from accessing liquidity ahead of it. If PHLX were to display trading interest available on the opposite side of the

<sup>7</sup> Member organizations can request that the Acceptable Trade Range not apply to their orders, in which case, the order would be cancelled back to the member organization.

<sup>8</sup> Non-firm quote indication values are described on page 18 of the specifications disseminated by the Options Price Regulatory Authority (“OPRA”). See [http://www.opradata.com/specs/participant\\_interface\\_specification.pdf](http://www.opradata.com/specs/participant_interface_specification.pdf). This will be disseminated both to OPRA and over the Exchange’s own data feeds.

<sup>3</sup> See NOM Rules, Chapter VI, Section 10(7) and BX Options Rules, Chapter VI, Section 10(7).

<sup>4</sup> The Acceptable Trade Range will not be available for All-or-none orders, as defined in Rule

market, that trading interest would be automatically accessible to later-entered orders during the period when the order triggering the Acceptable Trade Range is paused. Following the Posting Period, the Exchange will return to a normal trading state and disseminate its best bid and offer.

PHLX believes that disseminating a non-firm quotation message as described above is consistent with its obligations under the SEC Quote Rule.<sup>9</sup> The fact that PHLX is experiencing volatility that is strong enough to trigger the Acceptable Trade Range mechanism qualifies as an unusual market condition. PHLX expects such situations

to be rare, and, as described below, PHLX will set the parameters of the mechanism at levels that will ensure that it is triggered quite infrequently. In addition, the Acceptable Trade Range mechanism will cause the market to pause for no more than one second, the same pause that currently exists on NOM and BX Options. Importantly, the brief pause only occurs after the Exchange has already executed transactions—potentially at multiple price levels—rather than pausing before executing any transactions in the hopes of attracting initial liquidity.

Importantly, the Acceptable Trade Range is neutral with respect to away

markets. Consistent with the routing provisions in Rule 1080(m), an order may route to other destinations to access liquidity priced within the Acceptable Trade Range provided the order is designated as routable. If the order still remains unexecuted, this process will repeat<sup>10</sup> until the order is executed, cancelled, or posted at its limit price, consistent with PHLX routing rules.<sup>11</sup>

For example, assume that the Acceptable Trade Range is set for \$0.05 and the following quotations are posted in all markets:

Away Exchange Quotes:

Exchange	Bid size	Bid price	Offer price	Offer size
ISE .....	10	\$0.75	\$0.90	10
NYSE MKT .....	10	0.75	0.92	10
NOM .....	10	0.75	0.94	10

PHLX Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
PHLX orders .....	10	\$0.75	\$0.90	10
PHLX order .....			0.95	10
PHLX order .....			0.97	10
PHLX order .....			1.00	20

PHLX receives a routable order to buy 70 contracts at \$1.10. The Acceptable Trade Range is \$0.05 and the Reference Price is the National Best Offer—\$0.90. The Threshold Price is then \$0.90 + \$0.05 = \$0.95. The order is allowed to execute up to and including \$0.95. The System then pauses for a brief period not to exceed one second (the Posting Period) to allow the market (including other exchanges) to refresh and to determine whether additional liquidity will become available within the order's posted price. If additional liquidity becomes available on PHLX or any away market, that liquidity will be accessed and executed.

- 10 contracts will be executed at \$0.90 against PHLX
- 10 contracts will be executed at \$0.90 against ISE
- 10 contracts will be executed at \$0.92 against NYSE MKT
- 10 contracts will be executed at \$0.94 against NOM
- 10 contracts will be executed at \$0.95 against PHLX
- Then, after executing at multiple price levels, the order is posted at \$0.95 for a brief period not to exceed one second to determine whether additional liquidity will become available.
- A new Acceptable Trade Range Threshold Price of \$1.00 is

determined (new Reference Price of \$0.95 + \$0.05 = \$1.00)  
 —If, during the Posting Period, no liquidity becomes available within the order's posted price of \$0.95, the System will then execute 10 contracts at \$0.97, and 10 contracts at \$1.00<sup>12</sup>

Similarly, if a new order is received when a previous order has reached the Acceptable Trade Range threshold, the Threshold Price will be used as the Reference Price for the new Acceptable Trade Range threshold. Both orders would then be allowed to execute up (down) to the new Threshold Price.

For example:  
 Away Exchange Quotes:

Exchange	Bid size	Bid price	Offer price	Offer size
ISE .....	10	\$0.75	\$0.90	10
NYSE MKT .....	10	0.75	0.92	10
NOM .....	10	0.75	0.94	10

<sup>9</sup> 17 CFR 242.602.

<sup>10</sup> PHLX will establish a maximum number of Acceptable Trade Range iterations, until the order is cancelled.

<sup>11</sup> See PHLX Rule 1080(m). If after an order is routed to the full size of an away exchange and additional size remains available, the remaining contracts will be posted on PHLX at a price that assumes the away market has executed the routed

order. This practice of routing and then posting is consistent with the national market system plan governing trading and routing of options orders and the PHLX policies and procedures that implement that plan. See Options Order Protection and Locked/Crossed Markets Plan; Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009); NOM Rules Chapter VI, Section 7(b)(3)(C).

<sup>12</sup> The brief pause described above will not disadvantage customers seeking the best price in any market. For example, if in the example above an NYSE ARCA quote of \$0.75 × \$0.96 with size of 10 × 10 is received, a routable order would first route to NYSE ARCA at \$0.96, then execute against PHLX at \$0.97.

PHLX Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
PHLX orders .....	10	\$0.75	\$0.90	10
PHLX order .....	.....	.....	0.95	10
PHLX order .....	.....	.....	1.05	20

—PHLX receives a routable order to buy 60 contracts at \$1.10. The Acceptable Trade Range is \$0.05 and the Reference Price is the National Best Offer—\$0.90. The Acceptable Trade Range threshold is then \$0.90 + \$0.05 = \$0.95. The order is allowed to execute up to and including \$0.95.

—10 contracts will be executed at \$0.90 against PHLX

—10 contracts will be executed at \$0.90 against ISE

—10 contracts will be executed at \$0.92 against NYSE MKT

—10 contracts will be executed at \$0.94 against NOM

—10 contracts will be executed at \$0.95 against PHLX

—Then, after executing at multiple price levels, the order is posted at \$0.95 for

a brief period not to exceed one second to determine whether additional liquidity will become available.

—A new Acceptable Trade Range Threshold Price of \$1.00 is determined (new Reference Price of \$0.95 + \$0.05 = \$1.00)

—If, during the brief period not to exceed one second, a second order is received to buy 10 contracts at \$1.25, the two orders would then post at the new Acceptable Trade Range Threshold price of \$1.00 for a brief period not to exceed one second to determine whether additional liquidity will become available.

—A new Acceptable Trade Range threshold of \$1.05 will be calculated.

—If no additional liquidity becomes available within the posted price of the orders (\$1.00) during the brief period not to exceed one second, the orders would execute 10 contracts each against the order on the PHLX book at \$1.05

In addition, an order/quote which triggers a Quote Exhaust process, as explained above, will also be protected by the Acceptable Trade Range. When an order/quote triggers Quote Exhaust, the price at which the order/quote is posted becomes the Reference Price and the order/quote would then be allowed to execute up (down) to the new Threshold Price.

For example:  
Away Exchange Quotes:

Exchange	Bid size	Bid price	Offer price	Offer size
ISE .....	10	\$0.75	\$0.90	10
NYSE MKT .....	10	0.75	0.98	10
NOM .....	10	0.75	0.98	10

PHLX Price Levels:

Exchange	Bid size	Bid price	Offer price	Offer size
PHLX MM Quote .....	10	\$0.75	\$0.92	10
PHLX order .....	.....	.....	0.99	20

—PHLX receives a routable order to buy 60 contracts at \$1.10. The Acceptable Trade Range is \$0.05 and the Reference Price is the National Best Offer—\$0.90. The Acceptable Trade Range threshold is then \$0.90 + \$0.05 = \$0.95. The order is allowed to execute up to and including \$0.95.

—10 contracts will be executed at \$0.90 against ISE

—10 contracts will be executed at \$0.92 against PHLX MM Quote, triggering Quote Exhaust. At the end of the Quote Exhaust Timer, based on the Quote Exhaust Acceptable Range table, the order will be posted at a price of \$0.97 (assuming a \$0.05 Acceptable Range). The Acceptable Trade Range threshold becomes \$0.97 + \$0.05 = \$1.02. The order is allowed to execute up to and including \$1.02.

—10 contracts will be executed at \$0.98 against NYSE Amex

—10 contracts will be executed at \$0.98 against NOM

—20 contracts will be executed at \$0.99 against PHLX

The Exchange is also proposing to amend Rule 1082, Firm Quotations to address that the Quote Exhaust process will culminate with the application of the Acceptable Trade Range under proposed Rule 1080(p), rather than either cancelling or re-entering the remaining size of the order. Specifically, the Exchange proposes to amend Rule 1082(a)(ii)(B)(3)(g)(vi) to provide that the Acceptable Range Price becomes the Reference Price and the Acceptable Trade Range (pursuant to Rule 1080(p)) is applied to the remaining size of the order. This would occur after the brief time period (of no more than ten seconds) when the order is posted at the Acceptable Range Price, which is part of the Quote Exhaust process. Because the Acceptable Trade Range, under this proposal, will now protect the remainder of the order, the Exchange

does not believe that it needs to cancel the order or offer the alternative that member organizations provide instructions if they would prefer the remainder to be re-entered. The Exchange is not otherwise changing the Quote Exhaust process.

*Setting Acceptable Trade Range Values.* The options premium will be the dominant factor in determining the Acceptable Trade Range. Generally, options with lower premiums tend to be more liquid and have tighter bid/ask spreads; options with higher premiums have wider spreads and less liquidity. Accordingly, a table consisting of several steps based on the premium of the option will be used to determine how far the market for a given option will be allowed to move. This table or tables would be listed on the NASDAQTrader.com Web site and any periodic updates to the table would be announced via an Options Trader Alert.

For example, looking at some SPY May 2013 Call options on May 1st of 2013:

Bid/Offer of SPY May 160 Call (at or near-the-money): \$1.23 × \$1.24 (several hundred contracts on bid and offer)

Bid/Offer of SPY May 105 Call (deep in-the-money): \$54.10 × \$54.26 (11 contracts on each side)

The deep in-the-money calls (May 105 calls) have a wider spread (\$54.10 – \$54.26 = \$0.16) compared to a spread of \$0.01 for the at-the-money calls (May 160 calls). Therefore, it is appropriate to have different thresholds for the two options. For instance, it may make sense to have a \$0.05 threshold for the at-the-money strikes (Premium < \$2) and a \$0.50 threshold for the deep in-the-money strikes (Premium > \$10).

To consider another example, the May 2013 ORCL put options on May 1st of 2013:

Bid/Offer of ORCL 33 May Put (at or near-the-money): \$0.33 × \$0.34 (100 × 500)

Bid/Offer of ORCL 44 May Put (deep in-the-money): \$10.40 × \$10.55 (50 × 200)

Even though ORCL has a much lower share price than SPY, and is a different type of security (it is a common stock of a technology company whereas SPY is an ETF based on the S&P 500 Index), the pattern is the same. The option with the lower premium has a very narrow spread of \$0.01 with significant size displayed whereas the higher premium option has a wide spread (\$0.15) and less size displayed.

The Acceptable Trade Range settings will be tied to the option premium. However, other factors will be considered when determining the exact settings. For example, Acceptable Ranges may change if market-wide volatility is as high as it was during the financial crisis in 2008 and 2009, or if overall liquidity is low based on historical trends. These different market conditions may present the need to adjust the threshold amounts from time to time to ensure a well-functioning market. Without adjustments, the market may become too constrained or conversely, prone to wide price swings. As stated above, the Exchange would publish the Acceptable Trade Range table or tables on the NASDAQTrader.com Web site. The Exchange does not foresee updating the table(s) often or intraday, although the exchange may determine to do so in extreme circumstances. The Exchange will provide sufficient advanced notice of changes to the Acceptable Trade

Range table, generally the prior day, to its membership via Options Trader Alerts.

The Acceptable Trade Range settings would generally be the same across all options traded on PHLX, although PHLX proposes to maintain flexibility to set them separately based on characteristics of the underlying security. For instance, Google is a stock with a high share price (\$824.57 closing price on April 30th). Google options therefore may require special settings due to the risk involved in actively quoting options on such a high-priced stock. Option spreads on Google are wider and the size available at the best bid and offer is smaller. Google could potentially need a wider threshold setting compared to other lower-priced stocks. There are other options that fit into this category (e.g. AAPL) which makes it necessary to have threshold settings that have flexibility based on the underlying security. Additionally, it is generally observed that options subject to the Penny Pilot program quote with tighter spreads than options not subject to the Penny Pilot. Currently, PHLX expects to set Acceptable Trade Ranges for three categories of options: Standard Penny Pilot, Special Penny Pilot (IWM, QQQQ, SPY), and Non-Penny Pilot.<sup>13</sup>

## 2. Statutory Basis

PHLX believes the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>14</sup> in general and with Section 6(b)(5) of the Act,<sup>15</sup> in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is consistent with these requirements in that it will reduce the negative impacts of sudden, unanticipated volatility in individual PHLX options, and serve to preserve an orderly market in a transparent and uniform manner, enhance the price-

discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors. Specifically, the Exchange believes that the NBBO is a fair representation of then-available prices and accordingly the proposal helps to avoid executions at prices that are significantly worse than the NBBO. Also, this proposal is consistent with existing rules that allow, when the underlying security is subject to a “Limit State” or “Straddle State,” as defined in the Limit Up-Limit Down Plan, for the breaking of options trades meeting the definition of an obvious error as well as rejecting market orders.<sup>16</sup>

## B. Self-Regulatory Organization’s Statement on Burden on Competition

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to the orders and quotes of all Options Participants. Nor will the proposal impose a burden on competition among the options exchanges, because of the vigorous competition for order flow among the options exchanges. PHLX competes with many other options exchanges, all of which offer electronic trading of options and certain routing services. In this highly competitive market, market participants can easily and readily direct order flow to competing venues.

## C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6)<sup>18</sup> thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the

<sup>13</sup> The Acceptable Range Test in Rule 1082(a)(ii)(B)(3)(f) currently provides for this flexibility, in addition to the comparable provisions in NOM and BX Options rules. See NOM Rules, Chapter VI, Section 10(7) and BX Options Rules, Chapter VI, Section 10(7).

<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> See PHLX Rule 1047(f).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

protection of investors and the public interest.<sup>19</sup>

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.<sup>20</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-69 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2013-69. 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.,

<sup>19</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(C).

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2013-69 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-15616 Filed 6-28-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69850; File No. SR-NYSEArca-2013-62]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in Which Its Indirect Parent, NYSE Euronext, Will Become a Wholly Owned Subsidiary of IntercontinentalExchange Group, Inc.

June 25, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act" or the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 14, 2013, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

##### A. Overview of the Proposed Merger

NYSE Arca, a Delaware corporation, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the "Proposed Rule Change") to the U.S. Securities and Exchange Commission in

connection with the proposed business combination (the "Merger") of NYSE Euronext ("NYSE Euronext") and IntercontinentalExchange, Inc. ("ICE"), both Delaware corporations. NYSE Euronext has entered into an Agreement and Plan of Merger, dated as of December 20, 2012, as amended and restated as of March 19, 2013, by and among NYSE Euronext, ICE, IntercontinentalExchange Group, Inc. ("ICE Group"), Braves Merger Sub, Inc. ("ICE Merger Sub") and Baseball Merger Sub, LLC ("NYSE Euronext Merger Sub") (as it may be further amended from time to time, the "Merger Agreement"), whereby NYSE Euronext and ICE would each become subsidiaries of ICE Group.

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation ("NYSE Group"), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the "NYSE Exchanges")—the New York Stock Exchange, LLC (the "Exchange"), NYSE Arca and NYSE MKT LLC ("NYSE MKT")—and (2) 100% of the equity interest of NYSE Market (DE), Inc. ("NYSE Market"), NYSE Regulation, Inc. ("NYSE Regulation"), NYSE Arca L.L.C., NYSE Arca Equities, Inc. ("NYSE Arca Equities") and NYSE Amex Options LLC ("NYSE Amex Options") (the NYSE Exchanges, together with (x) NYSE Market, NYSE Regulation, NYSE Arca L.L.C., NYSE Arca Equities and NYSE Amex Options and (y) any similar U.S. regulated entity acquired, owned or created after the date hereof, the "U.S. Regulated Subsidiaries" and each, a "U.S. Regulated Subsidiary"). Each of the Exchange and NYSE MKT will be separately filing a proposed rule change in connection with the Merger that will be substantially the same as the Proposed Rule Change.

ICE is a leading operator of regulated exchanges and clearing houses serving the risk management needs of global markets for agricultural, credit, currency, emissions, energy and equity index products. ICE directly and indirectly owns ICE Futures Europe, ICE Futures U.S., Inc., ICE Futures Canada, Inc., ICE U.S. OTC Commodity Markets, LLC, and five central counterparty clearing houses, including ICE Clear Europe Limited and ICE Clear Credit LLC, each of which is registered as a clearing agency under Section 17A of the Exchange Act,<sup>4</sup> ICE Clear U.S., Inc., ICE Clear Canada, Inc., and The Clearing Corporation, and owns 100% of the

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78qA [sic].

equity in Creditex Group Inc., which in turn indirectly owns Creditex Securities Corporation. Neither ICE nor any company owned by it directly or indirectly, including, but not limited to, those referenced in this paragraph, is a registered national securities exchange or a member of any U.S. Regulated Subsidiary.

ICE's common stock is listed on the Exchange under the symbol "ICE," and, following the completion of the Merger, ICE Group common stock is expected to be listed for trading on the Exchange under the same symbol.

#### B. Summary of Proposed Rule Change

NYSE Arca is proposing that, pursuant to the Merger, the successor to NYSE Euronext, the Exchange's indirect parent, will be a wholly owned subsidiary of ICE Group. ICE Group is currently a wholly owned subsidiary of ICE. ICE Group in turn has two wholly owned subsidiaries, ICE Merger Sub, a Delaware corporation, and NYSE Euronext Merger Sub, a Delaware limited liability company. To effect this transaction, (A) ICE Merger Sub will be merged with and into ICE (the "ICE Merger"), with ICE as the surviving corporation and a wholly owned subsidiary of ICE Group, and each share of ICE common stock owned by an ICE stockholder (other than ICE or ICE Merger Sub) will be converted into the right to receive one share of ICE Group common stock, and (B) immediately following the ICE Merger, NYSE Euronext shall be merged with and into NYSE Euronext Merger Sub, with NYSE Euronext Merger Sub as the surviving company and a wholly owned subsidiary of ICE Group (the "NYSE Euronext Merger" and, together with the ICE Merger, the "Merger"). Each issued and outstanding share of NYSE Euronext common stock will be converted into the right to receive the "standard election amount" of 0.1703 of a share of ICE Group common stock and \$11.27 in cash, other than certain shares held by NYSE Euronext, ICE and their respective affiliates. Alternatively, NYSE Euronext stockholders will have the right to make either a cash election to receive \$33.12 in cash, or a stock election to receive 0.2581 of a share of ICE Group common stock, for each share of NYSE Euronext. NYSE Euronext Merger Sub, as the surviving entity in the NYSE Euronext Merger, will change its name to NYSE Euronext Holdings LLC ("NYX Holdings") from and after the closing of the Merger.

If the Merger is completed, the businesses of ICE and NYSE Euronext, including the U.S. Regulated Subsidiaries, will be held under ICE

Group as a single publicly traded holding company that will be listed on the Exchange. The Proposed Rule Change, if approved by the Commission, will not be effective until the consummation of the Merger.

In addition, NYSE Arca is proposing that, in connection with the Merger, the Commission approve the organizational and other governance documents of ICE Group and NYX Holdings, as well as certain amendments to the organizational and other governance documents of NYSE Group and certain of the U.S. Regulated Subsidiaries, as well as certain rules of the Exchange, NYSE MKT and NYSE Arca Equities.<sup>5</sup> The Proposed Rule Change is summarized as follows:

*Certificate of Incorporation and Bylaws of ICE Group.* ICE Group would take appropriate steps to incorporate voting and ownership restrictions, provisions relating to the qualifications of directors and officers and their submission to jurisdiction, compliance with the Federal securities laws, access to books and records and other matters related to its control of the U.S. Regulated Subsidiaries. Specifically, the Amended and Restated Certificate of Incorporation of ICE Group (the "ICE Group Certificate")<sup>6</sup> and the Amended and Restated Bylaws of ICE Group (the "ICE Group Bylaws")<sup>7</sup> would contain provisions to incorporate these concepts with respect to itself, as well as its directors, officers, employees, and agents (as applicable):

- *Voting and Ownership Restrictions in the ICE Group Certificate and Bylaws.* The ICE Group Certificate would contain voting and ownership restrictions that will restrict any person, either alone or together with its related persons, from having voting control over ICE Group shares entitling the holder thereof to cast more than 10% of the then outstanding votes entitled to be cast on a matter or beneficially owning ICE Group shares representing more than 20% of the outstanding votes entitled to be cast on a matter. The ICE Group Certificate would provide that ICE Group will be required to disregard any votes purported to be cast in excess

<sup>5</sup> Proposed amendments to the governance documents and/or rules of the Exchange, NYSE MKT and NYSE Arca Equities are included in the Proposed Rule Change, and the text of those proposed amendments are attached as exhibits to the Proposed Rule Change, because they are part of the overall set of changes proposed by the NYSE Exchanges to be made in connection with the Merger.

<sup>6</sup> The text of the proposed ICE Group Certificate is attached to the Proposed Rule Change as Exhibit 5A.

<sup>7</sup> The text of the proposed ICE Group Bylaws is attached to the Proposed Rule Change as Exhibit 5B.

of the voting restriction. In the event that any person(s) exceeds the ownership restrictions, it will be obligated to sell promptly, and ICE Group is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of ICE Group necessary so that such person, together with its related persons, will beneficially own shares of ICE Group representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding. Consistent with the current Amended and Restated Certificate of Incorporation of NYSE Euronext (the "NYSE Euronext Certificate"), the ICE Group board of directors may waive the voting and ownership restrictions if it makes certain determinations (which will be subject to the same requirements as are currently required to be made by the board of directors of NYSE Euronext in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority. The ICE Group Certificate further provides that the board of directors may not approve either voting or ownership rights in excess of a 20% threshold with respect to any person that is a Member of the Exchange, as defined in the ICE Group Certificate (an "NYSE Member"), a Member of NYSE MKT as defined in the ICE Group Certificate (including any person who is a related person of such member, a "NYSE MKT Member"), an ETP Holder of NYSE Arca Equities, as defined in the ICE Group Certificate (an "ETP Holder"), or an OTP Holder or OTP Firm of NYSE Arca, as defined in the ICE Group Certificate (an "OTP Holder" and "OTP Firm," respectively). This limitation is currently in the NYSE Euronext Certificate with respect to NYSE Members, ETP Holders, OTP Holders and OTP Firms, and in the Second Amended and Restated Bylaws of NYSE Euronext (the "NYSE Euronext Bylaws") with respect to NYSE MKT Members, including an expanded definition of "Related Persons" to address NYSE MKT Members in a manner that is substantively consistent

with provisions currently located in the NYSE Rules.

- *Jurisdiction.* The ICE Group Bylaws will provide that ICE Group and its directors, and, to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, its officers, and those of its employees whose principal place of business and residence is outside the United States will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceedings pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the ICE Group Bylaws would provide that, so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The ICE Group Bylaws would provide that ICE Group will take reasonable steps necessary to cause its officers, directors and employees to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.

- *Books and Records.* The ICE Group Bylaws would provide that for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of ICE Group will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act, and that ICE Group's books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, ICE Group's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, ICE Group may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.

- *Restrictions on Amendments to ICE Group Certificate and Bylaws.* The ICE Group Certificate would provide that

before any amendment to the ICE Group Certificate may be effectuated, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective. The ICE Group Bylaws would include the same requirement.

- *ICE Group Independence Policy.* In addition, ICE Group will adopt a Director Independence Policy in the form attached to the Proposed Rule Change as Exhibit 5C (the "ICE Group Independence Policy"), which would be substantially identical to the current Independence Policy of the NYSE Euronext board of directors except for the change of the entity whose board of directors adopted the policy and nonsubstantive conforming changes.

- *Additional Matters.* The ICE Group Bylaws would include provisions regarding cooperation with the Commission and the U.S. Regulated Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function, preservation of the U.S. Regulated Subsidiaries' self-regulatory function, and directors' consideration of the effect of ICE Group's actions on the U.S. Regulated Subsidiaries' ability to carry out their respective responsibilities under the Exchange Act.

*Proposed Approval of Waiver of Ownership and Voting Restrictions of NYSE Euronext.* The Amended and Restated Certificate of Incorporation of NYSE Euronext (the "NYSE Euronext Certificate") currently restricts any person, either alone or together with its related persons, from being entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially owning shares of stock of NYSE Euronext representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.<sup>8</sup> NYSE Euronext is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Euronext shares that are held in excess of the ownership restriction. The NYSE Euronext Certificate and the Amended and Restated Bylaws of NYSE Euronext (the "NYSE Euronext Bylaws") provide that the board of directors of NYSE Euronext

may waive these voting and ownership restrictions if it makes certain determinations and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the U.S. Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder,<sup>9</sup> and filed with, and approved by, each European Regulator (as defined in the NYSE Euronext Certificate) having appropriate jurisdiction and authority.<sup>10</sup> Acting pursuant to this waiver provision, the board of directors of NYSE Euronext has adopted the resolutions set forth in Exhibit 5D to the Proposed Rule Change (the "NYSE Euronext Resolutions") in order to permit ICE Group to own and vote 100% of the outstanding common stock of NYX Holdings as of and after the NYSE Euronext Merger. NYSE Arca is requesting approval by the Commission of the NYSE Euronext Resolutions in order to allow the NYSE Euronext Merger to take place.

*Changes to the NYSE Euronext Certificate and Bylaws.* NYX Holdings, as a Delaware limited liability company, will operate pursuant to an operating agreement (the "NYX Holdings Operating Agreement"), a copy of which is attached to the Proposed Rule Change as Exhibit 5E. The NYX Holdings Operating Agreement will differ in certain respects from the current NYSE Euronext Certificate and Bylaws as a result of the different form of organization of NYX Holdings and as a result of the change from a public company to a wholly owned subsidiary.

- *Proposed Voting and Ownership Restrictions of NYX Holdings.* Because NYX Holdings, the surviving entity of the merger of NYSE Euronext into Merger Sub, would be a wholly owned subsidiary of ICE Group as a result of the NYSE Euronext Merger, NYSE Arca is proposing to adopt voting and ownership restrictions that will differ from those in the current NYSE Euronext Certificate, and would be consistent with the analogous provisions in the Second Amended and Restated Certificate of Incorporation of NYSE Group (the "NYSE Group Certificate"):

- first, the NYX Holdings Operating Agreement would provide that all of the issued and outstanding membership interests of NYX Holdings will be held

<sup>9</sup> 15 U.S.C. 78s(b).

<sup>8</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2.

<sup>10</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2, and Amended and Restated Bylaws of NYSE Euronext, Section 10.12.

by ICE Group, and that ICE Group may not transfer or assign any membership interests without approval by the Commission under the Exchange Act and the relevant European Regulators under the applicable European Exchange Regulations (as defined in the NYX Holdings Operating Agreement);<sup>11</sup>

○ second, the NYX Holdings Operating Agreement would provide that the voting and ownership restrictions contained therein would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests of NYX Holdings and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary (as such terms are defined in the NYX Holdings Operating Agreement). The voting and ownership restrictions in the NYX Holdings Operating Agreement would otherwise mirror those in both the current NYSE Group Certificate and the proposed ICE Group Certificate: a 10% threshold for the voting restriction and an ownership restriction of 20%.<sup>12</sup>

• *Proposed Amendments to Certain Public-Company-Related and Other Provisions of NYSE Euronext Organizational and Corporate Governance Documents.* Under the Proposed Rule Change, and in light of the fact that NYX Holdings will be a wholly owned subsidiary of ICE Group following the completion of the Merger, the NYX Holdings Operating Agreement, though based in substantial part on the current NYSE Euronext Certificate and Bylaws, will reflect a simplified and more efficient governance and capital structure that is appropriate for a wholly owned subsidiary. The NYX Holdings Operating Agreement also will include certain provisions that are analogous to provisions in the organizational documents of NYSE Group, which is a wholly owned subsidiary of NYSE Euronext, just as NYX Holdings will be a wholly owned subsidiary of ICE Group following completion of the Merger.

• *Other.* The NYX Holdings Operating Agreement will (a) include the provision, which is currently in the NYSE Euronext Bylaws, that requires the board of directors of NYSE Euronext to make certain determinations relating to NYSE MKT in order to waive the voting and ownership restrictions, (b) update the names of certain European regulatory authorities in the definitions

of “Euronext College of Regulators” and “European Regulator” and the technical descriptions of regulated markets and entities in the definitions of “European Exchange Regulations,” “European Regulated Market” and “European Market Subsidiary” (as currently defined in the NYSE Euronext Bylaws and incorporated into the NYSE Euronext Certificate), and (c) expand the definition of “Related Persons” to address NYSE MKT Members in a manner that is substantively consistent with provisions currently located in the NYSE Rules.

*Proposed Amendments to Voting and Ownership Restrictions of NYSE Group.* The NYSE Group Certificate currently provides that, if NYSE Euronext and the trust established pursuant to the Trust Agreement, dated as of April 4, 2007 and amended as of October 1, 2008, by and among NYSE Euronext, NYSE Group and other parties thereto (the “NYSE Trust Agreement”) do not hold 100% of the outstanding stock of NYSE Group, no person, either alone or together with its related persons, may be entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially own shares of stock of NYSE Group representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.<sup>13</sup> NYSE Group is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Group shares which are held in excess of the ownership restriction.<sup>14</sup>

• Under the Proposed Rule Change, the voting and ownership restrictions in the NYSE Group Certificate would be amended to apply only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as defined in the NYSE Group Certificate); and expand the definition of “Related Persons” regarding NYSE MKT Members so that it is consistent with the language in the NYSE Rules, which language also will be incorporated in the ICE Group Certificate and the NYX Holdings Operating Agreement pursuant to the Proposed Rule Change.

*Other Proposed Amendments to NYSE Group Certificate.* Under the Proposed Rule Change, the NYSE Group Certificate also would be amended to make certain clarifications and technical edits (for example, to conform the use of defined terms and other provisions to

be consistent with the other amendments to the NYSE Group Certificate set forth in the Proposed Rule Change).

*Proposed Amendments to constituent documents of the Exchange, NYSE MKT, NYSE Market and NYSE Regulation.* Under the Proposed Rule Change, certain conforming changes will be made to the Fourth Amended and Restated Operating Agreement, dated as of August 23, 2012, of the Exchange (the “Exchange Operating Agreement”) to reflect that certain nominations to the Board will be made by ICE Group rather than by NYSE Euronext. Substantially the same revisions would be made to the analogous provisions of the Third Amended and Restated Operating Agreement of NYSE MKT, the Second Amended and Restated Bylaws of NYSE Market and the Fourth Amended and Restated Bylaws of NYSE Regulation.

*Proposed Amendments to the Exchange Rules, NYSE MKT Rules, and NYSE Arca Equities Rules.* Under the Proposed Rule Change, certain technical amendments would be made to the Exchange Rules, including replacing references to “NYSE Euronext” with references to ICE Group, and deleting definitions of “member” and “member organization” relating to NYSE MKT, which are currently set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the current NYSE Euronext Certificate, because under the Proposed Rule Change, the ICE Group Certificate will incorporate this language. In addition, certain technical amendments would be made to the NYSE MKT Rules and NYSE Arca Equities Rules to replace references to “NYSE Euronext” with references to ICE Group.

The Second Amended and Restated Certificate of Incorporation of IntercontinentalExchange Group, Inc. that will be effective as of the consummation of the Merger, the Amended and Restated Bylaws of IntercontinentalExchange Group, Inc. that will be effective as of the consummation of the Merger; the proposed Director Independence Policy of Intercontinental-Exchange Group, Inc. that will be adopted by the board of directors of IntercontinentalExchange Group, Inc. effective as of the consummation of the Merger; the resolutions of the NYSE Euronext Board of Directors; the proposed Amended and Restated Limited Liability Company Agreement of NYSE Euronext Holdings LLC that will be effective as of the consummation of the Merger; the proposed Third Amended and Restated Certificate of Incorporation of NYSE Group, Inc. that will be effective as of

<sup>11</sup> See NYX Holdings Operating Agreement, Article VII Sections 7.1 (ICE Group as sole member) and 7.2 (transfer restrictions).

<sup>12</sup> See NYSE Group Certificate, Article IV Section 4(b); and ICE Group Certificate, Article V.

<sup>13</sup> See NYSE Group Certificate, Article IV Section 4(b)(1) and (2).

<sup>14</sup> See NYSE Group Certificate, Article IV Sections 4(b)(1)(A) and 4(b)(2)(D).

the consummation of the Merger; the proposed Fifth Amended and Restated Operating Agreement of New York Stock Exchange LLC that will be effective as of the consummation of the Merger; the proposed Fourth Amended and Restated Operating Agreement of NYSE MKT LLC that will be effective as of the consummation of the Merger; the proposed Third Amended and Restated Bylaws of NYSE Market (DE), Inc. that will be effective as of the consummation of the Merger; the proposed Fifth Amended and Restated Bylaws of NYSE Regulation, Inc. that will be effective as of the consummation of the Merger; the proposed amended Rules of the New York Stock Exchange, LLC that will be effective as of the consummation of the Merger; the proposed revised Director Independence Policy that will be adopted by the boards of directors of New York Stock Exchange, LLC, NYSE MKT LLC, NYSE Market (DE), Inc. and NYSE Regulation, Inc. effective as of the consummation of the Merger; the proposed amendments to the NYSE Trust Agreement, that will be effective as of the consummation of the Merger; the proposed amended Rules of NYSE MKT that will be effective as of the consummation of the Merger; and the proposed amended Rules of NYSE Arca Equities, Inc. that will be effective as of the consummation of the Merger are attached to the Proposed Rule Change as Exhibits 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5L, 5M, 5N and 5O, respectively.

The text of the Proposed Rule Change is available at the Exchange, the Commission's Public Reference Room, and on the Web site of the Exchange ([www.nyse.com](http://www.nyse.com)). The text of Exhibits 5A through 5O to the Proposed Rule Change is also available on the Exchange's Web site and on the Commission's Web site ([www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of this rule filing is to adopt the rules necessary to permit NYSE Euronext to effect the Merger and to amend certain provisions of the organizational and other governance documents of NYSE Euronext, NYSE Group and certain of the U.S. Regulated Subsidiaries, including certain Exchange Rules, NYSE MKT Rules and NYSE Arca Equities Rules.

#### 1. Overview of the Merger

NYSE Arca is submitting the Proposed Rule Change to the Commission in connection with the Merger of NYSE Euronext and ICE. ICE Group believes the Merger brings together two highly complementary businesses and will create an end-to-end multi-asset portfolio that will be strongly positioned to serve a global client base and capture current and future growth opportunities.

Other than as described herein and in the separate proposed rule changes filed by each NYSE Exchange, ICE Group and the NYSE Exchanges do not plan to make any changes to the regulated activities of the U.S. Regulated Subsidiaries in connection with the Merger. If ICE Group determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be effective until the consummation of the Merger.

The Merger will occur pursuant to the terms of the Merger Agreement. As a result of the Merger, NYX Holdings, the successor to NYSE Euronext, will be a subsidiary of ICE Group.

In the Merger, NYSE Euronext, the indirect parent of NYSE Arca, will become a wholly owned subsidiary of ICE Group. ICE Group is currently a wholly owned subsidiary of ICE. ICE Group in turn has two wholly owned subsidiaries, ICE Merger Sub and NYSE Euronext Merger Sub. ICE Merger Sub will be merged with and into ICE, with ICE as the surviving corporation and a wholly owned subsidiary of ICE Group. Immediately afterward, NYSE Euronext will be merged with and into NYSE Euronext Merger Sub, with NYSE Euronext Merger Sub as the surviving company and a wholly owned subsidiary of ICE Group. The surviving entity in the NYSE Euronext Merger will change its name to NYSE Euronext

Holdings LLC from and after the closing of the NYSE Euronext Merger.

Under the terms of the Merger Agreement, each share of NYSE Euronext common stock will be converted into 0.1703 of a newly issued share of ICE Group common stock and \$11.27 cash (together, the "Standard Merger Consideration"). NYSE Euronext stockholders may also elect to receive \$33.12 in cash, or a stock election to receive 0.2851 of a share of ICE Group common stock, for each of their NYSE Euronext shares. Both the cash election and the stock election are subject to proration and adjustment procedures to ensure that the total amount of cash paid, and the total number of shares of ICE Group common stock issued, in the NYSE Euronext Merger to the NYSE Euronext stockholders, as a whole, will be equal to the total amount of cash and number of shares that would have been paid and issued if all of the NYSE Euronext stockholders received the standard election amount. Following the Merger, ICE Group common shares are expected to be listed on the New York Stock Exchange.

The board of directors of ICE has determined that the Merger is in the best interests of its stockholders, approved the Merger Agreement and resolved to recommend to its stockholders that they approve the adoption of the Merger Agreement. The board of directors of NYSE Euronext has determined that the Merger is in the best interests of its stockholders, approved the Merger Agreement and resolved to recommend that its stockholders approve the adoption of the Merger Agreement.

#### 2. Overview of ICE Group Following the Merger

Following the Merger, ICE Group will be a for-profit, publicly traded Delaware corporation. ICE Group will hold all of the equity interests in ICE, which will continue its current operations, and in NYX Holdings, which will hold (1) 100% of the equity interests of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests in certain regulated trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom).

ICE Group will amend its certificate and bylaws to incorporate ownership and voting limitations and certain other provisions to satisfy U.S. and European regulatory requirements as described in detail in the Proposed Rule Change.

After the Merger, NYSE Group will be directly wholly owned by NYX Holdings and will continue to own, directly or indirectly, the three NYSE Exchanges—the Exchange, NYSE Arca and NYSE MKT—which provide marketplaces where investors buy and sell listed companies' common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE Regulation, Inc., an indirect not-for-profit subsidiary of NYX Holdings, will continue to oversee FINRA's performance of certain market surveillance and enforcement functions for the NYSE Exchanges, enforce listed company compliance with applicable standards, and oversee regulatory policy determinations, rule interpretation and regulation related rule development.

In Europe, NYSE Euronext and its subsidiaries own European-based exchanges that comprise Euronext N.V. and its subsidiaries—the London, Paris, Amsterdam, Brussels and Lisbon stock exchanges, as well as the derivatives markets in London, Paris, Amsterdam, Brussels and Lisbon (with certain qualifications and exceptions set forth in the ICE Group Bylaws, the "European Market Subsidiaries"). The activities of the NYSE Euronext European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the French Authority of Prudential Control (*Autorité de Contrôle Prudentiel*), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*), the Belgian Financial Services and Markets Authority (*Autorité des services et marchés financiers*), the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários—CMVM*) and the U.K. Financial Conduct Authority (*FCA*).

NYSE Euronext and ICE expect that, after the closing of the Merger, Euronext will be separated from ICE Group, although no definitive plans have been made to pursue such a separation. An initial public offering of Euronext would include all of the European Market Subsidiaries (the continental European cash equity platforms and the derivatives traded on them) but would not include the derivatives businesses of another current subsidiary of Euronext, Liffe Administration and Management ("LAM"). ICE has informed NYSE Euronext that it expects the derivatives business of LAM will be gradually transitioned to ICE Futures Europe,

subject to regulatory approval in the United Kingdom.

The current NYSE Euronext Certificate and Bylaws provide that each provision related to any European Market Subsidiary or any European regulatory requirement will be automatically repealed if (i) NYSE Euronext at any time in the future no longer holds a direct or indirect "controlling interest" (as defined therein) in Euronext or (ii) a "Euronext Call Option" (as defined in the NYSE Euronext bylaws) has been exercised and, after a period of six months following such exercise, Stichting NYSE Euronext, a foundation ("stichting") organized under the laws of The Netherlands, formed on April 4, 2007 (the "Foundation") holds shares of Euronext that represent a substantial portion of Euronext's business (provided that, in this case, the NYSE Euronext board of directors approves the applicable revocation). The ICE Group Certificate and Bylaws would contain similar provisions, except that the standard in clause (i) above that ICE Group no longer holds a direct or indirect controlling interest in Euronext would be replaced by a standard that it ceases to control Euronext, with "control" defined by reference to International Financial Reporting Standards. The separation of Euronext as described above is expected to trigger the repeal described in clause (i) as so modified.

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of each U.S. Regulated Subsidiary will be preserved. Specifically, after the Merger, NYSE Group's businesses and assets will continue to be structured as follows:

- The Exchange will remain a direct wholly owned subsidiary of NYSE Group and an indirect wholly owned subsidiary of NYX Holdings.
- NYSE Market will remain a wholly owned subsidiary of the Exchange and will continue to conduct the Exchange's business.
- NYSE Regulation will remain a wholly owned subsidiary of the Exchange and continue to perform, and/or oversee the performance of, regulatory responsibilities of the Exchange pursuant to a delegation agreement with the Exchange and regulatory functions of NYSE Arca and NYSE MKT pursuant to services agreements with them.<sup>15</sup>

<sup>15</sup> Certain regulatory functions have been allocated to, and/or are otherwise performed by, FINRA.

- NYSE Arca and NYSE Arca L.L.C., a Delaware limited liability company, will remain wholly owned subsidiaries of NYSE Group.

- NYSE Arca Equities will remain a wholly owned subsidiary of NYSE Arca.

- NYSE MKT will remain a direct wholly owned subsidiary of NYSE Group and an indirect wholly owned subsidiary of NYX Holdings.

- The Merger will have no effect on the ability of any party to trade securities on the Exchange, NYSE Arca or NYSE MKT.

Similarly, NYX Holdings, as successor to NYSE Euronext, and its subsidiaries will conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European Regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

ICE Group acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, NYSE Arca or NYSE MKT, it will be responsible for referring such possible violations to each such exchange, respectively. In addition, ICE Group will enter into an agreement with NYSE Regulation acknowledging that each of the Exchange, NYSE MKT and NYSE Arca has contracted to have NYSE Regulation perform its self-regulatory obligations, in each case with the self-regulatory organization retaining its responsibility for the adequate performance of those regulatory obligations, and agreeing to provide adequate funding to NYSE Regulation to allow NYSE Regulation to conduct its regulatory activities with respect to the Exchange, NYSE MKT and NYSE Arca.

### 13. Proposed Approval of Waiver of Voting and Ownership Restrictions of NYSE Euronext

Article V of the current NYSE Euronext Certificate provides that (1) no person, either alone or together with its "related persons" (as defined in the NYSE Euronext Certificate), may be entitled to vote or cause the voting of shares of NYSE Euronext beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into

with other persons to refrain from voting shares of stock of NYSE Euronext (the "NYSE Euronext Voting Restriction").<sup>16</sup> NYSE Euronext must disregard any votes purported to be cast in excess of the NYSE Euronext Voting Restriction.<sup>17</sup>

In addition, the NYSE Euronext Certificate provides that no person, either alone or together with its related persons, may at any time beneficially own shares of NYSE Euronext representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "NYSE Euronext Ownership Restriction").<sup>18</sup> If any person, either alone or together with its related persons, owns shares of NYSE Euronext in excess of the NYSE Euronext Ownership Restriction, then such person and its related persons are obligated to sell promptly, and NYSE Euronext is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of NYSE Euronext necessary so that such person, together with its related persons, will beneficially own shares of NYSE Euronext representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.<sup>19</sup>

The NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction are applicable to each person unless and until (1) Such person has delivered a notice in writing to the board of directors of NYSE Euronext, not less than 45 days (or such shorter period as the board of directors of NYSE Euronext expressly permits) prior to any vote or, in the case of the NYSE Euronext Ownership Restriction, prior to the acquisition of any shares of NYSE Euronext that would cause such person, either alone or together with its related persons, to exceed the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of NYSE Euronext stock beneficially owned by

such person or its related persons in excess of the NYSE Euronext Voting Restriction, or in the case of the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of NYSE Euronext has resolved to expressly permit such voting or ownership, as applicable; (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>20</sup> and has become effective thereunder; and (4) such resolution has been filed with, and approved by, each European Regulator having appropriate jurisdiction and authority. Subject to its fiduciary duties under applicable law, the NYSE Euronext board of directors may not adopt any resolution pursuant to clause (2) unless it has determined that the exercise of such voting rights (or the entering into of a voting agreement) or ownership, as applicable:

- Will not impair the ability of any U.S. Regulated Subsidiary, NYSE Euronext or NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity) to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder;

- will not impair the ability of any of the European Market Subsidiaries of NYSE Euronext or Euronext (to the extent that Euronext continues to exist as a separate entity) to discharge their respective responsibilities under the European Exchange Regulations (as defined in the NYSE Euronext Bylaws);

- is otherwise in the best interest of NYSE Euronext, its stockholders, the U.S. Regulated Subsidiaries and the European Market Subsidiaries, and will not impair the Commission's ability to enforce the Exchange Act or the European Regulators' ability to enforce the European Exchange Regulations;

- for so long as NYSE Euronext directly or indirectly controls the Exchange or NYSE Market, neither such person nor any of its related persons is a NYSE Member;

- for so long as NYSE Euronext directly or indirectly controls NYSE MKT, neither such person nor any of its related persons is a NYSE MKT Member (this restriction is currently set forth in the Bylaws of NYSE Euronext<sup>21</sup>);

- for so long as NYSE Euronext directly or indirectly controls NYSE Arca, NYSE Arca Equities or any facility of NYSE Arca, neither such person nor any of its related persons is an ETP

Holder, an OTP Holder or an OTP Firm; and

- neither such person nor any of its related persons is a U.S. Disqualified Person or a European Disqualified Person (as such terms are defined in the NYSE Euronext Certificate).<sup>22</sup>

In order to allow ICE Group to wholly own and vote all of the outstanding common stock of NYSE Euronext upon consummation of the Merger, ICE Group has delivered written notice to the board of directors of NYSE Euronext pursuant to the procedures set forth in the NYSE Euronext Certificate requesting approval of its voting and ownership of NYSE Euronext shares in excess of the NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction. Among other things, in this notice, ICE Group represented to the board of directors of NYSE Euronext that neither it, nor any of its related persons, is (1) An NYSE Member; (2) an NYSE MKT Member; (3) an ETP Holder; (4) an OTP Holder or OTP Firm; or (5) a U.S. Disqualified Person or a European Disqualified Person.

On [June 5] [sic], 2013, the board of directors of NYSE Euronext adopted by written consent the NYSE Euronext Resolutions to permit ICE Group, either alone or with its related persons, to exceed the NYSE Euronext Ownership Restriction and the NYSE Euronext Voting Restriction. In adopting such resolutions, the board of directors of NYSE Euronext made the necessary determinations set forth above and approved the submission of the Proposed Rule Change to the Commission. The U.S. Regulated Subsidiaries will continue to operate and regulate their markets and members exactly as they have done prior to the Merger. Except as set forth in the Proposed Rule Change, ICE Group is not proposing any amendments to their trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the U.S. Regulated Subsidiaries after the Merger, the U.S. Regulated Subsidiaries will operate in the same manner following the Merger as they operate today. Thus, the Commission will continue to have plenary regulatory authority over the U.S. Regulated Subsidiaries, as is the case currently with these entities. As described in the following sections of this filing, NYSE Arca is proposing the adoption of the ICE Group Certificate and Bylaws by ICE Group, the NYX Holdings Operating Agreement by NYX Holdings as the surviving entity of the

<sup>16</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1.

<sup>17</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1(A).

<sup>18</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2.

<sup>19</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2(D).

<sup>20</sup> 15 U.S.C. 78s(b).

<sup>21</sup> See NYSE Euronext Bylaws, Section 10.12.

<sup>22</sup> See NYSE Euronext Certificate, Article V Sections 1(B), 1(C), 2(B) and 2(C).

NYSE Euronext Merger, which are modeled in large part on the current NYSE Euronext Certificate and Bylaws (with adjustments discussed below), and a series of amendments to the NYSE Group Certificate, that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities, and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The NYSE Euronext board of directors also determined that ownership of NYSE Euronext by ICE Group is in the best interests of NYSE Euronext, its stockholders and the U.S. Regulated Subsidiaries.

An extract with the relevant provisions of the Euronext Resolutions is attached as Exhibit 5D to the Proposed Rule Change and can be found on the Exchange's Web site and the Commission's Web site.

NYSE Arca hereby requests that the Commission approve the NYSE Euronext Resolutions and allow ICE Group, either alone or with its related persons, to own and vote all of the outstanding common stock of NYSE Euronext upon and following the consummation of the Merger.

#### 4. Proposed Amendments to Ownership and Voting Restrictions After the Merger Overview

NYSE Arca is proposing that, effective as of the completion of the Merger, the ICE Group Certificate would contain voting and ownership restrictions that are substantially identical to those currently in the NYSE Euronext Certificate (except that they would apply only for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary), and would restrict any person, either alone or together with its related persons, from having voting control over ICE Group shares entitling the holder thereof to cause more than 10% of the votes entitled to be cast on any matter or beneficially owning ICE Group shares representing more than 20% of the outstanding votes that may be cast on any matter.

In addition, NYSE Arca is proposing that the Commission approve the NYX Holdings Operating Agreement, effective as of the consummation of the Merger, which would include voting and ownership provisions, as well as related waiver provisions, again

substantially identical to those in the current NYSE Euronext Certificate and NYSE Euronext Bylaws, except that they would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests in NYX Holdings and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary.

#### Voting and Ownership Restrictions in the ICE Group Certificate

Under the Proposed Rule Change, the ICE Group Certificate would provide that (1) no person, either alone or together with its related persons (as defined in the ICE Group Certificate), may be entitled to vote or cause the voting of shares of stock of ICE Group beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter, and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of ICE Group (the "ICE Group Voting Restriction").<sup>23</sup> The ICE Group Certificate will require ICE Group to disregard any votes purported to be cast in excess of the ICE Group Voting Restriction.

In addition, the ownership restrictions in the ICE Group Certificate would provide that, if such restrictions apply, no person, either alone or together with its related persons, may at any time own beneficially shares of ICE Group representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "ICE Group Ownership Restrictions").<sup>24</sup> If any person, either alone or together with its related persons, owns shares of ICE Group in excess of the ICE Group Ownership Restriction, then such person and its related persons are obligated to sell promptly, and ICE Group is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of ICE Group necessary so that such person, together with its related persons, will beneficially own shares of ICE Group representing in the aggregate

no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.<sup>25</sup>

The ICE Group Certificate would provide that the ICE Group Voting Restriction and the ICE Group Ownership Restriction would apply only for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary (as such term is defined in the ICE Group Certificate).

The ICE Group Voting Restriction applies to each person unless and until (1) Such person has delivered a notice in writing to the board of directors of ICE Group, not less than 45 days (or such shorter period as the board of directors of ICE Group expressly permits) prior to any vote, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of ICE Group stock beneficially owned by such person or its related persons in excess of the ICE Group Voting Restriction; (2) the board of directors of ICE Group has resolved to expressly permit such voting; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>26</sup> and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority.<sup>27</sup> Subject to its fiduciary duties under applicable law, the ICE Group board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless the board has made certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext in connection with a waiver of the NYSE Euronext Voting Restriction (as discussed above).<sup>28</sup>

The ICE Group Ownership Restriction applies to each person unless and until (1) Such person has delivered a notice in writing to the board of directors of ICE Group, not less than 45 days (or such shorter period as the board of directors of ICE Group expressly permits) prior to the acquisition of any shares of ICE Group that would cause such person, either alone or together with its related persons, to exceed the

<sup>25</sup> See ICE Group Certificate, Article V Section B.4.

<sup>26</sup> 15 U.S.C. 78s(b).

<sup>27</sup> See ICE Group Certificate, Article V Section A.2.

<sup>28</sup> See text accompanying notes 19–21 [sic] above. References to ICE Group would be added as appropriate in the context of a waiver of the ICE Group Voting Restriction. See ICE Group Certificate, Article V Section A.3.

<sup>23</sup> See ICE Group Certificate, Article V Section A.

<sup>24</sup> See ICE Group Certificate, Article V Section B.

ICE Group Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of ICE Group has resolved to expressly permit such ownership; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>29</sup> and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority.<sup>30</sup> Subject to its fiduciary duties under applicable law, the ICE Group board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless the board has made certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext in connection with a waiver of the NYSE Euronext Ownership Restriction (as discussed above).<sup>31</sup>

#### Amendments to NYSE Euronext Voting and Ownership Restrictions

Under the Proposed Rule Change, the NYX Holdings Operating Agreement, although modeled substantially on the current NYSE Euronext Certificate and Bylaws, would reflect certain modifications from the analogous provisions in the NYSE Euronext Certificate and Bylaws, effective as of the Merger, to be consistent with the status of NYX Holdings as a wholly owned subsidiary of ICE Group and with provisions currently in the NYSE Group Certificate, and certain other changes to update the voting and ownership restrictions, in the following respects:

- The NYX Holdings Operating Agreement would provide that all issued and outstanding membership interests will be held by ICE Group, and that ICE Group may not transfer or assign any membership interests without approval by the Commission under the Exchange Act and the relevant European Regulators (as defined in the NYX Holdings Operating Agreement) under the applicable European Exchange Regulations (as defined in the NYSE Euronext Certificate).<sup>32</sup>

<sup>29</sup> 15 U.S.C. 78s(b).

<sup>30</sup> See ICE Group Certificate, Article V Section B.2.

<sup>31</sup> See text accompanying notes 19–21 [sic] above. References to ICE Group would be added as appropriate in the context of a waiver of the ICE Group Ownership Restriction. See ICE Group Certificate, Article V Section B.3.

<sup>32</sup> The analogous provision in the NYSE Group Certificate is Article IV Section 4(a). See proposed NYX Holdings Operating Agreement, Article VII Sections 7.1 and 7.2.

- The NYX Holdings Operating Agreements would provide that the NYX Holdings voting and ownership restrictions contained therein would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests of NYX Holdings,<sup>33</sup> and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary (as defined in the NYX Holdings Operating Agreement).<sup>34</sup>

- The definition of “Related Persons” would be expanded to provide that (1) in the case of a person that is a “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include the “member” (as defined in Section 3(a)(3)(A)(ii), (iii) or (iv) of the Exchange Act) with which such person is associated; and (2) in the case of any person that is a “member” (as defined in 3(a)(3)(A)(ii), (iii) or (iv) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include any “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such person.<sup>35</sup> A conforming change will be made in the NYSE Group Certificate, as discussed below.

- The mandatory repurchase of membership interests from a Person whose ownership represents in the aggregate more than 20% in interest of the interests entitled to vote on any matter would be at a price determined by reference to each incremental percentage ownership over 20% rather than at par value, specifically \$1,000 for each percent.<sup>36</sup>

#### Amendments to NYSE Group Voting and Ownership Restrictions

The voting restrictions contained in the current NYSE Group Certificate are substantially the same as those in the current NYSE Euronext Certificate described above, except that (i) the NYSE Group Certificate does not contain any references to European subsidiaries, markets or regulators, and (ii) the NYSE Group Certificate contains references to NYSE MKT members in its definition of “Related Person” that are not currently in NYSE Euronext.

<sup>33</sup> The analogous provision in the NYSE Group Certificate is Article IV, Section 4(b). See proposed NYX Holdings Operating Agreement, Article IX Section 9.1.

<sup>34</sup> The analogous provision in the NYSE Group Certificate is Article IV Sections (b)(1) and (2). See proposed NYX Holdings Operating Agreement, Article VII Section 7.2.

<sup>35</sup> See proposed NYX Holdings Operating Agreement, Article I Section 1.1 (definition of Related Persons, clauses xi and xii).

<sup>36</sup> See proposed NYX Holdings Operating Agreement, Article IX, Section 9.1(b)(4).

The NYSE Group Certificate would be updated to provide that

- the NYSE Group Voting Restriction and the NYSE Group Ownership Restriction would apply only in the event that NYX Holdings does not own all of the issued and outstanding shares of NYSE Group<sup>37</sup> and only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as such term is defined in the NYSE Group Certificate).<sup>38</sup>

- The definition of “Related Persons” would be expanded to provide that (1) in the case of a person that is a “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include the “member” (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and (iii) of the Exchange Act, which are currently referenced in this provision of the NYSE Group Certificate) with which such person is associated; and (2) in the case of any person that is a “member” (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and (iii) of the Exchange Act, which are currently referenced in this provision of the NYSE Group Certificate) of NYSE MKT, such person’s “Related Persons” would include any “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such person.<sup>39</sup> This conforms the definition of Related Person to that in the ICE Group Certificate and the NYX Holdings Operating Agreement.

#### 5. Additional Matters to be Addressed in the ICE Group Certificate and Bylaws<sup>40</sup>

##### Jurisdiction over Individuals

Under the Proposed Rule Change, the ICE Group Bylaws would provide that ICE Group and its directors, and, to the extent that they are involved in the activities of the U.S. Regulated Subsidiaries, ICE Group’s officers and those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the

<sup>37</sup> NYSE Group Certificate, Article IV, Section 4(b).

<sup>38</sup> NYSE Group Certificate, Article IV, Sections 4(b)(1) and (2).

<sup>39</sup> NYSE Group Certificate, Article IV, Sections 4(b)(1)(E)(vi) and (xii).

<sup>40</sup> The ICE Group Certificate and Bylaws will also set forth certain restrictions and requirements relating to ICE Group’s European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to ICE Group’s U.S. Regulated Subsidiaries and U.S. regulatory matters.

jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. The ICE Group Bylaws would also provide that, with respect to any such suit, action, or proceeding brought by the Commission, ICE Group and its directors, officers and employees would (1) be deemed to agree that ICE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceedings relating to ICE Group or any of its subsidiaries; and (2) be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceedings is improper, or that the subject matter thereof may not be enforced in or by the U.S. federal courts of the Commission.<sup>41</sup>

In addition, the ICE Group Bylaws would provide that, so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of ICE Group will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>42</sup>

The ICE Group Bylaws would provide that ICE Group will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of ICE Group to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.<sup>43</sup>

NYSE Arca anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, over each of whom the Commission has direct authority pursuant to Section 19(h)(4) of the Exchange Act.<sup>44</sup>

#### Access to Books and Records

Under the Proposed Rule Change, the ICE Group Bylaws would provide that

for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of ICE Group will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>45</sup> In addition, ICE's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, ICE Group may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.<sup>46</sup> The ICE Group Bylaws also would provide that ICE's books and records will at all times be made available for inspection and copying by the Commission, and any U.S. Regulated Subsidiary to the extent they are related to the activities of the U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.<sup>47</sup>

#### Additional Matters

Under the Proposed Rule Change, the ICE Group Bylaws would provide that ICE Group will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority.<sup>48</sup> In addition, ICE Group would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.<sup>49</sup> The ICE Group Bylaws would also provide that, in discharging his or her responsibilities as a member of the ICE Group board of directors or as an officer or employee of ICE Group, each such director, officer or employee will (a) Comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S. Regulated Subsidiaries pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of ICE Group to any person to consider, or afford any particular weight to, any such

matters or to limit his or her consideration of such matters).<sup>50</sup>

The ICE Group Bylaws would also provide that all confidential information that comes into the possession of ICE Group pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) Not be made available to any persons other than to those officers, directors, employees and agents of ICE Group that have a reasonable need to know the contents thereof; (b) be retained in confidence by ICE Group and the officers, directors, employees and agents of ICE Group; and (c) not be used for any commercial purposes.<sup>51</sup> In addition, the ICE Group Bylaws would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of ICE Group to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.<sup>52</sup>

In addition, the ICE Group Bylaws would provide that ICE Group and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries (to the extent of each U.S. Regulated Subsidiary's self-regulatory function) and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of any U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.<sup>53</sup>

Finally, the ICE Group Bylaws would provide that each director of ICE Group would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into consideration the effect that ICE Group's actions would have on the ability of (a) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group

<sup>41</sup> See ICE Group Bylaws, Section 7.1.

<sup>42</sup> See ICE Group Bylaws, Section 8.4.

<sup>43</sup> See ICE Group Bylaws, Section 9.3.

<sup>44</sup> 15 U.S.C. 78s(h)(4).

<sup>45</sup> See ICE Group Bylaws, Section 8.4.

<sup>46</sup> See ICE Group Bylaws, Sections 8.5 and 8.6.

<sup>47</sup> See ICE Group Bylaws, Section 8.3.

<sup>48</sup> See ICE Group Bylaws, Section 9.1.

<sup>49</sup> See *id.*

<sup>50</sup> See ICE Group Bylaws, Section 3.14(b).

<sup>51</sup> See ICE Group Bylaws, Section 8.1.

<sup>52</sup> See ICE Group Bylaws, Section 8.2.

<sup>53</sup> See ICE Group Bylaws, Section 9.4.

and ICE Group to (1) Engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity), and ICE Group to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.<sup>54</sup>

#### Amendments to the ICE Group Certificate and Bylaws

Under the Proposed Rule Change, the ICE Group Bylaws would provide that, before any amendment to or repeal of any provision of the ICE Group Bylaws shall be effective, such amendment or repeal shall be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that, before such amendment or repeal may be effectuated, the same must be filed with, or filed with and approved by, the Commission pursuant to Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effectuated until filed with, or filed with and approved by, the Commission, as the case may be.<sup>55</sup> These requirements would also apply to any action by ICE Group that would have the effect of amending or repealing any provisions of the ICE Group Certificate.<sup>56</sup>

#### ICE Group Director Independence Policy

Under the Proposed Rule Change, ICE Group would adopt the ICE Group Independence Policy in the form attached to the Proposed Rule Change as Exhibit 5C, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors.

<sup>54</sup> See ICE Group Bylaws, Section 3.14(a). This requirement would not, however, create any duty owed by any director, officer or employee of ICE Group to any person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to such matters. See ICE Group Bylaws, Section 3.14(c).

<sup>55</sup> See ICE Group Bylaws, Section 11.3.

<sup>56</sup> See ICE Group Certificate, Article X(C).

6. Proposed Amendments to Certain Public-Company-Related and Other Provisions of the NYSE Euronext Certificate and Bylaws to be reflected in the NYX Holdings Operating Agreement

NYSE Arca is proposing that the NYX Holdings Operating Agreement differ from NYSE Euronext's Certificate and Bylaws to reflect the fact that, after the Merger, NYX Holdings will be an intermediate holding company, will not be a public company traded on an exchange and will not have securities registered under Section 12 of the Exchange Act. As a result, NYX Holdings will not be subject to the Exchange's listing standards or to the corporate governance requirements applicable to publicly traded companies.

As summarized below, the following revisions to the NYSE Euronext Certificate and Bylaws are proposed for the NYX Holdings Operating Agreement in order (1) To simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly owned subsidiary; (2) to conform certain provisions to analogous provisions of the current organizational documents of NYSE Group, which is a wholly owned subsidiary of NYSE Euronext, just as NYX Holdings will be a wholly owned subsidiary of ICE Group following completion of the Merger; and (3) to make certain clarifications and technical edits (for example, to conform the use of defined terms and other provisions, to update cross-references to sections both internal and in the ICE Group Certificate and Bylaws, and to conform to certain other provisions in the ICE Group Certificate and Bylaws).

- The NYSE Euronext Certificate and Bylaws contain provisions relating to the issuance of one or more series of preferred stock. The NYX Holdings Operating Agreement provides for only one class of membership interest and has no provision for a preferred membership interest because NYSE Arca considers it unlikely that a wholly owned subsidiary would have occasion to issue preferred interests.

- Section 16.1 of the NYX Holdings Operating Agreement would provide that, for so long as NYX Holdings controls, directly or indirectly, any U.S. Regulated Subsidiary, before any amendment to the NYX Holdings Operating Agreement may be effectuated, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment

may become effective. This provision parallels Article X(C) of the NYSE Euronext Certificate as supplemented, with respect to NYSE MKT, by Section 10.13 of the NYSE Euronext Bylaws.

- The NYX Holdings Operating Agreement would provide that the registered office and agent of NYX Holdings in Delaware will be the Corporation Trust Company, which is the registered agent of other subsidiaries of NYSE Euronext and of ICE.

- Section 3.1 of the NYSE Euronext Bylaws currently provides that the number of directors may be fixed and changed only by resolution adopted by two-thirds of the directors then in office. The two-thirds requirement will be changed to a majority in Section 3.2 of the NYX Holdings Operating Agreement as is appropriate for a wholly owned subsidiary. This standard has been eliminated from the list of provisions that are automatically suspended or become void upon certain events specified in Section 10.11 of the NYX Holdings Operating Agreement.

- Certain residency requirements applicable to directors and officers of NYSE Euronext and references to U.S. and European director domiciles and to "Deputy" officers that appear in the NYSE Euronext Certificate and Bylaws would not be included in the NYX Holdings Operating Agreement. Specifically, references to deputies in Section 2(A) of Article VI of the NYSE Euronext Certificate, and in Sections 2.2(3) and (5), Section 2.5, Section 3.12, Section 5.1, Section 10.4 and Section 10.5 of the NYSE Euronext Bylaws would not be replicated in the NYX Holdings Operating Agreement. Additionally, Section 4.4 of the NYSE Euronext Bylaws (regarding domicile requirements for members of the Nominating and Governance Committee of the board of directors) and the reference thereto in Section 4.1 would not be replicated in the NYX Holdings Operating Agreement. All, or the portions regarding director and officer domicile, of the following sections of the NYSE Euronext Bylaws would not be replicated in the NYX Holdings Operating Agreement: all of Section 3.2 (regarding director domicile requirements); all of Section 3.3 (regarding chairman and chief executive officer domicile requirements); portions of Section 3.6 (regarding filling of vacancies on the board); and the cross-references in Section 10.11(B) to the foregoing deleted provisions. In addition, the requirement in Section 3.8 of the NYSE Euronext Bylaws that board meetings be held with equal frequency in the United States and Europe would be replaced with a requirement that one

board meeting a year be held in Europe, to parallel the requirement in the ICE Group Bylaws.

- The restrictions on transfers of certain shares of NYSE Euronext common stock contained in Section 4 of Article IV of the NYSE Euronext Certificate have expired in accordance with their terms and would not be included in the NYX Holdings Operating Agreement.

- Notice of meetings of members would not be required under the NYX Holdings Operating Agreement if waived in accordance with Section 8.1(e) thereof.

- The ICE Group Bylaws provide in Section 2.5 that the holders of a majority of the shares outstanding and entitled to vote (giving effect to the "Recalculated Voting Limitation" referred to in Section A.1 of Article V of the ICE Group Certificate, if applicable) may call special meetings of stockholders. A comparable provision is appropriate for NYX Holdings to provide additional flexibility to ICE Group to take actions in its capacity as the sole member of NYX Holdings following completion of the Merger. Accordingly, Section 8.1(d) of the NYX Holdings Operating Agreement would allow the holders of a majority of the membership interests outstanding and entitled to vote (giving effect to the "Recalculated Voting Limitation," if applicable) to call special meetings of members.

- The requirement in Section 2.6 of the NYSE Euronext Bylaws for the appointment of an inspector of elections for stockholders meetings would not be included in the NYX Holdings Operating Agreement because the requirement for an inspector of elections under the Delaware General Corporation Law (the "DGCL") would no longer apply to NYX Holdings after completion of the Merger.<sup>57</sup>

- The requirement in Section 2.7 of the NYSE Euronext Bylaws that directors be elected by a majority of the votes cast (and that they must tender their resignation if such a majority vote is not received), except in the case of contested elections, and that the board of directors may fill any resulting vacancy or may decrease the size of the board, would not be included in the NYX Holdings Operating Agreement, and a plurality voting standard would be adopted for all director elections. These requirements would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member.

- Section 2.10 of the NYSE Euronext Bylaws requires certain advance notice from stockholders of director nominations and stockholder proposals, and that only business brought before a special meeting of stockholders pursuant to NYX Euronext's notice of the meeting may be brought before the meeting. This provision would not be included in the NYX Holdings Operating Agreement because the requirements would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member.

- In order to give ICE Group additional flexibility to take actions in its capacity as the sole member of NYX Holdings following completion of the Merger, Section 7.5 of the NYX Holdings Operating Agreement would allow the member to take any action without a meeting and without prior notice if consented to, in writing, by the member.

- In order to give ICE Group additional flexibility to take actions in its capacity as the sole member of NYX Holdings following completion of the Merger, Section 3.4 of the NYX Holdings Operating Agreement would allow members to fill board vacancies.

- The requirements in Article X of the NYSE Euronext Certificate for a supermajority stockholder vote to amend or repeal certain provisions of the certificate would be eliminated from the NYX Holdings Operating Agreement and a majority vote requirement would apply. A supermajority vote requirement would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member, and a majority voting standard is consistent with the standard generally applicable for actions by the parent entity of other wholly owned subsidiaries of NYX Holdings.

- Section 3.4 of the NYX Holdings Operating Agreement, which is analogous to current Section 3.6 of the NYSE Euronext Bylaws, would include "(if any)" after the reference therein to the Nominating and Governance Committee, because NYX Holdings would become a wholly owned subsidiary of ICE Group and, as such, may not have a Nominating and Governance Committee.

- Section 3.4 of the NYSE Euronext Bylaws, which relates to independence requirements, including the requirement that at least 75% of the board must be independent, would not be replicated in the NYX Holdings Operating Agreement because NYX Holdings would be a wholly owned subsidiary of ICE Group after completion of the Merger and, therefore, it is likely that executives of

ICE Group and its subsidiaries will serve on this board.

- Section 3.8(a) of the NYX Holdings Operating Agreement would provide that notice of board meetings is not required if waived in accordance with Section 3.8(b), which is less restrictive than Section 3.9 of the NYSE Euronext Bylaws.

- The advance notice period in Section 3.9 of the NYSE Euronext Bylaws for notices of board meetings sent by first-class mail would be reduced from four days to three days in Section 3.8(a) of the NYX Holdings Operating Agreement. This change conforms the notice period to Section 3.6(b) of the ICE Group Bylaws.

- Section 3.12 of the NYSE Euronext Bylaws requires that, if the chairman or deputy chairman of the board of directors is also the chief executive officer or deputy chief executive officer, he or she may not participate in executive sessions of the board of directors, and if the chairman is not the chief executive officer or deputy chief executive officer, he or she will act as a liaison between the board of directors and the chief executive officer or the deputy chief executive officer. No analogous provisions would be included in the NYX Holdings Operating Agreement.

- Certain aspects of the indemnification and expense advancement provisions in Section 15.2 of the NYX Holdings Operating Agreement, including the terms of any insurance policy maintained by NYX Holdings, would be simplified from Section 10.6 of the NYSE Euronext Bylaws in light of the fact that there are not expected to be any independent, non-executive directors of NYX Holdings, and, therefore, a more streamlined process for indemnification claims is appropriate.

- Section 10.10(A) of the NYSE Euronext Bylaws enumerates provisions of the Bylaws for which amendment requires approval by a supermajority of directors. The supermajority approval requirement would be eliminated in Section 16.1 of the NYX Holdings Operating Agreement by decreasing the current two-thirds standard to a majority of the directors then in office, as is appropriate for a wholly owned subsidiary.

- The supermajority stockholder vote requirements in Section 10.10(B) of the NYSE Euronext Bylaws would be eliminated in the NYX Holdings Operating Agreement because a supermajority vote requirement would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member.

<sup>57</sup> See Section 231(e) of the Delaware General Corporation Law.

• The NYSE Euronext Bylaw provisions that are subject to automatic suspension under Section 10.11 would be revised in Section 16.3 of the NYX Holdings Operating Agreement to reflect elimination of the supermajority voting provisions in Sections 10.10(A) and (B) discussed above.

In addition, the current Independence Policy of the NYSE Euronext board of directors would, effective as of the Merger, cease to apply.

#### 7. Proposed Amendments to the NYSE Group Certificate

Under the Proposed Rule Change, the revisions summarized below to the NYSE Group Certificate are proposed in order to conform certain provisions to the analogous provisions of the organizational documents of NYX Holdings, which would likewise be a wholly owned subsidiary of ICE Group following completion of the Merger, as well as to make certain clarifications and technical edits:

• Section 4(a) of Article IV of the NYSE Group Certificate would be amended to contemplate successors to NYSE Euronext as the holder of all of the issued and outstanding shares of NYSE Group for purposes of the NYSE Trust Agreement.

• Sections 4(b)(1)(A) and 4(b)(2)(A) of Article IV of the NYSE Group Certificate would be amended to clarify that the voting ownership concentration limitations in the NYSE Group Certificate would be effective “for so long as the Corporation shall control, directly or indirectly” a U.S. Regulated Subsidiary, as defined in Section 4(b)(1)(A). Conforming changes relating to the definition of U.S. Regulated Subsidiary and the change of name of NYSE Alternext to NYSE MKT have been made later in the same section and thereafter.

• Typographical errors in references to Exchange Act Section 3(a)(3) would be corrected in Section 4(b)(1)(E)(vi) and (xii) of Article IV.

• Section 3 of Article V would be amended by adding the words “from time to time” to conform the provision to the NYX Holdings Operating Agreement.

• Section 5 of Article V of the NYSE Group Certificate would be amended to clarify that the right of the NYSE Group board of directors to remove directors is subject to any rights of holders of any preferred stock in order to make this provision consistent with Section 2 of Article IV of the NYSE Group Certificate, which provides that preferred stock may be issued that may have voting rights.

• Numbering of certain sections of the NYSE Group Certificate would be updated to reflect the amendments set forth above.

#### 8. Proposed Amendments to Board Composition Requirements for the Exchange, NYSE MKT, NYSE Market and NYSE Regulation

The Fourth Amended and Restated Operating Agreement, dated as of August 23, 2012, of the Exchange (the “Exchange Operating Agreement”), currently provides that (1) a majority of the members of the Exchange’s board of directors must be U.S. persons and members of the board of directors of NYSE Euronext, and (2) at least 20% of the Exchange’s board members must be persons who are not members of the board of directors of NYSE Euronext but who qualify as independent under the independence policy of the Exchange’s board of directors (the “Non-Affiliated Exchange Directors”).<sup>58</sup> The nominating and governance committee of the NYSE Euronext board of directors is required to designate as Non-Affiliated Exchange Directors the candidates recommended jointly by the Director Candidate Recommendation Committees of each of NYSE Market and NYSE Regulation or, in the event there are Petition Candidates (as such term is defined in the Exchange Operating Agreement), the candidates that emerge from a specified process will be designated as the Non-Affiliated Exchange Directors.<sup>59</sup>

Under the Proposed Rule Change, these provisions would be amended to refer to ICE Group instead of NYSE Euronext. Also, references throughout to the Exchange’s “Corporation Independence Policy” would be changed to “Company Independence Policy” in recognition of the form of organization of the Exchange.

Substantially the same revisions would be made to the analogous provisions of the Fourth Amended and Restated Operating Agreement of NYSE MKT.

In addition, references to NYSE Euronext in the Director Independence Policy of each of the Exchange, NYSE Market, NYSE Regulation and NYSE MKT would be revised to refer to ICE Group.

#### 9. Other Changes to the Constituent Documents of the Exchange, NYSE MKT, NYSE Market and NYSE Regulation

The revisions to the Fourth Amended and Restated Operating Agreement of

<sup>58</sup> See Exchange Operating Agreement, Section 2.03(a).

<sup>59</sup> See *id.*

NYSE MKT indicate that NYSE MKT will be an indirect wholly owned subsidiary of ICE Group rather than a direct subsidiary of NYSE Euronext, and the phrase “NYSE/Amex” has been inserted before references to a merger in 2008 in the recitals to distinguish that merger from the Merger.

The Second Amended and Restated Bylaws of NYSE Market and the Third Amended and Restated Bylaws of NYSE Regulation would be amended to reflect the change from NYSE Euronext to ICE Group. In the case of NYSE Market, the address of the registered office and registered agent has been updated.

In the director independence policies, typographical errors in references to Exchange Act Section 3(a)(3) would be corrected in the first paragraph under the section captioned “Independence Qualifications.”

#### 10. Proposed Amendments to the Exchange Rules, NYSE MKT Rules and NYSE Arca Equities Rules

Under the Proposed Rule Change, certain technical amendments would be made to the Exchange Rules. First, references therein to “NYSE Euronext” would be replaced with references to ICE Group, except that references to NYSE Euronext in Rule 22 and Rule 422 would be replaced with references to NYX Holdings and references to ICE Group would be added. Second, Rule 2 would be revised to delete the definitions of “member” and “member organization” relating to NYSE MKT, which are set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the NYSE Euronext Certificate, because under the Proposed Rule Change, the ICE Group Certificate will incorporate this language.

In addition, certain technical amendments would be made to the NYSE MKT Rules and NYSE Arca Equities Rules to replace references to “NYSE Euronext” with references to ICE Group, except that references to NYSE Euronext in NYSE MKT Rules 107B and 501 would be changed to NYX Holdings. Also, certain provisions in NYSE MKT Rule 104T relating to restrictions on transfer in the NYSE Euronext Certificate would be eliminated because the referenced restrictions are no longer in effect and there will be no analogous provision in the ICE Group Certificate.

#### 2. Statutory Basis

NYSE Arca believes that this filing is consistent with Section 6(b) of the Exchange Act<sup>60</sup> in general, and furthers

<sup>60</sup> 15 U.S.C. 78f(b).

the objectives of Section 6(b)(1)<sup>61</sup> in particular, in that it enables NYSE Arca to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of NYSE Arca. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the U.S. Regulated Subsidiaries after the Merger, the U.S. Regulated Subsidiaries will operate in the same manner following the Merger as they operate today. Thus, the Commission will continue to have plenary regulatory authority over the U.S. Regulated Subsidiaries, as is the case currently with these entities. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

NYSE Arca also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act<sup>62</sup> because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NYSE Arca 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 Exchange Act. The Proposed Rule Change is not designed to address any competitive issue in the U.S. or European securities markets or have any impact on competition in those markets; rather, it

will combine the U.S. equities businesses of NYSE Euronext with the commodities and futures businesses of ICE. The ownership of U.S. securities exchanges will not become more concentrated as a result of the Proposed Rule Change because ICE currently owns no U.S. securities exchange. With respect to operations outside the United States, ICE has informed NYSE Euronext that it expects the derivatives business of LAM will be gradually transitioned to ICE Futures Europe, as discussed above, but such transition is subject to regulatory approval in the United Kingdom.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEArca-2013-62 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-NYSEArca-2013-62. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEArca-2013-62 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>63</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-15632 Filed 6-28-13; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69846; File No. SR-BOX-2013-33]

### **Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Interpretive Material to Rule 7150 (Price Improvement Period "PIP") to Extend a Pilot Program that Permits the Exchange to Have no Minimum Size Requirement for Orders Entered into the PIP ("PIP Pilot Program")**

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>63</sup> 17 CFR 200.30-3(a)(12).

<sup>61</sup> 15 U.S.C. 78f(b)(1).

<sup>62</sup> 15 U.S.C. 78f(b)(5).

(“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 21, 2013, BOX Options Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Interpretive Material to Rule 7150 (Price Improvement Period “PIP”) to extend a pilot program that permits the Exchange to have no minimum size requirement for orders entered into the PIP (“PIP Pilot Program”). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet Web site at <http://boxexchange.com>.

### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The purpose of the proposed rule change is to extend the PIP Pilot Program for twelve additional months. The PIP Pilot Program allows the Exchange to have no minimum size requirement for orders entered into the PIP.<sup>3</sup> The Exchange has committed to

provide certain data to the Commission during the PIP Pilot Program.<sup>4</sup> The proposed rule change retains the text of IM-7150-1 to Rule 7150 and seeks to extend the operation of the PIP Pilot Program until July 18, 2014.

The Exchange notes that the PIP Pilot Program guarantees Participants the right to trade with their customer orders that are less than 50 contracts. In particular, any order entered into the PIP is guaranteed an execution at the end of the auction at a price at least equal to the national best bid or offer. In further support of this proposed rule change, the Exchange will submit to the Commission monthly a PIP Pilot Program Report, offering detailed data from, and analysis of, the PIP Pilot Program. Specifically, the Exchange believes that, by extending the expiration of the PIP Pilot Program, the proposed rule change will allow for further analysis of the PIP Pilot Program and a determination of how the PIP Pilot Program shall be structured in the future.

##### **2. Statutory Basis**

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the PIP Pilot Program for an additional twelve months. The Exchange represents that the Pilot Program is designed to provide investors with real and significant price improvement regardless of the size of the order.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically,

2013) (SR-BOX-2012-009) (Notice of Filing and Immediate Effectiveness of a Proposal To Extend a Pilot Program That Permits BOX to Have No Minimum Size Requirement for Orders Entered Into the Price Improvement Period).

<sup>4</sup> *Id.* at 26334.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

the Exchange believes that, by extending the expiration of the PIP Pilot Program, the proposed rule change will allow for further analysis of the PIP Pilot Program and a determination of how the PIP Pilot Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay. The Exchange noted that such waiver will permit the PIP Pilot Program to continue without interruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot program. Further, the

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 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 Commission deems this requirement to have been met.

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Pilot Program is currently set to expire on July 18, 2013. See Securities Exchange Act Release Nos. 66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (File No.10-206, In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission) and 67255 (June 26, 2012) 77 FR 39315 (July 2,

Commission notes that, because the filing was submitted for immediate effectiveness on June 21, 2013, the fact that the current rule provision does not expire until July 18, 2013 will afford interested parties the opportunity to comment on the proposal before the Exchange requires it to become operative. For this reason, the Commission designates the proposed rule change to be operative on July 18, 2013.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2013-33 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2013-33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2013-33 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-15622 Filed 6-28-13; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69843; File No. SR-FINRA-2013-026]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Members' Filing Obligations Under FINRA Rule 5123 (Private Placements of Securities)

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 20, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing rule changes related to members' filing obligations under Rule 5123 (Private Placements of Securities).

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

On June 7, 2012, the Commission approved FINRA Rule 5123 ("Private Placements of Securities" or the "Rule"),<sup>4</sup> which requires that members file with FINRA any private placement memorandum, term sheet or such other offering document as exists in connection with a specified private placement in which the member participates. Specifically, the Rule provides that each member that sells a security in a non-public offering in reliance on an available exemption from registration under the Securities Act of 1933 (*i.e.*, a private placement) must: (1) Submit to FINRA, or have submitted on its behalf by a designated member, a copy of any private placement memorandum, term sheet or other offering document, including any materially amended versions thereof, used in connection with such sale within 15 calendar days of the date of first sale; or (2) indicate to FINRA that no such offering documents were used.

To facilitate the transmission of the required information from members to

<sup>11</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>27</sup> 17 CFR 240.19b-4.

<sup>37</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Securities Exchange Act Release No. 67157 (June 7, 2012), 77 FR 35457 (June 13, 2012) (Notice of Filing of Amendments No. 2 and No. 3 and Order Granting Accelerated Approval of File No. SR-FINRA-2011-057).

FINRA, FINRA has developed an electronic form for the processing of specified private placement filings (“Private Placement Form” or “Form”), which must be filed through FINRA Firm Gateway.<sup>5</sup> As announced in *Regulatory Notice* 12–40, the Form, an abbreviated version of which has been in use since the Rule became effective on December 3, 2012, provides an efficient way for firms to submit the filings electronically in searchable Portable Document Format (PDF) to FINRA.<sup>6</sup>

FINRA is filing the proposed rule change to codify the requirement that members file the Private Placement Form via FINRA Firm Gateway in connection with their compliance with Rule 5123, as set forth in *Regulatory Notice* 12–40. The existing Private Placement Form requests identifying and contact information for the member and the issuer, whether there is an affiliate relationship between the member and the issuer or sponsor, and basic information about the nature of the offering (e.g., the type of offering, the expected commencement date and whether a Form D has been filed with the SEC). FINRA also is proposing that the Form request, to the extent known by the member, certain other due diligence-related information concerning the offering, the issuer and its management,<sup>7</sup> but would permit members to respond “unknown” to such questions. Therefore, this Form does not impose any obligation on broker-dealers to seek out information that they do not already have. Specifically, the Form would include questions, to the extent known, regarding:

- Whether the offering is a contingency offering;
- whether independently audited financial statements are available for the issuer’s most recently completed fiscal year;
- whether the issuer is able to use offering proceeds to make or repay loans to, or purchase assets from, any officer, director or executive management of the issuer, sponsor, general partner, manager, advisor or any of the issuer’s affiliates;
- whether the issuer has a board of directors comprised of a majority of

- independent directors or a general partner that is unaffiliated with the firm;
- whether the issuer has engaged, or does the member anticipate that the issuer will engage, in a general solicitation in connection with the offering or sale of the securities; and
- whether the issuer, any officer, director or executive management of the issuer, sponsor, general partner, manager, advisor or any of the issuer’s affiliates has been the subject of SEC, FINRA or state disciplinary actions or proceedings or criminal complaints within the last 10 years.

FINRA also proposes to ask members to select an industry category for the specified private placement offering when completing the Form.

The revised Form will assist FINRA in fulfilling its regulatory responsibilities by providing critical information regarding the nature of the offering, involved parties and the member’s role in offering the securities.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, in that it will assist in FINRA’s efforts to detect and prevent fraud in connection with specified private placements. In addition, the proposed rule change will assist FINRA in evaluating the specified private placement activities of member firms and assess whether members are conducting a reasonable investigation for specified private placement offerings in which they participate.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA notes that all members that participate in specified private placements will have to file electronically (or have another

member that is participating in the specified private placement file on its behalf) a Private Placement Form in connection with Rule 5123. In addition, outside of very basic information about the member, the issuer (i.e., identity of the issuer and its contact information) and the nature of the offering (e.g., whether a Form D has been filed with the SEC), the Form will permit members to respond “unknown” to virtually all due diligence-related questions.

Because the new questions to be added to the Form in connection with this proposed rule change do not impose an affirmative duty on members to obtain answers, but only requires the member to provide the information on the Form if known, FINRA believes that the proposed rule change presents a very modest filing burden upon members. In light of the role of Rule 5123 and the Form in assisting FINRA in its efforts to detect and prevent fraudulent and manipulative acts and practices and enhance the protection of investors, FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### 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

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and Rule 19b–4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)<sup>11</sup> normally does not become operative for 30 days after the

<sup>5</sup> FINRA Firm Gateway is an online compliance tool that provides consolidated access to FINRA applications and allows firms to submit required filings electronically to meet their compliance and regulatory obligations.

<sup>6</sup> See *Regulatory Notice* 12–40 (September 2012).

<sup>7</sup> FINRA provided guidance on the scope of a firm’s responsibilities to conduct a reasonable investigation of private placement issuers in *Regulatory Notice* 10–22 (April 2010).

<sup>8</sup> 15 U.S.C. 78o–3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires FINRA to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b–4(f)(6).

date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will assist in FINRA's efforts to detect and prevent fraud in connection with specified private placements. As noted by FINRA, the burden on members will be minimal because electronic filing of an abbreviated version of the Form accompanying specified private placement filings has been operative since the Rule became effective and the proposed rule change does not impose an affirmative duty on members to obtain any additional information not already known to them. Therefore, implementation time is not necessary as members already file through FINRA Firm Gateway. For these reasons, the Commission designates the proposed rule change to be operative upon filing.<sup>13</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2013-026 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-026. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2013-026 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69849; File No. SR-NYSEMKT-2013-50]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in which Its Indirect Parent, NYSE Euronext, Will Become a Wholly Owned Subsidiary of IntercontinentalExchange Group, Inc.

June 25, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act" or the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 14, 2013, NYSE MKT LLC ("NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

##### A. Overview of the Proposed Merger

NYSE MKT, a New York limited liability company, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the "Proposed Rule Change") to the U.S. Securities and Exchange Commission in connection with the proposed business combination (the "Merger") of NYSE Euronext ("NYSE Euronext") and IntercontinentalExchange, Inc. ("ICE"), both Delaware corporations. NYSE Euronext has entered into an Agreement and Plan of Merger, dated as of December 20, 2012, as amended and restated as of March 19, 2013, by and among NYSE Euronext, ICE, IntercontinentalExchange Group, Inc. ("ICE Group"), Braves Merger Sub, Inc. ("ICE Merger Sub") and Baseball Merger Sub, LLC ("NYSE Euronext Merger Sub") (as it may be further amended from time to time, the "Merger Agreement"), whereby NYSE Euronext and ICE would each become subsidiaries of ICE Group.

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation ("NYSE Group"), which in turn directly or indirectly owns (1) 100% of the equity interest of

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

three registered national securities exchanges and self-regulatory organizations (together, the “NYSE Exchanges”)—NYSE MKT, NYSE Arca, Inc. (“NYSE Arca”) and New York Stock Exchange, LLC (the “Exchange”)—and (2) 100% of the equity interest of NYSE Market (DE), Inc. (“NYSE Market”), NYSE Regulation, Inc. (“NYSE Regulation”), NYSE Arca L.L.C., NYSE Arca Equities, Inc. (“NYSE Arca Equities”) and NYSE Amex Options LLC (“NYSE Amex Options”) (the NYSE Exchanges, together with (x) NYSE Market, NYSE Regulation, NYSE Arca L.L.C., NYSE Arca Equities and NYSE Amex Options and (y) any similar U.S. regulated entity acquired, owned or created after the date hereof, the “U.S. Regulated Subsidiaries” and each, a “U.S. Regulated Subsidiary”). Each of NYSE Arca and NYSE MKT will be separately filing a proposed rule change in connection with the Merger that will be substantially the same as the Proposed Rule Change.

ICE is a leading operator of regulated exchanges and clearing houses serving the risk management needs of global markets for agricultural, credit, currency, emissions, energy and equity index products. ICE directly and indirectly owns ICE Futures Europe, ICE Futures U.S., Inc., ICE Futures Canada, Inc., ICE U.S. OTC Commodity Markets, LLC, and five central counterparty clearing houses, including ICE Clear Europe Limited and ICE Clear Credit LLC, each of which is registered as a clearing agency under Section 17A of the Exchange Act,<sup>4</sup> ICE Clear U.S., Inc., ICE Clear Canada, Inc., and The Clearing Corporation, and owns 100% of the equity in Creditex Group Inc., which in turn indirectly owns Creditex Securities Corporation. Neither ICE nor any company owned by it directly or indirectly, including, but not limited to, those referenced in this paragraph, is a registered national securities exchange or a member of any U.S. Regulated Subsidiary.

ICE’s common stock is listed on the Exchange under the symbol “ICE,” and, following the completion of the Merger, ICE Group common stock is expected to be listed for trading on the Exchange under the same symbol.

#### B. Summary of Proposed Rule Change

NYSE MKT is proposing that, pursuant to the Merger, the successor to NYSE Euronext, NYSE MKT’s indirect parent, will be a wholly owned subsidiary of ICE Group. ICE Group is currently a wholly owned subsidiary of ICE. ICE Group in turn has two wholly

owned subsidiaries, ICE Merger Sub, a Delaware corporation, and NYSE Euronext Merger Sub, a Delaware limited liability company. To effect this transaction, (A) ICE Merger Sub will be merged with and into ICE (the “ICE Merger”), with ICE as the surviving corporation and a wholly owned subsidiary of ICE Group, and each share of ICE common stock owned by an ICE stockholder (other than ICE or ICE Merger Sub) will be converted into the right to receive one share of ICE Group common stock, and (B) immediately following the ICE Merger, NYSE Euronext shall be merged with and into NYSE Euronext Merger Sub, with NYSE Euronext Merger Sub as the surviving company and a wholly owned subsidiary of ICE Group (the “NYSE Euronext Merger” and, together with the ICE Merger, the “Merger”). Each issued and outstanding share of NYSE Euronext common stock will be converted into the right to receive the “standard election amount” of 0.1703 of a share of ICE Group common stock and \$11.27 in cash, other than certain shares held by NYSE Euronext, ICE and their respective affiliates. Alternatively, NYSE Euronext stockholders will have the right to make either a cash election to receive \$33.12 in cash, or a stock election to receive 0.2581 of a share of ICE Group common stock, for each share of NYSE Euronext. NYSE Euronext Merger Sub, as the surviving entity in the NYSE Euronext Merger, will change its name to NYSE Euronext Holdings LLC (“NYX Holdings”) from and after the closing of the Merger.

If the Merger is completed, the businesses of ICE and NYSE Euronext, including the U.S. Regulated Subsidiaries, will be held under ICE Group as a single publicly traded holding company that will be listed on the Exchange. The Proposed Rule Change, if approved by the Commission, will not be effective until the consummation of the Merger.

In addition, NYSE MKT is proposing that, in connection with the Merger, the Commission approve the organizational and other governance documents of ICE Group and NYX Holdings, as well as certain amendments to the organizational and other governance documents of NYSE Group and certain of the U.S. Regulated Subsidiaries, as well as certain rules of the Exchange, NYSE MKT and NYSE Arca Equities.<sup>5</sup>

<sup>5</sup> Proposed amendments to the governance documents and/or rules of the Exchange and NYSE Arca Equities are included in the Proposed Rule Change, and the text of those proposed amendments are attached as exhibits to the Proposed Rule Change, because they are part of the overall set of

The Proposed Rule Change is summarized as follows:

*Certificate of Incorporation and Bylaws of ICE Group.* ICE Group would take appropriate steps to incorporate voting and ownership restrictions, provisions relating to the qualifications of directors and officers and their submission to jurisdiction, compliance with the Federal securities laws, access to books and records and other matters related to its control of the U.S. Regulated Subsidiaries. Specifically, the Amended and Restated Certificate of Incorporation of ICE Group (the “ICE Group Certificate”)<sup>6</sup> and the Amended and Restated Bylaws of ICE Group (the “ICE Group Bylaws”)<sup>7</sup> would contain provisions to incorporate these concepts with respect to itself, as well as its directors, officers, employees, and agents (as applicable):

- *Voting and Ownership Restrictions in the ICE Group Certificate and Bylaws.* The ICE Group Certificate would contain voting and ownership restrictions that will restrict any person, either alone or together with its related persons, from having voting control over ICE Group shares entitling the holder thereof to cast more than 10% of the then outstanding votes entitled to be cast on a matter or beneficially owning ICE Group shares representing more than 20% of the outstanding votes entitled to be cast on a matter. The ICE Group Certificate would provide that ICE Group will be required to disregard any votes purported to be cast in excess of the voting restriction. In the event that any person(s) exceeds the ownership restrictions, it will be obligated to sell promptly, and ICE Group is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of ICE Group necessary so that such person, together with its related persons, will beneficially own shares of ICE Group representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding. Consistent with the current Amended and Restated Certificate of Incorporation of NYSE Euronext (the “NYSE Euronext Certificate”), the ICE Group board of

changes proposed by the NYSE Exchanges to be made in connection with the Merger.

<sup>6</sup> The text of the proposed ICE Group Certificate is attached to the Proposed Rule Change as Exhibit 5A.

<sup>7</sup> The text of the proposed ICE Group Bylaws is attached to the Proposed Rule Change as Exhibit 5B.

<sup>4</sup> 15 U.S.C. 78qA [sic].

directors may waive the voting and ownership restrictions if it makes certain determinations (which will be subject to the same requirements as are currently required to be made by the board of directors of NYSE Euronext in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority. The ICE Group Certificate further provides that the board of directors may not approve either voting or ownership rights in excess of a 20% threshold with respect to any person that is a Member of the Exchange, as defined in the ICE Group Certificate (an "NYSE Member"), a Member of NYSE MKT as defined in the ICE Group Certificate (including any person who is a related person of such member, a "NYSE MKT Member"), an ETP Holder of NYSE Arca Equities, as defined in the ICE Group Certificate (an "ETP Holder"), or an OTP Holder or OTP Firm of NYSE Arca, as defined in the ICE Group Certificate (an "OTP Holder" and "OTP Firm," respectively). This limitation is currently in the NYSE Euronext Certificate with respect to NYSE Members, ETP Holders, OTP Holders and OTP Firms, and in the Second Amended and Restated Bylaws of NYSE Euronext (the "NYSE Euronext Bylaws") with respect to NYSE MKT Members, including an expanded definition of "Related Persons" to address NYSE MKT Members in a manner that is substantively consistent with provisions currently located in the NYSE Rules.

- *Jurisdiction.* The ICE Group Bylaws will provide that ICE Group and its directors, and, to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, its officers, and those of its employees whose principal place of business and residence is outside the United States will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceedings pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the ICE Group Bylaws would provide that, so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be

deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The ICE Group Bylaws would provide that ICE Group will take reasonable steps necessary to cause its officers, directors and employees to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.

- *Books and Records.* The ICE Group Bylaws would provide that for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of ICE Group will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act, and that ICE Group's books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, ICE Group's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, ICE Group may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.

- *Restrictions on Amendments to ICE Group Certificate and Bylaws.* The ICE Group Certificate would provide that before any amendment to the ICE Group Certificate may be effectuated, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective. The ICE Group Bylaws would include the same requirement.

- *ICE Group Independence Policy.* In addition, ICE Group will adopt a Director Independence Policy in the form attached to the Proposed Rule Change as Exhibit 5C (the "ICE Group Independence Policy"), which would be substantially identical to the current Independence Policy of the NYSE Euronext board of directors except for the change of the entity whose board of directors adopted the policy and nonsubstantive conforming changes.

- *Additional Matters.* The ICE Group Bylaws would include provisions regarding cooperation with the Commission and the U.S. Regulated Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function, preservation of the independence of the U.S. Regulated Subsidiaries' self-regulatory function, and directors' consideration of the effect of ICE Group's actions on the U.S. Regulated Subsidiaries' ability to carry out their respective responsibilities under the Exchange Act.

*Proposed Approval of Waiver of Ownership and Voting Restrictions of NYSE Euronext.* The Amended and Restated Certificate of Incorporation of NYSE Euronext (the "NYSE Euronext Certificate") currently restricts any person, either alone or together with its related persons, from being entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially owning shares of stock of NYSE Euronext representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.<sup>8</sup> NYSE Euronext is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Euronext shares that are held in excess of the ownership restriction. The NYSE Euronext Certificate and the Amended and Restated Bylaws of NYSE Euronext (the "NYSE Euronext Bylaws") provide that the board of directors of NYSE Euronext may waive these voting and ownership restrictions if it makes certain determinations and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the U.S. Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder,<sup>9</sup> and filed with, and approved by, each European Regulator (as defined in the NYSE Euronext Certificate) having appropriate jurisdiction and authority.<sup>10</sup> Acting pursuant to this waiver provision, the board of directors of NYSE Euronext has adopted the resolutions set forth in Exhibit 5D to the Proposed Rule Change

<sup>8</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2.

<sup>9</sup> 15 U.S.C. 78s(b).

<sup>10</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2, and Amended and Restated Bylaws of NYSE Euronext, Section 10.12.

(the “NYSE Euronext Resolutions”) in order to permit ICE Group to own and vote 100% of the outstanding common stock of NYX Holdings as of and after the NYSE Euronext Merger. NYSE MKT is requesting approval by the Commission of the NYSE Euronext Resolutions in order to allow the NYSE Euronext Merger to take place.

*Changes to the NYSE Euronext Certificate and Bylaws.* NYX Holdings, as a Delaware limited liability company, will operate pursuant to an operating agreement (the “NYX Holdings Operating Agreement”), a copy of which is attached to the Proposed Rule Change as Exhibit 5E. The NYX Holdings Operating Agreement will differ in certain respects from the current NYSE Euronext Certificate and Bylaws as a result of the different form of organization of NYX Holdings and as a result of the change from a public company to a wholly owned subsidiary.

- *Proposed Voting and Ownership Restrictions of NYX Holdings.* Because NYX Holdings, the surviving entity of the merger of NYSE Euronext into Merger Sub, would be a wholly owned subsidiary of ICE Group as a result of the NYSE Euronext Merger, NYSE MKT is proposing to adopt voting and ownership restrictions that will differ from those in the current NYSE Euronext Certificate, and would be consistent with the analogous provisions in the Second Amended and Restated Certificate of Incorporation of NYSE Group (the “NYSE Group Certificate”):

- first, the NYX Holdings Operating Agreement would provide that all of the issued and outstanding membership interests of NYX Holdings will be held by ICE Group, and that ICE Group may not transfer or assign any membership interests without approval by the Commission under the Exchange Act and the relevant European Regulators under the applicable European Exchange Regulations (as defined in the NYX Holdings Operating Agreement);<sup>11</sup>

- second, the NYX Holdings Operating Agreement would provide that the voting and ownership restrictions contained therein would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests of NYX Holdings and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary (as such terms are defined in the NYX Holdings Operating Agreement). The

<sup>11</sup> See NYX Holdings Operating Agreement, Article VII Sections 7.1 (ICE Group as sole member) and 7.2 (transfer restrictions).

voting and ownership restrictions in the NYX Holdings Operating Agreement would otherwise mirror those in both the current NYSE Group Certificate and the proposed ICE Group Certificate: A 10% threshold for the voting restriction and an ownership restriction of 20%.<sup>12</sup>

- *Proposed Amendments to Certain Public-Company-Related and Other Provisions of NYSE Euronext Organizational and Corporate Governance Documents.* Under the Proposed Rule Change, and in light of the fact that NYX Holdings will be a wholly owned subsidiary of ICE Group following the completion of the Merger, the NYX Holdings Operating Agreement, though based in substantial part on the current NYSE Euronext Certificate and Bylaws, will reflect a simplified and more efficient governance and capital structure that is appropriate for a wholly owned subsidiary. The NYX Holdings Operating Agreement also will include certain provisions that are analogous to provisions in the organizational documents of NYSE Group, which is a wholly owned subsidiary of NYSE Euronext, just as NYX Holdings will be a wholly owned subsidiary of ICE Group following completion of the Merger.

- *Other.* The NYX Holdings Operating Agreement will (a) include the provision, which is currently in the NYSE Euronext Bylaws, that requires the board of directors of NYSE Euronext to make certain determinations relating to NYSE MKT in order to waive the voting and ownership restrictions, (b) update the names of certain European regulatory authorities in the definitions of “Euronext College of Regulators” and “European Regulator” and the technical descriptions of regulated markets and entities in the definitions of “European Exchange Regulations,” “European Regulated Market” and “European Market Subsidiary” (as currently defined in the NYSE Euronext Bylaws and incorporated into the NYSE Euronext Certificate), and (c) expand the definition of “Related Persons” to address NYSE MKT Members in a manner that is substantively consistent with provisions currently located in the NYSE Rules.

*Proposed Amendments to Voting and Ownership Restrictions of NYSE Group.* The NYSE Group Certificate currently provides that, if NYSE Euronext and the trust established pursuant to the Trust Agreement, dated as of April 4, 2007 and amended as of October 1, 2008, by and among NYSE Euronext, NYSE Group and other parties thereto (the

“NYSE Trust Agreement”) do not hold 100% of the outstanding stock of NYSE Group, no person, either alone or together with its related persons, may be entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially own shares of stock of NYSE Group representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.<sup>13</sup> NYSE Group is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Group shares which are held in excess of the ownership restriction.<sup>14</sup>

- Under the Proposed Rule Change, the voting and ownership restrictions in the NYSE Group Certificate would be amended to apply only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as defined in the NYSE Group Certificate); and expand the definition of “Related Persons” regarding NYSE MKT Members so that it is consistent with the language in the NYSE Rules, which language also will be incorporated in the ICE Group Certificate and the NYX Holdings Operating Agreement pursuant to the Proposed Rule Change.

*Other Proposed Amendments to NYSE Group Certificate.* Under the Proposed Rule Change, the NYSE Group Certificate also would be amended to make certain clarifications and technical edits (for example, to conform the use of defined terms and other provisions to be consistent with the other amendments to the NYSE Group Certificate set forth in the Proposed Rule Change).

*Proposed Amendments to constituent documents of the Exchange, NYSE MKT, NYSE Market and NYSE Regulation.* Under the Proposed Rule Change, certain conforming changes will be made to the Fourth Amended and Restated Operating Agreement, dated as of August 23, 2012, of the Exchange (the “Exchange Operating Agreement”) to reflect that certain nominations to the Board will be made by ICE Group rather than by NYSE Euronext. Substantially the same revisions would be made to the analogous provisions of the Third Amended and Restated Operating Agreement of NYSE MKT, the Second Amended and Restated Bylaws of NYSE Market and the Fourth Amended and Restated Bylaws of NYSE Regulation.

<sup>13</sup> See NYSE Group Certificate, Article IV Section 4(b)(1) and (2).

<sup>14</sup> See NYSE Group Certificate, Article IV Sections 4(b)(1)(A) and 4(b)(2)(D).

<sup>12</sup> See NYSE Group Certificate, Article IV Section 4(b); and ICE Group Certificate, Article V.

*Proposed Amendments to the Exchange Rules, NYSE MKT Rules, and NYSE Arca Equities Rules.* Under the Proposed Rule Change, certain technical amendments would be made to the Exchange Rules, including replacing references to “NYSE Euronext” with references to ICE Group, and deleting definitions of “member” and “member organization” relating to NYSE MKT, which are currently set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the current NYSE Euronext Certificate, because under the Proposed Rule Change, the ICE Group Certificate will incorporate this language. In addition, certain technical amendments would be made to the NYSE MKT Rules and NYSE Arca Equities Rules to replace references to “NYSE Euronext” with references to ICE Group.

The Second Amended and Restated Certificate of Incorporation of IntercontinentalExchange Group, Inc. that will be effective as of the consummation of the Merger, the Amended and Restated Bylaws of IntercontinentalExchange Group, Inc. that will be effective as of the consummation of the Merger; the proposed Director Independence Policy of Intercontinental-Exchange Group, Inc. that will be adopted by the board of directors of IntercontinentalExchange Group, Inc. effective as of the consummation of the Merger; the resolutions of the NYSE Euronext Board of Directors; the proposed Amended and Restated Limited Liability Company Agreement of NYSE Euronext Holdings LLC that will be effective as of the consummation of the Merger; the proposed Third Amended and Restated Certificate of Incorporation of NYSE Group, Inc. that will be effective as of the consummation of the Merger; the proposed Fifth Amended and Restated Operating Agreement of New York Stock Exchange LLC that will be effective as of the consummation of the Merger; the proposed Fourth Amended and Restated Operating Agreement of NYSE MKT LLC that will be effective as of the consummation of the Merger; the proposed Third Amended and Restated Bylaws of NYSE Market (DE), Inc. that will be effective as of the consummation of the Merger; the proposed Fifth Amended and Restated Bylaws of NYSE Regulation, Inc. that will be effective as of the consummation of the Merger; the proposed amended Rules of the New York Stock Exchange, LLC that will be effective as of the consummation of the Merger; the proposed revised Director Independence Policy that will be adopted by the boards of directors of New York Stock Exchange, LLC, NYSE

MKT LLC, NYSE Market (DE), Inc. and NYSE Regulation, Inc. effective as of the consummation of the Merger; the proposed amendments to the NYSE Trust Agreement, that will be effective as of the consummation of the Merger; the proposed amended Rules of NYSE MKT that will be effective as of the consummation of the Merger; and the proposed amended Rules of NYSE Arca Equities, Inc. that will be effective as of the consummation of the Merger are attached to the Proposed Rule Change as Exhibits 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5L, 5M, 5N and 5O, respectively.

The text of the Proposed Rule Change is available at the Exchange, the Commission’s Public Reference Room, and on the Web site of the Exchange ([www.nyse.com](http://www.nyse.com)). The text of Exhibits 5A through 5O to the Proposed Rule Change is also available on the Exchange’s Web site and on the Commission’s Web site ([www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)).

## **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

#### **1. Purpose**

The purpose of this rule filing is to adopt the rules necessary to permit NYSE Euronext to effect the Merger and to amend certain provisions of the organizational and other governance documents of NYSE Euronext, NYSE Group and certain of the U.S. Regulated Subsidiaries, including certain Exchange Rules, NYSE MKT Rules and NYSE Arca Equities Rules.

#### **1. Overview of the Merger**

NYSE MKT is submitting the Proposed Rule Change to the Commission in connection with the Merger of NYSE Euronext and ICE. ICE Group believes the Merger brings together two highly complementary businesses and will create an end-to-end

multi-asset portfolio that will be strongly positioned to serve a global client base and capture current and future growth opportunities.

Other than as described herein and in the separate proposed rule changes filed by each NYSE Exchange, ICE Group and the NYSE Exchanges do not plan to make any changes to the regulated activities of the U.S. Regulated Subsidiaries in connection with the Merger. If ICE Group determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be effective until the consummation of the Merger.

The Merger will occur pursuant to the terms of the Merger Agreement. As a result of the Merger, NYX Holdings, the successor to NYSE Euronext, will be a subsidiary of ICE Group.

In the Merger, NYSE Euronext, the indirect parent of NYSE MKT, will become a wholly owned subsidiary of ICE Group. ICE Group is currently a wholly owned subsidiary of ICE. ICE Group in turn has two wholly owned subsidiaries, ICE Merger Sub and NYSE Euronext Merger Sub. ICE Merger Sub will be merged with and into ICE, with ICE as the surviving corporation and a wholly owned subsidiary of ICE Group. Immediately afterward, NYSE Euronext will be merged with and into NYSE Euronext Merger Sub, with NYSE Euronext Merger Sub as the surviving company and a wholly owned subsidiary of ICE Group. The surviving entity in the NYSE Euronext Merger will change its name to NYSE Euronext Holdings LLC from and after the closing of the NYSE Euronext Merger.

Under the terms of the Merger Agreement, each share of NYSE Euronext common stock will be converted into 0.1703 of a newly issued share of ICE Group common stock and \$11.27 cash (together, the “Standard Merger Consideration”). NYSE Euronext stockholders may also elect to receive \$33.12 in cash, or a stock election to receive 0.2851 of a share of ICE Group common stock, for each of their NYSE Euronext shares. Both the cash election and the stock election are subject to proration and adjustment procedures to ensure that the total amount of cash paid, and the total number of shares of ICE Group common stock issued, in the NYSE Euronext Merger to the NYSE Euronext stockholders, as a whole, will be equal to the total amount of cash and number of shares that would have been paid and issued if all of the NYSE Euronext stockholders received the standard election amount. Following the

Merger, ICE Group common shares are expected to be listed on the New York Stock Exchange.

The board of directors of ICE has determined that the Merger is in the best interests of its stockholders, approved the Merger Agreement and resolved to recommend to its stockholders that they approve the adoption of the Merger Agreement. The board of directors of NYSE Euronext has determined that the Merger is in the best interests of its stockholders, approved the Merger Agreement and resolved to recommend that its stockholders approve the adoption of the Merger Agreement.

## 2. Overview of ICE Group Following the Merger

Following the Merger, ICE Group will be a for-profit, publicly traded Delaware corporation. ICE Group will hold all of the equity interests in ICE, which will continue its current operations, and in NYX Holdings, which will hold (1) 100% of the equity interests of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests in certain regulated trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom).

ICE Group will amend its certificate and bylaws to incorporate ownership and voting limitations and certain other provisions to satisfy U.S. and European regulatory requirements as described in detail in the Proposed Rule Change.

After the Merger, NYSE Group will be directly wholly owned by NYX Holdings and will continue to own, directly or indirectly, the three NYSE Exchanges—the Exchange, NYSE Arca and NYSE MKT—which provide marketplaces where investors buy and sell listed companies' common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE Regulation, Inc., an indirect not-for-profit subsidiary of NYX Holdings, will continue to oversee FINRA's performance of certain market surveillance and enforcement functions for the NYSE Exchanges, enforce listed company compliance with applicable standards, and oversee regulatory policy determinations, rule interpretation and regulation related rule development.

In Europe, NYSE Euronext and its subsidiaries own European-based exchanges that comprise Euronext N.V. and its subsidiaries—the London, Paris, Amsterdam, Brussels and Lisbon stock exchanges, as well as the derivatives

markets in London, Paris, Amsterdam, Brussels and Lisbon (with certain qualifications and exceptions set forth in the ICE Group Bylaws, the "European Market Subsidiaries"). The activities of the NYSE Euronext European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the French Authority of Prudential Control (*Autorité de Contrôle Prudentiel*), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*), the Belgian Financial Services and Markets Authority (*Autorité des services et marchés financiers*), the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários—CMVM*) and the U.K. Financial Conduct Authority (*FCA*).

NYSE Euronext and ICE expect that, after the closing of the Merger, Euronext will be separated from ICE Group, although no definitive plans have been made to pursue such a separation. An initial public offering of Euronext would include all of the European Market Subsidiaries (the continental European cash equity platforms and the derivatives traded on them) but would not include the derivatives businesses of another current subsidiary of Euronext, Liffe Administration and Management ("LAM"). ICE has informed NYSE Euronext that it expects the derivatives business of LAM will be gradually transitioned to ICE Futures Europe, subject to regulatory approval in the United Kingdom.

The current NYSE Euronext Certificate and Bylaws provide that each provision related to any European Market Subsidiary or any European regulatory requirement will be automatically repealed if (i) NYSE Euronext at any time in the future no longer holds a direct or indirect "controlling interest" (as defined therein) in Euronext or (ii) a "Euronext Call Option" (as defined in the NYSE Euronext bylaws) has been exercised and, after a period of six months following such exercise, Stichting NYSE Euronext, a foundation ("stichting") organized under the laws of The Netherlands, formed on April 4, 2007 (the "Foundation") holds shares of Euronext that represent a substantial portion of Euronext's business (provided that, in this case, the NYSE Euronext board of directors approves the applicable revocation). The ICE Group Certificate and Bylaws would contain similar provisions, except that the standard in clause (i) above that ICE

Group no longer holds a direct or indirect controlling interest in Euronext would be replaced by a standard that it ceases to control Euronext, with "control" defined by reference to International Financial Reporting Standards. The separation of Euronext as described above is expected to trigger the repeal described in clause (i) as so modified.

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of each U.S. Regulated Subsidiary will be preserved. Specifically, after the Merger, NYSE Group's businesses and assets will continue to be structured as follows:

- The Exchange will remain a direct wholly owned subsidiary of NYSE Group and an indirect wholly owned subsidiary of NYX Holdings.

- NYSE Market will remain a wholly owned subsidiary of the Exchange and will continue to conduct the Exchange's business.

- NYSE Regulation will remain a wholly owned subsidiary of the Exchange and continue to perform, and/or oversee the performance of, regulatory responsibilities of the Exchange pursuant to a delegation agreement with the Exchange and regulatory functions of NYSE Arca and NYSE MKT pursuant to services agreements with them.<sup>15</sup>

- NYSE Arca and NYSE Arca L.L.C., a Delaware limited liability company, will remain wholly owned subsidiaries of NYSE Group.

- NYSE Arca Equities will remain a wholly owned subsidiary of NYSE Arca.

- NYSE MKT will remain a direct wholly owned subsidiary of NYSE Group and an indirect wholly owned subsidiary of NYX Holdings.

- The Merger will have no effect on the ability of any party to trade securities on the Exchange, NYSE Arca or NYSE MKT.

Similarly, NYX Holdings, as successor to NYSE Euronext, and its subsidiaries will conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European Regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

ICE Group acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, NYSE Arca or NYSE MKT, it will be

<sup>15</sup> Certain regulatory functions have been allocated to, and/or are otherwise performed by, FINRA.

responsible for referring such possible violations to each such exchange, respectively. In addition, ICE Group will enter into an agreement with NYSE Regulation acknowledging that each of the Exchange, NYSE MKT and NYSE Arca has contracted to have NYSE Regulation perform its self-regulatory obligations, in each case with the self-regulatory organization retaining its responsibility for the adequate performance of those regulatory obligations, and agreeing to provide adequate funding to NYSE Regulation to allow NYSE Regulation to conduct its regulatory activities with respect to the Exchange, NYSE MKT and NYSE Arca.

### 3. Proposed Approval of Waiver of Voting and Ownership Restrictions of NYSE Euronext

Article V of the current NYSE Euronext Certificate provides that (1) no person, either alone or together with its "related persons" (as defined in the NYSE Euronext Certificate), may be entitled to vote or cause the voting of shares of NYSE Euronext beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of NYSE Euronext (the "NYSE Euronext Voting Restriction").<sup>16</sup> NYSE Euronext must disregard any votes purported to be cast in excess of the NYSE Euronext Voting Restriction.<sup>17</sup>

In addition, the NYSE Euronext Certificate provides that no person, either alone or together with its related persons, may at any time beneficially own shares of NYSE Euronext representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "NYSE Euronext Ownership Restriction").<sup>18</sup> If any person, either alone or together with its related persons, owns shares of NYSE Euronext

in excess of the NYSE Euronext Ownership Restriction, then such person and its related persons are obligated to sell promptly, and NYSE Euronext is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of NYSE Euronext necessary so that such person, together with its related persons, will beneficially own shares of NYSE Euronext representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.<sup>19</sup>

The NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction are applicable to each person unless and until (1) Such person has delivered a notice in writing to the board of directors of NYSE Euronext, not less than 45 days (or such shorter period as the board of directors of NYSE Euronext expressly permits) prior to any vote or, in the case of the NYSE Euronext Ownership Restriction, prior to the acquisition of any shares of NYSE Euronext that would cause such person, either alone or together with its related persons, to exceed the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of NYSE Euronext stock beneficially owned by such person or its related persons in excess of the NYSE Euronext Voting Restriction, or in the case of the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of NYSE Euronext has resolved to expressly permit such voting or ownership, as applicable; (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>20</sup> and has become effective thereunder; and (4) such resolution has been filed with, and approved by, each European Regulator having appropriate jurisdiction and authority. Subject to its fiduciary duties under applicable law, the NYSE Euronext board of directors may not adopt any resolution pursuant to clause (2) unless it has determined that the exercise of such voting rights (or the

entering into of a voting agreement) or ownership, as applicable:

- Will not impair the ability of any U.S. Regulated Subsidiary, NYSE Euronext or NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity) to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder;
- will not impair the ability of any of the European Market Subsidiaries of NYSE Euronext or Euronext (to the extent that Euronext continues to exist as a separate entity) to discharge their respective responsibilities under the European Exchange Regulations (as defined in the NYSE Euronext Bylaws);
- is otherwise in the best interest of NYSE Euronext, its stockholders, the U.S. Regulated Subsidiaries and the European Market Subsidiaries, and will not impair the Commission's ability to enforce the Exchange Act or the European Regulators' ability to enforce the European Exchange Regulations;
- for so long as NYSE Euronext directly or indirectly controls the Exchange or NYSE Market, neither such person nor any of its related persons is a NYSE Member;
- for so long as NYSE Euronext directly or indirectly controls NYSE MKT, neither such person nor any of its related persons is a NYSE MKT Member (this restriction is currently set forth in the Bylaws of NYSE Euronext<sup>21</sup>);
- for so long as NYSE Euronext directly or indirectly controls NYSE Arca, NYSE Arca Equities or any facility of NYSE Arca, neither such person nor any of its related persons is an ETP Holder, an OTP Holder or an OTP Firm; and
- neither such person nor any of its related persons is a U.S. Disqualified Person or a European Disqualified Person (as such terms are defined in the NYSE Euronext Certificate).<sup>22</sup>

In order to allow ICE Group to wholly own and vote all of the outstanding common stock of NYSE Euronext upon consummation of the Merger, ICE Group has delivered written notice to the board of directors of NYSE Euronext pursuant to the procedures set forth in the NYSE Euronext Certificate requesting approval of its voting and ownership of NYSE Euronext shares in excess of the NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction. Among other things, in this notice, ICE Group represented to the board of directors of NYSE Euronext that neither it, nor any of its related persons, is (1)

<sup>16</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1.

<sup>17</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1(A).

<sup>18</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2.

<sup>19</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2(D).

<sup>20</sup> 15 U.S.C. 78s(b).

<sup>21</sup> See NYSE Euronext Bylaws, Section 10.12.

<sup>22</sup> See NYSE Euronext Certificate, Article V Sections 1(B), 1(C), 2(B) and 2(C).

An NYSE Member; (2) an NYSE MKT Member; (3) an ETP Holder; (4) an OTP Holder or OTP Firm; or (5) a U.S. Disqualified Person or a European Disqualified Person.

On [June 5] [sic], 2013, the board of directors of NYSE Euronext adopted by written consent the NYSE Euronext Resolutions to permit ICE Group, either alone or with its related persons, to exceed the NYSE Euronext Ownership Restriction and the NYSE Euronext Voting Restriction. In adopting such resolutions, the board of directors of NYSE Euronext made the necessary determinations set forth above and approved the submission of the Proposed Rule Change to the Commission. The U.S. Regulated Subsidiaries will continue to operate and regulate their markets and members exactly as they have done prior to the Merger. Except as set forth in the Proposed Rule Change, ICE Group is not proposing any amendments to their trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the U.S. Regulated Subsidiaries after the Merger, the U.S. Regulated Subsidiaries will operate in the same manner following the Merger as they operate today. Thus, the Commission will continue to have plenary regulatory authority over the U.S. Regulated Subsidiaries, as is the case currently with these entities. As described in the following sections of this filing, NYSE MKT is proposing the adoption of the ICE Group Certificate and Bylaws by ICE Group, the NYX Holdings Operating Agreement by NYX Holdings as the surviving entity of the NYSE Euronext Merger, which are modeled in large part on the current NYSE Euronext Certificate and Bylaws (with adjustments discussed below), and a series of amendments to the NYSE Group Certificate, that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities, and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The NYSE Euronext board of directors also determined that ownership of NYSE Euronext by ICE Group is in the best interests of NYSE Euronext, its stockholders and the U.S. Regulated Subsidiaries.

An extract with the relevant provisions of the Euronext Resolutions is attached as Exhibit 5D to the

Proposed Rule Change and can be found on NYSE MKT's Web site and the Commission's Web site.

NYSE MKT hereby requests that the Commission approve the NYSE Euronext Resolutions and allow ICE Group, either alone or with its related persons, to own and vote all of the outstanding common stock of NYSE Euronext upon and following the consummation of the Merger.

#### 4. Proposed Amendments to Ownership and Voting Restrictions After the Merger Overview

NYSE MKT is proposing that, effective as of the completion of the Merger, the ICE Group Certificate would contain voting and ownership restrictions that are substantially identical to those currently in the NYSE Euronext Certificate (except that they would apply only for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary), and would restrict any person, either alone or together with its related persons, from having voting control over ICE Group shares entitling the holder thereof to cause more than 10% of the votes entitled to be cast on any matter or beneficially owning ICE Group shares representing more than 20% of the outstanding votes that may be cast on any matter.

In addition, NYSE MKT is proposing that the Commission approve the NYX Holdings Operating Agreement, effective as of the consummation of the Merger, which would include voting and ownership provisions, as well as related waiver provisions, again substantially identical to those in the current NYSE Euronext Certificate and NYSE Euronext Bylaws, except that they would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests in NYX Holdings and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary.

#### Voting and Ownership Restrictions in the ICE Group Certificate

Under the Proposed Rule Change, the ICE Group Certificate would provide that (1) no person, either alone or together with its related persons (as defined in the ICE Group Certificate), may be entitled to vote or cause the voting of shares of stock of ICE Group beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate

more than 10% of the then outstanding votes entitled to be cast on such matter, and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of ICE Group (the "ICE Group Voting Restriction").<sup>23</sup> The ICE Group Certificate will require ICE Group to disregard any votes purported to be cast in excess of the ICE Group Voting Restriction.

In addition, the ownership restrictions in the ICE Group Certificate would provide that, if such restrictions apply, no person, either alone or together with its related persons, may at any time own beneficially shares of ICE Group representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "ICE Group Ownership Restrictions").<sup>24</sup> If any person, either alone or together with its related persons, owns shares of ICE Group in excess of the ICE Group Ownership Restriction, then such person and its related persons are obligated to sell promptly, and ICE Group is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of ICE Group necessary so that such person, together with its related persons, will beneficially own shares of ICE Group representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.<sup>25</sup>

The ICE Group Certificate would provide that the ICE Group Voting Restriction and the ICE Group Ownership Restriction would apply only for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary (as such term is defined in the ICE Group Certificate).

The ICE Group Voting Restriction applies to each person unless and until (1) Such person has delivered a notice in writing to the board of directors of ICE Group, not less than 45 days (or such shorter period as the board of directors of ICE Group expressly permits) prior to any vote, of such person's intention, either alone or

<sup>23</sup> See ICE Group Certificate, Article V Section A.

<sup>24</sup> See ICE Group Certificate, Article V Section B.

<sup>25</sup> See ICE Group Certificate, Article V Section B.4.

together with its related persons, to vote or cause the voting of shares of ICE Group stock beneficially owned by such person or its related persons in excess of the ICE Group Voting Restriction; (2) the board of directors of ICE Group has resolved to expressly permit such voting; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>26</sup> and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority.<sup>27</sup> Subject to its fiduciary duties under applicable law, the ICE Group board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless the board has made certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext in connection with a waiver of the NYSE Euronext Voting Restriction (as discussed above).<sup>28</sup>

The ICE Group Ownership Restriction applies to each person unless and until (1) Such person has delivered a notice in writing to the board of directors of ICE Group, not less than 45 days (or such shorter period as the board of directors of ICE Group expressly permits) prior to the acquisition of any shares of ICE Group that would cause such person, either alone or together with its related persons, to exceed the ICE Group Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of ICE Group has resolved to expressly permit such ownership; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>29</sup> and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority.<sup>30</sup> Subject to its fiduciary duties under applicable law, the ICE Group board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless the board has made certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext in connection with a waiver of the NYSE

Euronext Ownership Restriction (as discussed above).<sup>31</sup>

#### Amendments to NYSE Euronext Voting and Ownership Restrictions

Under the Proposed Rule Change, the NYX Holdings Operating Agreement, although modeled substantially on the current NYSE Euronext Certificate and Bylaws, would reflect certain modifications from the analogous provisions in the NYSE Euronext Certificate and Bylaws, effective as of the Merger, to be consistent with the status of NYX Holdings as a wholly owned subsidiary of ICE Group and with provisions currently in the NYSE Group Certificate, and certain other changes to update the voting and ownership restrictions, in the following respects:

- The NYX Holdings Operating Agreement would provide that all issued and outstanding membership interests will be held by ICE Group, and that ICE Group may not transfer or assign any membership interests without approval by the Commission under the Exchange Act and the relevant European Regulators (as defined in the NYX Holdings Operating Agreement) under the applicable European Exchange Regulations (as defined in the NYSE Euronext Certificate).<sup>32</sup>

- The NYX Holdings Operating Agreements would provide that the NYX Holdings voting and ownership restrictions contained therein would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests of NYX Holdings,<sup>33</sup> and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary (as defined in the NYX Holdings Operating Agreement).<sup>34</sup>

- The definition of "Related Persons" would be expanded to provide that (1) in the case of a person that is a "member" (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE MKT, such person's "Related Persons" would include the "member"

<sup>31</sup> See text accompanying notes 18–20 [sic] above. References to ICE Group would be added as appropriate in the context of a waiver of the ICE Group Ownership Restriction. See ICE Group Certificate, Article V Section B.3.

<sup>32</sup> The analogous provision in the NYSE Group Certificate is Article IV Section 4(a). See proposed NYX Holdings Operating Agreement, Article VII Sections 7.1 and 7.2.

<sup>33</sup> The analogous provision in the NYSE Group Certificate is Article IV, Section 4(b). See proposed NYX Holdings Operating Agreement, Article IX Section 9.1.

<sup>34</sup> The analogous provision in the NYSE Group Certificate is Article IV Sections (b)(1) and (2). See proposed NYX Holdings Operating Agreement, Article VII Section 7.2.

(as defined in Section 3(a)(3)(A)(ii), (iii) or (iv) of the Exchange Act) with which such person is associated; and (2) in the case of any person that is a "member" (as defined in 3(a)(3)(A)(ii), (iii) or (iv) of the Exchange Act) of NYSE MKT, such person's "Related Persons" would include any "member" (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such person.<sup>35</sup> A conforming change will be made in the NYSE Group Certificate, as discussed below.

- The mandatory repurchase of membership interests from a Person whose ownership represents in the aggregate more than 20% in interest of the interests entitled to vote on any matter would be at a price determined by reference to each incremental percentage ownership over 20% rather than at par value, specifically \$1,000 for each percent.<sup>36</sup>

#### Amendments to NYSE Group Voting and Ownership Restrictions

The voting restrictions contained in the current NYSE Group Certificate are substantially the same as those in the current NYSE Euronext Certificate described above, except that (i) the NYSE Group Certificate does not contain any references to European subsidiaries, markets or regulators, and (ii) the NYSE Group Certificate contains references to NYSE MKT members in its definition of "Related Person" that are not currently in NYSE Euronext.

The NYSE Group Certificate would be updated to provide that

- the NYSE Group Voting Restriction and the NYSE Group Ownership Restriction would apply only in the event that NYX Holdings does not own all of the issued and outstanding shares of NYSE Group<sup>37</sup> and only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as such term is defined in the NYSE Group Certificate).<sup>38</sup>

- The definition of "Related Persons" would be expanded to provide that (1) in the case of a person that is a "member" (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE MKT, such person's "Related Persons" would include the "member" (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and (iii) of the

<sup>35</sup> See proposed NYX Holdings Operating Agreement, Article I Section 1.1 (definition of Related Persons, clauses xi and xiii).

<sup>36</sup> See proposed NYX Holdings Operating Agreement, Article IX, Section 9.1(b)(4).

<sup>37</sup> NYSE Group Certificate, Article IV, Section 4(b).

<sup>38</sup> NYSE Group Certificate, Article IV, Sections 4(b)(1) and (2).

<sup>26</sup> 15 U.S.C. 78s(b).

<sup>27</sup> See ICE Group Certificate, Article V Section A.2.

<sup>28</sup> See text accompanying notes 18–20 [sic] above. References to ICE Group would be added as appropriate in the context of a waiver of the ICE Group Voting Restriction. See ICE Group Certificate, Article V Section A.3.

<sup>29</sup> 15 U.S.C. 78s(b).

<sup>30</sup> See ICE Group Certificate, Article V Section B.2.

Exchange Act, which are currently referenced in this provision of the NYSE Group Certificate) with which such person is associated; and (2) in the case of any person that is a "member" (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and (iii) of the Exchange Act, which are currently referenced in this provision of the NYSE Group Certificate) of NYSE MKT, such person's "Related Persons" would include any "member" (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such person.<sup>39</sup> This conforms the definition of Related Person to that in the ICE Group Certificate and the NYX Holdings Operating Agreement.

#### 5. Additional Matters to be Addressed in the ICE Group Certificate and Bylaws<sup>40</sup>

##### Jurisdiction Over Individuals

Under the Proposed Rule Change, the ICE Group Bylaws would provide that ICE Group and its directors, and, to the extent that they are involved in the activities of the U.S. Regulated Subsidiaries, ICE Group's officers and those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. The ICE Group Bylaws would also provide that, with respect to any such suit, action, or proceeding brought by the Commission, ICE Group and its directors, officers and employees would (1) be deemed to agree that ICE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceedings relating to ICE Group or any of its subsidiaries; and (2) be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action, or proceeding is an

inconvenient forum or that the venue of the suit, action, or proceedings is improper, or that the subject matter thereof may not be enforced in or by the U.S. federal courts of the Commission.<sup>41</sup>

In addition, the ICE Group Bylaws would provide that, so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of ICE Group will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>42</sup>

The ICE Group Bylaws would provide that ICE Group will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of ICE Group to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.<sup>43</sup>

NYSE MKT anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, over each of whom the Commission has direct authority pursuant to Section 19(h)(4) of the Exchange Act.<sup>44</sup>

##### Access to Books and Records

Under the Proposed Rule Change, the ICE Group Bylaws would provide that for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of ICE Group will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>45</sup> In addition, ICE's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, ICE Group may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.<sup>46</sup> The ICE Group Bylaws also would provide that ICE's books and records will at all times be made available for inspection and copying by the Commission, and any U.S.

Regulated Subsidiary to the extent they are related to the activities of the U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.<sup>47</sup>

##### Additional Matters

Under the Proposed Rule Change, the ICE Group Bylaws would provide that ICE Group will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority.<sup>48</sup> In addition, ICE Group would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.<sup>49</sup> The ICE Group Bylaws would also provide that, in discharging his or her responsibilities as a member of the ICE Group board of directors or as an officer or employee of ICE Group, each such director, officer or employee will (a) Comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S. Regulated Subsidiaries pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of ICE Group to any person to consider, or afford any particular weight to, any such matters or to limit his or her consideration of such matters).<sup>50</sup>

The ICE Group Bylaws would also provide that all confidential information that comes into the possession of ICE Group pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) Not be made available to any persons other than to those officers, directors, employees and agents of ICE Group that have a reasonable need to know the contents thereof; (b) be retained in confidence by ICE Group and the officers, directors, employees and agents of ICE Group; and (c) not be used for any commercial purposes.<sup>51</sup> In addition, the ICE Group Bylaws would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential

<sup>39</sup> NYSE Group Certificate, Article IV, Sections 4(b)(1)(E)(vi) and (xii).

<sup>40</sup> The ICE Group Certificate and Bylaws will also set forth certain restrictions and requirements relating to ICE Group's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to ICE Group's U.S. Regulated Subsidiaries and U.S. regulatory matters.

<sup>41</sup> See ICE Group Bylaws, Section 7.1.

<sup>42</sup> See ICE Group Bylaws, Section 8.4.

<sup>43</sup> See ICE Group Bylaws, Section 9.3.

<sup>44</sup> 15 U.S.C. 78s(h)(4).

<sup>45</sup> See ICE Group Bylaws, Section 8.4.

<sup>46</sup> See ICE Group Bylaws, Sections 8.5 and 8.6.

<sup>47</sup> See ICE Group Bylaws, Section 8.3.

<sup>48</sup> See ICE Group Bylaws, Section 9.1.

<sup>49</sup> See *id.*

<sup>50</sup> See ICE Group Bylaws, Section 3.14(b).

<sup>51</sup> See ICE Group Bylaws, Section 8.1.

information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of ICE Group to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.<sup>52</sup>

In addition, the ICE Group Bylaws would provide that ICE Group and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries (to the extent of each U.S. Regulated Subsidiary's self-regulatory function) and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of any U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.<sup>53</sup>

Finally, the ICE Group Bylaws would provide that each director of ICE Group would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into consideration the effect that ICE Group's actions would have on the ability of (a) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group and ICE Group to (1) Engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity), and ICE Group to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.<sup>54</sup>

#### Amendments to the ICE Group Certificate and Bylaws

Under the Proposed Rule Change, the ICE Group Bylaws would provide that, before any amendment to or repeal of any provision of the ICE Group Bylaws shall be effective, such amendment or repeal shall be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that, before such amendment or repeal may be effectuated, the same must be filed with, or filed with and approved by, the Commission pursuant to Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effectuated until filed with, or filed with and approved by, the Commission, as the case may be.<sup>55</sup> These requirements would also apply to any action by ICE Group that would have the effect of amending or repealing any provisions of the ICE Group Certificate.<sup>56</sup>

#### ICE Group Director Independence Policy

Under the Proposed Rule Change, ICE Group would adopt the ICE Group Independence Policy in the form attached to the Proposed Rule Change as Exhibit 5C, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors.

#### 6. Proposed Amendments to Certain Public-Company-Related and Other Provisions of the NYSE Euronext Certificate and Bylaws To Be Reflected in the NYX Holdings Operating Agreement

NYSE MKT is proposing that the NYX Holdings Operating Agreement differ from NYSE Euronext's Certificate and Bylaws to reflect the fact that, after the Merger, NYX Holdings will be an intermediate holding company, will not be a public company traded on an exchange and will not have securities registered under Section 12 of the Exchange Act. As a result, NYX Holdings will not be subject to the Exchange's listing standards or to the corporate governance requirements applicable to publicly traded companies.

As summarized below, the following revisions to the NYSE Euronext Certificate and Bylaws are proposed for the NYX Holdings Operating Agreement in order (1) To simplify and provide for

a more efficient governance and capital structure that is appropriate for a wholly owned subsidiary; (2) to conform certain provisions to analogous provisions of the current organizational documents of NYSE Group, which is a wholly owned subsidiary of NYSE Euronext, just as NYX Holdings will be a wholly owned subsidiary of ICE Group following completion of the Merger; and (3) to make certain clarifications and technical edits (for example, to conform the use of defined terms and other provisions, to update cross-references to sections both internal and in the ICE Group Certificate and Bylaws, and to conform to certain other provisions in the ICE Group Certificate and Bylaws).

- The NYSE Euronext Certificate and Bylaws contain provisions relating to the issuance of one or more series of preferred stock. The NYX Holdings Operating Agreement provides for only one class of membership interest and has no provision for a preferred membership interest because NYSE MKT considers it unlikely that a wholly owned subsidiary would have occasion to issue preferred interests.

- Section 16.1 of the NYX Holdings Operating Agreement would provide that, for so long as NYX Holdings controls, directly or indirectly, any U.S. Regulated Subsidiary, before any amendment to the NYX Holdings Operating Agreement may be effectuated, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective. This provision parallels Article X(C) of the NYSE Euronext Certificate as supplemented, with respect to NYSE MKT, by Section 10.13 of the NYSE Euronext Bylaws.

- The NYX Holdings Operating Agreement would provide that the registered office and agent of NYX Holdings in Delaware will be the Corporation Trust Company, which is the registered agent of other subsidiaries of NYSE Euronext and of ICE.

- Section 3.1 of the NYSE Euronext Bylaws currently provides that the number of directors may be fixed and changed only by resolution adopted by two-thirds of the directors then in office. The two-thirds requirement will be changed to a majority in Section 3.2 of the NYX Holdings Operating Agreement as is appropriate for a wholly owned subsidiary. This standard has been eliminated from the list of provisions that are automatically suspended or become void upon certain events

<sup>52</sup> See ICE Group Bylaws, Section 8.2.

<sup>53</sup> See ICE Group Bylaws, Section 9.4.

<sup>54</sup> See ICE Group Bylaws, Section 3.14(a). This requirement would not, however, create any duty owed by any director, officer or employee of ICE Group to any person to consider, or afford any particular weight to, any of the foregoing matters or

to limit his or her consideration to such matters. See ICE Group Bylaws, Section 3.14(c).

<sup>55</sup> See ICE Group Bylaws, Section 11.3.

<sup>56</sup> See ICE Group Certificate, Article X(C).

specified in Section 10.11 of the NYX Holdings Operating Agreement.

- Certain residency requirements applicable to directors and officers of NYSE Euronext and references to U.S. and European director domiciles and to “Deputy” officers that appear in the NYSE Euronext Certificate and Bylaws would not be included in the NYX Holdings Operating Agreement. Specifically, references to deputies in Section 2(A) of Article VI of the NYSE Euronext Certificate, and in Sections 2.2(3) and (5), Section 2.5, Section 3.12, Section 5.1, Section 10.4 and Section 10.5 of the NYSE Euronext Bylaws would not be replicated in the NYX Holdings Operating Agreement. Additionally, Section 4.4 of the NYSE Euronext Bylaws (regarding domicile requirements for members of the Nominating and Governance Committee of the board of directors) and the reference thereto in Section 4.1 would not be replicated in the NYX Holdings Operating Agreement. All, or the portions regarding director and officer domicile, of the following sections of the NYSE Euronext Bylaws would not be replicated in the NYX Holdings Operating Agreement: all of Section 3.2 (regarding director domicile requirements); all of Section 3.3 (regarding chairman and chief executive officer domicile requirements); portions of Section 3.6 (regarding filling of vacancies on the board); and the cross-references in Section 10.11(B) to the foregoing deleted provisions. In addition, the requirement in Section 3.8 of the NYSE Euronext Bylaws that board meetings be held with equal frequency in the United States and Europe would be replaced with a requirement that one board meeting a year be held in Europe, to parallel the requirement in the ICE Group Bylaws.

- The restrictions on transfers of certain shares of NYSE Euronext common stock contained in Section 4 of Article IV of the NYSE Euronext Certificate have expired in accordance with their terms and would not be included in the NYX Holdings Operating Agreement.

- Notice of meetings of members would not be required under the NYX Holdings Operating Agreement if waived in accordance with Section 8.1(e) thereof.

- The ICE Group Bylaws provide in Section 2.5 that the holders of a majority of the shares outstanding and entitled to vote (giving effect to the “Recalculated Voting Limitation” referred to in Section A.1 of Article V of the ICE Group Certificate, if applicable) may call special meetings of stockholders. A comparable provision is appropriate for

NYX Holdings to provide additional flexibility to ICE Group to take actions in its capacity as the sole member of NYX Holdings following completion of the Merger. Accordingly, Section 8.1(d) of the NYX Holdings Operating Agreement would allow the holders of a majority of the membership interests outstanding and entitled to vote (giving effect to the “Recalculated Voting Limitation,” if applicable) to call special meetings of members.

- The requirement in Section 2.6 of the NYSE Euronext Bylaws for the appointment of an inspector of elections for stockholders meetings would not be included in the NYX Holdings Operating Agreement because the requirement for an inspector of elections under the Delaware General Corporation Law (the “DGCL”) would no longer apply to NYX Holdings after completion of the Merger.<sup>57</sup>

- The requirement in Section 2.7 of the NYSE Euronext Bylaws that directors be elected by a majority of the votes cast (and that they must tender their resignation if such a majority vote is not received), except in the case of contested elections, and that the board of directors may fill any resulting vacancy or may decrease the size of the board, would not be included in the NYX Holdings Operating Agreement, and a plurality voting standard would be adopted for all director elections. These requirements would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member.

- Section 2.10 of the NYSE Euronext Bylaws requires certain advance notice from stockholders of director nominations and stockholder proposals, and that only business brought before a special meeting of stockholders pursuant to NYX Euronext’s notice of the meeting may be brought before the meeting. This provision would not be included in the NYX Holdings Operating Agreement because the requirements would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member.

- In order to give ICE Group additional flexibility to take actions in its capacity as the sole member of NYX Holdings following completion of the Merger, Section 7.5 of the NYX Holdings Operating Agreement would allow the member to take any action without a meeting and without prior notice if consented to, in writing, by the member.

- In order to give ICE Group additional flexibility to take actions in

its capacity as the sole member of NYX Holdings following completion of the Merger, Section 3.4 of the NYX Holdings Operating Agreement would allow members to fill board vacancies.

- The requirements in Article X of the NYSE Euronext Certificate for a supermajority stockholder vote to amend or repeal certain provisions of the certificate would be eliminated from the NYX Holdings Operating Agreement and a majority vote requirement would apply. A supermajority vote requirement would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member, and a majority voting standard is consistent with the standard generally applicable for actions by the parent entity of other wholly owned subsidiaries of NYX Holdings.

- Section 3.4 of the NYX Holdings Operating Agreement, which is analogous to current Section 3.6 of the NYSE Euronext Bylaws, would include “(if any)” after the reference therein to the Nominating and Governance Committee, because NYX Holdings would become a wholly owned subsidiary of ICE Group and, as such, may not have a Nominating and Governance Committee.

- Section 3.4 of the NYSE Euronext Bylaws, which relates to independence requirements, including the requirement that at least 75% of the board must be independent, would not be replicated in the NYX Holdings Operating Agreement because NYX Holdings would be a wholly owned subsidiary of ICE Group after completion of the Merger and, therefore, it is likely that executives of ICE Group and its subsidiaries will serve on this board.

- Section 3.8(a) of the NYX Holdings Operating Agreement would provide that notice of board meetings is not required if waived in accordance with Section 3.8(b), which is less restrictive than Section 3.9 of the NYSE Euronext Bylaws.

- The advance notice period in Section 3.9 of the NYSE Euronext Bylaws for notices of board meetings sent by first-class mail would be reduced from four days to three days in Section 3.8(a) of the NYX Holdings Operating Agreement. This change conforms the notice period to Section 3.6(b) of the ICE Group Bylaws.

- Section 3.12 of the NYSE Euronext Bylaws requires that, if the chairman or deputy chairman of the board of directors is also the chief executive officer or deputy chief executive officer, he or she may not participate in executive sessions of the board of directors, and if the chairman is not the chief executive officer or deputy chief

<sup>57</sup> See Section 231(e) of the Delaware General Corporation Law.

executive officer, he or she will act as a liaison between the board of directors and the chief executive officer or the deputy chief executive officer. No analogous provisions would be included in the NYX Holdings Operating Agreement.

- Certain aspects of the indemnification and expense advancement provisions in Section 15.2 of the NYX Holdings Operating Agreement, including the terms of any insurance policy maintained by NYX Holdings, would be simplified from Section 10.6 of the NYSE Euronext Bylaws in light of the fact that there are not expected to be any independent, non-executive directors of NYX Holdings, and, therefore, a more streamlined process for indemnification claims is appropriate.

- Section 10.10(A) of the NYSE Euronext Bylaws enumerates provisions of the Bylaws for which amendment requires approval by a supermajority of directors. The supermajority approval requirement would be eliminated in Section 16.1 of the NYX Holdings Operating Agreement by decreasing the current two-thirds standard to a majority of the directors then in office, as is appropriate for a wholly owned subsidiary.

- The supermajority stockholder vote requirements in Section 10.10(B) of the NYSE Euronext Bylaws would be eliminated in the NYX Holdings Operating Agreement because a supermajority vote requirement would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member.

- The NYSE Euronext Bylaw provisions that are subject to automatic suspension under Section 10.11 would be revised in Section 16.3 of the NYX Holdings Operating Agreement to reflect elimination of the supermajority voting provisions in Sections 10.10(A) and (B) discussed above.

In addition, the current Independence Policy of the NYSE Euronext board of directors would, effective as of the Merger, cease to apply.

#### 7. Proposed Amendments to the NYSE Group Certificate

Under the Proposed Rule Change, the revisions summarized below to the NYSE Group Certificate are proposed in order to conform certain provisions to the analogous provisions of the organizational documents of NYX Holdings, which would likewise be a wholly owned subsidiary of ICE Group following completion of the Merger, as well as to make certain clarifications and technical edits:

- Section 4(a) of Article IV of the NYSE Group Certificate would be amended to contemplate successors to NYSE Euronext as the holder of all of the issued and outstanding shares of NYSE Group for purposes of the NYSE Trust Agreement.

- Sections 4(b)(1)(A) and 4(b)(2)(A) of Article IV of the NYSE Group Certificate would be amended to clarify that the voting ownership concentration limitations in the NYSE Group Certificate would be effective “for so long as the Corporation shall control, directly or indirectly” a U.S. Regulated Subsidiary, as defined in Section 4(b)(1)(A). Conforming changes relating to the definition of U.S. Regulated Subsidiary and the change of name of NYSE Alternext to NYSE MKT have been made later in the same section and thereafter.

- Typographical errors in references to Exchange Act Section 3(a)(3) would be corrected in Section 4(b)(1)(E)(vi) and (xii) of Article IV.

- Section 3 of Article V would be amended by adding the words “from time to time” to conform the provision to the NYX Holdings Operating Agreement.

- Section 5 of Article V of the NYSE Group Certificate would be amended to clarify that the right of the NYSE Group board of directors to remove directors is subject to any rights of holders of any preferred stock in order to make this provision consistent with Section 2 of Article IV of the NYSE Group Certificate, which provides that preferred stock may be issued that may have voting rights.

- Numbering of certain sections of the NYSE Group Certificate would be updated to reflect the amendments set forth above.

#### 8. Proposed Amendments to Board Composition Requirements for the Exchange, NYSE MKT, NYSE Market and NYSE Regulation

The Fourth Amended and Restated Operating Agreement, dated as of August 23, 2012, of the Exchange (the “Exchange Operating Agreement”), currently provides that (1) a majority of the members of the Exchange’s board of directors must be U.S. persons and members of the board of directors of NYSE Euronext, and (2) at least 20% of the Exchange’s board members must be persons who are not members of the board of directors of NYSE Euronext but who qualify as independent under the independence policy of the Exchange’s board of directors (the “Non-Affiliated

Exchange Directors”).<sup>58</sup> The nominating and governance committee of the NYSE Euronext board of directors is required to designate as Non-Affiliated Exchange Directors the candidates recommended jointly by the Director Candidate Recommendation Committees of each of NYSE Market and NYSE Regulation or, in the event there are Petition Candidates (as such term is defined in the Exchange Operating Agreement), the candidates that emerge from a specified process will be designated as the Non-Affiliated Exchange Directors.<sup>59</sup>

Under the Proposed Rule Change, these provisions would be amended to refer to ICE Group instead of NYSE Euronext. Also, references throughout to the Exchange’s “Corporation Independence Policy” would be changed to “Company Independence Policy” in recognition of the form of organization of the Exchange.

Substantially the same revisions would be made to the analogous provisions of the Fourth Amended and Restated Operating Agreement of NYSE MKT.

In addition, references to NYSE Euronext in the Director Independence Policy of each of the Exchange, NYSE Market, NYSE Regulation and NYSE MKT would be revised to refer to ICE Group.

#### 9. Other Changes to the Constituent Documents of the Exchange, NYSE MKT, NYSE Market and NYSE Regulation

The revisions to the Fourth Amended and Restated Operating Agreement of NYSE MKT indicate that NYSE MKT will be an indirect wholly owned subsidiary of ICE Group rather than a direct subsidiary of NYSE Euronext, and the phrase “NYSE/Amex” has been inserted before references to a merger in 2008 in the recitals to distinguish that merger from the Merger.

The Second Amended and Restated Bylaws of NYSE Market and the Third Amended and Restated Bylaws of NYSE Regulation would be amended to reflect the change from NYSE Euronext to ICE Group. In the case of NYSE Market, the address of the registered office and registered agent has been updated.

In the director independence policies, typographical errors in references to Exchange Act Section 3(a)(3) would be corrected in the first paragraph under the section captioned “Independence Qualifications.”

<sup>58</sup> See Exchange Operating Agreement, Section 2.03(a).

<sup>59</sup> See *id.*

10. Proposed Amendments to the Exchange Rules, NYSE MKT Rules and NYSE Arca Equities Rules

Under the Proposed Rule Change, certain technical amendments would be made to the Exchange Rules. First, references therein to “NYSE Euronext” would be replaced with references to ICE Group, except that references to NYSE Euronext in Rule 22 and Rule 422 would be replaced with references to NYX Holdings and references to ICE Group would be added. Second, Rule 2 would be revised to delete the definitions of “member” and “member organization” relating to NYSE MKT, which are set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the NYSE Euronext Certificate, because under the Proposed Rule Change, the ICE Group Certificate will incorporate this language.

In addition, certain technical amendments would be made to the NYSE MKT Rules and NYSE Arca Equities Rules to replace references to “NYSE Euronext” with references to ICE Group, except that references to NYSE Euronext in NYSE MKT Rules 107B and 501 would be changed to NYX Holdings. Also, certain provisions in NYSE MKT Rule 104T relating to restrictions on transfer in the NYSE Euronext Certificate would be eliminated because the referenced restrictions are no longer in effect and there will be no analogous provision in the ICE Group Certificate.

## 2. Statutory Basis

NYSE MKT believes that this filing is consistent with Section 6(b) of the Exchange Act<sup>60</sup> in general, and furthers the objectives of Section 6(b)(1)<sup>61</sup> in particular, in that it enables NYSE MKT to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of NYSE MKT. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the U.S. Regulated Subsidiaries after the Merger, the U.S. Regulated Subsidiaries will operate in the same manner following the Merger as they operate today. Thus, the Commission will continue to have plenary regulatory authority over the U.S. Regulated Subsidiaries, as is the case currently with these entities. The Proposed Rule Change is consistent with and will

facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

NYSE MKT also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act<sup>62</sup> because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

NYSE MKT 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 Exchange Act. The Proposed Rule Change is not designed to address any competitive issue in the U.S. or European securities markets or have any impact on competition in those markets; rather, it will combine the U.S. equities businesses of NYSE Euronext with the commodities and futures businesses of ICE. The ownership of U.S. securities exchanges will not become more concentrated as a result of the Proposed Rule Change because ICE currently owns no U.S. securities exchange. With respect to operations outside the United States, ICE has informed NYSE Euronext that it expects the derivatives business of LAM will be gradually transitioned to ICE Futures Europe, as discussed above, but such transition is subject to regulatory approval in the United Kingdom.

### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR–NYSEMKT–2013–50 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEMKT–2013–50. 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 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

<sup>60</sup> 15 U.S.C. 78f(b).

<sup>61</sup> 15 U.S.C. 78f(b)(1).

<sup>62</sup> 15 U.S.C. 78f(b)(5).

filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEMKT-2013-50 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>63</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-15631 Filed 6-28-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69844; File No. SR-NASDAQ-2013-084]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Third Party Market Data Delivered by NASDAQ

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 14, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify the existing fees clients voluntarily pay to receive third party market data delivered by NASDAQ as set forth in NASDAQ Rule 7034. NASDAQ proposes to implement the proposed rule change on a date that is on, or shortly after, the expiration of the pre-operative delay provided for in Rule 19b-4(f)(6)(iii).<sup>3</sup> The text of the proposed rule change is available on the

Exchange's Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Wireless technology has been in existence for many years, used primarily by the defense, retail and telecommunications industries. Wireless connectivity involves the beaming of signals through the air between towers that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), message latency is reduced. The continued use of this technology by the defense industry and regulation of the spectrum by the FCC demonstrates the secure nature of wireless networks.

Over the last year, wireless technology has been introduced in the financial services industry. In offering optional wireless connectivity, NASDAQ is responding to requests from clients that wish to utilize the technology. Clients have sought to buy roof rights so that they can install their own microwave dishes on the roof at the NASDAQ data center in Carteret, New Jersey. Some have already installed microwave dishes on nearby towers with fiber connectivity to the data center, or have reserved space to do so. Rather than sell roof rights to individual clients, which would quickly result in the lack of physical space on the data center roof to accommodate all clients fairly and equally, NASDAQ proposes to supply market data, via a vendor-supplied wireless network, for all data center clients that wish to avail themselves of it.

NASDAQ is proposing to utilize wireless technology to make available to its co-located clients third-party data from the CME Group, and to amend NASDAQ Rule 7034 to modify the existing fees for the delivery of third party market data to market center clients via a wireless network. Specifically, NASDAQ will add fees for access to third-party data from the CME Group. NASDAQ will utilize network vendors to supply wireless connectivity from the Carteret data center to CME Group's Aurora, Illinois data center. The vendors will install, test and maintain the necessary communication equipment for this wireless network between the data centers.<sup>4</sup>

Wireless connectivity to CME Group data is similar to existing access to other data. Clients who choose this optional service will use their existing NASDAQ cross connect handoffs (1G, 10G, or 40G) to receive the multicast market data for CME Group, and NASDAQ will continue to act as re-distributor of the third party market data feeds, capturing the data at CME Group's data centers and transporting the data to NASDAQ's Carteret data center. The Exchange has opted to offer the CME Group data that is most in demand by NASDAQ customers to start. Additional feeds may be added based on overall client demand and bandwidth availability.

CME Group data is already available via fiber optic network, and therefore the wireless connectivity will be an optional offering, an alternative to fiber optic network connectivity, and will provide lower latency. In other words, this proposal does not offer a new market data product, but merely an alternative means of connectivity. NASDAQ's wireless connectivity offering, in conjunction with NASDAQ's equidistant cross connect handoffs (1G, 10G, or 40G), will ensure that all clients electing to use this wireless connectivity offering will receive the chosen market data at the same low latency, equalizing any variances that might otherwise result from differences in the location of client cabinets within the facility or different wireless networks utilized by clients independently of this offering.

<sup>4</sup> The vendors supporting wireless transmission of CME data will install equipment on transmission towers nearby to NASDAQ and CME facilities. This is unlike NASDAQ's current authority to offer different third-party data via wireless equipment located on the rooftop of NASDAQ's Carteret collocation facility. See Exchange Act Release No. 68735 (Jan. 25, 2013); 78 FR 6842 (Jan. 31, 2013) (order approving SR-NASDAQ-2012-119). Accordingly, it is unnecessary to discuss the competitive impact of limiting roof rights to the Carteret facility, which NASDAQ addressed in its previous filing.

<sup>63</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 242.19b-4(f)(6)(iii).

To obtain CME Group data via wireless connectivity, clients will be charged a \$5,000 installation fee (a non-recurring charge) and a monthly recurring charge (MRC) of \$23,500 for connectivity. The rates are higher for the CME Group feeds compared to the other exchange feeds because the distance between the NASDAQ data center in New Jersey and the CME Group data center in Aurora, Illinois is 45 times longer than the distances to the other New Jersey data centers, which requires a more extensive and expensive wireless network to deliver this distant market data.

Clients will place orders for the wireless connectivity via NASDAQ's CoLo Console.<sup>5</sup> As with already-approved products, subscribers to CME Group's data via a wireless network will be required to subscribe for a minimum of one year, which is standard practice for co-location offerings. The minimum subscription period ensures that the Exchange and vendor can recoup the substantial investment required to establish the wireless system. As an incentive to clients, NASDAQ will waive the first month's MRC. The proposed MRC fee covers connectivity only; CME Group will charge data recipients directly the user fees for the market data received, and charge NASDAQ redistribution fees, as occurs today. No changes in CME Group's market data fees will occur as a result of this proposed offering.

NASDAQ OMX will perform substantial network testing prior to offering the service for a fee to members. After this "beta" testing period, upon initial roll-out of the service, clients will be offered the service for a fee, and on a rolling basis, the Exchange will enable new clients to receive the feed(s) for a minimum of 30 days before incurring any monthly recurring fees. The wireless network will continue to be closely monitored and the client informed of any issues. Similar to receiving market data over fiber optic networks, the wireless network can encounter delays or outages due to equipment issues. As wireless networks may be affected by severe weather events, clients will be expected to have redundant methods to receive this market data and will be asked to attest to having alternate methods or establishing an alternate method in the near future when they order this service from the Exchange.

This new data feed delivery option will be available to all clients of the data

center, and is in response to industry demand, as well as to changes in the technology for distributing market data. Clients opting not to pay for the wireless connectivity will still be able to receive market data via fiber optics and standard telecommunications connections, as they do currently, and under the same fees. Receipt of trade data via wireless technology is completely optional. In addition, clients can choose to receive market data via other third-party vendors (Extranets or Telecommunication vendors) via fiber optic networks or wireless networks.

The proposed fees are based on the cost to NASDAQ and the vendor of installing and maintaining the wireless connectivity and on the value provided to the customer, which receives low latency delivery of data feeds. The costs associated with the wireless connectivity system are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation and testing and ongoing maintenance of the network. The fees also allow NASDAQ to make a profit, and reflect the premium received by the clients in terms of lower latency over the fiber optics option. Clients can choose to build and maintain their own wireless networks or choose their own third party network vendors but the upfront and ongoing costs will be much more substantial than this Exchange wireless offering.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and with Sections 6(b)(4), (b)(5) and (b)(8) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. NASDAQ's proposal to offer wireless connectivity supports important policy objectives of the Act, including the broadest, fairest possible dissemination of market data.

The Exchange believes that the proposed fees for wireless connectivity to NASDAQ are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly

competitive market in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members. Although currently no other exchange offers wireless connectivity, there are no constraints on their ability to do so, and it is probable that other exchanges will make a similar offering in the near future. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location services, including fees for wireless connectivity.

A co-location customer may obtain a similar service by contracting with a wireless service provider to install the required dishes on towers near the data centers and paying the service provider to maintain the service. However, the cost involved in establishing service in this manner is substantial and could result in uneven access to wireless connectivity. The Exchange's proposed fees will allow these clients to utilize wireless connectivity and obtain the lower latency transmission of data from third parties and NASDAQ that is available to others, at a reasonable cost.<sup>8</sup>

<sup>8</sup> The wireless network offered by the Exchange via the provider, although constrained by bandwidth with respect to the number of feeds it can carry, can be made available to an unlimited number of customers. The factors that differentiate this proposal from the Exchange's offerings of and initial fees for low latency network telecommunication connections approved by the Commission in Securities Exchange Act Release No. 66013 (December 20, 2011) 76 FR 80992 (December 27, 2011) (SR-NASDAQ-2011-146) are a function of technology and program concept, but neither approach implicates a burden on competition, for similar reasons: Each offers, at a competitive price, a service that customers may obtain by dealing directly with the provider rather than the Exchange; and each is expected to result in a reduction in fees charged to market participants, the very essence of competition. Pursuant to the SEC's prior approval, the Exchange offers customers the opportunity to obtain low latency telecommunications

<sup>5</sup> The "CoLo Console" is a web-based ordering tool NASDAQ offers to enable members to place co-location orders.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4), (5) and (8).

Moreover, the Exchange believes the proposed fees for wireless connectivity to NASDAQ are reasonable because they are based on the Exchange's and vendor's costs to cover hardware, installation, testing and connection, as well as expenses involved in maintaining and managing the enhanced connection. The proposed fees allow the Exchange to recoup these costs and make a profit, while providing customers the ability to reduce latency in the transmission of data from third parties and NASDAQ, and reducing the cost to them that would be involved if they build or buy their own wireless networks. The Exchange believes that the proposed fees are reasonable in that they reflect the costs of the connection and the benefit of the lower latency to clients.

The Exchange also believes that the proposed wireless connectivity fees are consistent with Section 6(b)(5) of the Act in that the fees are equitably allocated and non-discriminatory. All Exchange members that voluntarily select this service option will be charged the same amount for the same services. As is true of all co-location services, all co-located clients have the option to select this voluntary connectivity option, and there is no differentiation among customers with regard to the fees charged for the service. Further, the latency reduction offered will be the same for all co-located clients, irrespective of the locations of their cabinets within the data center. The same cannot be said of the alternative where entities with substantial resources invest in private services and thereby obtain lower

connectivity by establishing a low-latency minimum standard and negotiating with multiple telecommunication providers to obtain discounted rates. It then passes these wholesale rates along to participating customers, with a markup to compensate for the Exchange's role in negotiating and establishing the arrangement, and integrating and maintaining each new connection. Co-located customers are free to choose the provider they wish to use from those participating in the program; or they may choose not to avail themselves of the service and obtain comparable services directly from the provider. The Exchange does not discriminate among telecommunications providers in its program, so long as they meet the required latency, destination, and fee standards. Wireless technology, in contrast, does not require separate avenues of connectivity for each customer, and thus the Exchange is not obtaining a wholesale price by negotiating with service providers. Rather, it is selecting, on a competitive basis, the service provider(s) to install and maintain the system, and charging customers for access to that particular system, offering lower prices because it is spreading the substantial cost among multiple clients. The program, far from burdening competition among connectivity service providers, promotes it. A wireless provider that can offer to the Exchange—or to a competitor exchange—a lower price for installation and maintenance will no doubt get the exchanges' business, with the end result that prices for the end users will go down.

latency transmission, while those without resources are unable to invest in the necessary infrastructure.

The Exchange's proposal is also consistent with the requirement of Section 6(b)(5) of the Act that Exchange rules 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 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal is consistent with these requirements inasmuch as it makes available to market participants, at a reasonable fee and on a non-discriminatory basis, access to low latency means of receiving market data feeds. Some market participants have already adopted wireless technology, using towers near the data centers, and others have approached the Exchange seeking to rent roof rights to mount their towers. Rather than lease out roof space to the highest bidders, a process that would stratify and limit access to the low latency delivery, this approach allows unlimited numbers of users to utilize the this Exchange service which utilizes vendors who rely on nearby towers to house the wireless equipment to receive the market data. It will allow the same low latency delivery to those unable to invest in the more expensive option of building or acquiring their own wireless network, as it does for those whose pockets are deeper.

Initially, NASDAQ will perform substantial network testing prior to making the service available to members. After this testing period, the wireless network will continue to be closely monitored and maintained by the vendor and the client will be informed of any issues. Additionally, during the initial roll-out of the service and on a rolling basis for future clients, the Exchange will enable clients to test the receipt of the feed(s) for a minimum of 30 days before incurring any monthly recurring fees. Similar to receiving market data over fiber optic networks, the wireless network can encounter delays or outages due to equipment issues. As wireless networks may be affected by severe weather events, clients will be expected to have redundant methods to receive this market data and will be asked to attest to having alternate methods or

establishing an alternate method in the near future when they order this service from the Exchange.

Finally, for the reasons stated below in Section 4 of Form 19b-4, the proposed fees for wireless connectivity are consistent with Section 6(b)(8) of the Act in that they do not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, this proposal will promote competition for distribution of market data by offering an optional and innovative product enhancement. Wireless technology has been in use for decades, is available from multiple providers, and may be adopted by other exchanges that decide to offer microwave connectivity for delivery of market data. As discussed above, the Exchange believes that fees for co-location services, including those proposed for microwave connectivity, are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition. Further, excessive fees for co-location services, including for wireless technology, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

Furthermore, there are multiple effective competitive alternatives to NASDAQ's wireless offering. NASDAQ has no arrangement with CME that limits the ability of CME to transmit CME data via alternative wireless providers. Additionally, NASDAQ does not limit the ability of alternative wireless providers to re-transmit data received from CME either outside of or within NASDAQ's co-location facility. A competitive network provides the same or similar data, at the same or similar speed, at the same or similar cost, and NASDAQ's proposal does nothing to inhibit or constrain this. Currently, 17 market data vendors have fiber optic cables connected to NASDAQ's telco room in Carteret, and NASDAQ believes at least ten wireless networks exist or are under construction within very close proximity to the Carteret facility.<sup>9</sup> That number can, and

<sup>9</sup>This belief is based on a review conducted for NASDAQ of publicly-available registration and

likely will, grow, and nothing in the proposal inhibits additional wireless vendors accessing or providing CME data. Any or all of those vendors and networks is an effective competitor to the NASDAQ wireless offering. A market data vendor could also induce purchasers away from NASDAQ with an ever-so-slightly slower but still valuable product at a lower price. This variety of price and speed attributes is an effective constraint on NASDAQ's pricing power.

Moreover, fiber optic networks are themselves effective competitors for wireless data. As stated above, 17 vendors currently offer connectivity to the NASDAQ data center at various, competing prices. Fiber optic networks are more resilient than wireless networks, which can be more susceptible to severe weather affects; this mature market for fiber optic networks will remain attractive to many clients who are more risk averse. While some NASDAQ firms will opt for faster, costlier wireless data, many others will conclude that the price and speed attributes of fiber optic data provide a reasonable competitive alternative to wireless data.

Competition between the Exchange and competing trading venues will be enhanced by allowing the Exchange to offer its market participants a lower latency connectivity option. Competition among market participants will also be supported by allowing small and large participants the same price for this lower latency connectivity.

The proposed rule change will likewise enhance competition among service providers offering connections between market participants and the data centers. The offering will expand the multiple means of connectivity available, allowing customers to compare the benefits and costs of lower latency transmission and related costs with reference to numerous variables. The Exchange, and presumably its competitors, selects service providers on a competitive basis in order to pass along price advantages to its customers to win and maintain their business. The offering is consistent with the Exchange's own economic incentives to facilitate as many market participants as possible in connecting to its market.

spectrum reservation databases at the Federal Communications Commission. While it is difficult to state a definitive number of active vendors, NASDAQ can state categorically that multiple vendors currently provide wireless services such as NASDAQ is proposing to provide via this proposed rule change.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii)[sic] of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-084 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-NASDAQ-2013-084. 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-NASDAQ-2013-084 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-15624 Filed 6-28-13; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-69855; File No. SR-EDGX-2013-21]**

**Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Offer and Establish Fees for a New Exchange Service, EdgeRisk Gateways**

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 14, 2013, EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 Exchange has designated the proposed rule change as it pertains to the fees for EdgeRisk Gateway<sup>SM</sup> (the "Service") as "establishing or charging a due, fee or

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(a)(ii)[sic].

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

other charge” under Section 19b(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. Additionally, the Exchange has designated the proposed rule change as it pertains to the EdgeRisk Gateway service as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder,<sup>6</sup> which renders the proposal effective upon receipt of this filing by 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 proposes to offer and establish fees for the Service, a risk management tool available to Members<sup>7</sup> and non-Members<sup>8</sup> of the Exchange. All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange’s Internet Web site at [www.directedge.com](http://www.directedge.com), at the Exchange’s principal office, and at the Public Reference Room of the Commission.

### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

#### **Proposed Addition of EdgeRisk Gateway Service**

The Exchange currently offers logical ports through which Members and non-Members enter orders in the Exchange’s

System,<sup>9</sup> receive drop copies of orders and execution messages, and receive transmission of depth of book data (“Logical Ports”). Each Logical Port is assigned an access gateway that performs order validations and manages the cycle of a submitted order’s flow of information to the System and back to the Member. The access gateway performs functions such as message validation, acknowledgement messaging, risk checks, matching engine routing and execution messaging. The Exchange currently assigns Members’ and non-Members’ Logical Ports to the access gateways through a standard method that accounts for the relative message traffic expected over the Logical Port as well as redundancy requirements, where an access gateway contains assigned Logical Ports for a number of firms. The Exchange assigns Member and non-Member sessions to multiple access gateways so that the failure of one gateway may not result in the loss of access. On an ongoing basis, the Exchange carefully monitors incoming and outgoing traffic on all access gateways to ensure that available capacity is adequate to support Exchange message traffic and installs additional access gateways as needed to ensure consistent capacity levels are maintained. Although the Exchange monitors traffic to ensure available capacity, it cannot completely address the effect of a trading disruption caused by any Member or Non-Member.

In order to assist Members’ and non-Members’ efforts to mitigate the impact of trading disruptions, the Exchange proposes to offer EdgeRisk Gateway as a new, optional fee-based service that provides Members and non-Members the option to obtain dedicated primary and backup access gateways in addition to, or in place of, a shared access gateway. Such Members and non-Members that choose to obtain the Service (each, a “Subscriber”, and collectively “Subscribers”) would benefit from enhanced risk mitigation, as it would reduce the impact of another firm’s message peaks or programming mistakes on the Subscriber’s trading experience. The Exchange notes that the Commission recently expressed concern regarding the potential ripple effects caused by systems disruptions and message traffic-related issues in particular.<sup>10</sup> The Service would mitigate

risks associated with disruptions caused by excessive message traffic or programming mistakes because the Subscriber’s order flow on its dedicated access gateways would be insulated from such external disruptions. Furthermore, by reducing the impact that could arise from another firm, the Service would provide improved performance, as the performance and capacity of the access gateways would be determined solely by the Subscriber’s order behavior.<sup>11</sup>

The Service would include dedicated access to both a primary and a backup access gateway to afford Subscribers access redundancy. Accordingly, the backup access gateway would function as a safety measure, allowing Subscribers to allocate their sessions across both access gateways, protecting Subscribers from a loss of access due to a server malfunction. Additionally, Subscribers may also request some of their Logical Ports continue to be assigned to shared access gateways for further risk mitigation.

The Exchange notes that both gateway options (shared and dedicated) would offer full backup to the extent that a Member or non-Member’s sessions are spread across multiple gateways. The Exchange further notes that it would, on an ongoing basis, continue to carefully monitor incoming and outgoing message traffic across all access gateways (shared and dedicated) so that available capacity is adequate to support Exchange message traffic. Additionally, the Exchange would continue to install additional shared access gateways as needed so that consistent capacity levels are maintained.

Both shared and dedicated gateway options consist of identical hardware and software with identical capacity and capabilities, offering equivalent latency under the same loads. To the extent that the load on a Subscriber’s dedicated gateway is less than the load on a shared gateway, a Subscriber normally would expect reduced

issues elsewhere.” *Id.* at 18138. The Commission went on to warn that, “if an e-market-maker handling 20 percent of message traffic experiences a systems issue, the order flow could be diverted elsewhere, including to entities that are unable to handle the increase in message traffic, resulting in a disruption to that entity’s systems as well. Similarly, a broker-dealer accidentally could run a test during live trading and flood markets with message traffic such that those markets hit their capacity limits, resulting in a disruption.” *Id.* at 18138, n. 336.

<sup>11</sup> The Exchange notes that the capacity of any system is finite and, as such, the risk associated with access gateway capacity cannot be eliminated entirely, as infrastructure components, the Subscriber’s infrastructure, or the Subscriber’s own trading patterns can affect the Subscriber’s overall trading experience.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</sup> As defined in Exchange Rule 1.5(n).

<sup>8</sup> Specifically, service bureaus that act as a conduit for orders entered by Members that are their customers.

<sup>9</sup> As defined in Exchange Rule 1.5(cc).

<sup>10</sup> See, e.g., Securities Exchange Act Release No. 69077, 78 FR 18084, 18138 (March 25, 2013) (File No. S7-01-13) (proposing Regulation SCI). In particular, the Commission noted that systems disruptions “could result in confusion about whether orders are handled correctly or whether the systems issue . . . could have caused capacity

latencies in sending orders to the Exchange through its dedicated gateway. In this regard, the Service is similar to other types of services provided by self-regulatory organizations that offer higher levels of service for a higher fee.<sup>12</sup> Other than the possible reduced latencies due to reduced gateway load, the Exchange believes that there are no material differences in terms of access to the Exchange between Subscribers and Members and non-Members that choose not to subscribe to the Service.

#### Proposed Fees Applicable to the Service

The Exchange proposes to offer the Service to Members and non-Members for a monthly charge of \$5,000. The Exchange is offering this new pricing model in order to keep pace with changes in the industry and evolving Member needs as new technologies emerge and products continue to develop and change. As previously noted, purchase and use of the Service would be entirely optional. To assure service quality as discussed above, access gateways would be provisioned as a pair, in which a second access gateway would be included for use as a backup, allowing Subscribers to allocate their sessions across both access gateways. Therefore, a Subscriber would receive a pair of access gateways for a fee of \$5,000 per month.

The Exchange notes that the Service and accompanying fees would be subject to significant competitive forces because, as discussed in detail below, the Service is similar to that currently provided by the International Securities Exchange, LLC ("ISE").<sup>13</sup>

<sup>12</sup> For example, many exchanges allow their member and non-member organizations the option to pay a higher price in exchange for a more stable and/or efficient connection, such as that obtained through co-location services or payment for logical ports. *See, e.g.,* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56) (approving fees charged by NYSE for its co-location services); Securities Exchange Act Release No. 62397 (June 28, 2010) 75 FR 38860 (July 6, 2010) (SR-NASDAQ-2010-019) (approving fees charged by NASDAQ for its co-location services); *see also* NASDAQ Stock Market LLC, Price List—Trading Connectivity, <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2> (listing fees for use of logical ports); BATS Exchange, Inc. & BATS Y-Exchange, Inc., Exchange Fee Schedule, [http://cdn.batstrading.com/resources/regulation/rule\\_book/BATS-Exchanges\\_Fee\\_Schedules.pdf](http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf) (listing fees for logical ports); EDGA Exchange, Inc., EDGA Exchange Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGAFeeSchedule.aspx> (listing fees for logical ports).

<sup>13</sup> *See* Securities Exchange Release No. 68324 (November 30, 2012), 77 FR 72901 (December 6, 2012) (SR-ISE-2012-89) (allowing members to utilize a pair of dedicated gateways and adopting a fee for the use of such gateways). *See also*, ISE, Schedule of Fees, <http://www.ise.com/assets/>

#### Implementation Date

The Exchange intends to implement the proposed rule change upon the operative date of this filing and will announce its availability via an information circular to be posted on the Exchange's Web site.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Act,<sup>14</sup> and the rules and regulations thereunder that are applicable to a national securities exchange. The bases under the Act for the proposed rule change are: (i) the requirement under Section 6(b)(4)<sup>15</sup> that the rules of an exchange be designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities; and (ii) the requirement under Section 6(b)(5)<sup>16</sup> that the rules of an exchange be designed to promote just and equitable principles of trade to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>17</sup> because it would provide for an equitable allocation of reasonable dues, fees and other charges. In particular, the proposed fee is equitable because the fee applies only to those Members and non-Members that have purchased Logical Ports and elected to become Subscribers. The Exchange notes that the Service would be a fee-based service because it would be prohibitively expensive for the Exchange to establish dedicated access gateways for every Exchange participant. As discussed above, the Service would provide Subscribers with improved risk mitigation at an increased cost. Although non-Subscribers may indirectly benefit from the Service to the

*documents/OptionsExchange/legal/fee/fee\_schedule.pdf* (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> 15 U.S.C. 78f(b)(4).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

extent that the Service would isolate shared gateways from potential message disruptions as a result of Subscribers' trading patterns on the dedicated gateways, the bulk of the benefits of the Service would accrue only to Subscribers. It is therefore equitable that only Subscribers be allocated a fee for the Service and that Members and non-Members that choose to utilize only shared gateways continue to be assessed no fee. In addition, the Exchange believes that the proposed rule change constitutes an equitable allocation of fees because all similarly situated Members and non-Members would be charged the same amount (all shared gateways are free whereas all dedicated gateways would be \$5,000 per month), based on their preference for either a shared gateway or a dedicated gateway.

The Exchange believes that the proposed fee for the Service is reasonable because the Service would be optional, available to all Members and non-Members who have Logical Ports and that the fees charged for the Service would be the same for all Subscribers. In addition, the proposed fee would be reasonable because the fee is a reflection of the cost of necessary hardware, software and infrastructure costs, maintenance fees and staff support costs. The revenue generated by the Service would pay for the development, marketing, technical infrastructure and operating costs of the Service. Profits generated above these costs would help offset the costs that the Exchange incurs in operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. This increased revenue stream would allow the Exchange to offer the Service at a reasonable rate, consistent with the similar service currently provided by the ISE and discussed in more detail below.<sup>18</sup>

In addition, the Exchange notes that it operates in a highly competitive market. In such an environment, the Exchange must continually review, and consider adjusting, its fees. As discussed above, the Service would be optional. If Members and/or non-Members deem the proposed fee for the Service to be unreasonable or to outweigh the benefits of the Service, such Members and/or non-Members would be under no obligation to subscribe to or continue to

<sup>18</sup> *See* Securities Exchange Release No. 68324 (November 30, 2012), 77 FR 72901 (December 6, 2012) (SR-ISE-2012-89) (allowing members to utilize a pair of dedicated gateways and adopting a fee for the use of such gateways). *See also*, ISE, Schedule of Fees, [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf) (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

subscribe to the Service. These market forces would act as a restraint on excessively high fees because if the market judged that the Service was overpriced, the resulting lack of interest would render the Service irrelevant.

Furthermore, the Exchange believes that its fee for the Service is reasonable because it is within industry norms, as it is comparable to that assessed by ISE for its dedicated gateway service. Currently, ISE charges its members a monthly fee of \$250 per shared gateway and provides the option to utilize a pair of dedicated gateways for a fee of \$2,000 per month.<sup>19</sup> The Exchange believes that its pricing (\$5,000 per dedicated gateway pair per month) is competitive with that offered by ISE because, although the cost of a dedicated gateway pair would be higher, the Exchange currently allows dedicated gateway Subscribers as well as its other Members and non-Members to utilize multiple shared gateways at no charge.

Lastly, the Exchange believes that the proposed fee is reasonable because payment for the Service on a monthly basis would provide flexibility and administrative benefits. Subscribers that choose to cancel the Service within the thirty (30) days' notice would have no recurring obligation. By offering payment for the Service on a month-to-month basis, the Exchange assumes the risk of termination by Subscribers prior to such time that it is able to recoup the costs of hardware, software, and operational resources necessary to provide the Service.

The Exchange believes that the proposed rule change is also consistent with the objectives of Section 6(b)(5) of the Act,<sup>20</sup> which requires, among other things, that the Exchange's rules are not designed to unfairly discriminate between customers, issuers, brokers or dealers and are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposal would not unfairly discriminate between customers, issuers, brokers, or

dealers because purchase of the Service would not be a prerequisite for participation on the Exchange. Only those Members and non-Members that deem the Service to be of sufficient overall value and usefulness would purchase it. The fees applicable to the Service would apply uniformly to all Subscribers. While Members and non-Members may opt for a dedicated gateway, those that do not will continue to be able to access the Exchange via a shared gateway. The Exchange further notes that it would, on an ongoing basis, continue to carefully monitor incoming and outgoing message traffic across all access gateways (shared and dedicated) so that available capacity is adequate to support Exchange message traffic. Additionally, the Exchange would continue to install additional shared access gateways as needed so that consistent capacity levels are maintained. Furthermore, the Exchange notes that both shared and dedicated gateway options consist of identical hardware and software with identical capacity and capabilities, offering equivalent latency under the same loads. To the extent that the load on a Subscriber's dedicated gateway is less than the load on a shared gateway, a Subscriber normally would expect reduced latencies in sending orders to the Exchange through its dedicated gateway. In this regard, the Service is similar to other types of services provided by self-regulatory organizations that offer higher levels of service for a higher fee.<sup>21</sup> Other than the reduced latencies due to reduced gateway load, the Exchange believes that there are no material differences in terms of access to the Exchange between Subscribers and Members and non-Members that choose not to subscribe to the Service. Thus, access to the

Exchange would continue to be offered on fair and non-discriminatory terms.

In providing access to a pair of access gateways, the Service is also designed to allow Subscribers to mitigate risks associated with potentially fraudulent and manipulative acts and practices that may adversely affect the Subscriber's trading experience. If, for example, a firm attempted to manipulate the submission of order flow into shared access gateways by directly or indirectly causing a surge in message traffic to be sent to the Exchange, Subscribers would, to an extent, mitigate the risks associated with such a manipulative tactic, as they would be insulated from all such external order flow.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

The Exchange believes that the Service would neither increase nor decrease intramarket competition because the Service is available to all Members and non-Members on a uniform and voluntary basis. As the Exchange currently supports access through shared access gateways and strives to ensure that all access gateways maintain a consistent level of capacity, the use of the Service by a Member or non-Member would be driven in part by their relative tolerance for the risks associated with trading disruptions.

The Exchange notes that there is significant competition among market centers for higher quality services at a premium, including, but not limited to, services related to connectivity. By introducing the proposed Service, the Exchange believes that it would be providing an additional service similar to that currently offered by ISE.<sup>22</sup> As such, the Service would increase competition by providing Members with additional options related to connectivity. The Exchange therefore believes that the Service would increase intermarket competition because it may attract order flow from market participants interested in the benefits offered by the Service that might otherwise send their order flow to competing venues. Alternatively, if demand for the Service does not meet expectations, the Service would neither increase nor decrease intermarket competition because the Service would

<sup>21</sup> For example, many exchanges allow their member and non-member organizations the option to pay a higher price in exchange for a more stable and/or efficient connection, such as that obtained through co-location services or payment for logical ports. See, e.g., Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56) (approving fees charged by NYSE for its co-location services); Securities Exchange Act Release No. 62397 (June 28, 2010) 75 FR 38860 (July 6, 2010) (SR-NASDAQ-2010-019) (approving fees charged by NASDAQ for its co-location services); see also NASDAQ Stock Market LLC, Price List—Trading Connectivity, <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2> (listing fees for use of logical ports); BATS Exchange, Inc. & BATS Y-Exchange, Inc., Exchange Fee Schedule, [http://cdn.batstrading.com/resources/regulation/rule\\_book/BATS-Exchanges\\_Fee\\_Schedules.pdf](http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf) (listing fees for logical ports); EDGA Exchange, Inc., EDGA Exchange Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGAFeeSchedule.aspx> (listing fees for logical ports).

<sup>19</sup> See ISE, Schedule of Fees, [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf) (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> See ISE, Schedule of Fees, [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf) (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

fail to persuade market participants to send their order flow to the Exchange rather than to competing venues.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from its Members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The portion of the foregoing proposed rule change pertain to fees for the EdgeRisk Gateway has become effective pursuant to Section 19(b)(3)(A)<sup>23</sup> of the Act and paragraph (f)(2) of Rule 19b-4<sup>24</sup> thereunder.

Additionally, because the portion of the foregoing proposed rule change pertaining to the establishment of the EdgeRisk Gateway service does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>25</sup> and Rule 19b-4(f)(6) thereunder.<sup>26</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest so that Members and non-Members may immediately obtain

the EdgeRisk Gateway to potentially assist them in mitigating risks associated with excess message traffic and programmatic mistakes.<sup>27</sup> Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2013-21 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-EDGX-2013-21. 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

<sup>27</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-EDGX-2013-21 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-15662 Filed 6-28-13; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69853; File No. SR-ISE-2013-41]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Price Improvement Mechanism Pilot Program**

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 21, 2013, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange 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 ISE proposes to extend two pilot programs related to its Price Improvement Mechanism ("PIM"). The text of the proposed rule change is available on the Exchange's Web site [www.ise.com](http://www.ise.com), at the principal office of

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange currently has two pilot programs related to its PIM.<sup>3</sup> The current pilot period provided in paragraphs .03 and .05 of the Supplementary Material to Rule 723 is set to expire on July 18, 2013.<sup>4</sup> Paragraph .03 provides that there is no minimum size requirement for orders to be eligible for the Price Improvement Mechanism. Paragraph .05 concerns the termination of the exposure period by unrelated orders. In accordance with the Approval Order, the Exchange has continually submitted certain data in support of extending the current pilot programs. The Exchange proposes to extend these pilot programs in their present form, through July 18, 2014, to give the Exchange and the Commission additional time to evaluate the effects of these pilot programs before the Exchange requests permanent approval of the rules. To aid the Commission in its evaluation of the PIM Functionality, ISE will also continue to provide additional PIM-related data as requested by the Commission.

<sup>3</sup> See Securities Exchange Act Release Nos. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR-ISE-2003-06) (Approving the PIM pilot (the "Approval Order")); 52027 (July 13, 2005), 70 FR 41804 (July 20, 2005) (SR-ISE-2005-30); 54146 (July 14, 2006), 71 FR 41490 (July 21, 2006) (SR-ISE-2006-39); 56106 (July 19, 2007), 72 FR 40914 (July 25, 2007) (SR-ISE-2007-64); 56156 (July 27, 2007), 72 FR 43305 (August 3, 2007) (SR-ISE-2007-66); 58197 (July 18, 2008), 73 FR 43810 (July 28, 2008) (SR-ISE-2008-60); 60333 (July 17, 2009), 74 FR 36792 (July 24, 2009) (SR-ISE-2009-52); 62513 (July 16, 2010), 75 FR 43221 (July 23, 2010) (SR-ISE-2010-75); and 64931 (July 20, 2011), 76 FR 44642 (July 26, 2011) (SR-ISE-2011-41).

<sup>4</sup> See Securities Exchange Act Release No. 67202 (June 14, 2012), 77 FR 36589 (June 19, 2012) (SR-ISE-2012-54).

#### 2. Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes the pilot programs are consistent with the Exchange Act because they provide opportunity for price improvement for all orders executed in the Exchange's Price Improvement Mechanism. Further, the Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the pilot programs for an additional twelve months. The Exchange further believes it is appropriate to extend the pilot programs to provide the Exchange and Commission more data upon which to evaluate the rules.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Specifically, the Exchange believes that, by extending the expiration of the pilot programs, the proposed rule change will allow for further analysis of the PIM. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

## 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

19(b)(3)(A)(ii) of the Act<sup>5</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>6</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>7</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>8</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay. The Exchange noted that such waiver will permit the pilot programs to continue without interruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot programs to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot program. Further, the Commission notes that, because the filing was submitted for immediate effectiveness on June 21, 2013, the fact that the current rule provisions do not expire until July 18, 2013 will afford interested parties the opportunity to comment on the proposal before the Exchange requires it to become operative. For this reason, the Commission designates the proposed rule change to be operative on July 18, 2013.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 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 Commission deems this requirement to have been met.

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

*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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2013-41 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-ISE-2013-41. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2013-41 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-15614 Filed 6-28-13; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69857; File No. SR-BATS-2013-037]

**Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Requirements of the Competitive Liquidity Provider Program**

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 20, 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, 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 filed a proposal to amend Rule 11.8 to eliminate the requirement that Competitive Liquidity Providers ("CLPs") have information barriers between the CLP unit and the Member's customer, research, and investment banking business because CLPs already are subject to principles-based Exchange rules governing the misuse of nonpublic, material information.

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 eliminate the requirement in subparagraph (c)(6) of Interpretation and Policy .02 to Rule 11.8 that the business unit of a Member acting as a CLP maintain adequate information barriers between the CLP unit and the Member's customer, research, and investment banking business. The Exchange believes that the information barrier requirement is unnecessary because CLPs already are subject to the Exchange's existing principles-based rules governing the misuse of nonpublic, material information. Elimination of the information barrier requirement clarifies that CLPs have the flexibility to adapt their policies and procedures as appropriate to reflect changes to their business model, business activities, or the securities market. The Exchange believes that its rules clearly identify prohibited conduct (*i.e.*, misuse of material, non-public information) without further requiring CLPs to establish and maintain specific compliance mechanisms (*e.g.*, information barriers).

**Background**

The CLP Program and its requirements are set out in Interpretation and Policy .02 to Rule 11.8, the rule that contains the obligations applicable to Exchange Market Makers. A CLP is a Member that electronically enters proprietary orders into the systems and facilities of the Exchange. It is obligated to maintain a bid or an offer at the NBB or NBO in each assigned security in round lots consistent with the requirements of Interpretation and Policy .02 to Rule 11.8. CLPs are subject to both a daily quoting requirement to be eligible to receive financial incentives and a monthly quoting requirement to remain qualified as a CLP. A CLP that does not meet the CLP daily requirement is not eligible to receive the financial incentives of the CLP Program. A CLP that does not meet the CLP monthly quoting requirements is subject to certain non-regulatory penalties, including the potential to lose its CLP status.

To qualify as a CLP, a Member is required to be a registered Market Maker in good standing with the Exchange, consistent with Rules 11.5 through 11.8. Further, the Exchange requires each Member seeking to qualify as a CLP to have and maintain: (1) adequate

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

technology to support trading through the systems and facilities of the Exchange; (2) one or more unique identifiers that identify to the Exchange CLP trading activity in assigned CLP securities; (3) adequate trading infrastructure to support trading activity, which includes support staff to maintain operational efficiencies in the CLP program and adequate administrative staff to manage the Member's participation in the CLP Program; (4) quoting and volume performance that demonstrates an ability to meet the CLP quoting requirement in each assigned security on a daily and monthly basis; (5) a disciplinary history that is consistent with just and equitable business practices; and (6) with respect to the business unit of the Member acting as a CLP, adequate information barriers between the CLP unit and the Member's customer, research, and investment banking business.

#### Proposed Rule Change

The Exchange believes it is appropriate to delete subparagraph (c)(6) of Interpretation and Policy .02 to Rule 11.8, which requires that the business unit of the Member acting as a CLP have in place adequate information barriers between the CLP unit and the Member's customer, research, and investment banking business. Instead, the Exchange believes that its rules governing the misuse of material nonpublic information provide an appropriate principles-based approach to preventing the market abuses addressed by subparagraph (c)(6).<sup>3</sup> The Exchange, therefore, believes that specifically requiring information barriers is unnecessary.

The requirement that exchange market makers, in general, have in place information barriers between a market making unit and other business units traces its roots from concerns that an inappropriate sharing of material, non-public information between the market making unit and other business units of a member could result in the misuse of non-public information, manipulation and other improper trading practices, as well as give rise to conflicts of interest.<sup>4</sup>

<sup>3</sup> The Exchange adopted these principles-based rules in February 2010. See Securities Exchange Act Release No. 61574 (February 23, 2010), 75 FR 9455 (March 2, 2010).

<sup>4</sup> See, e.g., Securities Exchange Act Release No. 61336 (Jan. 12, 2010), 75 FR 2908, 2910 (Jan. 19, 2010) ("CBOE Rule 8.91 addresses concerns arising from the potential for the sharing of material non-public information between a DPM's market making activities and other business activities of the DPM or its affiliates."); Securities Exchange Act Release No. 58328 (Aug. 7, 2008), 73 FR 48260, 48265 (Aug. 18, 2008) ("The restrictions in current NYSE Rule

One such concern is that a market maker or affiliate engaging in other business activities might trade on non-public information that the market maker acquired through its market making activities.<sup>5</sup> Another concern is that a market maker may misuse material, non-public information received from its other business activities, such as trading based on a change in the firm's buy or sell recommendation.<sup>6</sup>

Exchanges have recently adopted principles-based rules intended to prevent such market abuses, rather than specific sets of requirements designed to accomplish the same end, such as the information barriers set out in subparagraph (c)(6). NYSE Arca, Inc. ("NYSE Arca"), Nasdaq Stock Market, LLC ("Nasdaq"), and the Exchange, for example, have amended their rules to eliminate specific information barrier requirements for Members.<sup>7</sup> Those exchanges have instead enacted principles-based approaches that permit Members to develop and apply their own policies and procedures to, among other things, prohibit and prevent the misuse of material nonpublic information. While the specific policies and procedures are no longer mandated, these principles-based rules are "reasonably designed to ensure compliance with applicable federal securities law and regulations, and with the rules of the applicable exchange" and have been approved by the Commission.<sup>8</sup>

98 and related rules are intended to address two primary concerns. The first concern is the potential that an affiliate could unfairly use non-public information, such as information on a specialist's book or information regularly provided to him by other market participants because of his central role as a primary market specialist. . . . The second concern is that a specialist unit could favor its affiliates by providing orders placed by the affiliate with more favorable executions and by providing useful market information to the affiliated firm (or to its broker on the exchange trading floor) but not to others. In some cases, such conflicts of interest could result in the specialist neglecting his duty to make a fair and orderly market by giving an affiliate's principal or agency orders a more favorable execution."); see also *Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Nonpublic Information*, Securities and Exchange Commission Division of Market Regulation, March 1990.

<sup>5</sup> See Securities Exchange Act Release No. 61574 (February 23, 2010), 75 FR 9455, 9458 (March 2, 2010).

<sup>6</sup> *Id.*

<sup>7</sup> See Securities Exchange Act Release No. 61574 (February 23, 2010), 75 FR 9455 (March 2, 2010); Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR 46272 (September 8, 2009) (SR-NYSEArca-2009-78); Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (adopting Nasdaq IM-2110-2; IM-2110-3; IM-2110-4; and Rule 3010).

<sup>8</sup> See 75 FR at 9458 ("The Commission believes that, with adequate oversight by the Exchange of its

Consistent with the principles-based approach described above, Exchange Rule 5.5 requires that each Member establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the Member or persons associated with the Member. For purposes of this requirement, conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

(a) trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or

(b) trading in a security or related options or other derivative securities, while in possession of material, non-public information concerning imminent transactions in the security or related securities; or

(c) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

The Exchange also has several rules prohibiting Members from disadvantaging their customers or other market participants by improperly capitalizing on the Members' access to or receipt of material, non-public information. For example, Rule 12.6 prohibits a Member from trading ahead of its customer's limit orders. Rule 12.13 prohibits a Member from establishing an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security. Rule 5.1 requires each Member to (i) establish, maintain, and enforce written procedures that will enable it to supervise properly the activities of associated persons; and (ii) establish, maintain, and enforce written procedures to assure associated persons comply with applicable securities laws, rules, regulations, and statements of policy promulgated thereunder, with the rules of the designated self-

members, elimination of prescriptive information barrier requirements should not reduce the effectiveness of BATS rules requiring Members to establish and maintain systems to supervise the activities of Members, and written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on misuse of material nonpublic information."

regulatory organization, where appropriate, and with Exchange Rules.

The elimination of the information barrier requirements in the CLP Program would allow CLPs to tailor their policies and procedures with respect to the handling of material, non-public information as appropriate to reflect their business models and activities, and to adapt to changes in such models, activities, and the securities market in general.<sup>9</sup> Consistent with the practices of other national securities exchanges, the Exchange, therefore, proposes to eliminate the information barrier requirement set out in subparagraph (c)(6) of Interpretation and Policy .02 to Rule 11.8. The Exchange believes that this approach will foster a fair and orderly marketplace without being overly burdensome to its Members.

By amending its rules in accordance with this proposal, the Exchange reinforces a regulatory structure that clearly prohibits certain conduct (*e.g.*, misuse of material, non-public information pursuant to Rule 5.5) without further requiring Members to establish and maintain specific compliance mechanisms (*e.g.*, information barriers). The Exchange believes that the approach proposed herein is consistent with Nasdaq and NYSE Arca's respective structures. Importantly, like Nasdaq and NYSE Arca, market makers registered with BATS and other firms that are Members of BATS that trade for their own accounts do not have any advantages regarding relevant trading information provided by the Exchange, either at, or prior to, the point of execution *vis-à-vis* other market participants. Accordingly, the Exchange believes that its procedures based approach is reasonable.

Pursuant to this proposed rule change, Members may utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. In

<sup>9</sup> While information barriers are not specifically required under the Exchange's rules, a CLP's business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.

addition, in the context of approving the proposal by NYSE Arca, the Commission stated that, "while information barriers are not specifically required under the proposal, a [firm's] business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules."<sup>10</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, in that it is 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 believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to CLPs the type of conduct that is prohibited by the Exchange. Thus, while the proposal eliminates prescriptive information barrier requirements, CLPs will remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, nonpublic information. The Exchange also believes the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and national market system because the proposal will allow CLPs to utilize a flexible, principles-based approach to adapt their policies and procedures as appropriate to reflect their business models, business activities, and the securities markets at a given point in time.

### *Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose

<sup>10</sup> See Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR at 46275.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will enhance competition by allowing CLPs to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon its Members.

### *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.

### **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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>13</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</sup>

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.

### **Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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](mailto:rule-comments@sec.gov). Please include File

<sup>13</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

No. SR-BATS-2013-037 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2013-037. 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 changes 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2013-037 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-15697 Filed 6-28-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69856; File No. SR-EDGA-2013-16]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Offer and Establish Fees for a New Exchange Service, EdgeRisk Gateways

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 14, 2013, EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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 Exchange has designated the proposed rule change as it pertains to the fees for EdgeRisk Gateway<sup>SM</sup> (the "Service") as "establishing or charging a due, fee or other charge" under Section 19b(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. Additionally, the Exchange has designated the proposed rule change as it pertains to the EdgeRisk Gateway service as constituting a "non-controversial" rule change under Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder,<sup>6</sup> which renders the proposal effective upon receipt of this filing by 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 proposes to offer and establish fees for the Service, a risk management tool available to Members<sup>7</sup> and non-Members<sup>8</sup> of the Exchange. All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at [www.directedge.com](http://www.directedge.com), at the Exchange's

principal office, and at the Public Reference Room of the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Proposed Addition of EdgeRisk Gateway Service

The Exchange currently offers logical ports through which Members and non-Members enter orders in the Exchange's System,<sup>9</sup> receive drop copies of orders and execution messages, and receive transmission of depth of book data ("Logical Ports"). Each Logical Port is assigned an access gateway that performs order validations and manages the cycle of a submitted order's flow of information to the System and back to the Member. The access gateway performs functions such as message validation, acknowledgement messaging, risk checks, matching engine routing and execution messaging. The Exchange currently assigns Members' and non-Members' Logical Ports to the access gateways through a standard method that accounts for the relative message traffic expected over the Logical Port as well as redundancy requirements, where an access gateway contains assigned Logical Ports for a number of firms. The Exchange assigns Member and non-Member sessions to multiple access gateways so that the failure of one gateway may not result in the loss of access. On an ongoing basis, the Exchange carefully monitors incoming and outgoing traffic on all access gateways to ensure that available capacity is adequate to support Exchange message traffic and installs additional access gateways as needed to ensure consistent capacity levels are maintained. Although the Exchange monitors traffic to ensure available capacity, it cannot completely address

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</sup> As defined in Exchange Rule 1.5(n).

<sup>8</sup> Specifically, service bureaus that act as a conduit for orders entered by Members that are their customers.

<sup>9</sup> As defined in Exchange Rule 1.5(cc).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

the effect of a trading disruption caused by any Member or Non-Member.

In order to assist Members' and non-Members' efforts to mitigate the impact of trading disruptions, the Exchange proposes to offer EdgeRisk Gateway as a new, optional fee-based service that provides Members and non-Members the option to obtain dedicated primary and backup access gateways in addition to, or in place of, a shared access gateway. Such Members and non-Members that choose to obtain the Service (each, a "Subscriber", and collectively "Subscribers") would benefit from enhanced risk mitigation, as it would reduce the impact of another firm's message peaks or programming mistakes on the Subscriber's trading experience. The Exchange notes that the Commission recently expressed concern regarding the potential ripple effects caused by systems disruptions and message traffic-related issues in particular.<sup>10</sup> The Service would mitigate risks associated with disruptions caused by excessive message traffic or programming mistakes because the Subscriber's order flow on its dedicated access gateways would be insulated from such external disruptions. Furthermore, by reducing the impact that could arise from another firm, the Service would provide improved performance, as the performance and capacity of the access gateways would be determined solely by the Subscriber's order behavior.<sup>11</sup>

The Service would include dedicated access to both a primary and a backup access gateway to afford Subscribers access redundancy. Accordingly, the backup access gateway would function as a safety measure, allowing Subscribers to allocate their sessions across both access gateways, protecting Subscribers from a loss of access due to

a server malfunction. Additionally, Subscribers may also request some of their Logical Ports continue to be assigned to shared access gateways for further risk mitigation.

The Exchange notes that both gateway options (shared and dedicated) would offer full backup to the extent that a Member or non-Member's sessions are spread across multiple gateways. The Exchange further notes that it would, on an ongoing basis, continue to carefully monitor incoming and outgoing message traffic across all access gateways (shared and dedicated) so that available capacity is adequate to support Exchange message traffic. Additionally, the Exchange would continue to install additional shared access gateways as needed so that consistent capacity levels are maintained.

Both shared and dedicated gateway options consist of identical hardware and software with identical capacity and capabilities, offering equivalent latency under the same loads. To the extent that the load on a Subscriber's dedicated gateway is less than the load on a shared gateway, a Subscriber normally would expect reduced latencies in sending orders to the Exchange through its dedicated gateway. In this regard, the Service is similar to other types of services provided by self-regulatory organizations that offer higher levels of service for a higher fee.<sup>12</sup> Other than the possible reduced latencies due to reduced gateway load, the Exchange believes that there are no material differences in terms of access to the Exchange between Subscribers and Members and non-Members that choose not to subscribe to the Service.

#### Proposed Fees Applicable to the Service

The Exchange proposes to offer the Service to Members and non-Members

for a monthly charge of \$5,000. The Exchange is offering this new pricing model in order to keep pace with changes in the industry and evolving Member needs as new technologies emerge and products continue to develop and change. As previously noted, purchase and use of the Service would be entirely optional. To assure service quality as discussed above, access gateways would be provisioned as a pair, in which a second access gateway would be included for use as a backup, allowing Subscribers to allocate their sessions across both access gateways. Therefore, a Subscriber would receive a pair of access gateways for a fee of \$5,000 per month.

The Exchange notes that the Service and accompanying fees would be subject to significant competitive forces because, as discussed in detail below, the Service is similar to that currently provided by the International Securities Exchange, LLC ("ISE").<sup>13</sup>

#### Implementation Date

The Exchange intends to implement the proposed rule change upon the operative date of this filing and will announce its availability via an information circular to be posted on the Exchange's Web site.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Act,<sup>14</sup> and the rules and regulations thereunder that are applicable to a national securities exchange. The bases under the Act for the proposed rule change are: (i) The requirement under Section 6(b)(4)<sup>15</sup> that the rules of an exchange be designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities; and (ii) the requirement under Section 6(b)(5)<sup>16</sup> that the rules of an exchange be designed to promote just and equitable principles of trade to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

<sup>10</sup> See, e.g., Securities Exchange Act Release No. 69077, 78 FR 18084, 18138 (March 25, 2013) (File No. S7-01-13) (proposing Regulation SCI). In particular, the Commission noted that systems disruptions "could result in confusion about whether orders are handled correctly or whether the systems issue . . . could have caused capacity issues elsewhere." *Id.* at 18138. The Commission went on to warn that, "if an e-market-maker handling 20 percent of message traffic experiences a systems issue, the order flow could be diverted elsewhere, including to entities that are unable to handle the increase in message traffic, resulting in a disruption to that entity's systems as well. Similarly, a broker-dealer accidentally could run a test during live trading and flood markets with message traffic such that those markets hit their capacity limits, resulting in a disruption." *Id.* at 18138, n. 336.

<sup>11</sup> The Exchange notes that the capacity of any system is finite and, as such, the risk associated with access gateway capacity cannot be eliminated entirely, as infrastructure components, the Subscriber's infrastructure, or the Subscriber's own trading patterns can affect the Subscriber's overall trading experience.

<sup>12</sup> For example, many exchanges allow their member and non-member organizations the option to pay a higher price in exchange for a more stable and/or efficient connection, such as that obtained through co-location services or payment for logical ports. See, e.g., Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56) (approving fees charged by NYSE for its co-location services); Securities Exchange Act Release No. 62397 (June 28, 2010) 75 FR 38860 (July 6, 2010) (SR-NASDAQ-2010-019) (approving fees charged by NASDAQ for its co-location services); see also NASDAQ Stock Market LLC, Price List—Trading Connectivity, <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2> (listing fees for use of logical ports); BATS Exchange, Inc. & BATS Y-Exchange, Inc., Exchange Fee Schedule, [http://cdn.batstrading.com/resources/regulation/rule\\_book/BATS-Exchanges\\_Fee\\_Schedules.pdf](http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf) (listing fees for logical ports); EDGX Exchange, Inc., EDGX Exchange Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx> (listing fees for logical ports).

<sup>13</sup> See Securities Exchange Act Release No. 68324 (November 30, 2012), 77 FR 72901 (December 6, 2012) (SR-ISE-2012-89) (allowing members to utilize a pair of dedicated gateways and adopting a fee for the use of such gateways). See also, ISE, Schedule of Fees, [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf) (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> 15 U.S.C. 78f(b)(4).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

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 not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>17</sup> because it would provide for an equitable allocation of reasonable dues, fees and other charges. In particular, the proposed fee is equitable because the fee applies only to those Members and non-Members that have purchased Logical Ports and elected to become Subscribers. The Exchange notes that the Service would be a fee-based service because it would be prohibitively expensive for the Exchange to establish dedicated access gateways for every Exchange participant. As discussed above, the Service would provide Subscribers with improved risk mitigation at an increased cost. Although non-Subscribers may indirectly benefit from the Service to the extent that the Service would isolate shared gateways from potential message disruptions as a result of Subscribers' trading patterns on the dedicated gateways, the bulk of the benefits of the Service would accrue only to Subscribers. It is therefore equitable that only Subscribers be allocated a fee for the Service and that Members and non-Members that choose to utilize only shared gateways continue to be assessed no fee. In addition, the Exchange believes that the proposed rule change constitutes an equitable allocation of fees because all similarly situated Members and non-Members would be charged the same amount (all shared gateways are free whereas all dedicated gateways would be \$5,000 per month), based on their preference for either a shared gateway or a dedicated gateway.

The Exchange believes that the proposed fee for the Service is reasonable because the Service would be optional, available to all Members and non-Members who have Logical Ports and that the fees charged for the Service would be the same for all Subscribers. In addition, the proposed fee would be reasonable because the fee is a reflection of the cost of necessary hardware, software and infrastructure costs, maintenance fees and staff support costs. The revenue generated by the Service would pay for the development, marketing, technical infrastructure and operating costs of the Service. Profits generated above these

costs would help offset the costs that the Exchange incurs in operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. This increased revenue stream would allow the Exchange to offer the Service at a reasonable rate, consistent with the similar service currently provided by the ISE and discussed in more detail below.<sup>18</sup>

In addition, the Exchange notes that it operates in a highly competitive market. In such an environment, the Exchange must continually review, and consider adjusting, its fees. As discussed above, the Service would be optional. If Members and/or non-Members deem the proposed fee for the Service to be unreasonable or to outweigh the benefits of the Service, such Members and/or non-Members would be under no obligation to subscribe to or continue to subscribe to the Service. These market forces would act as a restraint on excessively high fees because if the market judged that the Service was overpriced, the resulting lack of interest would render the Service irrelevant.

Furthermore, the Exchange believes that its fee for the Service is reasonable because it is within industry norms, as it is comparable to that assessed by ISE for its dedicated gateway service. Currently, ISE charges its members a monthly fee of \$250 per shared gateway and provides the option to utilize a pair of dedicated gateways for a fee of \$2,000 per month.<sup>19</sup> The Exchange believes that its pricing (\$5,000 per dedicated gateway pair per month) is competitive with that offered by ISE because, although the cost of a dedicated gateway pair would be higher, the Exchange currently allows dedicated gateway Subscribers as well as its other Members and non-Members to utilize multiple shared gateways at no charge.

Lastly, the Exchange believes that the proposed fee is reasonable because payment for the Service on a monthly basis would provide flexibility and administrative benefits. Subscribers that choose to cancel the Service within the thirty (30) days' notice would have no recurring obligation. By offering

<sup>18</sup> See Securities Exchange Release No. 68324 (November 30, 2012), 77 FR 72901 (December 6, 2012) (SR-ISE-2012-89) (allowing members to utilize a pair of dedicated gateways and adopting a fee for the use of such gateways). See also, ISE, Schedule of Fees, [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf) (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

<sup>19</sup> See ISE, Schedule of Fees, [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf) (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

payment for the Service on a month-to-month basis, the Exchange assumes the risk of termination by Subscribers prior to such time that it is able to recoup the costs of hardware, software, and operational resources necessary to provide the Service.

The Exchange believes that the proposed rule change is also consistent with the objectives of Section 6(b)(5) of the Act,<sup>20</sup> which requires, among other things, that the Exchange's rules are not designed to unfairly discriminate between customers, issuers, brokers or dealers and are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposal would not unfairly discriminate between customers, issuers, brokers, or dealers because purchase of the Service would not be a prerequisite for participation on the Exchange. Only those Members and non-Members that deem the Service to be of sufficient overall value and usefulness would purchase it. The fees applicable to the Service would apply uniformly to all Subscribers. While Members and non-Members may opt for a dedicated gateway, those that do not will continue to be able to access the Exchange via a shared gateway. The Exchange further notes that it would, on an ongoing basis, continue to carefully monitor incoming and outgoing message traffic across all access gateways (shared and dedicated) so that available capacity is adequate to support Exchange message traffic. Additionally, the Exchange would continue to install additional shared access gateways as needed so that consistent capacity levels are maintained. Furthermore, the Exchange notes that both shared and dedicated gateway options consist of identical hardware and software with identical capacity and capabilities, offering equivalent latency under the same loads. To the extent that the load on a Subscriber's dedicated gateway is less than the load on a shared gateway, a Subscriber normally would expect reduced latencies in sending orders to the Exchange through its dedicated gateway. In this regard, the Service is similar to other types of services

<sup>17</sup> 15 U.S.C. 78f(b)(4).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

provided by self-regulatory organizations that offer higher levels of service for a higher fee.<sup>21</sup> Other than the reduced latencies due to reduced gateway load, the Exchange believes that there are no material differences in terms of access to the Exchange between Subscribers and Members and non-Members that choose not to subscribe to the Service. Thus, access to the Exchange would continue to be offered on fair and non-discriminatory terms.

In providing access to a pair of access gateways, the Service is also designed to allow Subscribers to mitigate risks associated with potentially fraudulent and manipulative acts and practices that may adversely affect the Subscriber's trading experience. If, for example, a firm attempted to manipulate the submission of order flow into shared access gateways by directly or indirectly causing a surge in message traffic to be sent to the Exchange, Subscribers would, to an extent, mitigate the risks associated with such a manipulative tactic, as they would be insulated from all such external order flow.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

The Exchange believes that the Service would neither increase nor decrease intramarket competition because the Service is available to all Members and non-Members on a uniform and voluntary basis. As the Exchange currently supports access through shared access gateways and strives to ensure that all access gateways maintain a consistent level of capacity, the use of the Service by a Member or non-Member would be driven in part by

<sup>21</sup> For example, many exchanges allow their member and non-member organizations the option to pay a higher price in exchange for a more stable and/or efficient connection, such as that obtained through co-location services or payment for logical ports. See, e.g., Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56) (approving fees charged by NYSE for its co-location services); Securities Exchange Act Release No. 62397 (June 28, 2010) 75 FR 38860 (July 6, 2010) (SR-NASDAQ-2010-019) (approving fees charged by NASDAQ for its co-location services); see also NASDAQ Stock Market LLC, Price List—Trading Connectivity, <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2> (listing fees for use of logical ports); BATS Exchange, Inc. & BATS Y-Exchange, Inc., Exchange Fee Schedule, [http://cdn.batstrading.com/resources/regulation/rule\\_book/BATS-Exchanges\\_Fee\\_Schedules.pdf](http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf) (listing fees for logical ports); EDGX Exchange, Inc., EDGX Exchange Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx> (listing fees for logical ports).

their relative tolerance for the risks associated with trading disruptions.

The Exchange notes that there is significant competition among market centers for higher quality services at a premium, including, but not limited to, services related to connectivity. By introducing the proposed Service, the Exchange believes that it would be providing an additional service similar to that currently offered by ISE.<sup>22</sup> As such, the Service would increase competition by providing Members with additional options related to connectivity. The Exchange therefore believes that the Service would increase intermarket competition because it may attract order flow from market participants interested in the benefits offered by the Service that might otherwise send their order flow to competing venues. Alternatively, if demand for the Service does not meet expectations, the Service would neither increase nor decrease intermarket competition because the Service would fail to persuade market participants to send their order flow to the Exchange rather than to competing venues.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from its Members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The portion of the foregoing proposed rule change pertain to fees for the EdgeRisk Gateway has become effective pursuant to Section 19(b)(3)(A)<sup>23</sup> of the Act and paragraph (f)(2) of Rule 19b-4<sup>24</sup> thereunder.

Additionally, because the portion of the foregoing proposed rule change pertaining to the establishment of the EdgeRisk Gateway service does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of

<sup>22</sup> See ISE, Schedule of Fees, [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf) (charging \$250 per shared gateway per month and \$2000 per dedicated gateway pair per month).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(2).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>25</sup> and Rule 19b-4(f)(6) thereunder.<sup>26</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest so that Members and non-Members may immediately obtain the EdgeRisk Gateway to potentially assist them in mitigating risks associated with excess message traffic and programmatic mistakes.<sup>27</sup> Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

<sup>27</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Number SR-EDGA-2013-16 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-EDGA-2013-16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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-EDGA-2013-16 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-15664 Filed 6-28-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69847; File No. SR-NYSEArca-2013-61]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Proposing to List and Trade Units of the First Trust Gold Trust Pursuant to NYSE Arca Equities Rule 8.201

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on June 11, 2013, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade Units of the First Trust Gold Trust pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to list and trade Units of the Trust under NYSE

Arca Equities Rule 8.201.<sup>3</sup> Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares."<sup>4</sup> The Securities and Exchange Commission ("Commission") has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 shares of the APMEX Physical-1 oz. Gold Redeemable Trust<sup>5</sup>, ETFs Gold Trust<sup>6</sup>, as well as the Sprott Physical Gold Trust.<sup>7</sup> In addition, the Commission has approved listing on the Exchange of streetTRACKS Gold Trust and iShares COMEX Gold Trust.<sup>8</sup> Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange ("NYSE") and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC.<sup>9</sup> FT Portfolios Canada Co. will be the trustee and manager of the Trust ("Manager"),<sup>10</sup> and The Bank of Nova Scotia Trust Company (the "Trust Custodian") will be the custodian of the Trust's assets.<sup>11</sup> Equity Financial Trust

<sup>3</sup> See the draft registration statement for the Trust on Form F-1, filed with the Commission on March 19, 2013 (File No. 377-00130) (the "Registration Statement"). The descriptions of the Trust, the Units and the gold market contained herein are based, in part, on the Registration Statement.

<sup>4</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust.

<sup>5</sup> Securities Exchange Act Release 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18).

<sup>6</sup> Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40).

<sup>7</sup> Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEArca-2009-113).

<sup>8</sup> See Securities Exchange Act Release Nos. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR-NYSEArca-2007-76) (approving listing on the Exchange of the streetTRACKS Gold Trust); 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

<sup>9</sup> See Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (order approving listing of streetTRACKS Gold Trust on NYSE); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

<sup>10</sup> The Manager is a company subsisting under the laws of Nova Scotia. The Manager is responsible for the day-to-day activities and administration of the Trust. The Manager manages, or causes to be managed, the Trust pursuant to the declaration of trust. Additional details regarding the Manager are set forth in the Registration Statement.

<sup>11</sup> The Trust Custodian intends to appoint The Bank of Nova Scotia as gold sub-custodian (the "Gold Sub-Custodian"). Physical gold bullion held directly by the Gold Sub-Custodian will be stored on an allocated and segregated basis in the vault facilities of ScotiaMacatta, a division of the Gold

Continued

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Company (the "Transfer Agent") will process redemption orders and transfers for the Trust. CIBC Mellon Trust Company (the "Valuation Agent") will calculate the value of the net assets of the Trust on a daily basis and reconcile all purchases and redemptions of Units to determine the net asset value per Unit ("NAV"). The Trust was created to invest and hold substantially all of its assets in physical gold bullion. The Trust will seek to provide a secure, convenient and exchange-traded investment alternative for investors interested in holding physical gold bullion without the inconvenience that is typical of a direct investment in physical gold bullion. The Trust intends to invest primarily in long-term holdings of unencumbered, fully allocated, physical gold bullion and will not speculate with regard to short-term changes in gold prices. Each outstanding Unit will represent an equal, fractional, undivided ownership interest in the Trust. The Trust seeks to allow investors to invest in physical gold through Units of the Trust and either redeem their Units for physical gold bullion, or cash, less applicable expenses as described below.

According to the Registration Statement, substantially all of the net assets of the Trust (at least 90%), will be invested in allocated kilogram bars of physical gold bullion with a fineness of 0.995 or higher that are manufactured by refiners recognized by the London Bullion Market Association ("LBMA") for the production of "good delivery bars" ("Kilogram Bars"). The Trust will not invest in gold certificates or other financial instruments that represent gold or that may be exchanged for gold.

The Trust intends to list the Units on the Toronto Stock Exchange ("TSX"). According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940<sup>12</sup> nor a commodity pool for purposes of the Commodity Exchange Act.<sup>13</sup>

The Exchange represents that the Units satisfy the requirements of NYSE

Sub-Custodian, or additional gold sub-sub-custodians appointed by it in Canada, the United States or London, England. The Gold Sub-Custodian intends to appoint Brinks Global Services USA and/or Via Mat International as gold sub-sub-custodians for physical gold bullion in the Trust's name (each such gold sub-sub-custodians, and the Gold Sub-Custodian, a "Gold Custodian", and together with the Trust Custodian, the "Custodians"). Each Gold Custodian will be responsible for and will bear all risk of the loss of, and damage to, the Trust's physical gold bullion that is in the Gold Custodian's custody, subject to certain limitations based on events beyond the Gold Custodian's control.

<sup>12</sup> 15 U.S.C. 80a-1.

<sup>13</sup> 7 U.S.C. 1.

Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.<sup>14</sup>

Operation of the Physical Gold Bullion Market

According to the Registration Statement, the physical gold bullion market is influenced by several factors, including:

- (a) Global gold supply and demand, which is influenced by such factors as: (i) Forward selling by gold producers; (ii) purchases made by gold producers to unwind gold hedge positions; (iii) central bank purchases and sales; (iv) production and cost levels in major gold-producing countries; and (v) new production projects;
- (b) investors' expectations for future inflation rates;
- (c) exchange rate volatility of the U.S. dollar, the principal currency in which the price of gold is generally quoted;
- (d) interest rate volatility;
- (e) unexpected global, or regional, political or economic incidents; and
- (f) changing tax, royalty, land and mineral rights ownership and leasing regulations in gold producing countries.

LBMA

According to the Registration Statement, the LBMA is the London-based trade association that represents the wholesale gold and silver bullion market in London. London is the focus of the international Over-the-Counter (OTC) market for gold and silver, with a client base that includes the majority of the central banks that hold gold, plus producers, refiners, fabricators and other traders throughout the world.

According to the Registration Statement, the "LBMA Good Delivery List"—the list of acceptable refiners of gold and silver bars in the London bullion market—is now widely recognized as representing the de facto standard for the quality of gold and silver bars, and applies stringent criteria for assaying standards and bar quality that an applicant must satisfy in order to be listed. The assaying capabilities of refiners on the Good Delivery List are periodically checked under the LBMA's "Proactive Monitoring" program.

The LBMA Good Delivery List has been developed and is maintained by the LBMA in order to facilitate the international distribution and acceptability on technical grounds of standard bars produced by those refiners:

- (a) Who meet the criteria for inclusion in the list; and

<sup>14</sup> With respect to application of Rule 10A-3 (17 CFR 240.10A-3) under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

(b) whose bars have passed the testing procedures laid down by the LBMA.

Standard Good Delivery bars of gold are bars of approximately 400 fine troy ounces.

Operation of the Trust

According to the Registration Statement, the Trust will not hold or trade in commodity futures contracts regulated by the Commodity Exchange Act, as administered by the U.S. Commodity Futures Trading Commission ("CFTC"). Gold futures are traded on the COMEX, an affiliate of the Chicago Mercantile Exchange, Inc., and the Tokyo Commodity Exchange.<sup>15</sup>

The Trust is subject to various "Investment and Operating Restrictions", as described in the Registration Statement. The Investment and Operating Restrictions provide that the Trust:

(a) Will invest in and hold a minimum of 90% of the total net assets of the Trust in physical gold bullion (i.e., Kilogram Bars) and hold no more than 10% of the total net assets of the Trust, at the discretion of the Portfolio Advisor, in cash or any asset readily convertible into cash (whether or not denominated in U.S. dollars) including, but not limited to, bank accounts, certificates of deposit, money market accounts, commercial paper, U.S. and foreign treasury obligations and other cash equivalent instruments, except during the 60-day period following the closing of the offering of the Units or additional offerings or prior to the distribution of the assets of the Trust;

(b) will store all Kilogram Bars owned by the Trust at a Gold Custodian on a fully allocated basis, provided that the Kilogram Bars may be stored with a custodian only if it will remain within the chain of custody with the Gold Custodian;

(c) will not purchase, sell or hold derivatives;

(d) will not issue Units following the completion of the offering of the Units except if the net proceeds per Unit to be received by the Trust are not less than 100% of the most recently calculated NAV prior to, or upon the determination of the pricing of such issuance;

(e) will ensure that no part of the stored Kilogram Bars may be delivered out of safekeeping by a Gold Custodian, without receipt of an instruction from the Manager in the form specified by a Gold Custodian indicating the purpose of the delivery and giving direction with respect to the specific amount;

<sup>15</sup> For additional information regarding the gold bullion market, gold futures exchanges, and regulation of the global gold market, see, e.g., Securities Exchange Act Release Nos. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40) (order approving Exchange listing and trading of the ETFs Gold Trust); and 66627 (March 20, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18) (order approving Exchange listing and trading of the APMEX Physical-1 oz. Gold Redeemable Trust).

(f) will ensure that no director or officer of the Manager or representative of the Trust or the Manager will be authorized to enter into the Kilogram Bars storage vaults without being accompanied by at least one representative of a Gold Custodian, as applicable;

(g) will ensure that the Kilogram Bars remain unencumbered;

(h) will inspect or cause to be inspected the stored Kilogram Bars periodically on a spot inspection basis and, together with a representative of the Trust's auditor, physically verify the existence of each bar annually;

(i) will not guarantee the securities or obligations of any person other than the Manager, and then only in respect of the activities of the Trust; and

(j) will comply with certain holding restrictions of the Income Tax Act (Canada).

#### Description of the Units

According to the Registration Statement, the Trust will be authorized to issue an unlimited number of Units. Each Unit will represent a beneficial interest in the net assets of the Trust. Units will be transferable and redeemable at the option of the unitholder in accordance with the provisions set forth in the "Declaration of Trust". All Units will have equal rights and privileges with respect to all matters, including voting, receipt of distributions from the Trust, liquidation and other events in connection with the Trust. Units and fractions thereof will be issued only as fully paid and non-assessable units. Units will have no preference, conversion, exchange or preemptive rights. Each whole Unit will entitle the holder thereof to a vote at meetings of unitholders.

#### Redemption of Units

According to the Registration Statement, subject to the terms of the Declaration of Trust and the Manager's right to suspend redemptions in the circumstances described below, Units may be redeemed at the option of a unitholder in any month for Kilogram Bars or cash. All redemptions will be determined using U.S. dollars, regardless of whether the redeemed Units were acquired on a U.S. national securities exchange or the TSX. Redemption requests will be processed on the last business day of the applicable month.

#### Redemption for Physical Gold

According to the Registration Statement, all redemptions of Units for Kilogram Bars will be determined using U.S. dollars. Unitholders whose Units are redeemed for Kilogram Bars will be entitled to receive a redemption price equal to 100% of the NAV of the redeemed Units on the last day of the

month on which the NYSE Arca is open for trading for the month in respect of which the redemption request is processed (the "Monthly Redemption Date"). The NAV of Units in connection with a redemption will be calculated by the Valuation Agent in the same manner as the NAV of Units is calculated on an ongoing basis. Redemption requests must be for amounts that are at least equivalent to the value of one Kilogram Bar plus applicable expenses. Any redemption proceeds not paid in Kilogram Bars because such proceeds are not equivalent to the value of one Kilogram Bar will be paid in cash at a rate equal to 100% of the NAV of the redeemed Units as of 4:00 p.m., Eastern Time, on the applicable Monthly Redemption Date that represents such excess amount.

#### Procedures to Redeem for Physical Gold Bullion (Kilogram Bars)

A unitholder that owns a sufficient number of Units who desires to exercise redemption privileges for Kilogram Bars must do so by instructing his, her or its broker, who must be a direct or indirect participant of the Canadian Depository for Securities ("CDS") or the Depository Trust Company ("DTC"), as applicable, to deliver to the Transfer Agent on behalf of the unitholder a written request signed by a unitholder in the form as the Manager may from time to time in its sole discretion determine, which must be guaranteed by a Canadian chartered bank, or by a bank, brokerage firm or other financial intermediary that is a member of an approved "Medallion Guarantee Program" or that the Manager on behalf of the Trust otherwise approves (a "Gold Redemption Notice"), of the unitholder's intention to redeem Units for Kilogram Bars. A Gold Redemption Notice must be received by the Transfer Agent no later than 4:00 p.m., Toronto Time, on the 15th day of the month in which the Gold Redemption Notice will be processed or, if such day is not a business day, then on the immediately following day that is a business day. Any Gold Redemption Notice received after such time will be processed on the next Monthly Redemption Date.

Once a Gold Redemption Notice is received by the Transfer Agent, the Transfer Agent, together with the Manager, will determine whether such Gold Redemption Notice complies with the applicable requirements, is for an amount of gold that is equal to at least one Kilogram Bar plus applicable expenses, and contains delivery instructions that are acceptable to the armored service transportation carrier, or such other transportation provider as

deemed appropriate by the logistical coordinator. If the Transfer Agent and the Manager determine that the Gold Redemption Notice complies with all applicable requirements, it will provide a notice to such redeeming unitholder's broker confirming that the Gold Redemption Notice was received and determined to be complete.

If the Gold Redemption Notice is determined to have complied with the applicable requirements, the Transfer Agent and the Manager will determine as of 4:00 p.m., Toronto Time, on the Monthly Redemption Date the amount of Kilogram Bars and the amount of cash that will be delivered to the redeeming unitholder. Also, if the Units being redeemed are certificated on such Monthly Redemption Date, the redeeming unitholder's broker will deliver the certificate(s) evidencing the redeeming Units to CDS or DTC or the Transfer Agent, as applicable, for cancellation.

The Transfer Agent and the Manager will determine the amount of Kilogram Bars the redeeming unitholder will receive and the amount of cash necessary to cover the expenses associated with the redemption and delivery that must be paid by the redeeming unitholder. Once such determination has been made, the Transfer Agent will inform the broker through which the unitholder has delivered its Gold Redemption Notice of the amount of Kilogram Bars and cash that the redeeming unitholder will receive upon the redemption of the unitholder's Units.

Based on instructions from the Manager, the Gold Custodian will release the requisite amount of Kilogram Bars from its custody to the armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator. As directed by the Manager, any cash to be received by a redeeming unitholder in connection with a redemption of Units for Kilogram Bars will be delivered or caused to be delivered by the Manager to the unitholder's brokerage account within 10 business days after the applicable Monthly Redemption Date.

#### Transporting the Gold from a Custodian to the Redeeming Unitholder

A unitholder redeeming Units for Kilogram Bars will receive the Kilogram Bars from a Gold Custodian. Kilogram Bars received by a unitholder as a result of a redemption of Units will be delivered by armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator

pursuant to delivery instructions provided by the unitholder to the Manager. The armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator will be engaged by or on behalf of the redeeming unitholder. Such Kilogram Bars can be delivered (i) To an account established by the unitholder at an institution located in North America recognized as a depository for physical precious metals; (ii) in the United States, to any physical address (subject to approval by the armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator); (iii) in Canada, to any business address (subject to approval by the armored transportation service carrier); and (iv) outside of the United States and Canada, to any address approved by the armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator.

Costs associated with the redemption of Units and the delivery of Kilogram Bars will be borne by the redeeming unitholder, as set forth in the Registration Statement.

The armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator will receive Kilogram Bars in connection with a redemption of Units approximately 10 business days after the Monthly Redemption Date. Once the Kilogram Bars representing the redeemed Units has been placed with the armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator, the Gold Custodian will no longer bear the risk of loss of, and damage to, such Kilogram Bars. In the event of a loss after the Kilogram Bars have been placed with the armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator, the unitholder will not have recourse against the Trust, the Manager, the Advisor, or Gold Custodian. However, Kilogram Bars being delivered to a redeeming unitholder will be insured until the client signs accepting delivery of the Kilogram Bars.

#### Redemption for Cash

All redemptions for cash shall be determined using U.S. dollars. Unitholders whose Units are redeemed for cash will be entitled to receive a redemption price per Unit equal to 95%

of the lesser of (i) the volume-weighted average trading price of the Units traded on the NYSE Arca or, if trading has been suspended on the NYSE Arca, the trading price of the Units traded on the TSX, for the last five days on which the respective exchange is open for trading for the month in which the redemption request is processed and (ii) the NAV of the redeemed Units as of 4:00 p.m., Toronto Time, on the Monthly Redemption Date. Cash proceeds from the redemption of Units will be transferred to a redeeming Unitholder approximately three business days after the applicable Monthly Redemption Date.

#### Suspension of Redemptions

The Manager, on behalf of the Trust, may suspend the right or obligation of the Trust to redeem Units (whether for Kilogram Bars and/or cash) for the whole or any part of any period with the prior approval of securities regulatory authorities having jurisdiction, where required, for any period during which the Manager determines that conditions exist which render impractical the sale of assets of the Trust or which impair the ability for the Manager to determine the NAV or the redemption amount of Units.

In the event of any such suspension, the Manager will issue a press release announcing the suspension and will advise the Trustee. The suspension may apply to all requests for redemption received prior to the suspension, but as for which payment has not been made, as well as to all requests received while the suspension is in effect. All unitholders making such requests will be advised by the Manager of the suspension and that the redemption will be effected at a price determined on the first valuation date that the NAV per Unit is calculated following the termination of the suspension. All such unitholders will have, and will be advised that during such suspension of redemptions that they have, the right to withdraw their requests for redemption. The suspension will terminate in any event on the first business day on which the condition giving rise to the suspension has ceased to exist or when the Manager has determined that such condition no longer exists, provided that no other condition under which a suspension is authorized then exists, at which time the Manager will issue a press release announcing the termination of the suspension. Subject to applicable laws any declaration of suspension made by the Manager, on behalf of the Trust, will be conclusive.

Generally, a mutual fund, such as the Trust, that is a reporting issuer in

Canada only may suspend the right of security holders to request that the mutual fund redeem its securities without the approval of securities regulatory authorities for the whole or any part of a period during which normal trading is suspended on a stock exchange, options exchange or futures exchange within or outside Canada on which securities are listed and traded, or on which specified derivatives are traded, if those securities or specified derivatives represent more than 50 percent by value, or underlying market exposure, of the total assets of the mutual fund without allowance for liabilities and if those securities or specified derivatives are not traded on any other exchange that represents a reasonably practical alternative for the mutual fund. Given the intended portfolio assets of the Trust (which will consist primarily of gold, not exchange traded securities), the Trust likely will not avail itself of the foregoing and will need to seek the approval of the securities regulatory authority in each province and territory of Canada if it intends to suspend redemptions. The securities regulatory authorities will consider whether the proposed suspension is not contrary or prejudicial to the public interest.

If the approval of securities regulatory authorities is required to suspend redemptions, the Trust must apply to the Ontario Securities Commission, the securities regulatory authority for the jurisdiction in which the head office of the Trustee is located, for approval pursuant to Sections 5.7(2) and 5.7(3) of National Instrument 81-102—Mutual Funds and must concurrently file a copy of the application with the securities regulatory authority in each of the other Canadian jurisdictions in which the Units will be offered. The Trust may suspend redemptions only after the application is approved by the Ontario Securities Commission and has not been disallowed by any of the other relevant Canadian jurisdictions.

Other Canadian securities regulatory authorities which must be notified are as follows: British Columbia Securities Commission, Alberta Securities Commission, Saskatchewan Securities Commission, Manitoba Securities Commission, Autorite des marches financiers, New Brunswick Securities Commission, Nova Scotia Securities Commission, Securities Commission of Newfoundland and Labrador, Prince Edward Island Securities Office, Office of the Attorney General, Northwest Territories Securities Registry, Government of Nunavut Securities Registry and Registrar of Securities, Government of the Yukon Territory.

### Suspension of Calculation of Net Asset Value Per Unit

During any period in which the right of unitholders to request a redemption of their Units for Kilogram Bars and/or cash is suspended, the Manager, on behalf of the Trust, will direct the Valuation Agent to suspend the calculation of the value of the net assets of the Trust and the NAV. During any such period of suspension, the Trust will not issue or redeem any Units. In the event of any such suspension or termination thereof, the Manager will issue a press release announcing the suspension or the termination of such suspension, as the case may be.

### Secondary Market Trading

The Units may trade in the secondary market on the Exchange at prices that are lower or higher relative to their NAV. The amount of the discount or premium in the trading price relative to the NAV may be influenced by non-concurrent trading hours between the COMEX, which is the U.S. exchange on which gold for physical delivery is traded and NYSE Arca. While the Units will trade on NYSE Arca until 4:00 p.m., Toronto time, liquidity in the global gold market will lessen after the close of the COMEX at 1:30 p.m., Eastern time. As a result, during this time, trading spreads, and the resulting premium or discount to the NAV may widen.

### Termination Events

According to the Registration Statement, the Trust does not have a fixed termination date but will be terminated and dissolved in the event any of the following occurs:

- (a) There are no outstanding Units;
- (b) the Trustee resigns or is removed and no successor trustee is appointed and approved by the Unitholders, if required;
- (c) the Trustee has been declared bankrupt or insolvent or has entered into a liquidation or winding-up, whether compulsory or voluntary (and not merely voluntary liquidation for the purposes of amalgamation or reconstruction);
- (d) the Trustee makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency; or
- (e) the assets of the Trustee have become subject to seizure or confiscation by any public or governmental authority.

In addition, the Trustee may, in its discretion, terminate the Trust, without unitholder approval, if, in the opinion of the Trustee, the value of net assets of the Trust have been reduced such that

it is no longer economically feasible to continue the Trust and/or it would be in the best interests of the unitholders to terminate the Trust, by giving each holder of Units at the time at least ninety (90) days notice.

In the event of the winding-up of the Trust, the rights of unitholders to require redemption of any or all of their Units will be suspended, and the Manager or, in the event of (c), (d) or (e) above, such other person appointed by the Trustee, the unitholders of the Trust or a court of competent jurisdiction, as the case may be, will make appropriate arrangements for converting the investments of the Trust into cash and the Trustee will proceed to wind-up the affairs of the Trust in such manner as seems to it to be appropriate. The assets of the Trust remaining after paying or providing for all obligations and liabilities of the Trust will be distributed among the unitholders registered as of 4:00 p.m., Toronto time, on the date on which the Trust is terminated in accordance with the Declaration of Trust. Distributions of net income and net taxable capital gains will, to the extent not inconsistent with the orderly realization of the assets of the Trust, continue to be made in accordance with the Declaration of Trust until the Trust has been wound up. Additional information relating to the Trust's termination is provided in the Registration Statement.

### Determining the NAV of the Trust

According to the Registration Statement, the NAV of the Trust will be determined daily as of 4:00 p.m., Toronto time, on each business day by the Trust's Valuation Agent. The value of the net assets of the Trust on any such day will be equal to the aggregate fair market value of the assets of the Trust as of such date, less an amount equal to the fair value of the liabilities of the Trust (excluding all liabilities represented by outstanding Units) as of such date, after processing of all subscriptions and redemptions of Units as of such date. The Valuation Agent will calculate the NAV per Unit by dividing the value of the net assets of the Trust represented by the Units on that day by the total number of Units then outstanding on such day.

### Calculation of Net Asset Value

According to the Registration Statement, the Trustee shall or shall cause the Valuation Agent of the Trust to calculate the value of the net assets of the Trust. The value of the net assets of the Trust as of 4:00 p.m., Toronto Time, on each business day will be the amount obtained by deducting from the

aggregate fair market value of the assets of the Trust as of such time an amount equal to the fair value of the liabilities of the Trust (excluding all liabilities represented by outstanding Units) as of such time.

The NAV per Unit at any time shall be the quotient obtained by dividing the value of the net assets of the Trust at such time by the total number of Units then outstanding and adjusting the number to the nearest one hundredth of a cent. For the purpose of this calculation:

(a) Units subscribed for shall be deemed to be outstanding as of the business day after the day upon which payment in full for such Units shall have actually been received by the Manager; and

(b) Units which the Trust is required to redeem shall be deemed to be outstanding at 4:00 p.m., Toronto Time, on the valuation date as of which NAV is to be determined for the purpose of the redemption, and thereafter the Units shall be deemed to be no longer outstanding and the redemption price shall, until paid, be deemed to be a liability of the Trust.

The NAV will be determined in accordance with the following:

(a) The assets of the Trust will be deemed to include the following property:

(i) All Kilogram Bars owned by or contracted for the Trust;

(ii) all cash on hand or on deposit, including any interest accrued thereon adjusted for accruals deriving from trades executed but not yet settled;

(iii) all bills, notes and accounts receivable;

(iv) all interest accrued on any interest-bearing securities owned by the Trust other than interest, the payment of which is in default;

(v) prepaid expenses; and

(vi) such other cash equivalent instruments, as may be held by the Trust from time to time.

(b) The market value of the portfolio assets of the Trust will be determined as follows:

(i) The value of Kilogram Bars will be based on the per ounce price as indicated by the daily 3 p.m. London Fix<sup>16</sup> (15:00 Greenwich Mean Time) and, if the 3 p.m. London Fix is not available, such Kilogram Bars will be valued at a price provided by another pricing service as determined by the

<sup>16</sup>Twice daily during London trading hours there is a fix which provides reference gold prices for that day's trading. Many long-term contracts will be priced on the basis of either the morning (AM) or afternoon (PM) London Fix, and market participants will usually refer to one or the other of these prices when looking for a basis for valuations.

Manager, in consultation with the Valuation Agent;

(ii) the value of any cash on hand or on deposit, bills, demand notes, accounts receivable, prepaid expenses, and interest accrued and not yet received, will be deemed to be the full amount thereof unless the Manager determines that any such deposit, bill, demand note, account receivable, prepaid expense or interest is not worth the full amount thereof, in which event the value thereof will be deemed to be such value as the Manager determines to be the fair value thereof;

(iii) short-term investments including notes and money market instruments will be valued at cost plus accrued interest;

(iv) the value of any security or other property for which no price quotations are available or, in the opinion of the Manager (which may delegate such responsibility to the Valuation Agent under the valuation services agreement), to which the above valuation principles cannot or should not be applied, will be the fair value thereof determined from time to time in such manner as the Manager (or the Valuation Agent, as the case may be) will from time to time in time provide; and

(v) the value of all assets and liabilities of the Trust will be valued in U.S. dollars and the value of assets and liabilities of the Trust in terms of a currency other than U.S. dollars will be converted to U.S. dollars by applying the rate of exchange obtained from the best available sources to the Valuation Agent as agreed upon by the Manager including, but not limited to, the Trustee or any of its affiliates.

For the purposes of determining the fair market value of any security or property pursuant to paragraph (b) above to which, in the opinion of the Trust's Valuation Agent in consultation with the Manager, the above valuation principles cannot be applied (because no price or yield equivalent quotations are available as provided above, or the current pricing option is not appropriate, or for any other reason), will be the fair value as determined in such manner by the Trust's Valuation Agent in consultation with the Manager and generally adopted by the marketplace from time to time. For greater certainty, fair valuing an investment comprising the property of the Trust may be appropriate if: (i) Market quotations do not accurately reflect the fair value of an investment; (ii) an investment's value has been materially affected by events occurring after the close of the exchange or market on which the investment is principally traded; (iii) a trading halt closes an

exchange or market early; or (iv) other events result in an exchange or market delaying its normal close.

For the purposes of determining the value of Kilogram Bars, the Manager will rely solely on weights provided to the Manager by third parties and confirmed by the applicable Gold Custodian. The Manager or the Trust's Valuation Agent will not be required to make any investigation or inquiry as to the accuracy or validity of such weights.

The Exchange will obtain a representation from the issuer of the Units that the NAV will be calculated on each business day and will be made available to all market participants at the same time.

#### Intraday Indicative Value

The Trust Web site will provide an intraday indicative value ("IIV") per Unit, as calculated by a third party financial data provider during the Exchange's core trading session (9:30 a.m. to 4:00 p.m., Eastern time; hereafter "Core Trading Session").<sup>17</sup> The IIV will be calculated based on a price of gold derived from updated bids and offers indicative of the spot price of gold.

#### Availability of Information

The Web site for the Trust, which the Trust will launch upon the closing of the initial public offering, will contain the following information, on a per Unit basis, for the Trust:

(a) The midpoint of the bid-ask price at the close of trading in relation to the NAV as of the time the NAV is calculated ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and

(b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

(c) the Trust's prospectus, as well as the two most recent reports to stockholders.

The Trust Web site also will provide the last sale price of the Units as traded in the U.S. market, as well as a breakdown of the holdings of the Trust, including the assets described above under "Calculation of Net Asset Value".

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape quotation and last sale information for the Units.

<sup>17</sup> The IIV on a per Unit basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which will be calculated once a day

In addition, there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. The IIV relating to the Units will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.<sup>18</sup>

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers.

Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London AM Fix and London PM Fix are publicly available at no charge at [www.bullioninternational.com](http://www.bullioninternational.com).

The Trust's daily (or as determined by the Manager in accordance with the Trust Agreement) NAV will be posted on the Trust's Web site as soon as practicable. The Exchange will provide on its Web site ([www.nyx.com](http://www.nyx.com)) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape last sale, quotation information, trading volume, closing prices and NAV for the Units from the previous day.

#### Criteria for Initial and Continued Listing

The Trust and the Units will be subject to the criteria in NYSE Arca

<sup>18</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds.

Equities Rule 8.201(e) for initial and continued listing of the Units.

The Exchange will require a minimum of 100,000 Units to be outstanding at the start of trading. The minimum number of Units required to be outstanding is comparable to requirements that have been applied to previously listed shares of the ETFs Gold Trust.<sup>19</sup> The Exchange believes that the anticipated minimum number of Units outstanding at the start of trading is sufficient to provide adequate market liquidity.

#### Trading Rules

The Exchange deems the Units to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Units on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading on the Exchange in the Units may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>20</sup> The Exchange may halt trading of the Units on the Exchange in the event trading in the Units is halted on TSX. The Exchange will halt trading if the Manager, on behalf of the Trust, directs the Trust's Valuation Agent to suspend the calculation of the value of the net assets of the Trust and the NAV. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as

described above. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

#### Surveillance

The Exchange represents that trading in the Units will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>21</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

NYSE Arca Equities Rule 8.201 sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered Market Makers in the Units. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Units is required to provide the Exchange and FINRA, on behalf of the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives in a manner prescribed by the Exchange. Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Units to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Units).

FINRA, on behalf of the Exchange, will communicate as needed regarding

<sup>21</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

trading in the Units, gold futures contracts, and options on gold futures with other markets that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Units, gold futures contracts, and options on gold futures contracts from such markets, including the COMEX. In addition, the Exchange may obtain information regarding trading in the Units, gold futures contracts, and options on gold futures from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>22</sup> Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange and FINRA are able to request and obtain information regarding trading in the Units and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Units; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (3) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (4) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (5) trading information. For

<sup>22</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Investment Industry Regulatory Organization of Canada is a member of ISG. The Chicago Mercantile Exchange ("CME"), and the New York Mercantile Exchange ("NYMEX") are members of ISG, and the Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG memberships of CME and NYMEX.

<sup>19</sup> See note 6, *supra*.

<sup>20</sup> See NYSE Arca Equities Rule 7.12.

example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Units directly from the Trust will receive a prospectus. ETP Holders purchasing Units from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>23</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.201. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Units, gold futures contracts, and options on gold futures with other markets that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Units, gold futures contracts, and options on gold futures contracts from such markets, including the COMEX. In addition, the Exchange may obtain information regarding trading in the

Units, gold futures contracts, and options on gold futures from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The Trust's Web site will provide an IIV per share for the Units, as calculated by a third party financial data provider during the Exchange's Core Trading Session. The Trust's Web site will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. The Exchange will provide on its Web site a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Units from the previous day.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Units and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding gold pricing and gold futures information.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional exchange-traded product that holds physical gold and that will enhance competition among

market participants, to the benefit of investors and the marketplace.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2013-61 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2013-61. 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

<sup>23</sup> 15 U.S.C. 78f(b)(5).

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 NYSE's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2013-61, and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-15627 Filed 6-28-13; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69851; File No. SR-NYSE-2013-42]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in which Its Indirect Parent, NYSE Euronext, Will Become a Wholly Owned Subsidiary of IntercontinentalExchange Group, Inc.

June 25, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act" or the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 14, 2013, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

#### A. Overview of the Proposed Merger

The Exchange, a New York limited liability company, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the "Proposed Rule Change") to the U.S. Securities and Exchange Commission in connection with the proposed business combination (the "Merger") of NYSE Euronext ("NYSE Euronext") and IntercontinentalExchange, Inc. ("ICE"), both Delaware corporations. NYSE Euronext has entered into an Agreement and Plan of Merger, dated as of December 20, 2012, as amended and restated as of March 19, 2013, by and among NYSE Euronext, ICE, IntercontinentalExchange Group, Inc. ("ICE Group"), Braves Merger Sub, Inc. ("ICE Merger Sub") and Baseball Merger Sub, LLC ("NYSE Euronext Merger Sub") (as it may be further amended from time to time, the "Merger Agreement"), whereby NYSE Euronext and ICE would each become subsidiaries of ICE Group.

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation ("NYSE Group"), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the "NYSE Exchanges")—the Exchange, NYSE Arca, Inc. ("NYSE Arca") and NYSE MKT LLC ("NYSE MKT")—and (2) 100% of the equity interest of NYSE Market (DE), Inc. ("NYSE Market"), NYSE Regulation, Inc. ("NYSE Regulation"), NYSE Arca L.L.C., NYSE Arca Equities, Inc. ("NYSE Arca Equities") and NYSE Amex Options LLC ("NYSE Amex Options") (the NYSE Exchanges, together with (x) NYSE Market, NYSE Regulation, NYSE Arca L.L.C., NYSE Arca Equities and NYSE Amex Options and (y) any similar U.S. regulated entity acquired, owned or created after the date hereof, the "U.S. Regulated Subsidiaries" and each, a "U.S. Regulated Subsidiary"). Each of NYSE Arca and NYSE MKT will be separately filing a proposed rule change in connection with the Merger that will be substantially the same as the Proposed Rule Change.

ICE is a leading operator of regulated exchanges and clearing houses serving the risk management needs of global markets for agricultural, credit, currency, emissions, energy and equity index products. ICE directly and indirectly owns ICE Futures Europe, ICE

Futures U.S., Inc., ICE Futures Canada, Inc., ICE U.S. OTC Commodity Markets, LLC, and five central counterparty clearing houses, including ICE Clear Europe Limited and ICE Clear Credit LLC, each of which is registered as a clearing agency under Section 17A of the Exchange Act,<sup>4</sup> ICE Clear U.S., Inc., ICE Clear Canada, Inc., and The Clearing Corporation, and owns 100% of the equity in Creditex Group Inc., which in turn indirectly owns Creditex Securities Corporation. Neither ICE nor any company owned by it directly or indirectly, including, but not limited to, those referenced in this paragraph, is a registered national securities exchange or a member of any U.S. Regulated Subsidiary.

ICE's common stock is listed on the Exchange under the symbol "ICE," and, following the completion of the Merger, ICE Group common stock is expected to be listed for trading on the Exchange under the same symbol.

#### B. Summary of Proposed Rule Change

The Exchange is proposing that, pursuant to the Merger, the successor to NYSE Euronext, the Exchange's indirect parent, will be a wholly owned subsidiary of ICE Group. ICE Group is currently a wholly owned subsidiary of ICE. ICE Group in turn has two wholly owned subsidiaries, ICE Merger Sub, a Delaware corporation, and NYSE Euronext Merger Sub, a Delaware limited liability company. To effect this transaction, (A) ICE Merger Sub will be merged with and into ICE (the "ICE Merger"), with ICE as the surviving corporation and a wholly owned subsidiary of ICE Group, and each share of ICE common stock owned by an ICE stockholder (other than ICE or ICE Merger Sub) will be converted into the right to receive one share of ICE Group common stock, and (B) immediately following the ICE Merger, NYSE Euronext shall be merged with and into NYSE Euronext Merger Sub, with NYSE Euronext Merger Sub as the surviving company and a wholly owned subsidiary of ICE Group (the "NYSE Euronext Merger" and, together with the ICE Merger, the "Merger"). Each issued and outstanding share of NYSE Euronext common stock will be converted into the right to receive the "standard election amount" of 0.1703 of a share of ICE Group common stock and \$11.27 in cash, other than certain shares held by NYSE Euronext, ICE and their respective affiliates. Alternatively, NYSE Euronext stockholders will have the right to make either a cash election to receive \$33.12 in cash, or a stock

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78qA [sic].

election to receive 0.2581 of a share of ICE Group common stock, for each share of NYSE Euronext. NYSE Euronext Merger Sub, as the surviving entity in the NYSE Euronext Merger, will change its name to NYSE Euronext Holdings LLC (“NYX Holdings”) from and after the closing of the Merger.

If the Merger is completed, the businesses of ICE and NYSE Euronext, including the U.S. Regulated Subsidiaries, will be held under ICE Group as a single publicly traded holding company that will be listed on the Exchange. The Proposed Rule Change, if approved by the Commission, will not be effective until the consummation of the Merger.

In addition, the Exchange is proposing that, in connection with the Merger, the Commission approve the organizational and other governance documents of ICE Group and NYX Holdings, as well as certain amendments to the organizational and other governance documents of NYSE Group and certain of the U.S. Regulated Subsidiaries, as well as certain rules of the Exchange, NYSE MKT and NYSE Arca Equities.<sup>5</sup> The Proposed Rule Change is summarized as follows:

*Certificate of Incorporation and Bylaws of ICE Group.* ICE Group would take appropriate steps to incorporate voting and ownership restrictions, provisions relating to the qualifications of directors and officers and their submission to jurisdiction, compliance with the Federal securities laws, access to books and records and other matters related to its control of the U.S. Regulated Subsidiaries. Specifically, the Amended and Restated Certificate of Incorporation of ICE Group (the “ICE Group Certificate”)<sup>6</sup> and the Amended and Restated Bylaws of ICE Group (the “ICE Group Bylaws”)<sup>7</sup> would contain provisions to incorporate these concepts with respect to itself, as well as its directors, officers, employees, and agents (as applicable):

- *Voting and Ownership Restrictions in the ICE Group Certificate and Bylaws.* The ICE Group Certificate would contain voting and ownership restrictions that will restrict any person, either alone or together with its related

persons, from having voting control over ICE Group shares entitling the holder thereof to cast more than 10% of the then outstanding votes entitled to be cast on a matter or beneficially owning ICE Group shares representing more than 20% of the outstanding votes entitled to be cast on a matter. The ICE Group Certificate would provide that ICE Group will be required to disregard any votes purported to be cast in excess of the voting restriction. In the event that any person(s) exceeds the ownership restrictions, it will be obligated to sell promptly, and ICE Group is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of ICE Group necessary so that such person, together with its related persons, will beneficially own shares of ICE Group representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding. Consistent with the current Amended and Restated Certificate of Incorporation of NYSE Euronext (the “NYSE Euronext Certificate”), the ICE Group board of directors may waive the voting and ownership restrictions if it makes certain determinations (which will be subject to the same requirements as are currently required to be made by the board of directors of NYSE Euronext in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority. The ICE Group Certificate further provides that the board of directors may not approve either voting or ownership rights in excess of a 20% threshold with respect to any person that is a Member of the Exchange, as defined in the ICE Group Certificate (an “NYSE Member”), a Member of NYSE MKT as defined in the ICE Group Certificate (including any person who is a related person of such member, a “NYSE MKT Member”), an ETP Holder of NYSE Arca Equities, as defined in the ICE Group Certificate (an “ETP Holder”), or an OTP Holder or OTP Firm of NYSE Arca, as defined in the ICE Group Certificate (an “OTP Holder” and “OTP Firm,” respectively).

This limitation is currently in the NYSE Euronext Certificate with respect to NYSE Members, ETP Holders, OTP Holders and OTP Firms, and in the Second Amended and Restated Bylaws of NYSE Euronext (the “NYSE Euronext Bylaws”) with respect to NYSE MKT Members, including an expanded definition of “Related Persons” to address NYSE MKT Members in a manner that is substantively consistent with provisions currently located in the NYSE Rules.

- *Jurisdiction.* The ICE Group Bylaws will provide that ICE Group and its directors, and, to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, its officers, and those of its employees whose principal place of business and residence is outside the United States will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceedings pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the ICE Group Bylaws would provide that, so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The ICE Group Bylaws would provide that ICE Group will take reasonable steps necessary to cause its officers, directors and employees to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.

- *Books and Records.* The ICE Group Bylaws would provide that for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of ICE Group will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act, and that ICE Group’s books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, ICE Group’s books and records related to the U.S. Regulated Subsidiaries will be maintained within

<sup>5</sup> Proposed amendments to the governance documents and/or rules of NYSE MKT and NYSE Arca Equities are included in the Proposed Rule Change, and the text of those proposed amendments are attached as exhibits to the Proposed Rule Change, because they are part of the overall set of changes proposed by the NYSE Exchange to be made in connection with the Merger.

<sup>6</sup> The text of the proposed ICE Group Certificate is attached to the Proposed Rule Change as Exhibit 5A.

<sup>7</sup> The text of the proposed ICE Group Bylaws is attached to the Proposed Rule Change as Exhibit 5B.

the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, ICE Group may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.

- *Restrictions on Amendments to ICE Group Certificate and Bylaws.* The ICE Group Certificate would provide that before any amendment to the ICE Group Certificate may be effectuated, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective. The ICE Group Bylaws would include the same requirement.

- *ICE Group Independence Policy.* In addition, ICE Group will adopt a Director Independence Policy in the form attached to the Proposed Rule Change as Exhibit 5C (the “ICE Group Independence Policy”), which would be substantially identical to the current Independence Policy of the NYSE Euronext board of directors except for the change of the entity whose board of directors adopted the policy and nonsubstantive conforming changes.

- *Additional Matters.* The ICE Group Bylaws would include provisions regarding cooperation with the Commission and the U.S. Regulated Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries’ self-regulatory function, preservation of the independence of the U.S. Regulated Subsidiaries’ self-regulatory function, and directors’ consideration of the effect of ICE Group’s actions on the U.S. Regulated Subsidiaries’ ability to carry out their respective responsibilities under the Exchange Act.

*Proposed Approval of Waiver of Ownership and Voting Restrictions of NYSE Euronext.* The Amended and Restated Certificate of Incorporation of NYSE Euronext (the “NYSE Euronext Certificate”) currently restricts any person, either alone or together with its related persons, from being entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially owning shares of stock of NYSE Euronext representing in the aggregate more than 20% of the outstanding votes entitled to be cast on

any matter.<sup>8</sup> NYSE Euronext is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Euronext shares that are held in excess of the ownership restriction. The NYSE Euronext Certificate and the Amended and Restated Bylaws of NYSE Euronext (the “NYSE Euronext Bylaws”) provide that the board of directors of NYSE Euronext may waive these voting and ownership restrictions if it makes certain determinations and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the U.S. Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder,<sup>9</sup> and filed with, and approved by, each European Regulator (as defined in the NYSE Euronext Certificate) having appropriate jurisdiction and authority.<sup>10</sup> Acting pursuant to this waiver provision, the board of directors of NYSE Euronext has adopted the resolutions set forth in Exhibit 5D to the Proposed Rule Change (the “NYSE Euronext Resolutions”) in order to permit ICE Group to own and vote 100% of the outstanding common stock of NYX Holdings as of and after the NYSE Euronext Merger. The Exchange is requesting approval by the Commission of the NYSE Euronext Resolutions in order to allow the NYSE Euronext Merger to take place.

*Changes to the NYSE Euronext Certificate and Bylaws.* NYX Holdings, as a Delaware limited liability company, will operate pursuant to an operating agreement (the “NYX Holdings Operating Agreement”), a copy of which is attached to the Proposed Rule Change as Exhibit 5E. The NYX Holdings Operating Agreement will differ in certain respects from the current NYSE Euronext Certificate and Bylaws as a result of the different form of organization of NYX Holdings and as a result of the change from a public company to a wholly owned subsidiary.

- *Proposed Voting and Ownership Restrictions of NYX Holdings.* Because NYX Holdings, the surviving entity of the merger of NYSE Euronext into Merger Sub, would be a wholly owned subsidiary of ICE Group as a result of the NYSE Euronext Merger, the Exchange is proposing to adopt voting

and ownership restrictions that will differ from those in the current NYSE Euronext Certificate, and would be consistent with the analogous provisions in the Second Amended and Restated Certificate of Incorporation of NYSE Group (the “NYSE Group Certificate”):

- first, the NYX Holdings Operating Agreement would provide that all of the issued and outstanding membership interests of NYX Holdings will be held by ICE Group, and that ICE Group may not transfer or assign any membership interests without approval by the Commission under the Exchange Act and the relevant European Regulators under the applicable European Exchange Regulations (as defined in the NYX Holdings Operating Agreement);<sup>11</sup>

- second, the NYX Holdings Operating Agreement would provide that the voting and ownership restrictions contained therein would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests of NYX Holdings and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary (as such terms are defined in the NYX Holdings Operating Agreement). The voting and ownership restrictions in the NYX Holdings Operating Agreement would otherwise mirror those in both the current NYSE Group Certificate and the proposed ICE Group Certificate: A 10% threshold for the voting restriction and an ownership restriction of 20%.<sup>12</sup>

- *Proposed Amendments to Certain Public-Company-Related and Other Provisions of NYSE Euronext Organizational and Corporate Governance Documents.* Under the Proposed Rule Change, and in light of the fact that NYX Holdings will be a wholly owned subsidiary of ICE Group following the completion of the Merger, the NYX Holdings Operating Agreement, though based in substantial part on the current NYSE Euronext Certificate and Bylaws, will reflect a simplified and more efficient governance and capital structure that is appropriate for a wholly owned subsidiary. The NYX Holdings Operating Agreement also will include certain provisions that are analogous to provisions in the organizational documents of NYSE Group, which is a wholly owned subsidiary of NYSE Euronext, just as NYX Holdings will be

<sup>8</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2.

<sup>9</sup> 15 U.S.C. 78s(b).

<sup>10</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Sections 1 & 2, and Amended and Restated Bylaws of NYSE Euronext, Section 10.12.

<sup>11</sup> See NYX Holdings Operating Agreement, Article VII Sections 7.1 (ICE Group as sole member) and 7.2 (transfer restrictions).

<sup>12</sup> See NYSE Group Certificate, Article IV Section 4(b); and ICE Group Certificate, Article V.

a wholly owned subsidiary of ICE Group following completion of the Merger.

- *Other.* The NYX Holdings Operating Agreement will (a) include the provision, which is currently in the NYSE Euronext Bylaws, that requires the board of directors of NYSE Euronext to make certain determinations relating to NYSE MKT in order to waive the voting and ownership restrictions, (b) update the names of certain European regulatory authorities in the definitions of “Euronext College of Regulators” and “European Regulator” and the technical descriptions of regulated markets and entities in the definitions of “European Exchange Regulations,” “European Regulated Market” and “European Market Subsidiary” (as currently defined in the NYSE Euronext Bylaws and incorporated into the NYSE Euronext Certificate), and (c) expand the definition of “related Persons” to address NYSE MKT Members in a manner that is substantively consistent with provisions currently located in the NYSE Rules.

*Proposed Amendments to Voting and Ownership Restrictions of NYSE Group.* The NYSE Group Certificate currently provides that, if NYSE Euronext and the trust established pursuant to the Trust Agreement, dated as of April 4, 2007 and amended as of October 1, 2008, by and among NYSE Euronext, NYSE Group and other parties thereto (the “NYSE Trust Agreement”) do not hold 100% of the outstanding stock of NYSE Group, no person, either alone or together with its related persons, may be entitled to vote or cause the voting of shares to the extent that such shares represent in the aggregate more than 10% of the outstanding votes entitled to be cast on any matter or beneficially own shares of stock of NYSE Group representing in the aggregate more than 20% of the outstanding votes entitled to be cast on any matter.<sup>13</sup> NYSE Group is required to disregard votes which are in excess of the voting restriction and to repurchase NYSE Group shares which are held in excess of the ownership restriction.<sup>14</sup>

- Under the Proposed Rule Change, the voting and ownership restrictions in the NYSE Group Certificate would be amended to apply only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as defined in the NYSE Group Certificate); and expand the definition of “Related Persons” regarding NYSE MKT Members so that it is consistent with the

language in the NYSE Rules, which language also will be incorporated in the ICE Group Certificate and the NYX Holdings Operating Agreement pursuant to the Proposed Rule Change.

*Other Proposed Amendments to NYSE Group Certificate.* Under the Proposed Rule change, the NYSE Group Certificate also would be amended to make certain clarifications and technical edits (for example, to conform the use of defined terms and other provisions to be consistent with the other amendments to the NYSE Group Certificate set forth in the Proposed Rule Change).

*Proposed Amendments to constituent documents of the Exchange, NYSE MKT, NYSE Market and NYSE Regulation.* Under the Proposed Rule Change, certain conforming changes will be made to the Fourth Amended and Restated Operating Agreement, dated as of August 23, 2012, of the Exchange (the “Exchange Operating Agreement”) to reflect that certain nominations to the Board will be made by ICE Group rather than by NYSE Euronext. Substantially the same revisions would be made to the analogous provisions of the Third Amended and Restated Operating Agreement of NYSE MKT, the Second Amended and Restated Bylaws of NYSE Market and the Fourth Amended and Restated Bylaws of NYSE Regulation.

*Proposed Amendments to the Exchange Rules, NYSE MKT Rules, and NYSE Arca Equities Rules.* Under the Proposed Rule Change, certain technical amendments would be made to the Exchange Rules, including replacing references to “NYSE Euronext” with references to ICE Group, and deleting definitions of “member” and “member organization” relating to NYSE MKT, which are currently set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the current NYSE Euronext Certificate, because under the Proposed Rule Change, the ICE Group Certificate will incorporate this language. In addition, certain technical amendments would be made to the NYSE MKT Rules and NYSE Arca Equities Rules to replace references to “NYSE Euronext” with references to ICE Group.

The Second Amended and Restated Certificate of Incorporation of IntercontinentalExchange Group, Inc. that will be effective as of the consummation of the Merger, the Amended and Restated Bylaws of IntercontinentalExchange Group, Inc. that will be effective as of the consummation of the Merger; the proposed Director Independence Policy of Intercontinental-Exchange Group, Inc. that will be adopted by the board

of directors of IntercontinentalExchange Group, Inc. effective as of the consummation of the Merger; the resolutions of the NYSE Euronext Board of Directors; the proposed Amended and Restated Limited Liability Company Agreement of NYSE Euronext Holdings LLC that will be effective as of the consummation of the Merger; the proposed Third Amended and Restated Certificate of Incorporation of NYSE Group, Inc. that will be effective as of the consummation of the Merger; the proposed Fifth Amended and Restated Operating Agreement of New York Stock Exchange LLC that will be effective as of the consummation of the Merger; the proposed Fourth Amended and Restated Operating Agreement of NYSE MKT LLC that will be effective as of the consummation of the Merger; the proposed Third Amended and Restated Bylaws of NYSE Market (DE), Inc. that will be effective as of the consummation of the Merger; the proposed Fifth Amended and Restated Bylaws of NYSE Regulation, Inc. that will be effective as of the consummation of the Merger; the proposed amended Rules of the New York Stock Exchange, LLC that will be effective as of the consummation of the Merger; the proposed revised Director Independence Policy that will be adopted by the boards of directors of New York Stock Exchange, LLC, NYSE MKT LLC, NYSE Market (DE), Inc. and NYSE Regulation, Inc. effective as of the consummation of the Merger; the proposed amendments to the NYSE Trust Agreement, that will be effective as of the consummation of the Merger; the proposed amended Rules of NYSE MKT that will be effective as of the consummation of the Merger; and the proposed amended Rules of NYSE Arca Equities, Inc. that will be effective as of the consummation of the Merger are attached to the Proposed Rule Change as Exhibits 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5L, 5M, 5N and 5O, respectively.

The text of the Proposed Rule Change is available at the Exchange, the Commission’s Public Reference Room, and on the Web site of the Exchange ([www.nyse.com](http://www.nyse.com)). The text of Exhibits 5A through 5O to the Proposed Rule Change is also available on the Exchange’s Web site and on the Commission’s Web site ([www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)).

## 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 has included statements concerning the purpose of, and basis for,

<sup>13</sup> See NYSE Group Certificate, Article IV Section 4(b)(1) and (2).

<sup>14</sup> See NYSE Group Certificate, Article IV Sections 4(b)(1)(A) and 4(b)(2)(D).

the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule filing is to adopt the rules necessary to permit NYSE Euronext to effect the Merger and to amend certain provisions of the organizational and other governance documents of NYSE Euronext, NYSE Group and certain of the U.S. Regulated Subsidiaries, including certain Exchange Rules, NYSE MKT Rules and NYSE Arca Equities Rules.

1. Overview of the Merger

The Exchange is submitting the Proposed Rule Change to the Commission in connection with the Merger of NYSE Euronext and ICE. ICE Group believes the Merger brings together two highly complementary businesses and will create an end-to-end multi-asset portfolio that will be strongly positioned to serve a global client base and capture current and future growth opportunities.

Other than as described herein and in the separate proposed rule changes filed by each NYSE Exchange, ICE Group and the NYSE Exchanges do not plan to make any changes to the regulated activities of the U.S. Regulated Subsidiaries in connection with the Merger. If ICE Group determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be effective until the consummation of the Merger.

The Merger will occur pursuant to the terms of the Merger Agreement. As a result of the Merger, NYX Holdings, the successor to NYSE Euronext, will be a subsidiary of ICE Group.

In the Merger, NYSE Euronext, the indirect parent of the Exchange, will become a wholly owned subsidiary of ICE Group. ICE Group is currently a wholly owned subsidiary of ICE. ICE Group in turn has two wholly owned subsidiaries, ICE Merger Sub and NYSE Euronext Merger Sub. ICE Merger Sub will be merged with and into ICE, with ICE as the surviving corporation and a wholly owned subsidiary of ICE Group. Immediately afterward, NYSE Euronext

will be merged with and into NYSE Euronext Merger Sub, with NYSE Euronext Merger Sub as the surviving company and a wholly owned subsidiary of ICE Group. The surviving entity in the NYSE Euronext Merger will change its name to NYSE Euronext Holdings LLC from and after the closing of the NYSE Euronext Merger.

Under the terms of the Merger Agreement, each share of NYSE Euronext common stock will be converted into 0.1703 of a newly issued share of ICE Group common stock and \$11.27 cash (together, the "Standard Merger Consideration"). NYSE Euronext stockholders may also elect to receive \$33.12 in cash, or a stock election to receive 0.2851 of a share of ICE Group common stock, for each of their NYSE Euronext shares. Both the cash election and the stock election are subject to proration and adjustment procedures to ensure that the total amount of cash paid, and the total number of shares of ICE Group common stock issued, in the NYSE Euronext Merger to the NYSE Euronext stockholders, as a whole, will be equal to the total amount of cash and number of shares that would have been paid and issued if all of the NYSE Euronext stockholders received the standard election amount. Following the Merger, ICE Group common shares are expected to be listed on the New York Stock Exchange.

The board of directors of ICE has determined that the Merger is in the best interests of its stockholders, approved the Merger Agreement and resolved to recommend to its stockholders that they approve the adoption of the Merger Agreement. The board of directors of NYSE Euronext has determined that the Merger is in the best interests of its stockholders, approved the Merger Agreement and resolved to recommend that its stockholders approve the adoption of the Merger Agreement.

2. Overview of ICE Group Following the Merger

Following the Merger, ICE Group will be a for-profit, publicly traded Delaware corporation. ICE Group will hold all of the equity interests in ICE, which will continue its current operations, and in NYX Holdings, which will hold (1) 100% of the equity interests of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests in certain regulated trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom).

ICE Group will amend its certificate and bylaws to incorporate ownership and voting limitations and certain other provisions to satisfy U.S. and European regulatory requirements as described in detail in the Proposed Rule Change.

After the Merger, NYSE Group will be directly wholly owned by NYX Holdings and will continue to own, directly or indirectly, the three NYSE Exchanges—the Exchange, NYSE Arca and NYSE MKT—which provide marketplaces where investors buy and sell listed companies' common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE Regulation, Inc., an indirect not-for-profit subsidiary of NYX Holdings, will continue to oversee FINRA's performance of certain market surveillance and enforcement functions for the NYSE Exchanges, enforce listed company compliance with applicable standards, and oversee regulatory policy determinations, rule interpretation and regulation related rule development.

In Europe, NYSE Euronext and its subsidiaries own European-based exchanges that comprise Euronext N.V. and its subsidiaries—the London, Paris, Amsterdam, Brussels and Lisbon stock exchanges, as well as the derivatives markets in London, Paris, Amsterdam, Brussels and Lisbon (with certain qualifications and exceptions set forth in the ICE Group Bylaws, the "European Market Subsidiaries"). The activities of the NYSE Euronext European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the French Authority of Prudential Control (*Autorité de Contrôle Prudentiel*), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*), the Belgian Financial Services and Markets Authority (*Autorité des services et marchés financiers*), the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários—CMVM*) and the U.K. Financial Conduct Authority (*FCA*).

NYSE Euronext and ICE expect that, after the closing of the Merger, Euronext will be separated from ICE Group, although no definitive plans have been made to pursue such a separation. An initial public offering of Euronext would include all of the European Market Subsidiaries (the continental European cash equity platforms and the derivatives traded on them) but would not include the derivatives businesses of another current subsidiary of Euronext,

Liffe Administration and Management (“LAM”). ICE has informed NYSE Euronext that it expects the derivatives business of LAM will be gradually transitioned to ICE Futures Europe, subject to regulatory approval in the United Kingdom.

The current NYSE Euronext Certificate and Bylaws provide that each provision related to any European Market Subsidiary or any European regulatory requirement will be automatically repealed if (i) NYSE Euronext at any time in the future no longer holds a direct or indirect “controlling interest” (as defined therein) in Euronext or (ii) a “Euronext Call Option” (as defined in the NYSE Euronext bylaws) has been exercised and, after a period of six months following such exercise, Stichting NYSE Euronext, a foundation (“stichting”) organized under the laws of The Netherlands, formed on April 4, 2007 (the “Foundation”) holds shares of Euronext that represent a substantial portion of Euronext’s business (provided that, in this case, the NYSE Euronext board of directors approves the applicable revocation). The ICE Group Certificate and Bylaws would contain similar provisions, except that the standard in clause (i) above that ICE Group no longer holds a direct or indirect controlling interest in Euronext would be replaced by a standard that it ceases to control Euronext, with “control” defined by reference to International Financial Reporting Standards. The separation of Euronext as described above is expected to trigger the repeal described in clause (i) as so modified.

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of each U.S. Regulated Subsidiary will be preserved. Specifically, after the Merger, NYSE Group’s businesses and assets will continue to be structured as follows:

- The Exchange will remain a direct wholly owned subsidiary of NYSE Group and an indirect wholly owned subsidiary of NYX Holdings.
- NYSE Market will remain a wholly owned subsidiary of the Exchange and will continue to conduct the Exchange’s business.
- NYSE Regulation will remain a wholly owned subsidiary of the Exchange and continue to perform, and/or oversee the performance of, regulatory responsibilities of the Exchange pursuant to a delegation agreement with the Exchange and regulatory functions of NYSE Arca and

NYSE MKT pursuant to services agreements with them.<sup>15</sup>

- NYSE Arca and NYSE Arca L.L.C., a Delaware limited liability company, will remain wholly owned subsidiaries of NYSE Group.

- NYSE Arca Equities will remain a wholly owned subsidiary of NYSE Arca.

- NYSE MKT will remain a direct wholly owned subsidiary of NYSE Group and an indirect wholly owned subsidiary of NYX Holdings.

- The Merger will have no effect on the ability of any party to trade securities on the Exchange, NYSE Arca or NYSE MKT.

Similarly, NYX Holdings, as successor to NYSE Euronext, and its subsidiaries will conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European Regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

ICE Group acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, NYSE Arca or NYSE MKT, it will be responsible for referring such possible violations to each such exchange, respectively. In addition, ICE Group will enter into an agreement with NYSE Regulation acknowledging that each of the Exchange, NYSE MKT and NYSE Arca has contracted to have NYSE Regulation perform its self-regulatory obligations, in each case with the self-regulatory organization retaining its responsibility for the adequate performance of those regulatory obligations, and agreeing to provide adequate funding to NYSE Regulation to allow NYSE Regulation to conduct its regulatory activities with respect to the Exchange, NYSE MKT and NYSE Arca.

### 3. Proposed Approval of Waiver of Voting and Ownership Restrictions of NYSE Euronext

Article V of the current NYSE Euronext Certificate provides that (1) no person, either alone or together with its “related persons” (as defined in the NYSE Euronext Certificate), may be entitled to vote or cause the voting of shares of NYSE Euronext beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter; and

<sup>15</sup> Certain regulatory functions have been allocated to, and/or are otherwise performed by, FINRA.

(2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of NYSE Euronext (the “NYSE Euronext Voting Restriction”).<sup>16</sup> NYSE Euronext must disregard any votes purported to be cast in excess of the NYSE Euronext Voting Restriction.<sup>17</sup>

In addition, the NYSE Euronext Certificate provides that no person, either alone or together with its related persons, may at any time beneficially own shares of NYSE Euronext representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the “NYSE Euronext Ownership Restriction”).<sup>18</sup> If any person, either alone or together with its related persons, owns shares of NYSE Euronext in excess of the NYSE Euronext Ownership Restriction, then such person and its related persons are obligated to sell promptly, and NYSE Euronext is obligated to purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of NYSE Euronext necessary so that such person, together with its related persons, will beneficially own shares of NYSE Euronext representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.<sup>19</sup>

The NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction are applicable to each person unless and until (1) such person has delivered a notice in writing to the board of directors of NYSE Euronext, not less than 45 days (or such shorter period as the board of directors of NYSE Euronext expressly permits) prior to any vote or, in the case of the NYSE Euronext Ownership Restriction, prior to the acquisition of any shares of NYSE Euronext that would cause such person, either alone or together with its

<sup>16</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1.

<sup>17</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 1(A).

<sup>18</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2.

<sup>19</sup> See Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V Section 2(D).

related persons, to exceed the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of NYSE Euronext stock beneficially owned by such person or its related persons in excess of the NYSE Euronext Voting Restriction, or in the case of the NYSE Euronext Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of NYSE Euronext has resolved to expressly permit such voting or ownership, as applicable; (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>20</sup> and has become effective thereunder; and (4) such resolution has been filed with, and approved by, each European Regulator having appropriate jurisdiction and authority. Subject to its fiduciary duties under applicable law, the NYSE Euronext board of directors may not adopt any resolution pursuant to clause (2) unless it has determined that the exercise of such voting rights (or the entering into of a voting agreement) or ownership, as applicable:

- will not impair the ability of any U.S. Regulated Subsidiary, NYSE Euronext or NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity) to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder;
- will not impair the ability of any of the European Market Subsidiaries of NYSE Euronext or Euronext (to the extent that Euronext continues to exist as a separate entity) to discharge their respective responsibilities under the European Exchange Regulations (as defined in the NYSE Euronext Bylaws);
- is otherwise in the best interest of NYSE Euronext, its stockholders, the U.S. Regulated Subsidiaries and the European Market Subsidiaries, and will not impair the Commission's ability to enforce the Exchange Act or the European Regulators' ability to enforce the European Exchange Regulations;
- for so long as NYSE Euronext directly or indirectly controls the Exchange or NYSE Market, neither such person nor any of its related persons is a NYSE Member;
- for so long as NYSE Euronext directly or indirectly controls NYSE MKT, neither such person nor any of its related persons is a NYSE MKT Member (this restriction is currently set forth in the Bylaws of NYSE Euronext<sup>21</sup>);

- for so long as NYSE Euronext directly or indirectly controls NYSE Arca, NYSE Arca Equities or any facility of NYSE Arca, neither such person nor any of its related persons is an ETP Holder, an OTP Holder or an OTP Firm; and

- neither such person nor any of its related persons is a U.S. Disqualified Person or a European Disqualified Person (as such terms are defined in the NYSE Euronext Certificate).<sup>22</sup>

In order to allow ICE Group to wholly own and vote all of the outstanding common stock of NYSE Euronext upon consummation of the Merger, ICE Group has delivered written notice to the board of directors of NYSE Euronext pursuant to the procedures set forth in the NYSE Euronext Certificate requesting approval of its voting and ownership of NYSE Euronext shares in excess of the NYSE Euronext Voting Restriction and the NYSE Euronext Ownership Restriction. Among other things, in this notice, ICE Group represented to the board of directors of NYSE Euronext that neither it, nor any of its related persons, is (1) an NYSE Member; (2) an NYSE MKT Member; (3) an ETP Holder; (4) an OTP Holder or OTP Firm; or (5) a U.S. Disqualified Person or a European Disqualified Person.

On [June 5] [sic], 2013, the board of directors of NYSE Euronext adopted by written consent the NYSE Euronext Resolutions to permit ICE Group, either alone or with its related persons, to exceed the NYSE Euronext Ownership Restriction and the NYSE Euronext Voting Restriction. In adopting such resolutions, the board of directors of NYSE Euronext made the necessary determinations set forth above and approved the submission of the Proposed Rule Change to the Commission. The U.S. Regulated Subsidiaries will continue to operate and regulate their markets and members exactly as they have done prior to the Merger. Except as set forth in the Proposed Rule Change, ICE Group is not proposing any amendments to their trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the U.S. Regulated Subsidiaries after the Merger, the U.S. Regulated Subsidiaries will operate in the same manner following the Merger as they operate today. Thus, the Commission will continue to have plenary regulatory authority over the U.S. Regulated Subsidiaries, as is the case currently with these entities. As described in the following sections of

this filing, the Exchange is proposing the adoption of the ICE Group Certificate and Bylaws by ICE Group, the NYX Holdings Operating Agreement by NYX Holdings as the surviving entity of the NYSE Euronext Merger, which are modeled in large part on the current NYSE Euronext Certificate and Bylaws (with adjustments discussed below), and a series of amendments to the NYSE Group Certificate, that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities, and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The NYSE Euronext board of directors also determined that ownership of NYSE Euronext by ICE Group is in the best interests of NYSE Euronext, its stockholders and the U.S. Regulated Subsidiaries.

An extract with the relevant provisions of the Euronext Resolutions is attached as Exhibit 5D to the Proposed Rule Change and can be found on the Exchange's Web site and the Commission's Web site.

The Exchange hereby requests that the Commission approve the NYSE Euronext Resolutions and allow ICE Group, either alone or with its related persons, to own and vote all of the outstanding common stock of NYSE Euronext upon and following the consummation of the Merger.

#### 4. Proposed Amendments to Ownership and Voting Restrictions After the Merger Overview

The Exchange is proposing that, effective as of the completion of the Merger, the ICE Group Certificate would contain voting and ownership restrictions that are substantially identical to those currently in the NYSE Euronext Certificate (except that they would apply only for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary), and would restrict any person, either alone or together with its related persons, from having voting control over ICE Group shares entitling the holder thereof to cause more than 10% of the votes entitled to be cast on any matter or beneficially owning ICE Group shares representing more than 20% of the outstanding votes that may be cast on any matter.

<sup>20</sup> 15 U.S.C. 78s(b).

<sup>21</sup> See NYSE Euronext Bylaws, Section 10.12.

<sup>22</sup> See NYSE Euronext Certificate, Article V Sections 1(B), 1(C), 2(B) and 2(C).

In addition, the Exchange is proposing that the Commission approve the NYX Holdings Operating Agreement, effective as of the consummation of the Merger, which would include voting and ownership provisions, as well as related waiver provisions, again substantially identical to those in the current NYSE Euronext Certificate and NYSE Euronext Bylaws, except that they would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests in NYX Holdings and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary.

*Voting and Ownership Restrictions in the ICE Group Certificate*

Under the Proposed Rule Change, the ICE Group Certificate would provide that (1) no person, either alone or together with its related persons (as defined in the ICE Group Certificate), may be entitled to vote or cause the voting of shares of stock of ICE Group beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter, and (2) no person, either alone or together with its related persons, may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of stock of ICE Group (the "ICE Group Voting Restriction").<sup>23</sup> The ICE Group Certificate will require ICE Group to disregard any votes purported to be cast in excess of the ICE Group Voting Restriction.

In addition, the ownership restrictions in the ICE Group Certificate would provide that, if such restrictions apply, no person, either alone or together with its related persons, may at any time own beneficially shares of ICE Group representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "ICE Group Ownership Restrictions").<sup>24</sup> If any person, either alone or together with its related persons, owns shares of ICE Group in excess of the ICE Group Ownership Restriction, then such person and its related persons are obligated to sell promptly, and ICE Group is obligated to

purchase promptly, at a price equal to the par value of such shares and to the extent funds are legally available for such purchase, the number of shares of ICE Group necessary so that such person, together with its related persons, will beneficially own shares of ICE Group representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.<sup>25</sup>

The ICE Group Certificate would provide that the ICE Group Voting Restriction and the ICE Group Ownership Restriction would apply only for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary (as such term is defined in the ICE Group Certificate).

The ICE Group Voting Restriction applies to each person unless and until (1) such person has delivered a notice in writing to the board of directors of ICE Group, not less than 45 days (or such shorter period as the board of directors of ICE Group expressly permits) prior to any vote, of such person's intention, either alone or together with its related persons, to vote or cause the voting of shares of ICE Group stock beneficially owned by such person or its related persons in excess of the ICE Group Voting Restriction; (2) the board of directors of ICE Group has resolved to expressly permit such voting; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>26</sup> and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority.<sup>27</sup> Subject to its fiduciary duties under applicable law, the ICE Group board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless the board has made certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext in connection with a waiver of the NYSE Euronext Voting Restriction (as discussed above).<sup>28</sup>

The ICE Group Ownership Restriction applies to each person unless and until (1) such person has delivered a notice

<sup>25</sup> See ICE Group Certificate, Article V Section B.4.

<sup>26</sup> 15 U.S.C. 78s(b).

<sup>27</sup> See ICE Group Certificate, Article V Section A.2.

<sup>28</sup> See text accompanying notes 18–20 [sic] above. References to ICE Group would be added as appropriate in the context of a waiver of the ICE Group Voting Restriction. See ICE Group Certificate, Article V Section A.3.

in writing to the board of directors of ICE Group, not less than 45 days (or such shorter period as the board of directors of ICE Group expressly permits) prior to the acquisition of any shares of ICE Group that would cause such person, either alone or together with its related persons, to exceed the ICE Group Ownership Restriction, of such person's intention, either alone or together with its related persons, to acquire such ownership; (2) the board of directors of ICE Group has resolved to expressly permit such ownership; and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act<sup>29</sup> and filed with, and approved by, the relevant European Regulators having appropriate jurisdiction and authority.<sup>30</sup> Subject to its fiduciary duties under applicable law, the ICE Group board of directors may not adopt any resolution pursuant to the foregoing clause (2) unless the board has made certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext in connection with a waiver of the NYSE Euronext Ownership Restriction (as discussed above).<sup>31</sup>

*Amendments to NYSE Euronext Voting and Ownership Restrictions*

Under the Proposed Rule Change, the NYX Holdings Operating Agreement, although modeled substantially on the current NYSE Euronext Certificate and Bylaws, would reflect certain modifications from the analogous provisions in the NYSE Euronext Certificate and Bylaws, effective as of the Merger, to be consistent with the status of NYX Holdings as a wholly owned subsidiary of ICE Group and with provisions currently in the NYSE Group Certificate, and certain other changes to update the voting and ownership restrictions, in the following respects:

- The NYX Holdings Operating Agreement would provide that all issued and outstanding membership interests will be held by ICE Group, and that ICE Group may not transfer or assign any membership interests without approval by the Commission under the Exchange Act and the relevant European Regulators (as defined in the NYX Holdings Operating

<sup>29</sup> 15 U.S.C. 78s(b).

<sup>30</sup> See ICE Group Certificate, Article V Section B.2.

<sup>31</sup> See text accompanying notes 18–20 [sic] above. References to ICE Group would be added as appropriate in the context of a waiver of the ICE Group Ownership Restriction. See ICE Group Certificate, Article V Section B.3.

<sup>23</sup> See ICE Group Certificate, Article V Section A.

<sup>24</sup> See ICE Group Certificate, Article V Section B.

Agreement) under the applicable European Exchange Regulations (as defined in the NYSE Euronext Certificate).<sup>32</sup>

- The NYX Holdings Operating Agreements would provide that the NYX Holdings voting and ownership restrictions contained therein would apply only in the event that ICE Group does not own all of the issued and outstanding membership interests of NYX Holdings,<sup>33</sup> and only for so long as NYX Holdings directly or indirectly controls any U.S. Regulated Subsidiary (as defined in the NYX Holdings Operating Agreement).<sup>34</sup>

- The definition of “Related Persons” would be expanded to provide that (1) in the case of a person that is a “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include the “member” (as defined in Section 3(a)(3)(A)(ii), (iii) or (iv) of the Exchange Act) with which such person is associated; and (2) in the case of any person that is a “member” (as defined in 3(a)(3)(A)(ii), (iii) or (iv) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include any “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such person.<sup>35</sup> A conforming change will be made in the NYSE Group Certificate, as discussed below.

- The mandatory repurchase of membership interests from a Person whose ownership represents in the aggregate more than 20% in interest of the interests entitled to vote on any matter would be at a price determined by reference to each incremental percentage ownership over 20% rather than at par value, specifically \$1,000 for each percent.<sup>36</sup>

#### *Amendments to NYSE Group Voting and Ownership Restrictions*

The voting restrictions contained in the current NYSE Group Certificate are substantially the same as those in the current NYSE Euronext Certificate described above, except that (i) the

NYSE Group Certificate does not contain any references to European subsidiaries, markets or regulators, and (ii) the NYSE Group Certificate contains references to NYSE MKT members in its definition of “Related Person” that are not currently in NYSE Euronext.

The NYSE Group Certificate would be updated to provide that

- the NYSE Group Voting Restriction and the NYSE Group Ownership Restriction would apply only in the event that NYX Holdings does not own all of the issued and outstanding shares of NYSE Group<sup>37</sup> and only for so long as NYSE Group directly or indirectly controls any Regulated Subsidiary (as such term is defined in the NYSE Group Certificate).<sup>38</sup>

- The definition of “Related Persons” would be expanded to provide that (1) in the case of a person that is a “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE MKT, such person’s “Related Persons” would include the “member” (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and (iii) of the Exchange Act, which are currently referenced in this provision of the NYSE Group Certificate) with which such person is associated; and (2) in the case of any person that is a “member” (as defined in Section 3(a)(3)(A)(iv) of the Exchange Act, in addition to Sections 3(a)(3)(A)(ii) and (iii) of the Exchange Act, which are currently referenced in this provision of the NYSE Group Certificate) of NYSE MKT, such person’s “Related Persons” would include any “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such person.<sup>39</sup> This conforms the definition of Related Person to that in the ICE Group Certificate and the NYX Holdings Operating Agreement.

5. Additional Matters to be Addressed in the ICE Group Certificate and Bylaws<sup>40</sup>

#### *Jurisdiction over Individuals*

Under the Proposed Rule Change, the ICE Group Bylaws would provide that ICE Group and its directors, and, to the

extent that they are involved in the activities of the U.S. Regulated Subsidiaries, ICE Group’s officers and those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. The ICE Group Bylaws would also provide that, with respect to any such suit, action, or proceeding brought by the Commission, ICE Group and its directors, officers and employees would (1) be deemed to agree that ICE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceedings relating to ICE Group or any of its subsidiaries; and (2) be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceedings is improper, or that the subject matter thereof may not be enforced in or by the U.S. federal courts of the Commission.<sup>41</sup>

In addition, the ICE Group Bylaws would provide that, so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of ICE Group will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>42</sup>

The ICE Group Bylaws would provide that ICE Group will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of ICE Group to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.<sup>43</sup>

The Exchange anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, over each of whom the Commission has

<sup>32</sup> The analogous provision in the NYSE Group Certificate is Article IV Section 4(a). See proposed NYX Holdings Operating Agreement, Article VII Sections 7.1 and 7.2.

<sup>33</sup> The analogous provision in the NYSE Group Certificate is Article IV, Section 4(b). See proposed NYX Holdings Operating Agreement, Article IX Section 9.1.

<sup>34</sup> The analogous provision in the NYSE Group Certificate is Article IV Sections (b)(1) and (2). See proposed NYX Holdings Operating Agreement, Article VII Section 7.2.

<sup>35</sup> See proposed NYX Holdings Operating Agreement, Article I Section 1.1 (definition of Related Persons, clauses xi and xii).

<sup>36</sup> See proposed NYX Holdings Operating Agreement, Article IX, Section 9.1(b)(4).

<sup>37</sup> NYSE Group Certificate, Article IV, Section 4(b).

<sup>38</sup> NYSE Group Certificate, Article IV, Sections 4(b)(1) and (2).

<sup>39</sup> NYSE Group Certificate, Article IV, Sections 4(b)(1)(E)(vi) and (xii).

<sup>40</sup> The ICE Group Certificate and Bylaws will also set forth certain restrictions and requirements relating to ICE Group’s European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to ICE Group’s U.S. Regulated Subsidiaries and U.S. regulatory matters.

<sup>41</sup> See ICE Group Bylaws, Section 7.1.

<sup>42</sup> See ICE Group Bylaws, Section 8.4.

<sup>43</sup> See ICE Group Bylaws, Section 9.3.

direct authority pursuant to Section 19(h)(4) of the Exchange Act.<sup>44</sup>

#### *Access to Books and Records*

Under the Proposed Rule Change, the ICE Group Bylaws would provide that for so long as ICE Group directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of ICE Group will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>45</sup>

In addition, ICE's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, ICE Group may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.<sup>46</sup> The ICE Group Bylaws also would provide that ICE's books and records will at all times be made available for inspection and copying by the Commission, and any U.S. Regulated Subsidiary to the extent they are related to the activities of the U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.<sup>47</sup>

#### *Additional Matters*

Under the Proposed Rule Change, the ICE Group Bylaws would provide that ICE Group will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority.<sup>48</sup> In addition, ICE Group would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.<sup>49</sup> The ICE Group Bylaws would also provide that, in discharging his or her responsibilities as a member of the ICE Group board of directors or as an officer or employee of ICE Group, each such director, officer or employee will (a) comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S. Regulated Subsidiaries

pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of ICE Group to any person to consider, or afford any particular weight to, any such matters or to limit his or her consideration of such matters).<sup>50</sup>

The ICE Group Bylaws would also provide that all confidential information that comes into the possession of ICE Group pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) not be made available to any persons other than to those officers, directors, employees and agents of ICE Group that have a reasonable need to know the contents thereof; (b) be retained in confidence by ICE Group and the officers, directors, employees and agents of ICE Group; and (c) not be used for any commercial purposes.<sup>51</sup> In addition, the ICE Group Bylaws would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of ICE Group to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.<sup>52</sup>

In addition, the ICE Group Bylaws would provide that ICE Group and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries (to the extent of each U.S. Regulated Subsidiary's self-regulatory function) and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of any U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.<sup>53</sup>

Finally, the ICE Group Bylaws would provide that each director of ICE Group would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into

consideration the effect that ICE Group's actions would have on the ability of (a) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group and ICE Group to (1) Engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity), and ICE Group to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.<sup>54</sup>

#### *Amendments to the ICE Group Certificate and Bylaws*

Under the Proposed Rule Change, the ICE Group Bylaws would provide that, before any amendment to or repeal of any provision of the ICE Group Bylaws shall be effective, such amendment or repeal shall be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that, before such amendment or repeal may be effectuated, the same must be filed with, or filed with and approved by, the Commission pursuant to Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effectuated until filed with, or filed with and approved by, the Commission, as the case may be.<sup>55</sup> These requirements would also apply to any action by ICE Group that would have the effect of amending or repealing any provisions of the ICE Group Certificate.<sup>56</sup>

#### *ICE Group Director Independence Policy*

Under the Proposed Rule Change, ICE Group would adopt the ICE Group Independence Policy in the form attached to the Proposed Rule Change as

<sup>54</sup> See ICE Group Bylaws, Section 3.14(a). This requirement would not, however, create any duty owed by any director, officer or employee of ICE Group to any person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to such matters. See ICE Group Bylaws, Section 3.14(c).

<sup>55</sup> See ICE Group Bylaws, Section 11.3.

<sup>56</sup> See ICE Group Certificate, Article X(C).

<sup>44</sup> 15 U.S.C. 78s(h)(4).

<sup>45</sup> See ICE Group Bylaws, Section 8.4.

<sup>46</sup> See ICE Group Bylaws, Sections 8.5 and 8.6.

<sup>47</sup> See ICE Group Bylaws, Section 8.3.

<sup>48</sup> See ICE Group Bylaws, Section 9.1.

<sup>49</sup> See *id.*

<sup>50</sup> See ICE Group Bylaws, Section 3.14(b).

<sup>51</sup> See ICE Group Bylaws, Section 8.1.

<sup>52</sup> See ICE Group Bylaws, Section 8.2.

<sup>53</sup> See ICE Group Bylaws, Section 9.4.

Exhibit 5C, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors.

6. Proposed Amendments to Certain Public-Company-Related and Other Provisions of the NYSE Euronext Certificate and Bylaws to be reflected in the NYX Holdings Operating Agreement

The Exchange is proposing that the NYX Holdings Operating Agreement differ from NYSE Euronext's Certificate and Bylaws to reflect the fact that, after the Merger, NYX Holdings will be an intermediate holding company, will not be a public company traded on an exchange and will not have securities registered under Section 12 of the Exchange Act. As a result, NYX Holdings will not be subject to the Exchange's listing standards or to the corporate governance requirements applicable to publicly traded companies.

As summarized below, the following revisions to the NYSE Euronext Certificate and Bylaws are proposed for the NYX Holdings Operating Agreement in order (1) to simplify and provide for a more efficient governance and capital structure that is appropriate for a wholly owned subsidiary; (2) to conform certain provisions to analogous provisions of the current organizational documents of NYSE Group, which is a wholly owned subsidiary of NYSE Euronext, just as NYX Holdings will be a wholly owned subsidiary of ICE Group following completion of the Merger; and (3) to make certain clarifications and technical edits (for example, to conform the use of defined terms and other provisions, to update cross-references to sections both internal and in the ICE Group Certificate and Bylaws, and to conform to certain other provisions in the ICE Group Certificate and Bylaws).

- The NYSE Euronext Certificate and Bylaws contain provisions relating to the issuance of one or more series of preferred stock. The NYX Holdings Operating Agreement provides for only one class of membership interest and has no provision for a preferred membership interest because the Exchange considers it unlikely that a wholly owned subsidiary would have occasion to issue preferred interests.

- Section 16.1 of the NYX Holdings Operating Agreement would provide that, for so long as NYX Holdings controls, directly or indirectly, any U.S. Regulated Subsidiary, before any amendment to the NYX Holdings Operating Agreement may be effectuated, such amendment would need to be submitted to the board of directors of each U.S. Regulated

Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective. This provision parallels Article X(C) of the NYSE Euronext Certificate as supplemented, with respect to NYSE MKT, by Section 10.13 of the NYSE Euronext Bylaws.

- The NYX Holdings Operating Agreement would provide that the registered office and agent of NYX Holdings in Delaware will be the Corporation Trust Company, which is the registered agent of other subsidiaries of NYSE Euronext and of ICE.

- Section 3.1 of the NYSE Euronext Bylaws currently provides that the number of directors may be fixed and changed only by resolution adopted by two-thirds of the directors then in office. The two-thirds requirement will be changed to a majority in Section 3.2 of the NYX Holdings Operating Agreement as is appropriate for a wholly owned subsidiary. This standard has been eliminated from the list of provisions that are automatically suspended or become void upon certain events specified in Section 10.11 of the NYX Holdings Operating Agreement.

- Certain residency requirements applicable to directors and officers of NYSE Euronext and references to U.S. and European director domiciles and to "Deputy" officers that appear in the NYSE Euronext Certificate and Bylaws would not be included in the NYX Holdings Operating Agreement. Specifically, references to deputies in Section 2(A) of Article VI of the NYSE Euronext Certificate, and in Sections 2.2(3) and (5), Section 2.5, Section 3.12, Section 5.1, Section 10.4 and Section 10.5 of the NYSE Euronext Bylaws would not be replicated in the NYX Holdings Operating Agreement. Additionally, Section 4.4 of the NYSE Euronext Bylaws (regarding domicile requirements for members of the Nominating and Governance Committee of the board of directors) and the reference thereto in Section 4.1 would not be replicated in the NYX Holdings Operating Agreement. All, or the portions regarding director and officer domicile, of the following sections of the NYSE Euronext Bylaws would not be replicated in the NYX Holdings Operating Agreement: All of Section 3.2 (regarding director domicile requirements); all of Section 3.3 (regarding chairman and chief executive officer domicile requirements); portions of Section 3.6 (regarding filling of vacancies on the board); and the cross-references in Section 10.11(B) to the foregoing deleted provisions. In addition, the requirement in Section 3.8

of the NYSE Euronext Bylaws that board meetings be held with equal frequency in the United States and Europe would be replaced with a requirement that one board meeting a year be held in Europe, to parallel the requirement in the ICE Group Bylaws.

- The restrictions on transfers of certain shares of NYSE Euronext common stock contained in Section 4 of Article IV of the NYSE Euronext Certificate have expired in accordance with their terms and would not be included in the NYX Holdings Operating Agreement.

- Notice of meetings of members would not be required under the NYX Holdings Operating Agreement if waived in accordance with Section 8.1(e) thereof.

- The ICE Group Bylaws provide in Section 2.5 that the holders of a majority of the shares outstanding and entitled to vote (giving effect to the "Recalculated Voting Limitation" referred to in Section A.1 of Article V of the ICE Group Certificate, if applicable) may call special meetings of stockholders. A comparable provision is appropriate for NYX Holdings to provide additional flexibility to ICE Group to take actions in its capacity as the sole member of NYX Holdings following completion of the Merger. Accordingly, Section 8.1(d) of the NYX Holdings Operating Agreement would allow the holders of a majority of the membership interests outstanding and entitled to vote (giving effect to the "Recalculated Voting Limitation," if applicable) to call special meetings of members.

- The requirement in Section 2.6 of the NYSE Euronext Bylaws for the appointment of an inspector of elections for stockholders meetings would not be included in the NYX Holdings Operating Agreement because the requirement for an inspector of elections under the Delaware General Corporation Law (the "DGCL") would no longer apply to NYX Holdings after completion of the Merger.<sup>57</sup>

- The requirement in Section 2.7 of the NYSE Euronext Bylaws that directors be elected by a majority of the votes cast (and that they must tender their resignation if such a majority vote is not received), except in the case of contested elections, and that the board of directors may fill any resulting vacancy or may decrease the size of the board, would not be included in the NYX Holdings Operating Agreement, and a plurality voting standard would be adopted for all director elections. These requirements would no longer

<sup>57</sup> See Section 231(e) of the Delaware General Corporation Law.

serve any purpose after NYX Holdings becomes wholly owned by a single member.

- Section 2.10 of the NYSE Euronext Bylaws requires certain advance notice from stockholders of director nominations and stockholder proposals, and that only business brought before a special meeting of stockholders pursuant to NYX Euronext's notice of the meeting may be brought before the meeting. This provision would not be included in the NYX Holdings Operating Agreement because the requirements would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member.

- In order to give ICE Group additional flexibility to take actions in its capacity as the sole member of NYX Holdings following completion of the Merger, Section 7.5 of the NYX Holdings Operating Agreement would allow the member to take any action without a meeting and without prior notice if consented to, in writing, by the member.

- In order to give ICE Group additional flexibility to take actions in its capacity as the sole member of NYX Holdings following completion of the Merger, Section 3.4 of the NYX Holdings Operating Agreement would allow members to fill board vacancies.

- The requirements in Article X of the NYSE Euronext Certificate for a supermajority stockholder vote to amend or repeal certain provisions of the certificate would be eliminated from the NYX Holdings Operating Agreement and a majority vote requirement would apply. A supermajority vote requirement would no longer serve any purpose after NYX Holdings becomes wholly owned by a single member, and a majority voting standard is consistent with the standard generally applicable for actions by the parent entity of other wholly owned subsidiaries of NYX Holdings.

- Section 3.4 of the NYX Holdings Operating Agreement, which is analogous to current Section 3.6 of the NYSE Euronext Bylaws, would include "(if any)" after the reference therein to the Nominating and Governance Committee, because NYX Holdings would become a wholly owned subsidiary of ICE Group and, as such, may not have a Nominating and Governance Committee.

- Section 3.4 of the NYSE Euronext Bylaws, which relates to independence requirements, including the requirement that at least 75% of the board must be independent, would not be replicated in the NYX Holdings Operating Agreement because NYX Holdings would be a wholly owned subsidiary of ICE Group

after completion of the Merger and, therefore, it is likely that executives of ICE Group and its subsidiaries will serve on this board.

- Section 3.8(a) of the NYX Holdings Operating Agreement would provide that notice of board meetings is not required if waived in accordance with Section 3.8(b), which is less restrictive than Section 3.9 of the NYSE Euronext Bylaws.

- The advance notice period in Section 3.9 of the NYSE Euronext Bylaws for notices of board meetings sent by first-class mail would be reduced from four days to three days in Section 3.8(a) of the NYX Holdings Operating Agreement. This change conforms the notice period to Section 3.6(b) of the ICE Group Bylaws.

- Section 3.12 of the NYSE Euronext Bylaws requires that, if the chairman or deputy chairman of the board of directors is also the chief executive officer or deputy chief executive officer, he or she may not participate in executive sessions of the board of directors, and if the chairman is not the chief executive officer or deputy chief executive officer, he or she will act as a liaison between the board of directors and the chief executive officer or the deputy chief executive officer. No analogous provisions would be included in the NYX Holdings Operating Agreement.

- Certain aspects of the indemnification and expense advancement provisions in Section 15.2 of the NYX Holdings Operating Agreement, including the terms of any insurance policy maintained by NYX Holdings, would be simplified from Section 10.6 of the NYSE Euronext Bylaws in light of the fact that there are not expected to be any independent, non-executive directors of NYX Holdings, and, therefore, a more streamlined process for indemnification claims is appropriate.

- Section 10.10(A) of the NYSE Euronext Bylaws enumerates provisions of the Bylaws for which amendment requires approval by a supermajority of directors. The supermajority approval requirement would be eliminated in Section 16.1 of the NYX Holdings Operating Agreement by decreasing the current two-thirds standard to a majority of the directors then in office, as is appropriate for a wholly owned subsidiary.

- The supermajority stockholder vote requirements in Section 10.10(B) of the NYSE Euronext Bylaws would be eliminated in the NYX Holdings Operating Agreement because a supermajority vote requirement would no longer serve any purpose after NYX

Holdings becomes wholly owned by a single member.

- The NYSE Euronext Bylaw provisions that are subject to automatic suspension under Section 10.11 would be revised in Section 16.3 of the NYX Holdings Operating Agreement to reflect elimination of the supermajority voting provisions in Sections 10.10(A) and (B) discussed above.

In addition, the current Independence Policy of the NYSE Euronext board of directors would, effective as of the Merger, cease to apply.

## 7. Proposed Amendments to the NYSE Group Certificate

Under the Proposed Rule Change, the revisions summarized below to the NYSE Group Certificate are proposed in order to conform certain provisions to the analogous provisions of the organizational documents of NYX Holdings, which would likewise be a wholly owned subsidiary of ICE Group following completion of the Merger, as well as to make certain clarifications and technical edits:

- Section 4(a) of Article IV of the NYSE Group Certificate would be amended to contemplate successors to NYSE Euronext as the holder of all of the issued and outstanding shares of NYSE Group for purposes of the NYSE Trust Agreement.

- Sections 4(b)(1)(A) and 4(b)(2)(A) of Article IV of the NYSE Group Certificate would be amended to clarify that the voting ownership concentration limitations in the NYSE Group Certificate would be effective "for so long as the Corporation shall control, directly or indirectly" a U.S. Regulated Subsidiary, as defined in Section 4(b)(1)(A). Conforming changes relating to the definition of U.S. Regulated Subsidiary and the change of name of NYSE Alternext to NYSE MKT have been made later in the same section and thereafter.

- Typographical errors in references to Exchange Act Section 3(a)(3) would be corrected in Section 4(b)(1)(E)(vi) and (xii) of Article IV.

- Section 3 of Article V would be amended by adding the words "from time to time" to conform the provision to the NYX Holdings Operating Agreement.

- Section 5 of Article V of the NYSE Group Certificate would be amended to clarify that the right of the NYSE Group board of directors to remove directors is subject to any rights of holders of any preferred stock in order to make this provision consistent with Section 2 of Article IV of the NYSE Group Certificate, which provides that

preferred stock may be issued that may have voting rights.

- Numbering of certain sections of the NYSE Group Certificate would be updated to reflect the amendments set forth above.

#### 8. Proposed Amendments to Board Composition Requirements for the Exchange, NYSE MKT, NYSE Market and NYSE Regulation

The Fourth Amended and Restated Operating Agreement, dated as of August 23, 2012, of the Exchange (the "Exchange Operating Agreement"), currently provides that (1) a majority of the members of the Exchange's board of directors must be U.S. persons and members of the board of directors of NYSE Euronext, and (2) at least 20% of the Exchange's board members must be persons who are not members of the board of directors of NYSE Euronext but who qualify as independent under the independence policy of the Exchange's board of directors (the "Non-Affiliated Exchange Directors").<sup>58</sup> The nominating and governance committee of the NYSE Euronext board of directors is required to designate as Non-Affiliated Exchange Directors the candidates recommended jointly by the Director Candidate Recommendation Committees of each of NYSE Market and NYSE Regulation or, in the event there are Petition Candidates (as such term is defined in the Exchange Operating Agreement), the candidates that emerge from a specified process will be designated as the Non-Affiliated Exchange Directors.<sup>59</sup>

Under the Proposed Rule Change, these provisions would be amended to refer to ICE Group instead of NYSE Euronext. Also, references throughout to the Exchange's "Corporation Independence Policy" would be changed to "Company Independence Policy" in recognition of the form of organization of the Exchange.

Substantially the same revisions would be made to the analogous provisions of the Fourth Amended and Restated Operating Agreement of NYSE MKT.

In addition, references to NYSE Euronext in the Director Independence Policy of each of the Exchange, NYSE Market, NYSE Regulation and NYSE MKT would be revised to refer to ICE Group.

<sup>58</sup> See Exchange Operating Agreement, Section 2.03(a).

<sup>59</sup> See *id.*

#### 9. Other Changes to the Constituent Documents of the Exchange, NYSE MKT, NYSE Market and NYSE Regulation

The revisions to the Fourth Amended and Restated Operating Agreement of NYSE MKT indicate that NYSE MKT will be an indirect wholly owned subsidiary of ICE Group rather than a direct subsidiary of NYSE Euronext, and the phrase "NYSE/Amex" has been inserted before references to a merger in 2008 in the recitals to distinguish that merger from the Merger.

The Second Amended and Restated Bylaws of NYSE Market and the Third Amended and Restated Bylaws of NYSE Regulation would be amended to reflect the change from NYSE Euronext to ICE Group. In the case of NYSE Market, the address of the registered office and registered agent has been updated.

In the director independence policies, typographical errors in references to Exchange Act Section 3(a)(3) would be corrected in the first paragraph under the section captioned "Independence Qualifications."

#### 10. Proposed Amendments to the Exchange Rules, NYSE MKT Rules and NYSE Arca Equities Rules

Under the Proposed Rule Change, certain technical amendments would be made to the Exchange Rules. First, references therein to "NYSE Euronext" would be replaced with references to ICE Group, except that references to NYSE Euronext in Rule 22 and Rule 422 would be replaced with references to NYX Holdings and references to ICE Group would be added. Second, Rule 2 would be revised to delete the definitions of "member" and "member organization" relating to NYSE MKT, which are set forth in Rule 2 for purposes of Section 1(L) of Article 5 of the NYSE Euronext Certificate, because under the Proposed Rule Change, the ICE Group Certificate will incorporate this language.

In addition, certain technical amendments would be made to the NYSE MKT Rules and NYSE Arca Equities Rules to replace references to "NYSE Euronext" with references to ICE Group, except that references to NYSE Euronext in NYSE MKT Rules 107B and 501 would be changed to NYX Holdings. Also, certain provisions in NYSE MKT Rule 104T relating to restrictions on transfer in the NYSE Euronext Certificate would be eliminated because the referenced restrictions are no longer in effect and there will be no analogous provision in the ICE Group Certificate.

#### 2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) of the Exchange Act<sup>60</sup> in general, and furthers the objectives of Section 6(b)(1)<sup>61</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the U.S. Regulated Subsidiaries after the Merger, the U.S. Regulated Subsidiaries will operate in the same manner following the Merger as they operate today. Thus, the Commission will continue to have plenary regulatory authority over the U.S. Regulated Subsidiaries, as is the case currently with these entities. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act<sup>62</sup> because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

<sup>60</sup> 15 U.S.C. 78f(b).

<sup>61</sup> 15 U.S.C. 78f(b)(1).

<sup>62</sup> 15 U.S.C. 78f(b)(5).

The Proposed Rule Change is not designed to address any competitive issue in the U.S. or European securities markets or have any impact on competition in those markets; rather, it will combine the U.S. equities businesses of NYSE Euronext with the commodities and futures businesses of ICE. The ownership of U.S. securities exchanges will not become more concentrated as a result of the Proposed Rule Change because ICE currently owns no U.S. securities exchange. With respect to operations outside the United States, ICE has informed NYSE Euronext that it expects the derivatives business of LAM will be gradually transitioned to ICE Futures Europe, as discussed above, but such transition is subject to regulatory approval in the United Kingdom.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NYSE-2013-42 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-NYSE-2013-42. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSE-2013-42 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>63</sup>

**Kevin M. O'Neill**,  
Deputy Secretary.

[FR Doc. 2013-15630 Filed 6-28-13; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69852; File No. SR-EDGX-2013-20]

**Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Footnote 4 of the Exchange's Fee Schedule Regarding Retail Orders**

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

"Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 13, 2013, EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 proposes to amend Footnote 4 of the Exchange's fee schedule regarding Retail Orders. All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at [www.directedge.com](http://www.directedge.com), at the Exchange's principal office, and at the Public Reference Room of the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

In SR-EDGX-2012-47,<sup>3</sup> the Exchange introduced new flags ZA (Retail Order, adds liquidity) and ZR (Retail Order, removes liquidity) and appended to each flag Footnote 4 to the Exchange's fee schedule. Footnote 4 defined a "Retail Order," provided an attestation requirement for Members<sup>4</sup> to comply with when sending Retail Orders to the Exchange, and allowed Members to designate orders as Retail Orders on an order-by-order basis. In SR-EDGX-

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

<sup>4</sup> As defined in Exchange Rule 1.5(n).

<sup>63</sup> 17 CFR 200.30-3(a)(12).

2012–48,<sup>5</sup> the Exchange subsequently expanded Members' ability to send the Exchange Retail Orders by designating certain of their FIX ports at the Exchange as "Retail Order Ports." The attestation requirement, as described in SR–EDGX–2012–47,<sup>6</sup> continues to apply to all Members who submit Retail Orders, whether on an order-by-order basis or via Retail Order Ports. In SR–EDGX–2013–13, the Exchange added riskless principal orders to the types of orders that may qualify as Retail Orders.<sup>7</sup>

#### Proposed Amendment to Retail Attestation

In SR–EDGX–2012–47,<sup>8</sup> the Exchange stated requirements for Members that represent Retail Orders from another broker-dealer customer. The requirements state that "[t]he Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements."<sup>9</sup>

The Exchange proposes to codify in Footnote 4 of its fee schedule similar language, but delete the requirement that the form be acceptable to the

Exchange. With the deletion of this requirement, the proposed language to be added to Footnote 4 of the Exchange's fee schedule still requires Members to obtain an annual written representation if they represent Retail Orders from another broker-dealer customer and Footnote 4 provides criteria that all Members who submit Retail Orders must satisfy.<sup>10</sup> In addition, Members must ensure that their broker-dealer customers comply with the requirements in Footnote 4 of the Exchange's fee schedule so that Members themselves can comply with their supervisory procedure requirement, as outlined in Footnote 4 of the Exchange's fee schedule. The Exchange does not believe it needs to prescribe the exact form to be used between its Members and their broker/dealer customers as it wishes to provide Members additional flexibility to structure their written supervisory procedures in a way that is appropriate, taking into consideration Members' varying business models. To ensure the continued integrity of the retail order flow submitted to the Exchange, the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange pursuant to Exchange Rule 13.7, examines Members' supervisory procedures to determine whether such procedures adequately comply with the Exchange's retail order designation requirements. If FINRA was to determine that a Member's supervisory procedures were inadequate, such Member would be subject to the disciplinary procedures of the Exchange.<sup>11</sup> Furthermore, the Exchange bears ultimate responsibility for FINRA's actions as FINRA acts as an agent of the Exchange in its role as regulatory service provider. Therefore, the Exchange believes it is not necessary to dictate the form of the required annual written representation so long as it sufficiently ensures the integrity of the retail order flow sent to the Exchange.

The Exchange notes that the above language regarding Members' requirements with respect to Retail Orders sent to them from another broker-dealer was previously filed with the Commission, albeit containing the requirement that the form be acceptable

to the Exchange.<sup>12</sup> The present filing is merely codifying such language in the Exchange's fee schedule, with the exception of the requirement that the form be acceptable to the Exchange. In addition, the Exchange notes that other market centers have codified or are in the process of codifying similar language.<sup>13</sup>

#### Proposed Amendment to Definition of Retail Order

In addition, Footnote 4 to the Exchange's fee schedule currently states that "Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a 'Retail Order' complies with the [Retail Order] requirements."<sup>14</sup> The Exchange believes that the categorical nature of the current attestation language is preventing certain Members with retail customers from utilizing Retail Orders. In particular, the Exchange understands that some Members wishing to utilize Retail Orders represent both "Retail Orders", as defined in Footnote 4 to the Exchange's fee schedule, as well as other agency flow that may not meet the strict definition of a "Retail Order." The Exchange further understands that limitations in order management systems and routing networks used by such Members may make it infeasible for them to isolate 100% of their Retail Orders from other agency, non-Retail Order flow that they would otherwise send to the Exchange as Retail Orders. Unable to make the categorical attestation required by the current language in Footnote 4 to the Exchange's fee schedule, some Members have chosen not to utilize Retail Orders, notwithstanding that substantially all order flow from such Members would qualify as Retail Orders. This limitation has the effect of preventing such

<sup>5</sup> See Securities Exchange Act Release No. 68554 (December 31, 2012), 78 FR 966 (January 7, 2013) (SR–EDGX–2012–48).

<sup>6</sup> See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR–EDGX–2012–47).

<sup>7</sup> See Securities Exchange Act Release No. 69378 (April 15, 2013), 77 FR 23617 (April 19, 2013) (SR–EDGX–2013–13). Footnote 4 on the Exchange's fee schedule currently defines a Retail Order as: "(i) an agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology." See EDGX Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

<sup>8</sup> See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR–EDGX–2012–47).

<sup>9</sup> The Exchange notes that it has amended its attestation form for Members designating Retail Orders to add this requirement. The Exchange also notes that the Exchange's regulatory service provider, on behalf of the Exchange, will review Members' compliance with the attestation requirement through an exam based review of a Member's internal controls.

<sup>10</sup> The Exchange notes that currently Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order designated by the Member as a "Retail Order" complies with the definition of a Retail Order, as provided in Footnote 4 on the Exchange's fee schedule.

<sup>11</sup> As described in Chapter VIII of the Exchange's Rules.

<sup>12</sup> See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR–EDGX–2012–47).

<sup>13</sup> The Exchange notes that its proposed language differs from that used by other exchanges in that the Exchange proposes to delete the requirement that the annual written representation submitted by a broker-dealer customer to a Member be in a form acceptable to the Exchange. See, e.g., NYSE Rule 107C(b)(6); BATS BYX Rule 11.24(b)(6); and NASDAQ Rule 4780(b)(6). The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") currently has substantially similar language in their Retail Order Tier Form to that used by BATS and NYSE in their rulebooks. NYSE Arca, NYSE Arca Membership Forms, [http://usequities.nyx.com/sites/usequities.nyx.com/files/arca\\_retail\\_order\\_tier\\_form\\_nov\\_2012.pdf](http://usequities.nyx.com/sites/usequities.nyx.com/files/arca_retail_order_tier_form_nov_2012.pdf).

<sup>14</sup> See EDGX, EDGX Fee Schedule, <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

Members' retail customers from benefiting from the rebate offered to Retail Orders through Flags ZA (\$0.0032 per share rebate) and the ability to qualify for a Retail Order Tier of \$0.0034 per share, provided certain conditions are met.<sup>15</sup>

Accordingly, in order to accommodate these system limitations and expand the access of Retail Orders to more Members, the Exchange is proposing a de minimis relaxation of the attestation requirement in Footnote 4 of its fee schedule. Therefore, as proposed, Members would be permitted to send de minimis quantities of agency orders to the Exchange as Retail Orders that cannot be explicitly attested to under the existing attestation requirement. Therefore, the Exchange proposes to amend Footnote 4 to provide that a Member may attest that "substantially all" of the orders it designates as Retail Orders qualify as Retail Orders, replacing the requirement that the Member must attest that "every order" qualifies as a Retail Order. The Exchange proposes to amend Footnote 4 to its fee schedule to state that "Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that *substantially all orders* designated by the Member as a 'Retail Order' comply with the above requirements." (emphasis added).

The Exchange will issue a Regulatory Notice to make clear that the "substantially all" language is meant to permit the presence of only isolated and de minimis quantities of agency orders that do not qualify as Retail Orders that cannot be segregated from Retail Orders due to systems limitations. In this regard, a Member would need to retain, in its books and records, adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are de minimis in terms of the overall number of Retail Orders sent to the Exchange.<sup>16</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and

further the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because it would communicate to market participants that significant safeguards are in place to protect the integrity of the retail order flow and codify that it is the Member's duty to ensure its supervisory procedures are reasonably designed to assure designated Retail Orders it receives from a broker-dealer customer meet the definition of a Retail Order. As part of this duty, a Member must (i) obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements. The Exchange notes that this duty was communicated in a previous filing submitted to the Commission by the Exchange, and that the purpose of this filing is to increase transparency by codifying such duty in the Exchange's fee schedule, with the exception of the requirement that the form be acceptable to the Exchange.<sup>19</sup> The Exchange's elimination of the requirement that the form be acceptable to the Exchange provides Members additional flexibility to structure their written supervisory procedures in a way that best suits each individual Member.<sup>20</sup> The proposed language to be added to Footnote 4 of the Exchange's fee schedule defines the criteria for Members to meet to comply with the "Retail Order" definition if they represent Retail Orders from another broker-dealer customer. In addition, Footnote 4 provides criteria for all Members to meet to satisfy the "Retail

Order" definition.<sup>21</sup> Subsequent to the proposed rule change, the Exchange notes that the text of Footnote 4 regarding the attestation requirement would read as follows:

If the Member represents Retail Orders from another broker-dealer customer, the Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must (i) obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.

Members must ensure that their broker-dealer customers comply with the requirements in Footnote 4 of the Exchange's fee schedule so that Members themselves can comply with the supervisory procedure requirement also in Footnote 4 of the Exchange's fee schedule. The Exchange does not believe it needs to prescribe the exact form to be used between its Members and their broker/dealer customers as it wishes to provide Members additional flexibility to structure their written supervisory procedures in a way that is appropriate, taking into consideration Members' varying business models. To ensure the continued integrity of the retail order flow submitted to the Exchange, FINRA, on behalf of the Exchange pursuant to Exchange Rule 13.7, examines Members' supervisory procedures to determine whether such procedures adequately comply with the Exchange's retail order designation requirements. If FINRA were to determine that a Member's supervisory procedures were inadequate, such Member would be subject to the disciplinary procedures of the Exchange.<sup>22</sup> The Exchange bears ultimate responsibility for FINRA's actions as FINRA acts as an agent of the Exchange in its role as regulatory service provider. Therefore, the Exchange believes it is not necessary to dictate the form of the required annual written representation so long as it

<sup>21</sup> The Exchange notes that Members must continue to submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that every order[sic] designated by the Member as a "Retail Order" complies with the definition of a Retail Order, as provided in Footnote 4 on the Exchange's fee schedule.

<sup>22</sup> As described in Chapter VIII of the Exchange's Rules.

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47).

<sup>20</sup> The Exchange notes that Members will continue to be required to submit to the Exchange an attestation in a form acceptable to the Exchange regarding their own retail order flow.

<sup>15</sup> Members will be provided a rebate of \$0.0034 per share if they add an average daily volume of Retail Orders (Flag ZA) that is 0.10% or more of the TCW on a daily basis, measured monthly.

<sup>16</sup> FINRA, on behalf of the Exchange, will review a Member's compliance with these requirements.

<sup>17</sup> 15 U.S.C. 78f.

sufficiently ensures the integrity of the retail order flow sent to the Exchange.

Such procedures are designed to promote just and equitable principles of trade and removes impediments to and perfect the mechanism of a free and open market and a national market system because they provide a backstop that would ensure the integrity of the retail order flow sent to the Exchange.

The Exchange believes that the proposed change would protect investors and the public interest by making more transparent the requirements for Members surrounding broker-dealer customers of Members that plan to utilize Retail Orders and codify the supervisory duty of the Member to ensure such customers abide by the requirements of Retail Orders, thus promoting the integrity of the retail order flow sent to the Exchange and acting as a deterrent to prevent potential abuse of the Retail Order designation. Accordingly, the proposed amendment to the requirements for Retail Orders would contribute to investors' confidence in the fairness of their transactions, prompting investors to send more retail order flow to the Exchange, which would subsequently benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery and promoting market transparency.

The Exchange believes that its proposal to amend Footnote 4 of its fee schedule to provide that a Member may attest that "substantially all" of the orders it submits to the Exchange qualify as Retail Orders is designed to prevent fraudulent and manipulative acts and practices because, while the proposed rule change represents a relaxation of the attestation requirements, the change is a de minimis relaxation that still requires the Member to attest that "substantially all" of its orders will qualify as Retail Orders. This de minimis relaxation will allow enough flexibility to accommodate system limitations while still ensuring that only a fractional amount of orders submitted as Retail Orders would not qualify as Retail Orders.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that similarly situated Members who have only slight differences in the capability of their systems will be able to equally benefit from Retail Orders.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it

will allow Members, who are concerned about its system limitations not allowing 100% certification that submitted orders are Retail Orders, to still utilize Retail Orders. By removing impediments to the characterizing of orders as Retail Orders, the proposed change would permit expanded access of Members and their retail customers to the potential rebate and tiered pricing offered to Retail Orders (Flag ZA and the Retail Tier in Footnote 4 of the Exchange's fee schedule).

In addition, the Exchange notes that the proposed amendment will render the Exchange's definition closer to the definitions utilized by the Exchange's competitors.<sup>23</sup>

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed amendment to Footnote 4 of the Exchange's fee schedule would not burden intramarket competition because the ability to submit Retail Orders would continue to be open to all Members that wish to send Retail Orders to the Exchange, including those that represent Retail Orders from another broker-dealer customer, requiring an attestation, as described above.

The Exchange believes that the proposed amendment would not burden intermarket competition because the proposed amendment is similar to that utilized by other market centers.<sup>24</sup> This amendment would increase transparency and promote the integrity of the retail order flow sent to the Exchange, which would stimulate Members to send more retail order flow to the Exchange and thereby allow more

<sup>23</sup> See Securities Exchange Act Release No. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (SR-NYSE-2013-08) (SR-NYSEMKT-2013-07); Securities Exchange Act Release No. 69719 (June 7, 2013), 78 FR 35656 (June 13, 2013) (SR-NASDAQ-2013-031); Securities Exchange Act Release No. 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (SR-BYX-2013-008).

<sup>24</sup> The Exchange notes that its proposed language differs from that used by other exchanges in that the Exchange proposes to delete the requirement that the annual written representation submitted by a broker-dealer customer to a Member be in a form acceptable to the Exchange. See, e.g., NYSE Rule 107C(b)(6); BATS BYX Rule 11.24(b)(6); and NASDAQ Rule 4780(b)(6). The Exchange notes that NYSE Arca currently has substantially similar language in their Retail Order Tier Form to that used by BATS and NYSE in their rulebooks. NYSE Arca, NYSE Arca Membership Forms, [http://usequities.nyx.com/sites/usequities.nyx.com/files/arca\\_retail\\_order\\_tier\\_form\\_nov\\_2012.pdf](http://usequities.nyx.com/sites/usequities.nyx.com/files/arca_retail_order_tier_form_nov_2012.pdf).

Members to achieve an enhanced rebate for such flow.

The Exchange does not believe that the proposed amendment to the definition of Retail Order will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment, by increasing the level of participation of Retail Orders, would increase the level of competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of allowing Retail Orders on an exchange market would result in better prices for retail investors, and benefits retail investors by expanding the capabilities of exchanges to encompass practices currently allowed on non-exchange venues.

#### *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: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>25</sup> and Rule 19b-4(f)(6) thereunder.<sup>26</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is a limited and sufficiently defined modification to the current attestation requirement or provides additional transparency to the Exchange's Members regarding the usage of Retail Orders on the Exchange.<sup>27</sup> Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2013-20 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-EDGX-2013-20. 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-EDGX-2013-20 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-15661 Filed 6-28-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69854; File No. SR-CBOE-2013-063]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Trades for Less Than \$1

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 18, 2013, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the

Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 proposing to extend its program that allows transactions to take place at a price that is below \$1 per option contract through January 5, 2014. The text of the proposed rule change is available on the Exchange's Web site ([www.cboe.org/Legal](http://www.cboe.org/Legal)), 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 6.54, *Accommodation Liquidations (Cabinet Trades)*, which sets forth specific procedures for engaging in cabinet trades. Rule 6.54 currently provides for cabinet transactions to occur via open outcry at a cabinet price of \$1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of \$1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a PAR Official/OBO, a Floor Broker or a Market-Maker, but

<sup>27</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

must yield priority to all resting orders in the PAR Official/OBO cabinet book (which resting cabinet book orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at \$1 per option contract.

The Exchange has temporarily amended the procedures through June 28, 2013 to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option contract.<sup>5</sup> These lower priced transactions are traded pursuant to the same procedures applicable to \$1 cabinet trades, except that (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also available for trading in option classes participating in the Penny Pilot Program.<sup>6</sup> The Exchange believes that allowing a price of at least \$0 but less than \$1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly due to market conditions which may result in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of \$100 and the underlying stock might now be trading at \$30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the \$1 cabinet price

(e.g., the series might be quoted no bid).<sup>7</sup>

The purpose of the instant rule change is to extend the operation of these temporary procedures through January 5, 2014, so that the procedures can continue without interruption while CBOE considers whether to seek permanent approval of the temporary procedures.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Act<sup>8</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than \$1 per option contract better facilitates the closing of options positions that are worthless or not actively trading. Further, the Exchange believes the proposal is consistent with the Act because the proposed extension is of appropriate length to allow the Exchange and the Commission to continue to assess the impact of the Exchange's authority to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option in accordance with its attendant obligations and conditions,

<sup>7</sup> As with other accommodation liquidations under Rule 6.54, transactions that occur for less than \$1 are not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.54, the transactions are exempt from the Consolidated Options Audit Trail ("COATS") requirements of Exchange Rule 6.24, *Required Order Information*. However, the Exchange maintains quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than \$1 must be reported to the Exchange following the close of each business day. The rule also provides that transactions for less than \$1 will be reported for clearing utilizing forms, formats and procedures established by the Exchange from time to time. In this regard, the Exchange initially intends to have clearing firms directly report the transactions to The Options Clearing Corporation ("OCC") using OCC's position adjustment/transfer procedures. This manner of reporting transactions for clearing is similar to the procedure that CBOE currently employs for on-floor position transfer packages executed pursuant to Exchange Rule 6.49A, *Transfer of Positions*.

<sup>8</sup> 15 U.S.C. 78s(b)(1).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

including the process for submitting such transactions to OCC for clearing.

## 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 allowing for liquidations at a price less than \$1 per option contract better facilitates the closing of options positions that are worthless or not actively trading. The Exchange believes this promotes fair and orderly markets, as well as assists the Exchange in its ability to effectively attract order flow and liquidity to its market, and ultimately benefits all CBOE TPHs and all investors.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change does not make any changes to Exchange rules, but simply extends an existing temporary program. Further, the program is available to all market participants through CBOE TPHs. The Exchange 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, again, the proposed rule change does not make any changes to Exchange rules, but simply extends an existing temporary program. Moreover, to the extent that the program makes CBOE a more attractive marketplace, as noted above, the program is available to all market participants through CBOE TPHs.

## 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 proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent

<sup>5</sup> See Securities Exchange Act Release Nos. 59188 (December 30, 2008), 74 FR 480 (January 6, 2009) (SR-CBOE-2008-133) (adopting the amended procedures on a temporary basis through January 30, 2009), 59331 (January 30, 2009), 74 FR 6333 (February 6, 2009) (extending the amended procedures on a temporary basis through May 29, 2009), 60020 (June 1, 2009), 74 FR 27220 (June 8, 2009) (SR-CBOE-2009-034) (extending the amended procedures on a temporary basis through June 1, 2010), 62192 (May 28, 2010), 75 FR 31828 (June 4, 2010) (SR-CBOE-2010-052) (extending the amended procedures on a temporary basis through June 1, 2011); 64403 (May 4, 2011), 76 FR 27110 (May 10, 2011) (SR-CBOE-2011-048) (extending the amended procedures on a temporary basis through December 30, 2011); 65872 (December 2, 2011), 76 FR 76788 (December 8, 2011) (SR-CBOE-2011-113) (extending the amended procedures on a temporary basis through June 29, 2012) and 67144 (June 6, 2012), 77 FR 35095 (June 12, 2012) (SR-CBOE-2012-053) (extending the amended procedures on a temporary basis through June 28, 2013).

<sup>6</sup> Currently the \$1 cabinet trading procedures are limited to options classes traded in \$0.05 or \$0.10 standard increment. The \$1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier). Because the temporary procedures allow trading below \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier), the procedures are available for all classes, including those classes participating in the Penny Pilot Program.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-063 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-2013-063. 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 CBOE. 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-2013-063 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69842; File No. SR-Phlx-2013-68]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section B of Exchange's Pricing Schedule

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 21, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Section

B, entitled "Customer Rebate Program" to amend the various defined categories associated with Customer rebates.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### 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 Section B of the Pricing Schedule, entitled "Customer Rebate Program," to provide members and member organizations the ability to achieve greater Customer rebates by transacting PIXL<sup>3</sup> Orders.

Currently, the Exchange has in place a four tier structure Customer Rebate Program at Section B of the Pricing Schedule which pays Customer rebates on four Categories, A, B, C and D, of transactions. The four tier structure pays rebates based on percentage thresholds of national customer multiply-listed options volume by month based on four Categories (A, B, C and D) of transactions. Specifically, the Exchange bases a market participant's qualification for a certain Rebate Tier on the percentage of total national customer volume in multiply-listed options which are transacted monthly on Phlx as follows:

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL<sup>SM</sup>). See Rule 1080(n).

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed equity and ETF options classes, excluding SPY options (monthly)	Category A	Category B	Category C	Category D
Tier 1 .....	0.00%–0.75% .....	\$0.00	\$0.00	\$0.00	\$0.00
Tier 2 .....	Above 0.75%–1.60% .....	0.12	0.17	0.17	0.08
Tier 3 .....	Above 1.60%–2.60% .....	0.14	0.17	0.17	0.08
Tier 4 .....	Above 2.60% .....	0.15	0.17	0.17	0.09

The Exchange totals Customer volume in Multiply Listed Options (including Select Symbols and options overlying Standard and Poor's Depository Receipts/SPDRs ("SPY"));<sup>4</sup> that are electronically-delivered and executed, except volume associated with electronic Qualified Contingent Cross ("QCC") Orders,<sup>5</sup> as defined in Exchange Rule 1080(o).<sup>6</sup> Members and member organizations under Common Ownership<sup>7</sup> may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates.

Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols.<sup>8</sup> Rebates

<sup>4</sup> SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

<sup>5</sup> A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades ("QCTs") that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of Regulation NMS). A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer; and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

<sup>6</sup> The Exchange calculates volume and pays rebates based on a member's or member organization's Phlx house account number.

<sup>7</sup> Common ownership means 75% common ownership or control.

<sup>8</sup> Section II of the Pricing Schedule includes Multiply Listed Options Fees, including options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order<sup>9</sup> interest, except in the case of Customer PIXL Orders that are greater than 999 contracts. All Customer PIXL Orders that are greater than 999 contracts are paid a rebate regardless of the contra-party to the transaction.

Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols.

Category C rebates are paid to members executing electronically-delivered Customer Complex Orders<sup>10</sup> in Select Symbols<sup>11</sup> in Section I.

Category D rebates are paid to members executing electronically-delivered Customer Simple Orders in Select Symbols in Section I. Rebates are paid on PIXL Orders in Section I symbols that execute against non-Initiating Order interest.

The Exchange is proposing to amend Categories B and C to offer rebates on qualifying<sup>12</sup> Customer PIXL Complex Orders in Section II symbols for Category B and Section I symbols for

<sup>9</sup> A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent ("Initiating Order") provided it submits the PIXL order for electronic execution into the PIXL Auction ("Auction") pursuant to Rule 1080. See Exchange Rule 1080(n). Non-Initiating Order interest could be a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction.

<sup>10</sup> A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund ("ETF") coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

<sup>11</sup> The Select Symbols are listed in Section I of the Pricing Schedule.

<sup>12</sup> The Exchange pays rebates on certain Customer volumes as specified in Section B of the Pricing Schedule.

Category C that execute against non-Initiating Order interest, except in the case of Customer PIXL Complex Orders that are greater than 999 contracts. All Customer PIXL Complex Orders that are greater than 999 contracts would be paid a rebate regardless of the contra-party to the transaction.

The Exchange filed a proposed rule change to amend its Rules to permit Complex Orders in PIXL.<sup>13</sup> Specifically, the Exchange filed a proposal to amend Rule 1080 to allow Complex Orders in the Exchange's price-improving electronic auction, PIXL.<sup>14</sup> The Exchange proposes to permit members to receive a Customer rebate, pursuant to Section B of the Exchange's Pricing Schedule, by transacting qualifying Customer PIXL Complex Orders in Multiply Listed Section I and II symbols provided the transactions are against non-Initiating Order interest and not greater than 999 contracts. If the Customer PIXL Complex Order is greater than 999 contracts, that transaction will be paid a rebate regardless of the contra-party to the transaction. The Exchange proposes for this rule change to become immediately effective, however a member would not be able to transact PIXL Complex Orders, and thereby receive Customer rebates, until SR-Phlx-2013-46 is approved by the Commission.<sup>15</sup>

The Exchange proposes to amend Category D to offer members a similar

<sup>13</sup> Securities Exchange Act Release No. 69550 (May 9, 2013), 78 FR 28654 (May 15, 2013) (SR-Phlx-2013-46) (notice of filing of proposed rule change to accommodate Complex Orders in PIXL).

<sup>14</sup> The PIXL mechanism is a process whereby members and member organizations electronically submit orders they represent as agent against principal interest or other interest that they represent as agent. The submitted orders are stopped at a price and are subsequently entered into an auction seeking price improvement. Currently, the PIXL mechanism accepts only simple orders. Securities Exchange Act Release No. 69550 (May 9, 2013), 78 FR 28654 (May 15, 2013) (SR-Phlx-2013-46).

<sup>15</sup> The functionality to transact PIXL Complex Orders will not be available unless and until such time as the Commission approves SR-Phlx-2013-46. The purpose of this filing is to offer members the opportunity to achieve certain rebates related to PIXL Complex Orders when the functionality to transact such orders is approved by the Commission.

rebate opportunity. The Exchange proposes to pay rebates on qualifying Customer PIXL Orders in Select Symbols in Section I that execute against non-Initiating Order interest, except in the case of Customer PIXL Order that are greater than 999 contracts. All Customer PIXL Orders that are greater than 999 contracts would be paid a rebate regardless of the contra-party to the transaction.

The Exchange believes that offering members the opportunity to obtain rebates from PIXL transactions, whether in Simple or Complex Orders, will incentivize members to transact a greater number of PIXL Orders.

The Exchange also proposes to make technical amendments to the text of Category A to clarify rule text and conform the text to the new language which the Exchange proposes to add pursuant to this rule change.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>17</sup> in particular, in that it provides for an equitable allocation of reasonable fees and other charges among Exchange members and member organizations and other persons using its facilities.

The Exchange's proposal to amend Categories B and C of the Customer Rebate Program to pay rebates on qualifying Customer PIXL Complex Orders in Section I (Category C) and II (Category B) symbols, provided those transactions are contra to non-Initiating Order interest,<sup>18</sup> and also pay Customer PIXL Complex Order rebates on all orders greater than 999 contracts regardless of the contra-party is reasonable because the Exchange desires to incentivize members to transact Complex Orders in PIXL. Today, the Exchange incentivizes members to transact Simple Orders in PIXL by offering similar rebates under Category A<sup>19</sup> of the Customer Rebate Program.

The Exchange's proposal to amend Category D of the Customer Rebate

Program to pay rebates on qualifying Customer PIXL Orders in Section I Select Symbols provided those transactions are contra to non-Initiating Order interest and also pay Customer PIXL Order rebates on all orders greater than 999 contracts regardless of the contra-party is reasonable because the Exchange desires to incentivize members to transact a greater number of Simple Orders in PIXL. Today, the Exchange offers a rebate for Simple Orders in PIXL under Category A of the Customer Rebate Program.

The Exchange believes that the proposals to amend Categories B, C and D of the Customer Rebate Program to pay rebates on Customer Simple and Complex Orders in PIXL, respectively, in Section I and II symbols, provided those transactions are contra to non-Initiating Order interest,<sup>20</sup> and also pay Customer PIXL Complex Order rebates on all orders greater than 999 contracts regardless of the contra-party are equitable and not unfairly discriminatory because the Exchange will pay Customer rebates to any market participant that transacts a qualifying Customer PIXL Order in a Simple or Complex Order that executes against non-Initiating Order interest and will also pay Customer rebates to any market participant that transacts a qualifying Customer Simple or Complex Order in PIXL which is greater than 999 contracts regardless of the contra-party in Section I and II symbols. The Exchange will apply the Category B, C and D rebates uniformly with respect to market participants transacting qualifying PIXL Orders.

### *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 its proposal to amend Category B, C and D of the Customer Rebate Program does not impose an undue burden on competition because the Exchange is offering to pay Customer rebates on qualifying PIXL Simple and Complex Orders in Section I and II symbols, respectively, provided those transactions are contra to non-Initiating Order interest, to all participants. The Exchange is also offering to pay Customer rebates on PIXL Simple and Complex Orders in Section I and II symbols, respectively, on all qualifying

orders greater than 999 contracts regardless of the contra party for all market participants. These rebates should attract Customer PIXL Simple and Complex Order flow to the Exchange and benefit all market participants through the increased liquidity such order flow will bring to the PIXL auction in terms of order interaction. Today, the Exchange pays rebates on PIXL Simple Orders only in Category A of the Customer Rebate Program. With this proposal, the Exchange is providing an opportunity to obtain Customer rebates by transacting both Simple and Complex Orders in PIXL, respectively, in all categories of the Customer Rebate Program.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>21</sup> 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

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

<sup>18</sup> For example, a PIXL Responder or a resting order or quote that was on the Phlx book prior to the auction.

<sup>19</sup> Category A rebates are paid to members and member organizations executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II. Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Orders that are greater than 999 contracts. All Customer PIXL Orders that are greater than 999 contracts are paid a rebate regardless of the contra-party to the transaction.

<sup>20</sup> For example, a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction.

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-68 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2013-68. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2013-68 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-15615 Filed 6-28-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69845; File No. SR-Phlx-2013-46]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval To Proposed Rule Change, as Modified by Amendment No. 1, Regarding Complex Order PIXL

June 25, 2013.

#### I. Introduction

On April 30, 2013, NASDAQ OMX PHLX LLC (the "Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Phlx Rule 1080 to accommodate Complex Orders in Phlx's price-improving electronic auction ("PIXL," "PIXL Auction," or "Auction"). On May 8, 2013, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the *Federal Register* on May 15, 2013.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

Phlx proposes to amend Rule 1080 to accommodate Complex Orders in PIXL. Specifically, current Phlx Rule 1080(n) provides that a Phlx member (an "Initiating Member") may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (a "PIXL Order") against principal interest or against any other order it represents as agent (an "Initiating Order").<sup>4</sup> The submitted orders are then stopped at a price and entered into a PIXL Auction seeking price improvement. Phlx Rule 1080(n)

currently does not permit Complex Orders to be entered into the PIXL. This proposed rule change would permit Phlx members to send Complex Orders to the PIXL.<sup>5</sup>

#### A. Auction Eligibility and Auction Process

In order for a Complex Order to initiate a PIXL Auction, the Complex Order must be of a conforming ratio<sup>6</sup> and must be stopped at a price that is better than the best net price (debit or credit) that is (1) available on the Complex Order book regardless of the Complex Order book size; and (2) achievable from the best Phlx bids and offers for the individual options (an "improved net price"), provided in either case that such price is equal to or better than the PIXL Order's limit price.<sup>7</sup> The Exchange notes that requiring a Complex Order to be stopped at a net debit/credit price that improves upon the stated markets present for the individual components of the Complex Order ensures that at least one option leg will be executed at a better price than the established bid or offer for such leg.<sup>8</sup>

In order to initiate a PIXL Auction for a Complex Order ("Complex Order PIXL Auction"), the Initiating Member must mark the Complex PIXL Order for Auction processing, and specify either: (1) a single price at which it seeks to execute the PIXL Order (a "stop price"); or (2) that it is willing to either: (a) stop the entire order at a single stop price and auto-match responses to the Complex Order PIXL Auction ("PAN responses" or "Complex Order PAN responses") and trading interest at a price or prices that improve the stop price to a specified price (a "Not Worse Than" or "NWT" price); or (b) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop

<sup>5</sup> A Complex Order is defined as "an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy." See Phlx Rule 1080 Commentary .08(a)(i).

<sup>6</sup> Conforming ratios for Complex Orders are defined in Commentary .08(a)(i) and (a)(ix) to Phlx Rule 1080. Complex Orders consisting of a ratio other than a conforming ratio will not be accepted. See Notice, 78 FR at 28657.

<sup>7</sup> See proposed Phlx Rule 1080(n)(i)(C); see also Notice, 78 FR at 28657 for an example of an eligible Complex Order on PIXL. This provision, as applied to Complex Orders whose smallest leg is less than 50 contracts, is effective for a pilot period scheduled to expire on July 18, 2013.

<sup>8</sup> See Notice, 78 FR at 28657.

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 69550 (May 9, 2013), 78 FR 28654 (May 15, 2013) ("Notice").

<sup>4</sup> See Phlx Rule 1080(n); see also Securities Exchange Act Release No. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (approving rules establishing the PIXL Auction for simple orders).

price.<sup>9</sup> As with the simple order PIXL Auction, once the Initiating Member has submitted a Complex Order into PIXL, such order may not be modified or cancelled.<sup>10</sup> However, the stop price or NWT price may be improved to the benefit of the PIXL Order during the Complex Order PIXL Auction.<sup>11</sup>

Like PIXL Auctions for simple orders, Complex Order PIXL Auctions will last for one second, unless the Complex Order PIXL Auction terminates early.<sup>12</sup> Complex Order PAN responses may be submitted by any member.<sup>13</sup> The minimum price increment for PAN responses and an Initiating Member's stop price and/or NWT price for a Complex Order PIXL Auction will be \$0.01.<sup>14</sup> A Complex Order PAN response must be equal to or better than the cPBBO<sup>15</sup> at the time of receipt of the Complex Order PAN response.<sup>16</sup>

As with a simple order PIXL Auction, a Complex Order PIXL Auction will conclude at the earlier of the end of the Auction period<sup>17</sup> or any time there is a trading halt on the Exchange in the affected series.<sup>18</sup> In addition, a Complex

Order PIXL Auction will conclude any time the cPBBO or the Complex Order book cross the Complex PIXL Order stop price on the same side of the market as the Complex PIXL Order.<sup>19</sup>

The Exchange also proposes to modify its existing rules to provide that all PIXL Orders submitted during the final two seconds of the trading session will not be eligible to initiate an Auction and will be rejected.<sup>20</sup>

#### B. Complex PIXL Order Execution and Allocation

Order execution and allocation in a Complex PIXL Auction is similar to order execution and allocation in a simple order PIXL Auction.<sup>21</sup> If the Initiating Member selected the single stop price option of the Complex Order PIXL Auction, the Complex PIXL Order will be executed at prices that improve the stop price and then at the stop price, with up to 40% of the remaining contracts after public customer complex interest is satisfied being allocated to the Initiating Member at the stop price.<sup>22</sup> If only one other participant matches the stop price, then the Initiating Member may be allocated up to 50% of the contracts remaining after public customer complex interest is satisfied at such price.<sup>23</sup> Complex Orders on the PHLX Complex Order Book, PAN responses, and quotes and orders which comprise the cPBBO at the end of the Auction will be considered for allocation against the Complex PIXL Order at a given price point in the following order: (1) Public customer Complex Orders and PAN responses in time priority; (2) SQT, RSQT, and non-SQT ROT Complex Orders and PAN responses on a size pro-rata basis; (3) non-market maker off-floor broker-dealer Complex Orders and PAN

responses on a size pro-rata basis, and (4) quotes and orders which comprise the cPBBO at the end of the PIXL Auction, with public customer interest at that price being satisfied first in time priority, followed by SQT, RSQT, and non-SQT ROT interest satisfied on a size pro-rata basis, and then non-market maker off-floor broker-dealers on a size pro-rata basis (collectively (1)–(4), the “Allocation Algorithm”).<sup>24</sup> Thereafter, any remaining contracts, if any, will be allocated to the Initiating Member, after public customer Complex Orders and PAN responses have been satisfied.<sup>25</sup>

If the Initiating Member selected the “stop and NWT” price option of the Complex Order PIXL Auction, the Complex PIXL Order will be executed in the following order: (i) First to Complex Orders and PAN responses at prices better than the NWT price, as well as to quotes and orders which comprise the cPBBO if such cPBBO is better than the NWT price, pursuant to the Allocation Algorithm and (ii) next, to Complex Orders and PAN responses, as well as to quotes and orders which comprise the cPBBO at the end of the Auction, at the Initiating Member's NWT price and at prices better than or equal to the Initiating Member's stop price, beginning with the NWT price.<sup>26</sup> The Initiating Member will be allocated an equal number of contracts as the aggregate size of all other interest at each price point, except that the Initiating Member shall be entitled to receive up to 40% (or 50% if matching only one other participant) of the contracts remaining at the final price point (including situations where the final price is the stop price), after public customer Complex Orders and PAN responses have been satisfied.<sup>27</sup> If there is other interest at the final price point the contracts will be allocated to such interest pursuant to the Allocation Algorithm, and any remaining contracts shall be allocated to the Initiating Member.<sup>28</sup>

<sup>9</sup> See proposed Phlx Rule 1080(n)(ii)(A)(2); see also Notice, 78 FR at 28657 for a description of how the initiation of PIXL Complex Order Auction differs from a PIXL Auction for orders that are not complex.

<sup>10</sup> See proposed Phlx Rule 1080(n)(ii)(A)(2).

<sup>11</sup> See *id.*

<sup>12</sup> See proposed Phlx Rule 1080(n)(ii)(A)(4). For a description of the circumstances in which the Complex Order PIXL Auction terminates early, see text accompanying notes 17 to 19, *infra*.

<sup>13</sup> See proposed Phlx Rule 1080(n)(ii)(A)(5). PAN responses, among other things, must be properly marked specifying price, size and side of the market; will not be visible to PIXL Auction participants; will not be disseminated to the Options Price Reporting Authority (“OPRA”); and may not exceed the size of the PIXL Order at any given price point. See proposed Phlx Rule 1080(n)(ii)(A)(5)–(7).

<sup>14</sup> See proposed Phlx Rule 1080(n)(ii)(A)(7)(b). For a simple order PIXL Auction, the minimum price increment for a PAN response and for an Initiating Member's stop and/or NWT price is the minimum price increment established in Phlx Rule 1080(n)(ii)(A)(1). See Phlx Rule 1080(n)(ii)(A)(6), renumbered as proposed Phlx Rule 1080(n)(ii)(A)(7)(a).

<sup>15</sup> See proposed Phlx Rule 1080(n)(ii)(A)(9). The term “cPBBO” means the best net debit or credit price for a Complex Order Strategy based on the PBBO for the individual options components of such Complex Order Strategy, and, where the underlying security is a component of the Complex Order, the National Best Bid and/or Offer for the underlying security. See Phlx Rule 1080 Commentary .08(a)(iv).

<sup>16</sup> See proposed Phlx Rule 1080(n)(ii)(A)(9). A Complex Order PAN response submitted with a price that is outside the cPBBO will be rejected as will a PAN response submitted with a price inferior to the stop price of the PIXL Order. See *id.*

<sup>17</sup> See Phlx Rule 1080(n)(ii)(B)(1).

<sup>18</sup> See proposed Phlx Rule 1080(n)(ii)(B)(4). This provision is effective for a pilot period set to expire July 18, 2013. See proposed Phlx Rule 1080(n)(ii)(B)(5). Additionally, Phlx proposes that an unrelated market or marketable limit Complex

Order on the opposite side of the market from the Complex PIXL Order as well as orders for the individual components of the Complex Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction. If contracts remain from such unrelated order at the time the Complex Order PIXL Auction ends, they will be considered for participation in the order allocation process described in Section II.B *infra*, and in proposed Phlx Rule 1080(n)(ii)(E). See proposed Phlx Rule 1080(n)(ii)(D).

<sup>19</sup> See proposed Phlx Rule 1080(n)(ii)(B)(3). This provision is effective for a pilot period set to expire July 18, 2013. See proposed Phlx Rule 1080(n)(ii)(B)(5). See also *infra* notes 29–30 and accompanying text.

<sup>20</sup> See proposed Phlx Rule 1080(n)(i)(F).

<sup>21</sup> See 1080(n)(ii)(E)(2)(a)–(c) for a detailed description of order allocation for a simple PIXL Auction.

<sup>22</sup> See proposed Phlx Rule 1080(n)(ii)(E)(2)(d). See also Notice, 78 FR at 28658–59 for examples illustrating the execution and allocation of a Complex PIXL Order where the Initiating Member selected the single stop price option.

<sup>23</sup> See proposed Phlx Rule 1080(n)(ii)(E)(2)(d).

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*

<sup>26</sup> See proposed Phlx Rule 1080(n)(ii)(E)(2)(e)(i). See also Notice, 78 FR at 28660 for an example illustrating the execution and allocation of a Complex PIXL Order where the Initiating Member selected the “stop and NWT” option.

<sup>27</sup> See proposed Phlx Rule 1080(n)(ii)(E)(2)(e)(ii). In the case of an Initiating Order with a NWT price at the market, the Initiating Member shall be allocated an equal number of contracts as the aggregate size of all other interest at all price points, except that the Initiating Member shall be entitled to receive up to 40% (or 50% if matching only one other participant) of the contracts remaining at the final price point (including situations where the final price is the stop price), after public customer Complex Orders and PAN responses have been satisfied. See *id.*

<sup>28</sup> See proposed Phlx Rule 1080(n)(ii)(E)(2)(e)(ii).

If a Complex Order PIXL Auction concludes due to the cPBBO or the Complex Order book crossing the Complex PIXL Order stop price,<sup>29</sup> the entire Complex PIXL Order will be executed at the stop price against executable PAN responses and executable Complex Orders pursuant to the Allocation Algorithm.<sup>30</sup> In addition if Complex Order PAN responses cross the then-existing cPBBO at the time of the conclusion of the Auction, such PAN responses will be executed, if possible, at their limit prices.<sup>31</sup>

Finally, the proposed rule change provides for the execution of a Complex PIXL Order when the Complex Order PIXL Auction price matches a Complex Order book price on the same side of the market as the Complex PIXL Order. Specifically, the proposal provides that if the Complex Order PIXL Auction price is the same as that of a Complex Order on the Complex Order Book on the same side of the market as the Complex PIXL Order, the PIXL Order may only be executed at a price that is at least one minimum price improvement increment better than the resting order's limit price; or if such resting order's limit price is equal to or crosses the stop price, then the entire PIXL Order will trade at the stop price with all better priced interest being considered for execution at the stop price.<sup>32</sup>

The Exchange believes that that the proposed execution and allocation of Complex PIXL Orders ensures and maintains the priority of established interest as Complex PIXL Orders must be stopped at a price which improves upon all interest in the Phlx XL system

<sup>29</sup> See, *supra* note 19 and accompanying text.

<sup>30</sup> See proposed Phlx Rule 1080(n)(ii)(C), and *supra* note 24 and accompanying text. See also Notice, 78 FR at 28658 for an example of Complex PIXL Order execution and allocation when the cPBBO or the Complex Order book crosses the Complex Order PIXL stop price on the same side as the Complex PIXL Order.

<sup>31</sup> See proposed Phlx Rule 1080(n)(ii)(F).

<sup>32</sup> See proposed Phlx Rule 1080(n)(ii)(H). See also Notice, 78 FR at 28658 for an example of Complex PIXL Order execution pursuant to this provision. This rule is similar to existing Phlx Rule 1080(n)(ii)(G), which includes a parallel provision for simple order PIXL Auctions. Phlx also proposes modifying Phlx Rule 1080(n)(ii)(G) such that, if there is an order on the limit order book, on the same side of the market as the PIXL Order, which is "equal to or crosses" the stop price, then the entire PIXL Order will trade at the stop price with all better priced interest being considered for execution at the stop price. Currently, this rule provides that the entire PIXL Order will trade at the stop price with all better priced interest being considered for execution at the stop price only if there is an order on the limit order book on the same side of the market as the PIXL Order which crosses the stop price. See Phlx Rule 1080(n)(ii)(G).

at the time of receipt.<sup>33</sup> The Exchange also notes that the proposed allocation system for Complex Order PIXL Auctions ensures that public customer Complex Order interest will maintain priority over non-public customer Complex Order interest, and public customer interest comprising the cPBBO will be afforded priority over non-public customer interest comprising the cPBBO.<sup>34</sup> However, public customer interest comprising the cPBBO will not have priority over Complex Order or PAN response interest.<sup>35</sup> The Exchange believes that because all participant types, including public customers, may respond to an Auction notification, public customer interest comprising the cPBBO that choose not to avail themselves of the opportunity to participate in the Auction should not be afforded priority over participants offering contra-side interest to a Complex PIXL Order for all of its components at the same price point in the Complex Order PIXL Auction.<sup>36</sup>

### C. Complex PIXL Orders With Stock/ETF Components

The Exchange proposes that Complex PIXL Orders may consist of a stock/ETF component, but such Complex PIXL Orders will only execute against Complex Orders or PAN responses that also include the stock/ETF component,<sup>37</sup> and will not execute against interest comprising the cPBBO at the end of the Auction.<sup>38</sup> The proposal further specifies that member organizations may only submit Complex PIXL Orders, Initiating Orders, Complex Orders, and/or PAN responses with a stock/ETF component if such orders/responses comply with the Qualified Contingent Trade Exemption from Rule 611(a)<sup>39</sup> of Regulation NMS pursuant to the Act.<sup>40</sup> The proposal also provides

<sup>33</sup> See Notice, 78 FR at 28659. The Exchange notes that, in the event that the individual components of the Complex PIXL Order independently improve during the Auction and new interest is received during the Auction, Complex Orders and PAN responses will be afforded priority over individual component interest comprising the cPBBO at a given price point just as Auction responses and Complex Orders are afforded priority over individual components of a Complex Order that independently improve during a Complex Order Live Auction ("COLA"). See *id.*

<sup>34</sup> See Notice, 78 FR at 28659.

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> See *id.* at 28660.

<sup>38</sup> See proposed Phlx Rule 1080(n)(ii)(E)(2)(g).

<sup>39</sup> See 17 CFR 242.611(a).

<sup>40</sup> See proposed Phlx Rule 1080(n)(ii)(J)(1). The Exchange further provides that member organizations submitting such orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. See *id.* Members of FINRA or the NASDAQ Stock Market ("NASDAQ") are required to have a

that where one component of a Complex PIXL Order, Initiating Order, Complex Order, or PAN response is the underlying security, the Exchange shall electronically communicate the underlying security component of a Complex PIXL Order (together with the Initiating Order, Complex Order, or PAN response, as applicable) to NOS, the Exchange's designated broker-dealer, for immediate execution.<sup>41</sup>

In addition, the Exchange proposes to provide that when the short sale price test in Rule 201 of Regulation SHO<sup>42</sup> is triggered for a covered security,<sup>43</sup> NOS will not execute a short sale order in the underlying covered security component of a Complex PIXL Order, Initiating Order, Complex Order, or PAN response if the price is equal to or below the current national best bid.<sup>44</sup> However, NOS will execute a short sale order in the underlying covered security component of a Complex PIXL Order, Initiating Order, Complex Order, or PAN response if such order is marked "short exempt," regardless of whether it is at a price that is equal to or below the current national best bid.<sup>45</sup> If NOS cannot execute the underlying covered security component of a Complex PIXL Order, Initiating Order, Complex Order, or PAN Response in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex PIXL Order, Initiating Order, Complex Order, or PAN Response to the member organization that submitted it.<sup>46</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>47</sup> In particular, the Commission finds that the proposed rule change is consistent with Section

Uniform Service Bureau/Executing Broker Agreement ("AGU") with Nasdaq Options Services LLC in order to trade orders containing a stock/ETF component; firms that are not members of FINRA or NASDAQ are required to have a Qualified Special Representative ("QSR") arrangement with Nasdaq Options Services LLC ("NOS") in order to trade orders containing a stock/ETF component. See *id.*

<sup>41</sup> See proposed Phlx Rule 1080(n)(ii)(J)(2).

<sup>42</sup> 17 CFR 242.201.

<sup>43</sup> For the purposes of the Exchange's proposed rule change, the term "covered security" has the same meaning as in Rule 201(a)(1) of Regulation SHO. See 17 CFR 242.201(a).

<sup>44</sup> See proposed Phlx Rule 1080(n)(ii)(J)(3).

<sup>45</sup> See *id.* See also Notice, 78 FR at 28661.

<sup>46</sup> See proposed Phlx Rule 1080(n)(ii)(J)(3).

<sup>47</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

6(b)(5) of the Act,<sup>48</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

By allowing Phlx members to enter complex orders into the PIXL Auction, the Commission believes that the proposal could provide opportunities for complex orders to receive price improvement. Under the proposal, a complex order entered into the PIXL Auction must be of a conforming ratio and must be stopped at a price that is better than the best net price (debit or credit) (1) available on Phlx's Complex Order book regardless of the Complex Order book size; and (2) achievable from the best Phlx bids and offers for the individual options (an "improved net price"), provided in either case that such price is equal to or better than the PIXL Order's limit price.<sup>49</sup> As noted above, an Initiating Member enters a PIXL Order in the Complex Order PIXL Auction with an Initiating Order for the full size of the PIXL Order.<sup>50</sup> At the conclusion of the PIXL Auction, the PIXL Order is executed in full at the best prices available, taking into consideration orders and quotes in the Phlx market, PAN responses, and the Initiating Order. Thus, a complex order entered into a Complex Order PIXL Auction would receive an execution at the best price available at the conclusion of the Auction and, at a minimum, would be executed in full at the improved net price. In addition, if an improved net price for a complex order entered in a Complex Order PIXL Auction could be achieved from bids and offers for the individual legs of the complex order in the Phlx's market, the complex order would be executed at the better net price.

The Commission notes that the complex order spread priority rules contained in Phlx Rule 1080, Commentary .08(c)(iii), will continue to

apply to Complex PIXL Orders.<sup>51</sup> By requiring that a Complex PIXL Order be stopped at a net debit/credit price which improves upon the stated markets present for the individual components of the Complex PIXL Order, the Exchange ensures that at least one option leg will be executed at a better price than the established bid or offer for such leg.

As described more fully above, the Exchange's proposal provides specific rules for Complex PIXL Orders which have a stock or ETF component.<sup>52</sup> The Commission believes that proposed Phlx Rule 1080(n)(ii)(J) is similar to the rules related to complex orders with stock/ETF components previously adopted by the Exchange in connection with Phlx's COLA.<sup>53</sup> The Commission notes that proposed Phlx Rule 1080(n)(ii)(J)(3) is designed to ensure compliance with Rule 201 of Regulation SHO, in particular with respect to the obligations of trading centers, such as the Exchange and NOS, under Regulation SHO.<sup>54</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>55</sup> that the proposed rule change (SR-Phlx-2013-46), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>56</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-15623 Filed 6-28-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69858; File No. SR-NASDAQ-2013-085]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend Rule 4630 to Remove a Restriction on a Member Acting as a Registered Market Maker in a Commodity-Related Security

June 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 14, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the NASDAQ. 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

NASDAQ proposes to amend NASDAQ Rule 4630(e), which governs the trading in Commodity-Related Securities.<sup>3</sup> This rule change to amend NASDAQ Rule 4630(e) is consistent with a previous NYSE Arca, Inc. ("NYSE Arca") rule change discussed herein.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The term "Commodity-Related Security" means a security that is issued by a trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives. See NASDAQ Rule 4630(c)(1).

<sup>51</sup> See Notice, 78 FR at 28657.

<sup>52</sup> See generally Section II.C.

<sup>53</sup> See e.g., Phlx Rule 1080.08(h) and proposed Phlx Rule 1080(n)(ii)(J)(3). See also Securities Exchange Act Release No. 63777 (January 26, 2011), 76 FR 5630 (February 1, 2011) (approving complex orders with stock/ETF components for trading on Phlx's COLA).

<sup>54</sup> See *supra* notes 39-46.

<sup>55</sup> 15 U.S.C. 78s(b)(2).

<sup>56</sup> 17 CFR 200.30-3(a)(12).

<sup>48</sup> 15 U.S.C. 78f(b)(5).

<sup>49</sup> See proposed Phlx Rule 1080(n)(i)(C); see also Notice, 78 FR at 28657 for an example of an eligible Complex Order on PIXL.

<sup>50</sup> Phlx Rule 1080(n)(i) and 1080(n)(ii)(A).

concerning the purpose of and basis for 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 NASDAQ Rule 4630(e) consistent with a rule change previously made by NYSE Arca in 2010 to its equities rules in an immediately effective rule filing (the "NYSE Arca filing").<sup>4</sup> NASDAQ's proposed rule change is to remove the restriction that a member acting as a registered market maker in a Commodity-Related Security will not act or register as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

The NYSE Arca filing, in part, amended Commentary .01(a) to NYSE Arca Equities Rule 5.2(j)(6) ("Commentary .01(a)"). The portion of that amendment that is the focus of this filing affected NYSE Arca's listing standards for Commodity-Linked Securities. Specifically, the deletion included removing the prohibition that a registered market maker in Commodity-Linked Securities could not also act as a market maker or function in any capacity involving market-making responsibilities in the commodity reference asset or the components underlying that commodity reference asset. As amended, NASDAQ Rule 4630(e) would similarly remove this prohibition, which states that a registered market maker in a Commodity-Related Security is prohibited from acting or registering as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

NASDAQ Rule 4630(e), as amended, would be similar to current Commentary .01(a) and would similarly continue to provide that a member acting as a registered market maker in a Commodity-Related Security must file with the Exchange's regulation

department in a manner prescribed by such department and keep current a list identifying all accounts for trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, in which the market maker holds an interest, over which it may exercise investment discretion, or in which it shares in the profits and losses.

Additionally, the amended NASDAQ rule would remain consistent with Commentary .01(a) since it would also continue to provide that no market maker shall trade in, or exercise investment discretion with respect to, such underlying commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has an interest in the profits or losses thereof, that has not been reported as required by the rule.

NASDAQ Rule 4630(e), as amended, also would remain consistent with NASDAQ Rules 4630(d) and (g) so that a member acting as a registered market maker in a Commodity-Related Security remains obligated to establish adequate information barriers when such market maker engages in inter-departmental communications. Members should refer to NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures (NASD Notice to Members 91-45) for guidance on the "minimum elements" of adequate Chinese Wall policy and procedures.<sup>5</sup> For purposes of a Commodity-Related Security, "inter-departmental communications" are defined to include communications to other departments within the same firm or the firm's affiliates that involve trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.<sup>6</sup>

In the context of approving a similar proposal by NYSE Arca, the Commission stated that, "while information barriers are not specifically required under the proposal, a [firm's] business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and

regulations, and with applicable Exchange rules."

The NASDAQ rules discussed above serve to ensure that market makers in a Commodity-Related Security would continue to have in place the appropriate policies and procedures with regard to also acting as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security. This amendment does not lessen the protection of members from risks associated with integrated market making and any possible misuse of non-public information.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, NASDAQ believes that the change to remove the restriction in NASDAQ Rule 4630(e) that a member acting as a registered market maker in a Commodity-Related Security shall not act or register as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security will remove impediments to and perfect the mechanism of a free and open market by providing the same flexibility to NASDAQ that is already available to NYSE Arca regarding the market maker activities for Commodity-Related Securities.

Additionally, NASDAQ Rules 4630(d) and (g), in connection with NASDAQ Rule 4630(e), as amended, would continue to serve to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest from concerns that may be associated with integrated market making and any possible misuse of non-public information.

<sup>5</sup> See NASDAQ Rule 4630(d).

<sup>6</sup> See Securities Exchange Act Release No. 55386 (March 2, 2007), 72 FR 10801 (March 2, 2007) (SR-NASDAQ-2007-016).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> See Securities Exchange Act Release No. 62013 (April 30, 2010), 75 FR 25892 (May 10, 2010) (SR-NYSEArca-2010-35).

### B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the Exchange believes the proposal is pro-competitive and is proposed as a competitive response to the NYSE Arca filing. The Exchange believes this proposed rule change, which governs the trading in Commodity-Related Securities is necessary to permit fair competition among the exchanges.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

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. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-085 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-NASDAQ-2013-085. 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-NASDAQ-2013-085 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-15701 Filed 6-28-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### Norstra Energy Inc.; Order of Suspension of Trading

June 26, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Norstra Energy Inc. ("Norstra"). Norstra is a Nevada corporation based in South Lake, Texas, and its stock is currently quoted on OTC Link, operated by OTC Markets Group, Inc. under the symbol NORX. Questions have arisen concerning the adequacy and accuracy of press releases and other public statements concerning Norstra's business operations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Norstra.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on June 26, 2013 through 11:59 p.m. EDT, on July 10, 2013.

By the Commission.  
**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2013-15668 Filed 6-26-13; 11:15 am]

**BILLING CODE 8011-01-P**

## SMALL BUSINESS ADMINISTRATION

### Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.500 (2½) percent for the July-September quarter of FY 2013.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted

<sup>9</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

by the constitution or laws of the given State.

**Michael A. Simmons,**  
Acting Director, Office of Financial Assistance.

[FR Doc. 2013-15648 Filed 6-28-13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF STATE

[Public Notice 8364]

### Culturally Significant Objects Imported for Exhibition; Determinations: "Magritte: The Mystery of the Ordinary, 1926-1938"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Magritte: The Mystery of the Ordinary, 1926-1928," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about September 28, 2013, until on or about January 12, 2014, The Menil Collection, Houston, Texas, from on or about February 14, 2014, until on or about June 1, 2014, The Art Institute of Chicago, Chicago, Illinois, from on or about June 29, 2014, until on or about October 12, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6469). The mailing address is U.S. Department of State, SA-5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522-0505.

Dated: June 20, 2013.

**J. Adam Ereli,**  
Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs,  
Department of State.

[FR Doc. 2013-15726 Filed 6-28-13; 8:45 am]

**BILLING CODE 4710-05-P**

## DEPARTMENT OF STATE

[Public Notice 8365]

### Waiver of Restriction on Assistance to the Central Government of the Dominican Republic

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, P.L. 112-74) ("the Act"), as carried forward by the Further Continuing Appropriations Act, 2013 (Div. F, P.L. 113-6), and Department of State Delegation of Authority Number 245-1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act and similar provisions of law in prior year Acts with respect to the Dominican Republic and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: May 31, 2013.

**William J. Burns,**  
Deputy Secretary.

[FR Doc. 2013-15725 Filed 6-28-13; 8:45 am]

**BILLING CODE 4710-29-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending June 8, 2013. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application

by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT-OST-2013-0117.

*Date Filed:* June 6, 2013.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 27, 2013.

### Description

Application of Danish Air Transport A/S requesting the issuance of an exemption and a foreign air carrier permit authorizing it to engage in: (a) Foreign charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (b) foreign charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (c) foreign charter cargo air transportation between any point or points in the United States and any other point or points; (d) other charters pursuant to the prior approval requirements; and (e) charter transportation authorized by any additional route rights made available to European Union carriers in the future.

**Barbara J. Hairston,**

Acting Program Manager, Docket Operations,  
Federal Register Liaison.

[FR Doc. 2013-15734 Filed 6-28-13; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings, Agreements filed the week ending May 25, 2013

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* DOT-OST-2012-0121.

*Date Filed:* May 22, 2013.

*Parties:* Members of the International Air Transport Association.

*Subject:* Recommended Practice 1630, Recommended Practice 1670, CSC/Meet/007/2013 dated 17 May 2013, Intended effective date: 1 July 2013.

**Barbara J. Hairston,**

Acting Program Manager, Docket Operations,  
Federal Register Liaison.

[FR Doc. 2013-15749 Filed 6-28-13; 8:45 am]

**BILLING CODE 4910-9X-P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration**

[Docket No. FHWA-2013-0036]

**Temporary Closure of I-65 (I-70/I-65 South Split Interchange to I-70/I-65 North Split Interchange) in the City of Indianapolis**

AGENCIES: Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and Request for Comment.

**SUMMARY:** The Indiana Department of Transportation (INDOT) has requested FHWA approval of INDOT's proposed plan to close a 2-mile portion of I-65 in Indiana (from I-70/I-65 south split interchange to I-70/I-65 north split interchange) for a period of 93 days, from Wednesday, August 21, 2013, to Thursday, November 21, 2013. The closure is requested to accommodate the reconstruction on the Virginia Avenue Bridge, which consists of replacing the northbound and southbound bridge girders and lowering the pavement section from south of Morris Street to north of Fletcher Avenue. The request is based on the provisions in 23 CFR 658.11 which authorizes the deletion of segments of the federally designated routes that make up the National Network designated in Appendix A of 23 CFR Part 658 upon approval by the FHWA.

The FHWA seeks comments from the general public on this request submitted by INDOT for a deletion in accordance with 23 CFR 658.11(d) for the considerations discussed in this notice.

**DATES:** Comments must be received on or before 30 days after date of publication in the **Federal Register**.

**ADDRESSES:** The letter of request along with justifications can be viewed electronically at the docket established for this notice at <http://www.regulations.gov>. Hard copies of the documents will also be available for viewing at the DOT address listed below.

Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, or fax comments to (202) 493-2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov> (follow the on-line instructions for submitting comments). All comments should include the docket number that appears in the heading of this document. All comments received will be available for

examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. All comments received into any docket may be searched in electronic format by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78), or you may view the statement at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Crystal Jones, Office of Freight Management and Operations, Office of Operations, (202) 366-2976, Mr. Bill Winne, Office of the Chief Counsel, (202) 366-0791, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, and Mr. Richard Marquis, FHWA Division Administrator-Indiana Division, (317) 226-7483. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access and Filing**

You may submit or retrieve comments online through the Federal eRulemaking portal at: <http://www.regulations.gov>. The Web site is available 24 hours each day of the year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: [http://www.archives.gov/federal\\_register](http://www.archives.gov/federal_register) and the Government Printing Office's Web page at: <http://www.gpoaccess.gov>.

**Background**

The FHWA is responsible for enforcing the Federal regulations applicable to the National Network of highways that can safely and efficiently accommodate the large vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982, as amended, designated in accordance with 23 CFR part 658 and listed in Appendix A. In accordance with 23 CFR 658.11, the FHWA may approve deletions or restrictions of the Interstate System or other National Network routes based upon specified justification

criteria in 23 CFR 658.11(d)(2). These deletions are then published in the **Federal Register** for notice and comment.

The INDOT has submitted a request to FHWA for approval of the temporary closure of a segment of I-65, from the I-70/I-65 south split interchange to the I-70/I-65 north split interchange, for a period of 93 days, from the period beginning Wednesday, August 21, 2013, through Thursday, November 21, 2013. The incoming request and supporting documents, including maps, may be viewed electronically at the docket established for this notice at <http://www.regulations.gov>.

Along its length, I-65 through Indianapolis, Indiana, passes under several bridges, many with limited vertical clearance. The bridges at Virginia Avenue, Fletcher Avenue, Calvary Street, and Morris Street have vertical clearances ranging from 13' 11", to 14' 6". This project will increase vertical clearances to a minimum 14' 9" at each of these locations.

For the duration of the requested temporary closure, eastbound and westbound I-70 traffic will be detoured to I-465, around the south side of Indianapolis. Northbound and southbound I-65 traffic will be detoured to I-465. The INDOT states that the temporary closure of this segment of I-65 to general traffic should have negligible impact to interstate commerce.

Commercial motor vehicles of the dimensions and configurations described in 23 CFR 658.13 and 658.15 serving the impacted area may use the alternate routes listed above. Vehicles servicing the businesses bordering the impacted area will still be able to do so by also using the alternative routes noted above to circulate around the restricted area. In addition, vehicles not serving businesses in the restricted area but, currently using I-65 and the local street system to reach their ultimate destinations, will be able to use I-465 to access the alternative routes. A map depicting the alternative routes is available electronically at the docket established for this notice at <http://www.regulations.gov>. The INDOT has reviewed these alternative routes and determined the routes to generally be capable of safely accommodating the diverted traffic during the period of temporary closure.

The INDOT will increase the Hoosier Helper workforce (freeway service patrols) along I-465 to address incident response and minimize any incident impacts. The INDOT will issue a press release to inform the community of the closure and will post the closure in

Road Restriction System. The INDOT traveler information Web site Traffic Wise will be utilized, as well as the 511 phone system. The INDOT will issue a formal press release upon notification that the request for closure has been approved.

The INDOT has reached out to Federal, State, and local agencies to ensure a collaborative and coordinated effort to address the logistical challenges of reconstructing this section of I-65. The Illinois Department of Transportation and the Ohio Department of Transportation will be informed of this proposal. Additionally, efforts have been made to work with the various transit systems as well as the American Trucking Association. The INDOT has notified the Indiana Motor Trucking Association of this plan to temporarily close I-65, and has agreed to work with them to provide information targeted at the trucking industry.

This request to close I-65 to general traffic on or around August 21, 2013, was prepared for the INDOT in accordance with the Indianapolis Metropolitan Planning Organization's Transportation Plan. The INDOT's proposal has been approved by the city of Indianapolis Department of Public Works and INDOT will coordinate the closure with the Indianapolis Metropolitan Police Department.

The FHWA seeks comments on this request for temporary deletion from the National Network for considerations in accordance with 23 CFR 658.11(d).

**Authority:** 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; 23 CFR Part 658.

Issued on: June 20, 2013.

**Victor M. Mendez,**

*Federal Highway Administrator.*

[FR Doc. 2013-15655 Filed 6-28-13; 8:45 am]

**BILLING CODE 4910-22-P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Revenue Procedure 98-32

**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 Revenue Procedure 98-32, Electronic Federal Tax Payment System (EFTPS) Programs for Reporting Agents.

**DATES:** Written comments should be received on or before August 30, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622-3869, or through the Internet at [Martha.R.Brinson@irs.gov](mailto:Martha.R.Brinson@irs.gov).

**SUPPLEMENTARY INFORMATION:**

**Title:** Electronic Federal Tax Payment System (EFTPS) Programs for Reporting Agents.

**OMB Number:** 1545-1601.

**Revenue Procedure Number:** Revenue Procedure 98-32.

**Abstract:** This revenue procedure provides information about the Electronic Federal Tax Payment System (EFTPS) programs for Batch Filers and Bulk Filers (Filers). EFTPS is an electronic remittance processing system for making federal tax deposits (FTDs) and federal tax payments (FTPs). The Batch Filer and Bulk Filer programs are used by Filers for electronically submitting enrollments, FTDs, and FTPs on behalf of multiple taxpayers.

**Current Actions:** There are no changes being made to this revenue procedure at this time.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Business or other for-profit organizations.

**Estimated Number of Respondents:** 229,237.

**Estimated Average Time per Respondent:** 1 hr, 5 min.

**Estimated Total Annual Burden Hours:** 246,877.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request For Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 25, 2013.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. 2013-15475 Filed 6-28-13; 8:45 am]

**BILLING CODE 4830-01-P**



# FEDERAL REGISTER

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Part II

Department of the Treasury

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Fiscal Service

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Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Notices

**DEPARTMENT OF THE TREASURY****Fiscal Service**

[Dept. Circular 570; 2013 Revision]

**Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies**

Effective July 1, 2013.

This Circular is published annually, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular and interim changes may be obtained directly from the internet or from the Government Printing Office (202) 512-1800. (Interim changes are published in the **Federal Register** and on the internet as they occur). Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F01, Hyattsville, MD 20782, Telephone (202) 874-6850 or Fax (202) 874-9978.

The most current list of Treasury authorized companies is always available through the Internet at [www.fms.treas.gov/c570](http://www.fms.treas.gov/c570). In addition, applicable laws, regulations, and application information are also available at the same site.

*Please note that the underwriting limitation published herein is on a per bond basis but this does not limit the amount of a bond that a company can write.* Companies are allowed to write bonds with a penal sum over their underwriting limitation as long as they protect the excess amount with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11. Please refer to Note (b) at the end of this publication.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury. Those listed in the front of this Circular are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)]. Those listed in the back are acceptable only as reinsurers on Federal bonds under 31 CFR 223.3(b) [See Note (e)].

If we can be of any assistance, please feel free to contact the Surety Bond Branch at (202) 874-6850.

**Patricia M. Greiner,**  
*Assistant Commissioner for Management (CFO).*

Important Information is Contained in the Notes at the End of this Circular. Please Read The Notes Carefully.

**Certified Companies****ACCREDITED SURETY AND CASUALTY COMPANY, INC. (NAIC #26379)**

BUSINESS ADDRESS: PO Box 140855, Orlando, FL 32814-0855. PHONE: (407) 629-2131. UNDERWRITING LIMITATION b/: \$1,658,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

**ACSTAR INSURANCE COMPANY (NAIC #22950)**

BUSINESS ADDRESS: 30 SOUTH ROAD, FARMINGTON, CT 06032. PHONE: (860) 415-8400. UNDERWRITING LIMITATION b/: \$2,877,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Aegis Security Insurance Company (NAIC #33898)**

BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657-9671. UNDERWRITING LIMITATION b/: \$4,452,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**ALL AMERICA INSURANCE COMPANY (NAIC #20222)**

BUSINESS ADDRESS: P.O. BOX 351, VAN WERT, OH 45891-0351. PHONE: (419) 238-1010. UNDERWRITING LIMITATION b/: \$11,352,000. SURETY LICENSES c,f/: AZ, CA, CT, GA, IL, IN, IA, KY, MA, MI, NV, NJ, NY, NC, OH, OK, TN, TX, VA. INCORPORATED IN: Ohio.

**Allegheny Casualty Company (NAIC #13285)**

BUSINESS ADDRESS: One Newark Center, 20th Floor, Newark, NJ 07102. PHONE: (800) 333-4167 x-269. UNDERWRITING LIMITATION b/: \$1,932,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**ALLEGHENY SURETY COMPANY (NAIC #34541)**

BUSINESS ADDRESS: 4217 Steubenville Pike, Pittsburgh, PA 15205. PHONE: (412) 921-3077. UNDERWRITING LIMITATION b/: \$296,000. SURETY LICENSES c,f/: PA. INCORPORATED IN: Pennsylvania.

**ALLIED Property and Casualty Insurance Company (NAIC #42579)**

BUSINESS ADDRESS: ONE WEST NATIONWIDE BLVD., 1-04-701, COLUMBUS, OH 43215-2220. PHONE: (515) 508-4211. UNDERWRITING LIMITATION b/: \$5,772,000. SURETY LICENSES c,f/: AZ, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MO, MT, NE., NV, NM, ND, OH, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

**Allied World Insurance Company (NAIC #22730)**

BUSINESS ADDRESS: 199 Water Street, New York, NY 10038. PHONE: (646) 794-0500. UNDERWRITING LIMITATION b/: \$50,007,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**Allied World Reinsurance Company (NAIC #22730) 1****AMCO Insurance Company (NAIC #19100)**

BUSINESS ADDRESS: ONE WEST NATIONWIDE BLVD., 1-04-701, COLUMBUS, OH 43215-2220. PHONE: (515) 508-4211. UNDERWRITING LIMITATION b/: \$42,916,000. SURETY LICENSES c,f/: AZ, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MO, MT, NE., NV, NM, NC, ND, OH, OR, PA,

SC, SD, TN, TX, UT, VA, WA, WI,  
WY. INCORPORATED IN: Iowa.

**AMERICAN ALTERNATIVE  
INSURANCE CORPORATION (NAIC  
#19720)**

BUSINESS ADDRESS: 555 COLLEGE  
ROAD EAST, P.O. BOX 5241,  
PRINCETON, NJ 08543. PHONE: (609)  
243-4200. UNDERWRITING  
LIMITATION b/: \$15,623,000.  
SURETY LICENSES c.f/: AL, AK, AZ,  
AR, CA, CO, CT, DE, DC, FL, GA, HI,  
ID, IL, IN, IA, KS, KY, LA, ME, MD,  
MA, MI, MN, MS, MO, MP, MT, NE.,  
NV, NJ, NM, NY, NC, ND, OH, OK,  
OR, PA, PR, RI, SC, SD, TN, TX, UT,  
VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Delaware.

**American Automobile Insurance  
Company (NAIC #21849)**

BUSINESS ADDRESS: 777 San Marin  
Drive, Novato, CA 94998. PHONE:  
(415) 899-2000. UNDERWRITING  
LIMITATION b/: \$16,051,000.  
SURETY LICENSES c.f/: AL, AK, AZ,  
AR, CA, CO, CT, DE, DC, FL, GA, HI,  
ID, IL, IN, IA, KS, KY, LA, ME, MD,  
MA, MI, MN, MS, MO, MT, NE., NV,  
NH, NJ, NM, NY, NC, OH, OK, OR,  
PA, RI, SC, SD, TN, TX, UT, VT, VA,  
WA, WV, WI, WY. INCORPORATED  
IN: Missouri.

**AMERICAN BANKERS INSURANCE  
COMPANY OF FLORIDA (NAIC  
#10111)**

BUSINESS ADDRESS: 11222 QUAIL  
ROOST DRIVE, MIAMI, FL 33157-  
6596. PHONE: (305) 253-2244.  
UNDERWRITING LIMITATION b/:  
\$50,647,000. SURETY LICENSES c.f/  
: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY,  
LA, ME, MD, MA, MI, MN, MS, MO,  
MT, NE., NV, NH, NJ, NM, NY, NC,  
ND, OH, OK, OR, PA, PR, RI, SC, SD,  
TN, TX, UT, VT, VA, VI, WA, WV,  
WI, WY. INCORPORATED IN:  
Florida.

**American Casualty Company of  
Reading, Pennsylvania (NAIC #20427)**

BUSINESS ADDRESS: 333 S. WABASH  
AVE, CHICAGO, IL 60604. PHONE:  
(312) 822-5000. UNDERWRITING  
LIMITATION b/: \$13,661,000.  
SURETY LICENSES c.f/: AL, AK, AZ,  
AR, CA, CO, CT, DE, DC, FL, GA, HI,  
ID, IL, IN, IA, KS, KY, LA, ME, MD,  
MA, MI, MN, MS, MO, MT, NE., NV,  
NH, NJ, NM, NY, NC, ND, OH, OK,  
OR, PA, PR, RI, SC, SD, TN, TX, UT,  
VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Pennsylvania.

**AMERICAN CONTRACTORS  
INDEMNITY COMPANY (NAIC  
#10216)2**

BUSINESS ADDRESS: 601 South  
Figueroa Street, 16th Floor, Los  
Angeles, CA 90017. PHONE: (310)  
649-0990. UNDERWRITING  
LIMITATION b/: \$7,088,000. SURETY  
LICENSES c.f/: AL, AK, AZ, AR, CA,  
CO, CT, DE, DC, FL, GA, GU, HI, ID,  
IL, IN, IA, KS, KY, LA, ME, MD, MI,  
MN, MS, MO, MP, MT, NE., NV, NJ,  
NM, NY, ND, OH, OK, OR, PA, RI, SC,  
SD, TN, TX, UT, VA, WA, WV, WI,  
WY. INCORPORATED IN: California.

**American Fire and Casualty Company  
(NAIC #24066)**

BUSINESS ADDRESS: 62 Maple  
Avenue, Keene, NH 03431. PHONE:  
(617) 357-9500. UNDERWRITING  
LIMITATION b/: \$4,649,000. SURETY  
LICENSES c.f/: AL, AK, AZ, AR, CA,  
CO, CT, DE, DC, FL, GA, ID, IL, IN,  
IA, KS, KY, LA, MD, MA, MI, MN,  
MS, MO, MT, NE., NV, NJ, NM, NY,  
NC, ND, OH, OK, OR, PA, RI, SC, SD,  
TN, TX, UT, VA, WA, WV, WI, WY.  
INCORPORATED IN: New  
Hampshire.

**American Guarantee and Liability  
Insurance Company (NAIC #26247)**

BUSINESS ADDRESS: 1400 AMERICAN  
LANE, TOWER I, 18TH FLOOR,  
SCHAUMBURG, IL 60196-1056.  
PHONE: (847) 605-6000.  
UNDERWRITING LIMITATION b/:  
\$18,130,000. SURETY LICENSES c.f/  
: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY,  
LA, ME, MD, MA, MI, MN, MS, MO,  
MT, NE., NV, NH, NJ, NM, NY, NC,  
ND, OH, OK, OR, PA, RI, SC, SD, TN,  
TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: New York.

**American Home Assurance Company  
(NAIC #19380)**

BUSINESS ADDRESS: 175 WATER  
STREET, 18TH FLOOR, NEW YORK,  
NY 10038. PHONE: (212) 770-7000.  
UNDERWRITING LIMITATION b/:  
\$600,434,000. SURETY LICENSES c.f/  
: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, GU, HI, ID, IL, IN, IA, KS,  
KY, LA, ME, MD, MA, MI, MN, MS,  
MO, MP, MT, NE., NV, NH, NJ, NM,  
NY, NC, ND, OH, OK, OR, PA, RI, SC,  
SD, TN, TX, UT, VT, VA, WA, WV,  
WI, WY. INCORPORATED IN: New  
York.

**American Insurance Company (The)  
(NAIC #21857)**

BUSINESS ADDRESS: 777 San Marin  
Drive, Novato, CA 94998. PHONE:  
(415) 899-2000. UNDERWRITING  
LIMITATION b/: \$31,226,000.

SURETY LICENSES c.f/: AL, AK, AZ,  
AR, CA, CO, CT, DE, DC, FL, GA, HI,  
ID, IL, IN, IA, KS, KY, LA, ME, MD,  
MA, MI, MN, MS, MO, MT, NE., NV,  
NH, NJ, NM, NY, NC, OH, OK, OR,  
PA, PR, RI, SC, SD, TN, TX, UT, VT,  
VA, WA, WV, WI, WY.  
INCORPORATED IN: Ohio.

**AMERICAN ROAD INSURANCE  
COMPANY (THE) (NAIC #19631)**

BUSINESS ADDRESS: One American  
Road, MD 7600, Dearborn, MI 48126-  
2701. PHONE: (313) 337-1102.  
UNDERWRITING LIMITATION b/:  
\$21,404,000. SURETY LICENSES c.f/  
: AL, AK, AZ, AR, CA, CO, DE, DC,  
FL, GA, HI, ID, IL, IN, IA, KS, KY, LA,  
ME, MD, MA, MI, MN, MS, MO, MT,  
NE., NV, NH, NJ, NM, NY, NC, ND,  
OH, OK, OR, PA, RI, SC, SD, TN, TX,  
UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Michigan.

**American Safety Casualty Insurance  
Company (NAIC #39969)**

BUSINESS ADDRESS: 100 Galleria  
Pkwy, SE, Suite 700, Atlanta, GA  
30339. PHONE: (770) 916-1908.  
UNDERWRITING LIMITATION b/:  
\$7,894,000. SURETY LICENSES c.f/  
: AL, AK, AZ, AR, CA, CO, DE, DC, FL,  
GA, HI, ID, IL, IN, IA, KS, KY, LA,  
ME, MD, MI, MN, MS, MO, MT, NE.,  
NV, NJ, NM, NY, NC, ND, OH, OK,  
OR, PA, PR, RI, SC, SD, TN, TX, UT,  
VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Oklahoma.

**AMERICAN SERVICE INSURANCE  
COMPANY, INC. (NAIC #42897)**

BUSINESS ADDRESS: 150 Northwest  
Point Blvd., Suite 300, Elk Grove  
Village, IL 60007. PHONE: (847) 472-  
6700. UNDERWRITING LIMITATION  
b/: \$2,488,000. SURETY LICENSES  
c.f/: AL, AK, AZ, CO, FL, GA, HI, ID,  
IL, IN, IA, KS, KY, MD, MA, MS, MO,  
MT, NE., NV, NY, OH, OK, PA, SC,  
SD, TX, UT, VA, WA, WV, WY.  
INCORPORATED IN: Illinois.

**American Southern Insurance  
Company (NAIC #10235)**

BUSINESS ADDRESS: P O Box 723030,  
Atlanta, GA 31139-0030. PHONE:  
(404) 266-9599. UNDERWRITING  
LIMITATION b/: \$3,695,000. SURETY  
LICENSES c.f/: AL, AZ, AR, CO, DE,  
DC, FL, GA, IL, IN, KS, KY, MD, MI,  
MN, MS, MO, NE., NJ, NY, NC, OH,  
PA, SC, TN, UT, VA, WA, WV, WI,  
WY. INCORPORATED IN: Kansas.

**American Surety Company (NAIC  
#31380)**

BUSINESS ADDRESS: 250 East 96th  
Street, Suite 202, Indianapolis, IN  
46240. PHONE: (317) 875-8700.

UNDERWRITING LIMITATION b/: \$1,099,000. SURETY LICENSES c,f/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Indiana.

**Amerisure Mutual Insurance Company (NAIC #23396)**

BUSINESS ADDRESS: P. O. Box 2060, Farmington Hills, MI 48333-2060. PHONE: (248) 615-9000. UNDERWRITING LIMITATION b/: \$73,287,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

**Antilles Insurance Company (NAIC #10308)**

BUSINESS ADDRESS: PO Box 9023507, San Juan, PR 00902-3507. PHONE: (787) 474-4900. UNDERWRITING LIMITATION b/: \$6,379,000. SURETY LICENSES c,f/: PR. INCORPORATED IN: Puerto Rico.

**Arch Insurance Company (NAIC #11150)**

BUSINESS ADDRESS: 300 Plaza Three, Jersey City, NJ 07311-1107. PHONE: (201) 743-4000. UNDERWRITING LIMITATION b/: \$56,348,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Missouri.

**Arch Reinsurance Company (NAIC #10348)**

BUSINESS ADDRESS: 445 South Street, Suite 220, P.O. Box 1988, Morristown, NJ 07962-1988. PHONE: (973) 898-9575. UNDERWRITING LIMITATION b/: \$30,103,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV. INCORPORATED IN: Nebraska.

**Argonaut Insurance Company (NAIC #19801)**

BUSINESS ADDRESS: P.O. BOX 469011, SAN ANTONIO, TX 78246. PHONE: (800) 470-7958.

UNDERWRITING LIMITATION b/: \$38,052,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**ASPEN AMERICAN INSURANCE COMPANY (NAIC #43460)**

BUSINESS ADDRESS: 175 Capital Boulevard, Suite 300, Rocky Hill, CT 06067. PHONE: (860) 258-3500. UNDERWRITING LIMITATION b/: \$17,204,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Texas.

**Associated Indemnity Corporation (NAIC #21865)**

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: \$8,116,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

**Atlantic Specialty Insurance Company (NAIC #27154)**

BUSINESS ADDRESS: 150 Royall Street, Canton, MA 02021-1030. PHONE: (781) 332-7000. UNDERWRITING LIMITATION b/: \$71,674,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

**Auto-Owners Insurance Company (NAIC #18988)**

BUSINESS ADDRESS: P.O. BOX 30660, LANSING, MI 48909-8160. PHONE: (517) 323-1200. UNDERWRITING LIMITATION b/: \$659,097,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE., NV, NM, NC, ND, OH, OR, PA, SC, SD, TN, UT, VA, WA, WI. INCORPORATED IN: Michigan.

**AXIS Insurance Company (NAIC #37273)**

BUSINESS ADDRESS: 11680 Great Oaks Way, Ste. 500, Alpharetta, GA 30022. PHONE: (678) 746-9400. UNDERWRITING LIMITATION b/: \$53,888,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**AXIS Reinsurance Company (NAIC #20370)**

BUSINESS ADDRESS: 11680 Great Oaks Way, Suite 500, Alpharetta, GA 30022. PHONE: (678) 746-9400. UNDERWRITING LIMITATION b/: \$75,680,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**Bankers Insurance Company (NAIC #33162)**

BUSINESS ADDRESS: P.O. BOX 15707, ST. PETERSBURG, FL 33733. PHONE: (727) 823-4000. UNDERWRITING LIMITATION b/: \$5,514,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

**Beazley Insurance Company, Inc. (NAIC #37540)**

BUSINESS ADDRESS: 30 Batterson Park Road, Farmington, CT 06032. PHONE: (860) 677-3700. UNDERWRITING LIMITATION b/: \$11,938,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Berkley Insurance Company (NAIC #32603)**

BUSINESS ADDRESS: 475 STEAMBOAT ROAD, GREENWICH, CT 06830. PHONE: (203) 542-3800. UNDERWRITING LIMITATION b/: \$358,886,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO,

MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Berkley Regional Insurance Company (NAIC #29580)**

BUSINESS ADDRESS: 11201 Douglas Avenue, Urbandale, IA 50322. PHONE: (203) 629-3000. UNDERWRITING LIMITATION b/: \$71,731,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**BITUMINOUS CASUALTY CORPORATION (NAIC #20095)**

BUSINESS ADDRESS: 320-18TH STREET, ROCK ISLAND, IL 61201-8744. PHONE: (309) 786-5401. UNDERWRITING LIMITATION b/: \$27,421,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**BOND SAFEGUARD INSURANCE COMPANY (NAIC #27081)**

BUSINESS ADDRESS: 10002 Shelbyville Road, Suite 100, Louisville, KY 40223. PHONE: (502) 253-6500. UNDERWRITING LIMITATION b/: \$2,935,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, IL, IN, KS, KY, LA, ME, MD, MA, MN, MS, MO, MP, MT, NV, NH, NJ, NM, NC, ND, OH, OK, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Boston Indemnity Company, Inc. (NAIC #30279)**

BUSINESS ADDRESS: 21 High Street, Suite 208B, North Andover, MA 01845. PHONE: (978) 984-5783. UNDERWRITING LIMITATION b/: \$451,000. SURETY LICENSES c,f/: SD. INCORPORATED IN: South Dakota.

**Brierfield Insurance Company (NAIC #10993)**

BUSINESS ADDRESS: 6300 University Parkway, Sarasota, FL 34240-8424. PHONE: (800) 226-3224 x-2726. UNDERWRITING LIMITATION b/: \$793,000. SURETY LICENSES c,f/: AL, AR, GA, MS, TN. INCORPORATED IN: Mississippi.

**BRITISH AMERICAN INSURANCE COMPANY (NAIC #32875)**

BUSINESS ADDRESS: P.O. Box 1590, Dallas, TX 75221-1590. PHONE: (214) 443-5500. UNDERWRITING LIMITATION b/: \$3,154,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

**Capitol Indemnity Corporation (NAIC #10472)**

BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. PHONE: (608) 829-4200. UNDERWRITING LIMITATION b/: \$16,246,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**Capitol Preferred Insurance Company, Inc. (NAIC #10908)**

BUSINESS ADDRESS: 2255 Killlearn Center Boulevard, Tallahassee, FL 32309. PHONE: (850) 521-0742. UNDERWRITING LIMITATION b/: \$1,666,000. SURETY LICENSES c,f/: FL, GA, SC. INCORPORATED IN: Florida.

**Carolina Casualty Insurance Company (NAIC #10510)**

BUSINESS ADDRESS: P. O. BOX 2575, JACKSONVILLE, FL 32203-2575. PHONE: (904) 363-0900. UNDERWRITING LIMITATION b/: \$24,270,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

**Centennial Casualty Company (NAIC #34568)**

BUSINESS ADDRESS: 2200 Woodcrest Place, Suite 200, Birmingham, AL 35209. PHONE: (205) 414-2600. UNDERWRITING LIMITATION b/: \$4,870,000. SURETY LICENSES c,f/: AL. INCORPORATED IN: Alabama.

**CENTRAL MUTUAL INSURANCE COMPANY (NAIC #20230)**

BUSINESS ADDRESS: P.O. Box 351, VAN WERT, OH 45891-0351. PHONE: (419) 238-1010. UNDERWRITING LIMITATION b/: \$39,693,000. SURETY LICENSES c,f/: AZ, CA, CO, CT, DE, GA, IL, IN, IA, KY, MA, MI, NV, NH, NJ, NM, NY, NC, OH, OK, PA, TN, TX, VA. INCORPORATED IN: Ohio.

**CENTURY SURETY COMPANY (NAIC #36951)**

BUSINESS ADDRESS: 465 Cleveland Avenue, Westerville, OH 43082. PHONE: (614) 895-2000. UNDERWRITING LIMITATION b/: \$12,586,000. SURETY LICENSES c,f/: AZ, IN, OH, WV, WI. INCORPORATED IN: Ohio.

**Cherokee Insurance Company (NAIC #10642)**

BUSINESS ADDRESS: 34200 Mound Road, Sterling Heights, MI 48310. PHONE: (800) 201-0450 x-3400. UNDERWRITING LIMITATION b/: \$13,810,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE., NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

**CHUBB INDEMNITY INSURANCE COMPANY (NAIC #12777)**

BUSINESS ADDRESS: 15 Mountain View Road, Warren, NJ 07059. PHONE: (212) 612-4000. UNDERWRITING LIMITATION b/: \$11,224,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**Cincinnati Casualty Company (The) (NAIC #28665)**

BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: \$29,265,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE., NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Cincinnati Insurance Company (The) (NAIC #10677)**

BUSINESS ADDRESS: P.O. BOX 145496, CINCINNATI, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: \$362,095,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**CITIZENS INSURANCE COMPANY OF AMERICA (NAIC #31534)**

BUSINESS ADDRESS: 645 W. GRAND RIVER AVENUE, HOWELL, MI 48843-2151. PHONE: (517) 546-2160. UNDERWRITING LIMITATION b/: \$68,263,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, GA, HI, IL, IN, IA, KS, ME, MD, MA, MI, MN, MS, MO, MT, NE., NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Michigan.

**COLONIAL AMERICAN CASUALTY AND SURETY COMPANY (NAIC #34347)**

BUSINESS ADDRESS: 1400 AMERICAN LANE, TOWER I, 18TH FLOOR, SCHAUMBURG, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION b/: \$2,300,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Maryland.

**COLONIAL SURETY COMPANY (NAIC #10758)**

BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION b/: \$2,361,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**COMPANION PROPERTY AND CASUALTY INSURANCE COMPANY (NAIC #12157)**

BUSINESS ADDRESS: P.O. Box 100165, Columbia, SC 29202. PHONE: (803) 735-0672. UNDERWRITING LIMITATION b/: \$24,192,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Carolina.

**Continental Casualty Company (NAIC #20443)**

BUSINESS ADDRESS: 333 S. WABASH AVE, CHICAGO, IL 60604. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: \$730,996,000.

SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**CONTINENTAL HERITAGE INSURANCE COMPANY (NAIC #39551)**

BUSINESS ADDRESS: 6140 PARKLAND BLVD, STE 321, MAYFIELD HEIGHTS, OH 44124. PHONE: (440) 229-3420. UNDERWRITING LIMITATION b/: \$656,000. SURETY LICENSES c,f/: AZ, CA, CO, DC, FL, GA, ID, IL, IN, IA, LA, MD, MN, MS, NV, ND, OH, PA, SC, SD, TN, TX, UT, VA, WV. INCORPORATED IN: Florida.

**Continental Insurance Company (The) (NAIC #35289)**

BUSINESS ADDRESS: 333 S. WABASH AVE, CHICAGO, IL 60604. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: \$132,296,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**CONTRACTORS BONDING AND INSURANCE COMPANY (NAIC #37206)**

BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/: \$10,143,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

**Cooperativa de Seguros Múltiples de Puerto Rico (NAIC #18163)**

BUSINESS ADDRESS: PO BOX 363846, SAN JUAN, PR 00936-3846. PHONE: (787) 622-3575 x-2512. UNDERWRITING LIMITATION b/: \$18,193,000. SURETY LICENSES c,f/: FL, PR. INCORPORATED IN: Puerto Rico.

**CorePointe Insurance Company (NAIC #10499)**

BUSINESS ADDRESS: 401 South Old Woodward Avenue, Suite 300,

Birmingham, MI 48009. PHONE: (800) 782-9164. UNDERWRITING LIMITATION b/: \$13,226,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

**CUMIS INSURANCE SOCIETY, INC. (NAIC #10847)**

BUSINESS ADDRESS: P. O. Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION b/: \$56,205,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

**Darwin National Assurance Company (NAIC #16624)**

BUSINESS ADDRESS: 1690 New Britain Avenue, Suite 101, Farmington, CT 06032. PHONE: (860) 284-1300. UNDERWRITING LIMITATION b/: \$36,842,000. SURETY LICENSES c,f/: AL, AK, AZ, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Developers Surety and Indemnity Company (NAIC #12718)**

BUSINESS ADDRESS: P.O. BOX 19725, IRVINE, CA 92623-9725. PHONE: (949) 263-3300. UNDERWRITING LIMITATION b/: \$5,624,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

**Employers Insurance Company of Wausau (NAIC #21458)**

BUSINESS ADDRESS: 2000 Westwood Drive, Wausau, WI 54401. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: \$112,776,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT,

VT, VA, VI, WA, WV, WI, WY.  
INCORPORATED IN: Wisconsin.

**Employers Mutual Casualty Company  
(NAIC #21415)**

BUSINESS ADDRESS: P. O. BOX 712,  
DES MOINES, IA 50306-0712.  
PHONE: (515) 280-2511.  
UNDERWRITING LIMITATION b/  
\$96,302,000. SURETY LICENSES c,f/  
: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY,  
LA, ME, MD, MA, MI, MN, MS, MO,  
MT, NE., NV, NH, NJ, NM, NY, NC,  
ND, OH, OK, OR, PA, RI, SC, SD, TN,  
TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Iowa.

**Endurance American Insurance  
Company (NAIC #10641)**

BUSINESS ADDRESS: 333 Westchester  
Avenue, White Plains, NY 10604.  
PHONE: (914) 468-8000.  
UNDERWRITING LIMITATION b/  
\$23,100,000. SURETY LICENSES c,f/  
: AL, AK, AZ, AR, CO, DE, DC, GA,  
HI, ID, IL, IN, IA, KS, KY, LA, MD,  
MA, MI, MS, MO, MT, NE., NV, NH,  
NJ, NM, NY, ND, OH, OK, OR, PA, RI,  
SC, SD, TN, TX, UT, VT, WA, WV,  
WI, WY. INCORPORATED IN:  
Delaware.

**Endurance Reinsurance Corporation of  
America (NAIC #11551)**

BUSINESS ADDRESS: 333 Westchester  
Avenue, White Plains, NY 10604.  
PHONE: (914) 468-8000.  
UNDERWRITING LIMITATION b/  
\$35,641,000. SURETY LICENSES c,f/  
: AL, AK, AZ, AR, CA, CO, DE, DC,  
GA, HI, ID, IL, IN, IA, KS, KY, LA,  
ME, MD, MA, MI, MN, MS, MO, MT,  
NE., NV, NJ, NM, NY, NC, ND, OH,  
OK, OR, PA, PR, RI, SC, SD, TN, TX,  
UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Delaware.

**Erie Insurance Company (NAIC  
#26263)**

BUSINESS ADDRESS: 100 ERIE  
INSURANCE PLACE, ERIE, PA 16530.  
PHONE: (814) 870-2000.  
UNDERWRITING LIMITATION b/  
\$27,642,000. SURETY LICENSES c,f/  
: DC, IL, IN, KY, MD, MN, NY, NC,  
OH, PA, TN, VA, WV, WI.  
INCORPORATED IN: Pennsylvania.

**Everest Reinsurance Company (NAIC  
#26921)**

BUSINESS ADDRESS: P.O. Box 830,  
Liberty Corner, NJ 07938-0830.  
PHONE: (908) 604-3000.  
UNDERWRITING LIMITATION b/  
\$261,300,000. SURETY LICENSES c,f/  
: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY,  
LA, ME, MD, MA, MI, MN, MS, MO,

MT, NE., NV, NH, NJ, NM, NY, NC,  
ND, OH, OK, OR, PA, RI, SC, SD, TN,  
TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Delaware.

**Evergreen National Indemnity  
Company (NAIC #12750)**

BUSINESS ADDRESS: 6140  
PARKLAND BLVD, STE 321,  
MAYFIELD HEIGHTS, OH 44124.  
PHONE: (440) 229-3420.  
UNDERWRITING LIMITATION b/  
\$3,365,000. SURETY LICENSES c,f/  
: AL, AK, AZ, AR, CA, CO, CT, DE, DC,  
FL, GA, HI, ID, IL, IN, IA, KS, KY, LA,  
ME, MD, MA, MI, MN, MS, MO, MT,  
NE., NV, NH, NJ, NM, NY, ND, OH,  
OK, OR, PA, RI, SC, SD, TN, TX, UT,  
VT, VA, WA, WI, WY.  
INCORPORATED IN: Ohio.

**Executive Risk Indemnity Inc. (NAIC  
#35181)**

BUSINESS ADDRESS: 15 Mountain  
View Road, Warren, NJ 07059.  
PHONE: (908) 903-2000.  
UNDERWRITING LIMITATION b/  
\$110,064,000. SURETY LICENSES c,f/  
: AL, AK, AZ, AR, CA, CO, DE, DC,  
FL, GA, HI, ID, IL, IN, IA, KS, KY, LA,  
ME, MD, MA, MI, MN, MS, MO, MP,  
MT, NE., NV, NH, NJ, NM, NY, NC,  
ND, OH, OK, OR, PA, RI, SC, SD, TN,  
TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Delaware.

**Explorer Insurance Company (NAIC  
#40029)**

BUSINESS ADDRESS: P.O. BOX 85563,  
SAN DIEGO, CA 92186-5563.  
PHONE: (858) 350-2400 x-2550.  
UNDERWRITING LIMITATION b/  
\$4,728,000. SURETY LICENSES c,f/  
: AZ, CA, CO, HI, ID, IL, IN, IA, MT,  
NV, NM, OR, PA, TX, UT, WA.  
INCORPORATED IN: California.

**Farmers Alliance Mutual Insurance  
Company (NAIC #19194)**

BUSINESS ADDRESS: P.O. Box 1401,  
McPherson, KS 67460. PHONE: (620)  
241-2200. UNDERWRITING  
LIMITATION b/: \$13,273,000.  
SURETY LICENSES c,f/: CO, ID, IA,  
KS, MN, MO, MT, NE., NM, ND, OK,  
SD. INCORPORATED IN: Kansas.

**Farmington Casualty Company (NAIC  
#41483)**

BUSINESS ADDRESS: ONE TOWER  
SQUARE, HARTFORD, CT 06183.  
PHONE: (860) 277-0111.  
UNDERWRITING LIMITATION b/  
\$26,924,000. SURETY LICENSES c,f/  
: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY,  
LA, ME, MD, MA, MI, MN, MS, MO,  
MT, NE., NV, NH, NJ, NM, NY, NC,  
ND, OH, OK, OR, PA, RI, SC, SD, TN,

TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Connecticut.

**Farmland Mutual Insurance Company  
(NAIC #13838)**

BUSINESS ADDRESS: ONE WEST  
NATIONWIDE BLVD., 1-04-701,  
COLUMBUS, OH 43215-2220.  
PHONE: (615) 508-3300.  
UNDERWRITING LIMITATION b/  
\$16,041,000. SURETY LICENSES c,f/  
: AL, AZ, AR, CA, CO, DE, DC, FL,  
GA, HI, ID, IL, IN, IA, KS, KY, MD, MI,  
MN, MS, MO, MT, NE., NV, NC, ND,  
OH, OK, OR, PA, SC, SD, TN, TX, UT,  
VA, WA, WV, WI, WY.  
INCORPORATED IN: Iowa.

**FCCI Insurance Company (NAIC  
#10178)**

BUSINESS ADDRESS: 6300 University  
Parkway, Sarasota, FL 34240-8424.  
PHONE: (800) 226-3224 x-2726.  
UNDERWRITING LIMITATION b/  
\$47,767,000. SURETY LICENSES c,f/  
: AL, AZ, AR, CO, FL, GA, IL, IN, IA,  
KS, KY, LA, MD, MI, MS, MO, NE.,  
NC, OH, OK, PA, SC, TN, TX, VA.  
INCORPORATED IN: Florida.

**Federal Insurance Company (NAIC  
#20281)**

BUSINESS ADDRESS: 15 Mountain  
View Road, Warren, NJ 07059.  
PHONE: (908) 903-2000.  
UNDERWRITING LIMITATION b/  
\$1,262,813,000. SURETY LICENSES  
c,f/: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, GU, HI, ID, IL, IN, IA, KS,  
KY, LA, ME, MD, MA, MI, MN, MS,  
MO, MP, MT, NE., NV, NH, NJ, NM,  
NY, NC, ND, OH, OK, OR, PA, PR, RI,  
SC, SD, TN, TX, UT, VT, VA, VI, WA,  
WV, WI, WY. INCORPORATED IN:  
Indiana.

**FEDERATED MUTUAL INSURANCE  
COMPANY (NAIC #13935)**

BUSINESS ADDRESS: 121 EAST PARK  
SQUARE, OWATONNA, MN 55060.  
PHONE: (507) 455-5200.  
UNDERWRITING LIMITATION b/  
\$236,544,000. SURETY LICENSES c,f/  
: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY,  
LA, ME, MD, MA, MI, MN, MS, MO,  
MT, NE., NV, NH, NJ, NM, NY, NC,  
ND, OH, OK, OR, PA, RI, SC, SD, TN,  
TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Minnesota.

**Fidelity and Deposit Company of  
Maryland (NAIC #39306)**

BUSINESS ADDRESS: 1400 AMERICAN  
LANE, TOWER I, 18TH FLOOR,  
SCHAUMBURG, IL 60196-1056.  
PHONE: (847) 605-6000.  
UNDERWRITING LIMITATION b/  
\$16,058,000. SURETY LICENSES c,f/

: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

**FIDELITY AND GUARANTY INSURANCE COMPANY (NAIC #35386)**

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: \$1,926,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

**Fidelity and Guaranty Insurance Underwriters, Inc. (NAIC #25879)**

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: \$9,921,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**Fidelity National Property and Casualty Insurance Company (NAIC #16578)**

BUSINESS ADDRESS: P. O. Box 45126, Jacksonville, FL 32232-5126. PHONE: (800) 849-6140. UNDERWRITING LIMITATION b/: \$10,461,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**Financial Casualty & Surety, Inc. (NAIC #35009)**

BUSINESS ADDRESS: 3131 Eastside, Suite 600, Houston, TX 77098. PHONE: (800) 392-1604. UNDERWRITING LIMITATION b/: \$1,200,000. SURETY LICENSES c,f/: AZ, CA, CT, DE, FL, ID, IN, IA, KS, LA, MD, MI, MN, MS, MT, NV, NJ, NY, NC, ND, OH, PA, SC, TN, TX, UT, VT, WA, WV. INCORPORATED IN: Texas.

**Financial Pacific Insurance Company (NAIC #31453)**

BUSINESS ADDRESS: P.O. BOX 73909, CEDAR RAPIDS, IA 52407-3909. PHONE: (319) 399-5700. UNDERWRITING LIMITATION b/: \$8,438,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, ID, KS, MO, MT, NE., NV, NM, ND, OK, OR, SD, UT, WA, WI. INCORPORATED IN: California.

**Fireman's Fund Insurance Company (NAIC #21873)**

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: \$244,098,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

**First Founders Assurance Company (NAIC #12150)**

BUSINESS ADDRESS: 6 Mill Ridge Lane, Chester, NJ 07930-2486. PHONE: (908) 879-0990. UNDERWRITING LIMITATION b/: \$341,000. SURETY LICENSES c,f/: NJ. INCORPORATED IN: New Jersey.

**First Insurance Company of Hawaii, Ltd. (NAIC #41742)**

BUSINESS ADDRESS: P.O. Box 2866, Honolulu, HI 96803. PHONE: (808) 527-7777. UNDERWRITING LIMITATION b/: \$28,690,000. SURETY LICENSES c,f/: GU, HI. INCORPORATED IN: Hawaii.

**First Liberty Insurance Corporation (The) (NAIC #33588)**

BUSINESS ADDRESS: 2815 Forbs Avenue, Suite 200, Hoffman Estates, IL 60192. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: \$2,091,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**First National Insurance Company of America (NAIC #24724)**

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: \$4,847,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI,

MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**First Net Insurance Company (NAIC #10972)**

BUSINESS ADDRESS: 102 JULALE CENTER, HAGATNA, GU 96910. PHONE: (671) 477-8613. UNDERWRITING LIMITATION b/: \$1,110,000. SURETY LICENSES c,f/: GU, MP. INCORPORATED IN: Guam.

**General Casualty Company Of Wisconsin (NAIC #24414)**

BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. PHONE: (608) 837-4440. UNDERWRITING LIMITATION b/: \$34,726,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**General Reinsurance Corporation (NAIC #22039)**

BUSINESS ADDRESS: 120 LONG RIDGE ROAD, STAMFORD, CT 06902-1843. PHONE: (203) 328-5000. UNDERWRITING LIMITATION b/: \$1,069,320,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**GRANGE INSURANCE COMPANY OF MICHIGAN (NAIC #11136)**

BUSINESS ADDRESS: 671 South High Street, P.O. Box 1218, Columbus, OH 43216-1218. PHONE: (614) 445-2900. UNDERWRITING LIMITATION b/: \$3,299,000. SURETY LICENSES c,f/: MI, OH. INCORPORATED IN: Ohio.

**GRANGE MUTUAL CASUALTY COMPANY (NAIC #14060)**

BUSINESS ADDRESS: 671 South High Street, Columbus, OH 43206-1014. PHONE: (614) 445-2900. UNDERWRITING LIMITATION b/: \$88,234,000. SURETY LICENSES c,f/: AL, GA, IL, IN, IA, KS, KY, MO, OH, PA, SC, TN, VA, WI. INCORPORATED IN: Ohio.

**GRANITE RE, INC. (NAIC #26310)**

BUSINESS ADDRESS: 14001 Quailbrook Drive, Oklahoma City, OK 73134. PHONE: (405) 752-2600.

UNDERWRITING LIMITATION b/: \$1,534,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE., NV, NM, NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WV, WI, WY. INCORPORATED IN: Oklahoma.

**Granite State Insurance Company (NAIC #23809)**

BUSINESS ADDRESS: 175 WATER STREET, 18TH FLOOR, NEW YORK, NY 10038. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: \$3,927,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**GRAY CASUALTY & SURETY COMPANY (THE) (NAIC #10671)**

BUSINESS ADDRESS: P.O. Box 6202, Metairie, LA 70009-6202. PHONE: (504) 888-7790. UNDERWRITING LIMITATION b/: \$1,419,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, DC, GA, IL, KY, LA, MD, MS, MO, NV, NM, NC, OK, PA, SC, TN, TX. INCORPORATED IN: Louisiana.

**GRAY INSURANCE COMPANY (THE) (NAIC #36307)**

BUSINESS ADDRESS: P.O. BOX 6202, METAIRIE, LA 70009-6202. PHONE: (504) 888-7790. UNDERWRITING LIMITATION b/: \$8,895,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Louisiana.

**Great American Alliance Insurance Company (NAIC #26832)**

BUSINESS ADDRESS: 301 E Fourth Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: \$3,085,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Great American Insurance Company (NAIC #16691)**

BUSINESS ADDRESS: 301 E Fourth Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING

LIMITATION b/: \$146,964,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**GREAT AMERICAN INSURANCE COMPANY OF NEW YORK (NAIC #22136)**

BUSINESS ADDRESS: 301 E Fourth Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: \$4,523,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**Great Northern Insurance Company (NAIC #20303)**

BUSINESS ADDRESS: 15 Mountain View Road, Warren, NJ 07059. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: \$43,859,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**Greenwich Insurance Company (NAIC #22322)**

BUSINESS ADDRESS: SEAVIEW HOUSE, 70 SEAVIEW AVENUE, STAMFORD, CT 06902. PHONE: (203) 964-5200. UNDERWRITING LIMITATION b/: \$44,080,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Guarantee Company of North America USA (The) (NAIC #36650)**

BUSINESS ADDRESS: One Towne Square, Suite 1470, Southfield, MI 48076-3725. PHONE: (248) 281-0281 x-6012. UNDERWRITING LIMITATION b/: \$14,172,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK,

OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

**Hanover Insurance Company (The) (NAIC #22292)**

BUSINESS ADDRESS: 440 LINCOLN STREET, WORCESTER, MA 01653-0002. PHONE: (508) 853-7200 x-4476. UNDERWRITING LIMITATION b/: \$75,381,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**HARCO NATIONAL INSURANCE COMPANY (NAIC #26433)**

BUSINESS ADDRESS: 702 OBERLIN ROAD, RALEIGH, NC 27605-0800. PHONE: (919) 833-1600. UNDERWRITING LIMITATION b/: \$14,264,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Harleysville Mutual Insurance Company (NAIC #14168)3**

**Harleysville Worcester Insurance Company (NAIC #26182)**

BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2297. PHONE: (215) 256-5000. UNDERWRITING LIMITATION b/: \$19,161,000. SURETY LICENSES c,f/: AL, AR, CT, DE, DC, GA, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, NE., NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

**Hartford Accident and Indemnity Company (NAIC #22357)**

BUSINESS ADDRESS: One Hartford Plaza, Hartford, CT 06155-0001. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: \$220,024,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Hartford Casualty Insurance Company (NAIC #29424)**

BUSINESS ADDRESS: One Hartford Plaza, Hartford, CT 06155-0001. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: \$90,732,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**Hartford Fire Insurance Company (NAIC #19682)**

BUSINESS ADDRESS: One Hartford Plaza, Hartford, CT 06155-0001. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: \$1,301,254,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Hartford Insurance Company of Illinois (NAIC #38288)**

BUSINESS ADDRESS: One Hartford Plaza, Hartford, CT 06155-0001. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: \$130,098,000. SURETY LICENSES c,f/: CT, HI, IL, MI, NY, PA. INCORPORATED IN: Illinois.

**Hartford Insurance Company of the Midwest (NAIC #37478)**

BUSINESS ADDRESS: One Hartford Plaza, Hartford, CT 06155-0001. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: \$35,274,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**Hartford Insurance Company of the Southeast (NAIC #38261)**

BUSINESS ADDRESS: One Hartford Plaza, Hartford, CT 06155-0001. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: \$5,443,000. SURETY LICENSES c,f/: CT, FL, GA, KS, LA, MI, PA. INCORPORATED IN: Connecticut.

**Hudson Insurance Company (NAIC #25054)**

BUSINESS ADDRESS: 100 William Street, 5th Floor, New York, NY 10038. PHONE: (212) 978-2800. UNDERWRITING LIMITATION b/: \$39,890,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**IMT Insurance Company (NAIC #14257)**

BUSINESS ADDRESS: P.O. Box 1336, Des Moines, IA 50306-1336. PHONE: (515) 327-2777. UNDERWRITING LIMITATION b/: \$11,630,000. SURETY LICENSES c,f/: IL, IA, MN, MO, NE., SD, WI. INCORPORATED IN: Iowa.

**Indemnity Company of California (NAIC #25550)**

BUSINESS ADDRESS: P. O. BOX 19725, IRVINE, CA 92623-9725. PHONE: (949) 263-3300. UNDERWRITING LIMITATION b/: \$1,829,000. SURETY LICENSES c,f/: AK, AZ, CA, CO, GA, HI, ID, IN, MD, MT, NV, NM, OR, SC, UT, VA, WA, WY. INCORPORATED IN: California.

**Indemnity National Insurance Company (NAIC #18468)**

BUSINESS ADDRESS: 4800 Old Kingston Pike, Knoxville, TN 37919. PHONE: (865) 934-4360. UNDERWRITING LIMITATION b/: \$1,214,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, GA, KY, LA, MS, NV, NM, OK, SC, TN, TX, UT. INCORPORATED IN: Mississippi.

**Independence Casualty and Surety Company (NAIC #10024)**

BUSINESS ADDRESS: P.O. BOX 85563, SAN DIEGO, CA 92186-5563. PHONE: (858) 350-2400. UNDERWRITING LIMITATION b/: \$2,513,000. SURETY LICENSES c,f/: TX. INCORPORATED IN: Texas.

**Indiana Lumbermens Mutual Insurance Company (NAIC #14265)**

BUSINESS ADDRESS: 8888 KEYSTONE CROSSING, SUITE 250, INDIANAPOLIS, IN 46240. PHONE: (800) 428-1441. UNDERWRITING LIMITATION b/: \$1,696,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA,

WV, WI, WY. INCORPORATED IN: Indiana.

**Inland Insurance Company (NAIC #23264)**

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: \$15,846,000. SURETY LICENSES c,f/: AZ, CO, IA, KS, MN, MO, MT, NE., ND, OK, SD, WY. INCORPORATED IN: Nebraska.

**Insurance Company of the State of Pennsylvania (The) (NAIC #19429)**

BUSINESS ADDRESS: 175 WATER STREET, 18TH FLOOR, NEW YORK, NY 10038. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: \$95,196,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**Insurance Company of the West (NAIC #27847)**

BUSINESS ADDRESS: P.O. BOX 85563, SAN DIEGO, CA 92186-5563. PHONE: (858) 350-2400 x-2550. UNDERWRITING LIMITATION b/: \$34,509,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

**Insurors Indemnity Company (NAIC #43273)**

BUSINESS ADDRESS: P.O. Box 2683, Waco, TX 76702-2683. PHONE: (254) 759-3703 x-3727. UNDERWRITING LIMITATION b/: \$1,110,000. SURETY LICENSES c,f/: AR, NM, OK, TX. INCORPORATED IN: Texas.

**INTEGRAND ASSURANCE COMPANY (NAIC #26778)**

BUSINESS ADDRESS: PO Box 70128, San Juan, PR 00936-8128. PHONE: (787) 781-0707 x-200. UNDERWRITING LIMITATION b/: \$7,642,000. SURETY LICENSES c,f/: PR, VI. INCORPORATED IN: Puerto Rico.

**Integrity Mutual Insurance Company (NAIC #14303)**

BUSINESS ADDRESS: P.O. Box 539, Appleton, WI 54912-0539. PHONE: (920) 734-4511. UNDERWRITING LIMITATION b/: \$4,024,000. SURETY

LICENSES c,f/: IL, IA, MN, OH, WI.  
INCORPORATED IN: Wisconsin.

**International Fidelity Insurance Company (NAIC #11592)4**

BUSINESS ADDRESS: One Newark Center, Newark, NJ 07102-5207.  
PHONE: (973) 624-7200.  
UNDERWRITING LIMITATION b/: \$8,651,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

**ISLAND INSURANCE COMPANY, LIMITED (NAIC #22845)**

BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806-1520. PHONE: (808) 564-8200. UNDERWRITING LIMITATION b/: \$11,798,000. SURETY LICENSES c,f/: HI. INCORPORATED IN: Hawaii.

**Kansas Bankers Surety Company (The) (NAIC #15962)**

BUSINESS ADDRESS: P. O. Box 1654, Topeka, KS 66601. PHONE: (785) 228-0000. UNDERWRITING LIMITATION b/: \$14,780,000. SURETY LICENSES c,f/: AZ, AR, CO, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE., NM, ND, OH, OK, SD, TN, TX, UT, WV, WI, WY. INCORPORATED IN: Kansas.

**LEXINGTON NATIONAL INSURANCE CORPORATION (NAIC #37940)**

BUSINESS ADDRESS: P.O. BOX 6098, LUTHERVILLE, MD 21094. PHONE: (410) 625-0800. UNDERWRITING LIMITATION b/: \$1,842,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Maryland.

**Lexon Insurance Company (NAIC #13307)**

BUSINESS ADDRESS: 10002 Shelbyville Rd, Suite 100, Louisville, KY 40223. PHONE: (502) 253-6500. UNDERWRITING LIMITATION b/: \$4,397,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Texas.

**Liberty Insurance Corporation (NAIC #42404)**

BUSINESS ADDRESS: 2815 Forbs Avenue, Suite 200, Hoffman Estates, IL 60192. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: \$16,865,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Liberty Mutual Fire Insurance Company (NAIC #23035)**

BUSINESS ADDRESS: 2000 Westwood Drive, Wausau, WI 54401. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: \$86,266,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**Liberty Mutual Insurance Company (NAIC #23043)**

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02116. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: \$1,216,960,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

**LM Insurance Corporation (NAIC #33600)**

BUSINESS ADDRESS: 2815 Forbs Avenue, Suite 200, Hoffman Estates, IL 60192. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: \$11,007,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Lyndon Property Insurance Company (NAIC #35769)**

BUSINESS ADDRESS: 14755 North Outer Forty Rd., Suite 400, St. Louis, MO 63017. PHONE: (636) 536-5600. UNDERWRITING LIMITATION b/: \$18,397,000. SURETY LICENSES c,f/

: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

**Manufacturers Alliance Insurance Company (NAIC #36897)**

BUSINESS ADDRESS: P.O. Box 3031, Blue Bell, PA 19422-ndash;0754. PHONE: (610) 397-5000. UNDERWRITING LIMITATION b/: \$6,709,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, ID, IN, KS, KY, LA, ME, MD, MI, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, OH, PA, RI, SC, SD, TN, UT, VT, VA, WA. INCORPORATED IN: Pennsylvania.

**MARKEL INSURANCE COMPANY (NAIC #38970)**

BUSINESS ADDRESS: 4521 Highwoods Parkway, Glen Allen, VA 23060. PHONE: (800) 431-1270. UNDERWRITING LIMITATION b/: \$27,277,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Massachusetts Bay Insurance Company (NAIC #22306)**

BUSINESS ADDRESS: 440 LINCOLN STREET, WORCESTER, MA 01653-0002. PHONE: (508) 853-7200 x-4476. UNDERWRITING LIMITATION b/: \$5,959,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**Merchants Bonding Company (Mutual) (NAIC #14494)**

BUSINESS ADDRESS: 2100 Fleur Drive, Des Moines, IA 50321-ndash;1158. PHONE: (515) 243-8171. UNDERWRITING LIMITATION b/: \$7,130,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

**Merchants National Bonding, Inc.  
(NAIC #11595)**

BUSINESS ADDRESS: 2100 Fleur Drive, Des Moines, IA 50321–ndash;1158. PHONE: (515) 243–8171. UNDERWRITING LIMITATION b/: \$982,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE., NV, NJ, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Iowa.

**Michigan Millers Mutual Insurance Company (NAIC #14508)**

BUSINESS ADDRESS: P. O. Box 30060, Lansing, MI 48909–7560. PHONE: (517) 482–6211 x–7765. UNDERWRITING LIMITATION b/: \$7,583,000. SURETY LICENSES c,f/: AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE., NY, NC, ND, OH, OK, OR, PA, SD, TN, VA, WA, WI, WY. INCORPORATED IN: Michigan.

**Mid-Century Insurance Company (NAIC #21687)**

BUSINESS ADDRESS: P.O. Box 2478 Terminal Annex, Los Angeles, CA 90051. PHONE: (323) 932–3200. UNDERWRITING LIMITATION b/: \$85,436,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KS, MA, MI, MN, MS, MO, MT, NE., NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: California.

**MID–CONTINENT CASUALTY COMPANY (NAIC #23418)**

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587–7221. UNDERWRITING LIMITATION b/: \$13,565,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE., NM, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, VA, WA, WY. INCORPORATED IN: Ohio.

**Motorists Commercial Mutual Insurance Company (NAIC #13331)**

BUSINESS ADDRESS: 471 East Broad Street, Columbus, OH 43215. PHONE: (614) 225–8211. UNDERWRITING LIMITATION b/: \$12,858,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Motorists Mutual Insurance Company (NAIC #14621)**

BUSINESS ADDRESS: 471 East Broad Street, Columbus, OH 43215. PHONE: (614) 225–8211. UNDERWRITING LIMITATION b/: \$48,056,000. SURETY LICENSES c,f/: IN, KY, MI, OH, PA, WV. INCORPORATED IN: Ohio.

**Motors Insurance Corporation (NAIC #22012)**

BUSINESS ADDRESS: 300 GALLERIA OFFICENTRE, SOUTHFIELD, MI 48034. PHONE: (248) 263–6900. UNDERWRITING LIMITATION b/: \$118,316,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

**Munich Reinsurance America, Inc. (NAIC #10227)**

BUSINESS ADDRESS: 555 COLLEGE ROAD EAST—P.O. BOX 5241, PRINCETON, NJ 08543. PHONE: (609) 243–4200. UNDERWRITING LIMITATION b/: \$453,233,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**National American Insurance Company (NAIC #23663)**

BUSINESS ADDRESS: P.O. Box 9, Chandler, OK 74834. PHONE: (405) 258–0804. UNDERWRITING LIMITATION b/: \$5,647,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE., NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Oklahoma.

**National Casualty Company (NAIC #11991)**

BUSINESS ADDRESS: ONE WEST NATIONWIDE BLVD., 1–04–701, COLUMBUS, OH 43215–2220. PHONE: (480) 365–4000. UNDERWRITING LIMITATION b/: \$12,261,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**NATIONAL FARMERS UNION PROPERTY AND CASUALTY COMPANY (NAIC #16217)**

BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. PHONE: (608) 837–4440. UNDERWRITING LIMITATION b/: \$6,272,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**National Fire Insurance Company of Hartford (NAIC #20478)**

BUSINESS ADDRESS: 333 S. WABASH AVE, CHICAGO, IL 60604. PHONE: (312) 822–5000. UNDERWRITING LIMITATION b/: \$11,183,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**National Indemnity Company (NAIC #20087)**

BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131–3580. PHONE: (402) 916–3000. UNDERWRITING LIMITATION b/: \$7,886,151,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE., NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

**National Surety Corporation (NAIC #21881)**

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (312) 346–6400. UNDERWRITING LIMITATION b/: \$14,024,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**NATIONAL TRUST INSURANCE COMPANY (NAIC #20141)**

BUSINESS ADDRESS: 6300 University Parkway, Sarasota, FL 34240–8424. PHONE: (800) 226–3224 x-2726.

UNDERWRITING LIMITATION b/: \$3,521,000. SURETY LICENSES c,f/: AZ, FL, GA, IL, IN, IA, KY, LA, MD, MI, MS, MO, NE., NC, OK, SC, TN, TX. INCORPORATED IN: Indiana.

**National Union Fire Insurance Company of Pittsburgh, PA (NAIC #19445)**

BUSINESS ADDRESS: 175 WATER STREET, 18TH FLOOR, NEW YORK, NY 10038. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: \$630,620,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**NATIONS BONDING COMPANY (NAIC #11595)5**

**Nationwide Mutual Insurance Company (NAIC #23787)**

BUSINESS ADDRESS: ONE WEST NATIONWIDE BLVD., 1-04-701, COLUMBUS, OH 43215-2220. PHONE: (614) 249-7111. UNDERWRITING LIMITATION b/: \$1,054,290,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**NAVIGATORS INSURANCE COMPANY (NAIC #42307)**

BUSINESS ADDRESS: 6 International Drive, Rye Brook, NY 10573. PHONE: (914) 934-8999. UNDERWRITING LIMITATION b/: \$68,288,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**New Hampshire Insurance Company (NAIC #23841)**

BUSINESS ADDRESS: 175 WATER STREET, 18TH FLOOR, NEW YORK, NY 10038. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: \$92,272,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV,

WI, WY. INCORPORATED IN: Pennsylvania.

**NGM Insurance Company (NAIC #14788)**

BUSINESS ADDRESS: 55 WEST STREET, KEENE, NH 03431. PHONE: (904) 380-7282. UNDERWRITING LIMITATION b/: \$80,735,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

**NORTH AMERICAN SPECIALTY INSURANCE COMPANY (NAIC #29874)**

BUSINESS ADDRESS: 650 ELM STREET, MANCHESTER, NH 03101. PHONE: (603) 644-6600. UNDERWRITING LIMITATION b/: \$29,431,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**NORTHWESTERN PACIFIC INDEMNITY COMPANY (NAIC #20338)**

BUSINESS ADDRESS: 15 Mountain View Road, Warren, NJ 07059. PHONE: (503) 221-4240. UNDERWRITING LIMITATION b/: \$1,575,000. SURETY LICENSES c,f/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon.

**NOVA Casualty Company (NAIC #42552)**

BUSINESS ADDRESS: 2 WATERSIDE CROSSING, SUITE 400, WINDSOR, CT 06095-1567. PHONE: (860) 683-4250. UNDERWRITING LIMITATION b/: \$9,496,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: New York.

**Ohio Casualty Insurance Company (The) (NAIC #24074)**

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: \$95,052,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD,

MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**Ohio Farmers Insurance Company (NAIC #24104)**

BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION b/: \$152,556,000. SURETY LICENSES c,f/: AL, AZ, AR, CO, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE., NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Ohio Indemnity Company (NAIC #26565)**

BUSINESS ADDRESS: 250 East Broad Street, 7th Floor, Columbus, OH 43215. PHONE: (614) 228-2800. UNDERWRITING LIMITATION b/: \$4,519,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Ohio Security Insurance Company (NAIC #24082)**

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: \$1,477,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**Oklahoma Surety Company (NAIC #23426)**

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION b/: \$1,873,000. SURETY LICENSES c,f/: AR, KS, LA, OH, OK, TX. INCORPORATED IN: Ohio.

**OLD DOMINION INSURANCE COMPANY (NAIC #40231)**

BUSINESS ADDRESS: 55 WEST STREET, KEENE, NH 03431. PHONE: (904) 642-3000. UNDERWRITING LIMITATION b/: \$3,109,000. SURETY LICENSES c,f/: CT, DE, FL, GA, ME, MD, MA, NH, NY, NC, PA, RI, SC,

TN, VT, VA. INCORPORATED IN: Florida.

**Old Republic General Insurance Corporation (NAIC #24139)**

BUSINESS ADDRESS: 307 NORTH MICHIGAN AVENUE, CHICAGO, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION b/: \$33,261,000. SURETY LICENSES c,f/ : AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Old Republic Insurance Company (NAIC #24147)**

BUSINESS ADDRESS: P.O. Box 789, Greensburg, PA 15601-0789. PHONE: (724) 834-5000. UNDERWRITING LIMITATION b/: \$87,492,000. SURETY LICENSES c,f/ : AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**Old Republic Surety Company (NAIC #40444)**

BUSINESS ADDRESS: P.O. BOX 1635, MILWAUKEE, WI 53201-1635. PHONE: (262) 797-2640. UNDERWRITING LIMITATION b/: \$4,872,000. SURETY LICENSES c,f/ : AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE., NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**OneBeacon America Insurance Company (NAIC #20621)**

BUSINESS ADDRESS: 150 Royall Street, Canton, MA 02021-1030. PHONE: (781) 332-7000. UNDERWRITING LIMITATION b/: \$7,507,000. SURETY LICENSES c,f/ : AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

**OneBeacon Insurance Company (NAIC #21970)**

BUSINESS ADDRESS: 150 Royall Street, Canton, MA 02021-1030. PHONE: (781) 332-7000. UNDERWRITING LIMITATION b/: \$11,958,000. SURETY LICENSES c,f/ : AL, AK, AZ,

AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**Pacific Employers Insurance Company (NAIC #22748)**

BUSINESS ADDRESS: 436 WALNUT STREET, P.O. Box 1000, Philadelphia, PA 19106. PHONE: (215) 640-1000. UNDERWRITING LIMITATION b/: \$108,581,000. SURETY LICENSES c,f/ : AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**Pacific Indemnity Company (NAIC #20346)**

BUSINESS ADDRESS: 15 Mountain View Road, Warren, NJ 07059. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: \$249,620,000. SURETY LICENSES c,f/ : AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**PACIFIC INDEMNITY INSURANCE COMPANY (NAIC #18380)**

BUSINESS ADDRESS: 348 WEST O'BRIEN DRIVE, HAGATNA, GU 96910. PHONE: (671) 477-1663. UNDERWRITING LIMITATION b/: \$1,508,000. SURETY LICENSES c,f/ : GU, MP. INCORPORATED IN: Guam.

**PARTNER REINSURANCE COMPANY OF THE U.S. (NAIC #38636)**

BUSINESS ADDRESS: ONE GREENWICH PLAZA, GREENWICH, CT 06830-6352. PHONE: (203) 485-4200. UNDERWRITING LIMITATION b/: \$114,577,000. SURETY LICENSES c,f/ : AL, AZ, CA, CO, DC, IL, KS, MI, MS, NE., NY, TX, UT, WA. INCORPORATED IN: New York.

**PARTNERRE INSURANCE COMPANY OF NEW YORK (NAIC #10006)**

BUSINESS ADDRESS: One Greenwich Plaza, Greenwich, CT 06830-6352. PHONE: (203) 485-4200. UNDERWRITING LIMITATION b/: \$11,441,000. SURETY LICENSES c,f/ : AL, AZ, CA, CO, DE, DC, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MT, NE., NJ, NM, NY, ND, OH, OK, OR,

PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New York.

**Pekin Insurance Company (NAIC #24228)**

BUSINESS ADDRESS: 2505 COURT STREET, PEKIN, IL 61558. PHONE: (309) 346-1161. UNDERWRITING LIMITATION b/: \$11,161,000. SURETY LICENSES c,f/ : AZ, IL, IN, IA, MI, OH, WI. INCORPORATED IN: Illinois. Pennsylvania General Insurance Company (NAIC #21962)6

**Pennsylvania Insurance Company (NAIC #21962)**

BUSINESS ADDRESS: P.O. Box 3646, Omaha, NE 68103-0646. PHONE: (402) 827-3424. UNDERWRITING LIMITATION b/: \$1,068,000. SURETY LICENSES c,f/ : AL, AZ, AR, CA, CO, CT, DE, DC, GA, IA, KS, KY, LA, ME, MA, MI, MN, MS, MO, MT, NE., NV, NJ, NM, OH, OK, OR, PA, RI, SC, SD, TN, TX, VA, WA, WV, WI. INCORPORATED IN: Iowa.

**Pennsylvania Manufacturers Indemnity Company (NAIC #41424)**

BUSINESS ADDRESS: P.O. Box 3031, Blue Bell, PA 19422-0754. PHONE: (610) 397-5000. UNDERWRITING LIMITATION b/: \$7,756,000. SURETY LICENSES c,f/ : AL, AK, AZ, AR, CO, CT, DE, DC, ID, IN, KS, KY, LA, ME, MD, MI, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, OH, PA, RI, SC, SD, TN, UT, VT, VA, WA. INCORPORATED IN: Pennsylvania.

**Pennsylvania Manufacturers' Association Insurance Company (NAIC #12262)**

BUSINESS ADDRESS: P.O. Box 3031, Blue Bell, PA 19422-0754. PHONE: (610) 397-5000. UNDERWRITING LIMITATION b/: \$22,544,000. SURETY LICENSES c,f/ : AL, AK, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IA, KS, KY, LA, ME, MD, MA, MI, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV. INCORPORATED IN: Pennsylvania.

**Pennsylvania National Mutual Casualty Insurance Company (NAIC #14990)**

BUSINESS ADDRESS: P. O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941. UNDERWRITING LIMITATION b/: \$47,366,000. SURETY LICENSES c,f/ : AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN,

TX, UT, VT, VA, WA, WV, WI.  
INCORPORATED IN: Pennsylvania.

**PHILADELPHIA INDEMNITY  
INSURANCE COMPANY (NAIC  
#18058)**

BUSINESS ADDRESS: One Bala Plaza,  
Suite 100, Bala Cynwyd, PA 19004–  
1403. PHONE: (610) 617–7900.  
UNDERWRITING LIMITATION b/  
: \$201,718,000. SURETY LICENSES c,f/  
: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY,  
LA, ME, MD, MA, MI, MN, MS, MO,  
MT, NE., NV, NH, NJ, NM, NY, NC,  
ND, OH, OK, OR, PA, RI, SC, SD, TN,  
TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Pennsylvania.

**PLATTE RIVER INSURANCE  
COMPANY (NAIC #18619)**

BUSINESS ADDRESS: P.O. Box 5900,  
Madison, WI 53705–0900. PHONE:  
(608) 829–4200. UNDERWRITING  
LIMITATION b/: \$3,774,000. SURETY  
LICENSES c,f/: AL, AK, AZ, AR, CA,  
CO, CT, DE, DC, FL, GA, HI, ID, IL,  
IN, IA, KS, KY, LA, ME, MD, MA, MI,  
MN, MS, MO, MT, NE., NV, NH, NJ,  
NM, NY, NC, ND, OH, OK, OR, PA,  
RI, SC, SD, TN, TX, UT, VT, VA, WA,  
WV, WI, WY. INCORPORATED IN:  
Nebraska.

**Plaza Insurance Company (NAIC  
#30945)**

BUSINESS ADDRESS: 700 West 47th  
Street, Suite 350, Kansas City, MO  
64112. PHONE: (816) 412–1800.  
UNDERWRITING LIMITATION b/  
: \$2,538,000. SURETY LICENSES c,f/  
: AL, AK, AZ, AR, CA, DE, DC, FL, GA,  
HI, ID, IL, IN, IA, KS, KY, LA, ME,  
MD, MA, MI, MN, MS, MO, MT, NE.,  
NV, NJ, NM, NC, ND, OH, OK, OR,  
PA, RI, SC, SD, TN, TX, UT, VT, VA,  
WA, WV, WI, WY. INCORPORATED  
IN: Missouri.

**ProCentury Insurance Company (NAIC  
#21903)**

BUSINESS ADDRESS: 465 Cleveland  
Avenue, Westerville, OH 43082.  
PHONE: (614) 895–2000.  
UNDERWRITING LIMITATION b/  
: \$3,730,000. SURETY LICENSES c,f/  
: AK, AZ, AR, CA, DE, DC, GA, IL, IN,  
IA, KS, LA, MD, MA, MI, MN, MS,  
MO, MT, NE., NV, NJ, NM, NY, ND,  
OK, PA, SC, SD, TX, UT, WV, WI,  
WY. INCORPORATED IN: Texas.

**Progressive Casualty Insurance  
Company (NAIC #24260)**

BUSINESS ADDRESS: P.O. BOX 89490,  
CLEVELAND, OH 44101–6490.  
PHONE: (440) 461–5000.  
UNDERWRITING LIMITATION b/  
: \$144,847,000. SURETY LICENSES c,f/

: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY,  
LA, ME, MD, MA, MI, MN, MS, MO,  
MT, NE., NV, NH, NJ, NM, NY, NC,  
ND, OH, OK, OR, PA, PR, RI, SC, SD,  
TN, TX, UT, VT, VA, WA, WV, WI,  
WY. INCORPORATED IN: Ohio.

**Protective Insurance Company (NAIC  
#12416)**

BUSINESS ADDRESS: PO Box 7099,  
Indianapolis, IN 46207. PHONE: (317)  
636–9800 x-2632. UNDERWRITING  
LIMITATION b/: \$21,732,000.  
SURETY LICENSES c,f/: AL, AK, AZ,  
AR, CA, CO, CT, DE, DC, FL, GA, HI,  
ID, IL, IN, IA, KS, KY, LA, ME, MD,  
MA, MI, MN, MS, MO, MT, NE., NV,  
NH, NJ, NM, NY, NC, ND, OH, OK,  
OR, PA, RI, SC, SD, TN, TX, UT, VT,  
VA, WA, WV, WI, WY.  
INCORPORATED IN: Indiana.

**Regent Insurance Company (NAIC  
#24449)**

BUSINESS ADDRESS: One General  
Drive, Sun Prairie, WI 53596. PHONE:  
(608) 837–4440. UNDERWRITING  
LIMITATION b/: \$3,813,000. SURETY  
LICENSES c,f/: AL, AK, AZ, CA, CO,  
DE, DC, FL, GA, HI, ID, IL, IN, IA, KS,  
KY, LA, ME, MD, MA, MI, MN, MS,  
MO, MT, NE., NV, NH, NJ, NY, NC,  
ND, OH, OK, OR, PA, RI, SC, SD, TN,  
TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Wisconsin.

**Republic—Franklin Insurance  
Company (NAIC #12475)**

BUSINESS ADDRESS: P. O. Box 530,  
Utica, NY 13503–0530. PHONE: (315)  
734–2000. UNDERWRITING  
LIMITATION b/: \$4,467,000. SURETY  
LICENSES c,f/: CT, DE, DC, GA, IL,  
IN, KS, MD, MA, MI, NH, NJ, NY, NC,  
OH, PA, RI, TN, TX, VA, WI.  
INCORPORATED IN: Ohio.

**RLI Indemnity Company (NAIC  
#28860)**

BUSINESS ADDRESS: 9025 N.  
Lindbergh Drive, Peoria, IL 61615.  
PHONE: (309) 692–1000.  
UNDERWRITING LIMITATION b/  
: \$4,224,000. SURETY LICENSES c,f/  
: AL, AZ, AR, CA, CO, CT, DE, DC, FL,  
GA, HI, ID, IL, IN, IA, KS, KY, LA,  
ME, MD, MA, MI, MN, MS, MO, MT,  
NE., NV, NH, NJ, NM, NY, NC, ND,  
OH, OK, OR, PA, RI, SC, SD, TN, TX,  
UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Illinois.

**RLI Insurance Company (NAIC #13056)**

BUSINESS ADDRESS: 9025 N.  
Lindbergh Drive, Peoria, IL 61615.  
PHONE: (309) 692–1000.  
UNDERWRITING LIMITATION b/  
: \$54,040,000. SURETY LICENSES c,f/

: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY,  
LA, ME, MD, MA, MI, MN, MS, MO,  
MT, NE., NV, NH, NJ, NM, NY, NC,  
ND, OH, OK, OR, PA, PR, RI, SC, SD,  
TN, TX, UT, VT, VA, WA, WV, WI,  
WY. INCORPORATED IN: Illinois.

**Roche Surety and Casualty Company,  
Inc. (NAIC #42706)**

BUSINESS ADDRESS: 1910 Orient  
Road, Tampa, FL 33619. PHONE:  
(813) 623–5042. UNDERWRITING  
LIMITATION b/: \$772,000. SURETY  
LICENSES c,f/: AK, AZ, AR, CT, DE,  
FL, GA, HI, ID, IN, IA, KS, LA, MD,  
MI, MN, MS, MO, MT, NE., NV, NH,  
NJ, NM, NY, NC, ND, OH, OK, PA,  
SC, SD, TN, TX, UT, VT, VA, WA.  
INCORPORATED IN: Florida.

**Rockwood Casualty Insurance  
Company (NAIC #35505)**

BUSINESS ADDRESS: 654 Main Street,  
Rockwood, PA 15557. PHONE: (814)  
926–4661. UNDERWRITING  
LIMITATION b/: \$5,629,000. SURETY  
LICENSES c,f/: AK, AZ, AR, CO, DE,  
FL, GA, ID, IL, IN, IA, KS, KY, LA,  
MD, MN, MS, MO, MT, NV, NM, NY,  
NC, OH, OK, OR, PA, SC, SD, TX, UT,  
VA, WV. INCORPORATED IN:  
Pennsylvania.

**SAFECO Insurance Company of  
America (NAIC #24740)**

BUSINESS ADDRESS: 62 Maple  
Avenue, Keene, NH 03431. PHONE:  
(617) 357–9500. UNDERWRITING  
LIMITATION b/: \$89,658,000.  
SURETY LICENSES c,f/: AL, AK, AZ,  
AR, CA, CO, CT, DE, DC, FL, GA, GU,  
HI, ID, IL, IN, IA, KS, KY, LA, ME,  
MD, MA, MI, MN, MS, MO, MT, NE.,  
NV, NH, NJ, NM, NY, NC, ND, OH,  
OK, OR, PA, RI, SC, SD, TN, TX, UT,  
VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: New  
Hampshire.

**Safety National Casualty Corporation  
(NAIC #15105)**

BUSINESS ADDRESS: 1832 Schuetz  
Road, St. Louis, MO 63146–3540.  
PHONE: (314) 995–5300.  
UNDERWRITING LIMITATION b/  
: \$96,082,000. SURETY LICENSES c,f/  
: AL, AK, AZ, AR, CA, CO, CT, DE,  
DC, FL, GA, HI, ID, IL, IN, IA, KS, KY,  
LA, ME, MD, MA, MI, MN, MS, MO,  
MT, NE., NV, NH, NJ, NM, NY, NC,  
ND, OH, OK, OR, PA, PR, RI, SC, SD,  
TN, TX, UT, VT, VA, VI, WA, WV,  
WI, WY. INCORPORATED IN:  
Missouri.

**Sagamore Insurance Company (NAIC #40460)**

BUSINESS ADDRESS: PO Box 7099, Indianapolis, IN 46207. PHONE: (317) 636-9800 x-2632. UNDERWRITING LIMITATION b/: \$12,016,000. SURETY LICENSES c,f/: AL, AK, AZ, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE., NJ, NM, NY, NC, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**SECURA INSURANCE, A Mutual Company (NAIC #22543)**

BUSINESS ADDRESS: P.O. Box 819, Appleton, WI 54912-0819. PHONE: (920) 739-3161. UNDERWRITING LIMITATION b/: \$27,331,000. SURETY LICENSES c,f/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE., NV, ND, OH, OK, OR, PA, SD, TN, UT, WA, WI, WY. INCORPORATED IN: Wisconsin.

**Selective Insurance Company of America (NAIC #12572)**

BUSINESS ADDRESS: 40 WANTAGE AVENUE, BRANCHVILLE, NJ 07890. PHONE: (973) 948-3000. UNDERWRITING LIMITATION b/: \$36,992,000. SURETY LICENSES c,f/: AL, AK, AR, CT, DE, DC, GA, IL, IN, IA, KS, KY, MD, MA, MI, MN, MS, MO, MT, NE., NJ, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

**Seneca Insurance Company, Inc. (NAIC #10936)**

BUSINESS ADDRESS: 160 Water Street, New York, NY 10038-4922. PHONE: (212) 344-3000. UNDERWRITING LIMITATION b/: \$15,733,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**Sentry Insurance A Mutual Company (NAIC #24988)**

BUSINESS ADDRESS: 1800 NORTH POINT DRIVE, STEVENS POINT, WI 54481-8020. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/: \$341,570,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**Sentry Select Insurance Company (NAIC #21180)**

BUSINESS ADDRESS: 1800 NORTH POINT DRIVE, STEVENS POINT, WI 54481-8020. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/: \$22,145,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

**SERVICE INSURANCE COMPANY (NAIC #36560)**

BUSINESS ADDRESS: P.O. Box 9729, Bradenton, FL 34206-9729. PHONE: (800) 780-8423. UNDERWRITING LIMITATION b/: \$2,039,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MI, MS, MO, MT, NE., NV, NM, NC, ND, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

**SERVICE INSURANCE COMPANY INC. (THE) (NAIC #28240)**

BUSINESS ADDRESS: 80 Main Street, West Orange, NJ 07052. PHONE: (973) 731-7650. UNDERWRITING LIMITATION b/: \$527,000. SURETY LICENSES c,f/: CT, DE, MD, MA, NH, NJ, NY, PA, RI, VA. INCORPORATED IN: New Jersey.

**SIRIUS AMERICA INSURANCE COMPANY (NAIC #38776)**

BUSINESS ADDRESS: ONE LIBERTY PLAZA-18TH FLOOR, NEW YORK, NY 10006-1404. PHONE: (212) 312-2500. UNDERWRITING LIMITATION b/: \$52,834,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DC, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MT, NE., NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TX, UT, VA, WA, WV, WI. INCORPORATED IN: New York.

**SOUTHWEST MARINE AND GENERAL INSURANCE COMPANY (NAIC #12294)**

BUSINESS ADDRESS: 412 Mt. Kemble Ave, Suite 300C, Morristown, NJ 07960. PHONE: (800) 774-2755. UNDERWRITING LIMITATION b/: \$5,154,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MO, MT, NE., NV, ND, OH, OK, PA, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

**St. Paul Fire and Marine Insurance Company (NAIC #24767)**

BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: \$314,899,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**ST. PAUL GUARDIAN INSURANCE COMPANY (NAIC #24775)**

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: \$2,543,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**St. Paul Mercury Insurance Company (NAIC #24791)**

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: \$12,902,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Standard Fire Insurance Company (The) (NAIC #19070)**

BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: \$105,776,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Star Insurance Company (NAIC #18023)**

BUSINESS ADDRESS: 26255 American Drive, Southfield, MI 48034. PHONE: (248) 358-1100. UNDERWRITING LIMITATION b/: \$26,310,000. SURETY LICENSES c,f/: AL, AK, AZ,

AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Michigan.

**StarNet Insurance Company (NAIC #40045)**

BUSINESS ADDRESS: 215 Shuman Blvd., Suite 200, Naperville, IL 60563. PHONE: (630) 210-0360. UNDERWRITING LIMITATION b/: \$10,738,000. SURETY LICENSES c,f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY.  
INCORPORATED IN: Delaware.

**State Auto Property and Casualty Insurance Company (NAIC #25127)**

BUSINESS ADDRESS: 518 EAST BROAD STREET, COLUMBUS, OH 43215. PHONE: (614) 464-5000. UNDERWRITING LIMITATION b/: \$50,549,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NJ, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Iowa.

**State Automobile Mutual Insurance Company (NAIC #25135)**

BUSINESS ADDRESS: 518 EAST BROAD STREET, COLUMBUS, OH 43215. PHONE: (614) 464-5000. UNDERWRITING LIMITATION b/: \$40,789,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Ohio.

**State Farm Fire and Casualty Company (NAIC #25143)**

BUSINESS ADDRESS: ONE STATE FARM PLAZA, BLOOMINGTON, IL 61710. PHONE: (309) 766-2311. UNDERWRITING LIMITATION b/: \$880,536,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Illinois.

**SureTec Insurance Company (NAIC #10916)**

BUSINESS ADDRESS: 1330 POST OAK BLVD, SUITE 1100, HOUSTON, TX 77056. PHONE: (713) 812-0800. UNDERWRITING LIMITATION b/: \$7,230,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Texas.

**SURETY BONDING COMPANY OF AMERICA (NAIC #24047)**

BUSINESS ADDRESS: 333 S. WABASH AVE, CHICAGO, IL 60604. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: \$794,000. SURETY LICENSES c,f/: AL, AZ, AR, CA, CO, DE, DC, GA, ID, IL, IN, KS, MN, MO, MT, NE., NV, NM, NY, ND, OK, OR, SC, SD, TN, TX, UT, WV, WY.  
INCORPORATED IN: South Dakota.

**Swiss Reinsurance America Corporation (NAIC #25364)**

BUSINESS ADDRESS: 175 KING STREET, ARMONK, NY 10504. PHONE: (913) 676-5200. UNDERWRITING LIMITATION b/: \$497,318,000. SURETY LICENSES c,f/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

**TEXAS PACIFIC INDEMNITY COMPANY (NAIC #20389)**

BUSINESS ADDRESS: 15 Mountain View Road, Warren, NJ 07059. PHONE: (214) 754-0777. UNDERWRITING LIMITATION b/: \$699,000. SURETY LICENSES c,f/: AR, TX. INCORPORATED IN: Texas.

**TRANSATLANTIC REINSURANCE COMPANY (NAIC #19453)**

BUSINESS ADDRESS: 80 PINE STREET, NEW YORK, NY 10005. PHONE: (212) 365-2200. UNDERWRITING LIMITATION b/: \$417,914,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, DE, DC, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE., NV, NJ, NM, NY, OH, OK, PA, SD, UT, WA, WI. INCORPORATED IN: New York.

**Travelers Casualty and Surety Company (NAIC #19038)**

BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183. PHONE: (860) 277-0111.

UNDERWRITING LIMITATION b/: \$309,982,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Travelers Casualty and Surety Company of America (NAIC #31194)**

BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: \$178,045,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**Travelers Casualty Insurance Company of America (NAIC #19046)**

BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: \$50,655,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Connecticut.

**Travelers Indemnity Company (The) (NAIC #25658)**

BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: \$711,929,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**U.S. Specialty Insurance Company (NAIC #29599)**

BUSINESS ADDRESS: 13403 NORTHWEST FREEWAY, HOUSTON, TX 77040-6094. PHONE: (713) 462-1000. UNDERWRITING LIMITATION b/: \$55,251,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV,

NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.  
INCORPORATED IN: Texas.

**UNITED CASUALTY AND SURETY INSURANCE COMPANY (NAIC #36226)**

BUSINESS ADDRESS: 1250 Hancock Street, Suite 803N, Quincy, MA 02169. PHONE: (617) 471-1112 x-109. UNDERWRITING LIMITATION b/: \$445,000. SURETY LICENSES c,f/: CT, DC, FL, MD, MA, NH, NJ, NY, PA. INCORPORATED IN: Massachusetts.

**United Fire & Casualty Company (NAIC #13021)**

BUSINESS ADDRESS: P. O. BOX 73909, CEDAR RAPIDS, IA 52407-3909. PHONE: (319) 399-5700. UNDERWRITING LIMITATION b/: \$48,646,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE., NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

**UNITED FIRE & INDEMNITY COMPANY (NAIC #19496)**

BUSINESS ADDRESS: P.O. BOX 73909, CEDAR RAPIDS, IA 52407-3909. PHONE: (319) 399-5700. UNDERWRITING LIMITATION b/: \$1,514,000. SURETY LICENSES c,f/: AL, CO, IN, KY, LA, MS, MO, NM, TX. INCORPORATED IN: Texas.

**United States Fidelity and Guaranty Company (NAIC #25887)**

BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: \$262,747,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

**United States Fire Insurance Company (NAIC #21113)**

BUSINESS ADDRESS: 305 Madison Avenue, Morristown, NJ 07962. PHONE: (973) 490-6600. UNDERWRITING LIMITATION b/: \$61,536,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV,

WI, WY. INCORPORATED IN: Delaware.

**United States Surety Company (NAIC #10656)**

BUSINESS ADDRESS: P. O. Box 5605, Timonium, MD 21094-5605. PHONE: (410) 453-9522. UNDERWRITING LIMITATION b/: \$2,877,000. SURETY LICENSES c,f/: CT, DE, DC, FL, GA, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV. INCORPORATED IN: Maryland.

**UNITED SURETY AND INDEMNITY COMPANY (NAIC #44423)**

BUSINESS ADDRESS: P.O. BOX 2111, SAN JUAN, PR 00922-2111. PHONE: (787) 625-1105. UNDERWRITING LIMITATION b/: \$6,280,000. SURETY LICENSES c,f/: PR. INCORPORATED IN: Puerto Rico.

**Universal Surety Company (NAIC #25933)**

BUSINESS ADDRESS: P.O.Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: \$9,728,000. SURETY LICENSES c,f/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE., NM, ND, OH, OK, OR, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

**UNIVERSAL UNDERWRITERS INSURANCE COMPANY (NAIC #41181)**

BUSINESS ADDRESS: 1400 AMERICAN LANE, TOWER I, 18TH FLOOR, SCHAUMBURG, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION b/: \$34,169,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

**Utica Mutual Insurance Company (NAIC #25976)**

BUSINESS ADDRESS: POST OFFICE BOX 530, UTICA, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION b/: \$70,350,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**Vigilant Insurance Company (NAIC #20397)**

BUSINESS ADDRESS: 15 Mountain View Road, Warren, NJ 07059. PHONE: (212) 612-4000. UNDERWRITING LIMITATION b/: \$24,677,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

**Washington International Insurance Company (NAIC #32778)**

BUSINESS ADDRESS: 475 North Martingale Road, Suite 850, Schaumburg, IL 60173. PHONE: (603) 644-6600. UNDERWRITING LIMITATION b/: \$6,941,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

**West American Insurance Company (NAIC #44393)**

BUSINESS ADDRESS: 350 E. 96th Street, Indianapolis, IN 46240. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: \$26,285,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

**WEST BEND MUTUAL INSURANCE COMPANY (NAIC #15350)**

BUSINESS ADDRESS: 1900 South 18th Avenue, West Bend, WI 53095. PHONE: (262) 365-2512. UNDERWRITING LIMITATION b/: \$61,355,000. SURETY LICENSES c,f/: IL, IN, IA, KS, KY, MI, MN, MO, NE., OH, WI. INCORPORATED IN: Wisconsin.

**Westchester Fire Insurance Company (NAIC #10030)**

BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1000, Philadelphia, PA 19106. PHONE: (215) 640-1000. UNDERWRITING LIMITATION b/: \$81,370,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI,

SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

**Western National Mutual Insurance Company (NAIC #15377)**

BUSINESS ADDRESS: P.O. BOX 1463, MINNEAPOLIS, MN 55440. PHONE: (952) 835-5350. UNDERWRITING LIMITATION b/: \$29,244,000. SURETY LICENSES c,f/: AZ, CO, ID, IL, IA, KS, MN, MO, MT, NE., NV, ND, OR, SD, TX, UT, WA, WI. INCORPORATED IN: Minnesota.

**Western Surety Company (NAIC #13188)**

BUSINESS ADDRESS: 333 S. WABASH AVE, CHICAGO, IL 60604. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: \$104,446,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

**Westfield Insurance Company (NAIC #24112)**

BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION b/: \$85,360,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

**Westfield National Insurance Company (NAIC #24120)**

BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION b/: \$20,798,000. SURETY LICENSES c,f/: AZ, CA, CO, DE, FL, GA, IL, IN, IA, KY, MD, MI, MN, NM, NC, ND, OH, OK, PA, SC, SD, TN, TX, VA, WV, WI. INCORPORATED IN: Ohio.

**Westport Insurance Corporation (NAIC #39845)**

BUSINESS ADDRESS: P.O. Box 2991, OVERLAND PARK, KS 66202-1391. PHONE: (913) 676-5200. UNDERWRITING LIMITATION b/: \$136,278,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC,

SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Missouri.

**XL Reinsurance America Inc. (NAIC #20583)**

BUSINESS ADDRESS: SEAVIEW HOUSE, 70 SEAVIEW AVENUE, STAMFORD, CT 06902. PHONE: (203) 964-5200. UNDERWRITING LIMITATION b/: \$162,837,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

**XL Specialty Insurance Company (NAIC #37885)**

BUSINESS ADDRESS: SEAVIEW HOUSE, 70 SEAVIEW AVENUE, STAMFORD, CT 06902. PHONE: (203) 964-5200. UNDERWRITING LIMITATION b/: \$16,867,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Delaware.

**Zurich American Insurance Company (NAIC #16535)**

BUSINESS ADDRESS: 1400 AMERICAN LANE, TOWER I, 18TH FLOOR, SCHAUMBURG, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION b/: \$693,569,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MP, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

**Certified Reinsurer Companies**

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297. [See Note (e)]

**Alterra Reinsurance USA Inc. (NAIC #10829)**

BUSINESS ADDRESS: 535 SPRINGFIELD AVENUE, SUMMIT, NJ 07901. PHONE: (908) 630-2700. UNDERWRITING LIMITATION b/: \$67,163,000. SURETY LICENSES c,f/:

**Odyssey Reinsurance Company (NAIC #23680)**

BUSINESS ADDRESS: 300 FIRST STAMFORD PLACE, STAMFORD, CT 06902. PHONE: (203) 977-8000. UNDERWRITING LIMITATION b/: \$277,970,000. SURETY LICENSES c,f/:

**Phoenix Insurance Company (The) (NAIC #25623)**

BUSINESS ADDRESS: ONE TOWER SQUARE, HARTFORD, CT 06183. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: \$139,065,000. SURETY LICENSES c,f/:

**PLATINUM UNDERWRITERS REINSURANCE, INC. (NAIC #10357)**

BUSINESS ADDRESS: 225 Liberty Street, Suite 2300, New York, NY 10281-1008. PHONE: (212) 238-9600. UNDERWRITING LIMITATION b/: \$55,538,000. SURETY LICENSES c,f/:

**ST. PAUL PROTECTIVE INSURANCE COMPANY (NAIC #19224)**

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: \$22,420,000. SURETY LICENSES c,f/:

**Footnotes**

1 Allied World Reinsurance Company (NAIC #22730) changed its name to Allied World Insurance Company. The effective date of the name change is December 11, 2012.

2 AMERICAN CONTRACTORS INDEMNITY COMPANY (NAIC# 10216) is required by state law to conduct business in the state of Texas as TEXAS BONDING COMPANY. However, business is conducted in all other covered states as AMERICAN CONTRACTORS INDEMNITY COMPANY.

3 Harleysville Mutual Insurance Company (NAIC # 14168) merged with and into Nationwide Mutual Insurance Company (NAIC #23787), effective May 1, 2012. The surviving corporation is Nationwide Mutual Insurance Company.

4 International Fidelity Insurance Company's (NAIC# 11592) name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular. Do not hesitate to contact the Company to verify the authenticity of a bond.

5 NATIONS BONDING COMPANY (NAIC# 11595) formally changed its name to Merchants National Bonding,

Inc. The effective date of the name change is January 1, 2012.

6 Pennsylvania General Insurance Company (NAIC# 21962) changed its name to Pennsylvania Insurance Company and redomesticated from Pennsylvania to Iowa. The effective date of the name change and redomestication is December 12, 2012.

7 UNIVERSAL UNDERWRITERS INSURANCE COMPANY (NAIC# 41181) redomesticated from Kansas to Illinois. The effective date of the redomestication is December 31, 2012.

**Notes**

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a *per bond basis*. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, *when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other*

methods in accordance with 31 CFR Section 223.10, Section 223.11. Treasury refers to a *bond of this type as an Excess Risk*. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a *Federal reinsurance form* to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(c) A surety company *must be licensed in the State or other area in which it provides a bond*, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. *For updated license information, you may contact*

*the company directly or the applicable State Insurance Department*. Refer to the list of state insurance departments at the end of this publication. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(d) FEDERAL PROCESS AGENTS: Treasury Approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds and may not directly write Federal bonds.

(f) Some companies may be Approved *surplus lines carriers* in various states. Such approval may indicate that the company is *authorized to write surety in a particular state, even though the company is not licensed in the state*. Questions related to this may be directed to the appropriate State Insurance Department. Refer to the list of state insurance departments at the end of this publication.

**State Insurance Departments**

STATE INSURANCE DEPARTMENTS	TELEPHONE NO.
Alabama, Montgomery 36104 .....	(334) 269-3550
Alaska, Anchorage 99501-3567 .....	(907) 269-7900
Arizona, Phoenix 85018-7256 .....	(602) 364-2499
Arkansas, Little Rock 72201-1904 .....	(501) 371-2600
California, Sacramento 95814 .....	(213) 897-8921
Colorado, Denver 80202 (303) .....	894-7499
Connecticut, Hartford 06142-0816 .....	(860) 297-3800
Delaware, Dover 19904 .....	(302) 674-7390
District of Columbia, Washington 20002 .....	(202) 442-7813
Florida, Tallahassee 32399-6502 .....	(850) 413-3132
Georgia, Atlanta 30334 .....	(404) 656-2056
Hawaii, Honolulu 96813 .....	(808) 586-2790
Idaho, Boise 83720-0043 .....	(208) 334-4250
Illinois, Springfield 62767-0001 .....	(217) 782-4515
Indiana, Indianapolis 46204-2787 .....	(317) 232-2385
Iowa, Des Moines 50319-0065 .....	(515) 281-5705
Kansas, Topeka 66612-1678 .....	(785) 296-3071
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New Hampshire, Concord 03301 .....	(603) 271-2261
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New Mexico, Santa Fe 87504-1269 .....	(800) 947-4722
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Part III

## Nuclear Regulatory Commission

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10 CFR Parts 170 and 171

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2013; Final Rule

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 170 and 171

[NRC-2012-0211]

RIN 3150-AJ19

### Revision of Fee Schedules; Fee Recovery for Fiscal Year 2013

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires the NRC to recover through fees approximately 90 percent of its budget authority in Fiscal Year (FY) 2013, not including amounts appropriated for Waste Incidental to Reprocessing (WIR) and amounts appropriated for generic homeland security activities. The President signed the Consolidated and Further Continuing Appropriations Act of 2013 on March 26, 2013, giving the NRC a total appropriation of \$985.6 million for FY 2013. The NRC's required fee recovery amount for the FY 2013 budget is approximately \$864.0 million. After accounting for billing adjustments, the total amount to be billed as fees is approximately \$859.6 million.

**DATES:** This final rule is effective on August 30, 2013.

**ADDRESSES:** Please refer to Docket ID NRC-2012-0211 when contacting the NRC about the availability of information for this final rule. You may access information related to this final rule, which the NRC possesses and is publicly available, by any of the following methods:

- Federal Rulemaking Web site: Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0211. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS,

please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this document entitled, "Availability of Documents."

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Arlette Howard, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1481, email: [Arlette.Howard@nrc.gov](mailto:Arlette.Howard@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### II. Response to Comments

##### III. Final Action

A. Amendments to Part 170 of Title 10 of the *Code of Federal Regulations* (10 CFR): Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC

##### IV. Plain Writing

##### V. Availability of Documents

##### VI. Voluntary Consensus Standards

##### VII. Environmental Impact: Categorical Exclusion

##### VIII. Paperwork Reduction Act Statement

##### IX. Regulatory Analysis

##### X. Regulatory Flexibility Analysis

##### XI. Backfitting and Issue Finality

##### XII. Congressional Review Act

#### I. Background

Over the past 40 years the NRC (and earlier as the Atomic Energy Commission (AEC), the NRC's predecessor agency), has assessed and continues to assess fees to applicants and licensees to recover the cost of its regulatory program. The NRC's cost recovery principles for fee regulation are governed by two major laws, the Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 483(a)) and OBRA-90 (42 U.S.C. 2214), as amended. The NRC is required each year, under OBRA-90, as amended, to recover approximately 90 percent of its budget authority, not including amounts

appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items), through fees to NRC licensees and applicants. The following discussion explains the various court decisions, congressional mandates and Commission policy which form the basis for the NRC's current fee policy and cost recovery methodology, which in turn form the basis for this rulemaking.

#### *Establishment of Fee Policy and Cost Recovery Methodology*

In 1968, the AEC adopted its first license fee schedule in response to Title V of the IOAA. This statute authorized and encouraged Federal regulatory agencies to recover to the fullest extent possible costs attributable to services provided to identifiable recipients. The AEC established fees under 10 CFR part 170 in two sections, §§ 170.21 and 170.31. Section 170.21 established a flat application fee for filing applications for nuclear power plant construction permits. Fees were set by a sliding scale depending on plant size; for construction permits and operating license fees, and annual fees were levied on holders of Commission operating licenses under 10 CFR part 50. Section 170.31 established application fees and annual fees for materials licenses. Between 1971 and 1973, the 10 CFR part 170 fee schedules were adjusted to account for increased costs resulting from expanded services which included health and safety inspection services and manufacturing licenses and environmental and antitrust reviews. The annual fees assessed by the Commission began to include inspection costs and the material fee schedule expanded from 16 to 28 categories for fee assessment. During this period, the schedules continued to be modified based on the Commission's policy to recover costs attributable to identifiable beneficiaries for the processing of applications, permits and licenses, amendments to existing licenses, and health and safety inspections relating to the licensing process.

On March 4, 1974, the U.S. Supreme Court rendered major decisions in two cases, *National Cable Television Association, Inc. v. United States*, 415 U.S. 36 (1974) and *Federal Power Commission v. New England Power Company*, 415 U.S. 345 (1974), regarding the charging of fees by Federal agencies. The Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The

Court, therefore, invalidated the Federal Power Commission's annual fee rule because its fee structure assessed annual fees against the regulated industry at large without considering whether anyone had received benefits from any Commission services during the year in question. As a result of these decisions, the AEC promptly eliminated annual licensing fees and issued refunds to licensees, but left the remainder of the fee schedule unchanged.

In November 1974, the AEC published proposed revisions to its license fee schedule (39 FR 39734; November 11, 1974). The Commission reviewed public comments while simultaneously considering alternative approaches for the proper evaluation of expanding services and proper assessment based upon increasing costs of Commission services.

While this effort was under way, the Court of Appeals for the District of Columbia issued four opinions in fee cases—*National Cable Television Assoc. v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters v. FCC*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association v. FCC*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc. v. FCC*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions invalidated the license fee schedules promulgated by the Federal Communications Commission, and they provided the AEC with additional guidance for the prompt adoption and promulgation of an updated licensee fee schedule.

On January 19, 1975, under the Energy Reorganization Act of 1974, the licensing and related regulatory functions of the AEC were transferred to the NRC. The NRC, prompted by recent court decisions concerning fee policy, developed new guidelines for use in fee development and the establishment of a new proposed fee schedule.

The NRC published a summary of guidelines as a proposed rule (42 FR 22149; May 2, 1977), and the Commission held a public meeting to discuss the summary of guidelines on May 12, 1977. A summary of the comments on the guidelines and the NRC's responses were published in the **Federal Register** (43 FR 7211; February 21, 1978).

The U.S. Court of Appeals for the Fifth Circuit upheld the Commission's fee guidelines on August 24, 1979, in *Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act of 1954, as amended, and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act (42 U.S.C. 4321);

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

#### *The NRC's Current Statutory Requirement for Cost Recovery Through Fees*

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act (COBRA) (H.R. 3128), which required the NRC to assess and collect annual charges from persons licensed by the Commission. These charges, when added to other amounts collected by the NRC, totaled about 33 percent of the NRC's estimated budget. In response to this mandate and separate congressional inquiry on NRC fees, the NRC prepared a report on alternative approaches to annual fees and published the decision on annual fees for power reactor operating licenses in 10 CFR part 171 for public comment (51 FR 24078; July 1, 1986). The final rule (51 FR 33224; September 18, 1986) included a summary of the comments and the NRC's related responses. The decision was challenged in the D.C. Circuit Court of Appeals and upheld in its entirety in *Florida Power and Light Company v. United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

In 1987, the NRC retained the established annual and 10 CFR part 170 fee schedules in the **Federal Register** (51 FR 33224; September 18, 1986).

In 1988, the NRC was required to collect 45 percent of its budget authority through fees. The NRC published a proposed rule that included an hourly increase recommendation for public comment in the **Federal Register** (53 FR 24077; June 27, 1988). The NRC staff could not properly consider all comments received on the proposed rule. Therefore, on August 12, 1988, the NRC published an interim final rule in the **Federal Register** (53 FR 30423). The

interim final rule was limited to changing the 10 CFR part 171 annual fees.

In 1989, the Commission was required to collect 45 percent of its budget authority through fees. The NRC published a proposed fee rule in the **Federal Register** (53 FR 24077; June 25, 1988). A summary of the comments and the NRC's related responses were published in the **Federal Register** (53 FR 52632; December 28, 1988).

On November 5, 1990, with respect to 10 CFR part 171, the Congress passed OBRA-90, requiring that the NRC collect 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund (NWF), through the assessment of fees. The OBRA-90 allowed the NRC to collect user fees for the recovery of the costs of providing special benefits to identifiable applicants and licensees in compliance with 10 CFR part 170 and under the authority of the IOAA (31 U.S.C. 9701). These fees recovered the cost of inspections, applications for new licenses and license renewals, and requests for license amendments. The OBRA-90 also allowed the NRC to recover annual fees under 10 CFR part 171 for generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. In compliance with OBRA-90, the NRC adjusted its fee regulations in 10 CFR parts 170 and 171 to be more comprehensive without changing their underlying basis. The NRC published these regulations in a proposed rule for public comment in the **Federal Register** (54 FR 49763; December 1, 1989). The NRC held three public meetings to discuss the proposed changes and questions. A summary of comments and the NRC's related responses were published in the **Federal Register** (55 FR 21173; May 23, 1990).

In FYs 1991-2000, the NRC continued to comply with OBRA-90 requirements in its proposed and final rules. In 1991, the NRC's annual fee rule methodology was challenged and upheld by the D.C. Circuit Court of Appeals in *Allied Signal v. NRC*, 988 F.2d 146 (D.C. Cir. 1993).

The FY 2001 Energy and Water Development Appropriation Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005.

The FY 2006 Energy and Water Development Appropriation Act extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent in FY 2007.

In addition to the requirements of OBRA-90, as amended, the NRC was also required to comply with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996. This Act encouraged small businesses to participate in the regulatory process, and required agencies to develop more accessible sources of information on regulatory and reporting requirements for small businesses and create a small entity compliance guide. The NRC, in order to ensure equitable fee distribution among all licensees, developed a fee methodology specifically for small entities that consisted of a small entity definition and the Small Business Administration's most common receipts-based size standards as described under the North American Industry Classification System (NAICS) identifying industry codes. The NAICS is the standard used by Federal statistical agencies to classify business establishments for the purposes of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The purpose of this fee methodology was to lessen the financial impact on small entities through the establishment of a maximum fee at a reduced rate for qualifying licensees.

In FY 2009, the NRC computed the small entity fee based on a biennial adjustment of 39 percent, a fixed percent applied to the prior 2-year weighted average for all fee categories that have small entity licensees. The NRC also used 39 percent to compute the small entity annual fee for FY 2005, the same year the agency was required to recover only 90 percent of its budget authority. The methodology allowed small entity licensees to be able to predict changes in their fees in the biennial year based on the materials users' fees for the previous 2 years. Using a 2-year weighted average lessened the fluctuations caused by programmatic and budget variables within the fee categories for the majority of small entities.

The agency also determined that there should be a lower-tier annual fee based on 22 percent of the maximum small entity annual fee to further reduce the impact of fees. In FY 2011, the NRC applied this methodology which would have resulted in an upper-tier small entity fee of \$3,300, an increase of 74 percent or \$1,400 from FY 2009, and a lower-tier small entity fee of \$700, an increase of 75 percent or \$300 from FY 2009. The NRC determined that implementing this increase would have a disproportionate impact upon small entity licensees and performed a trend

analysis to calculate the appropriate fee tier levels. From FY 2000 to FY 2008, \$2,300 was the maximum upper-tier small entity fee and \$500 was the maximum lower-tier small entity fee. Therefore, in order to lessen financial hardship for small entity licensees, the NRC concluded that for FY 2011, \$2,300 should be the maximum upper-tier small entity fee and \$500 should be the lower-tier small entity fee.

## II. Response to Comments

The NRC published the FY 2013 proposed fee rule on March 7, 2013 (78 FR 14880), to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. By the close of the comment period (April 8, 2013), the NRC received responses from nine commenters that were considered in this final rulemaking. The majority of the comments were received from the uranium industry, nuclear power industry, and the general public. The comments have been grouped by issues and are addressed in a collective response.

### A. Specific 10 CFR Part 170 Issues

#### 1. Hourly Rate

*Comment.* The NRC staff received several comments from the uranium industry, nuclear power industry, and general public concerning the increase in the hourly rate. Some commenters expressed concern that the increase in the hourly rate and the large number of hours expended by the Commission staff on reviews, especially environmental reviews, has resulted in very large invoices to licensees. One commenter is concerned that the FY 2013 hourly rate is 16 percent higher than the rate charged in 2008, twice the rate of inflation since 2008. The commenter also stated the NRC should be concerned about the impact of cumulative hourly rate increases on all classes of licensees. One commenter expressed concern regarding the NRC's lack of cost containment, which the commenter believes is evident based on the number of hourly charges leading to 90 percent fee recovery for escalating uranium recovery activities. Another commenter stated that the NRC should revise the proposed rule to require more efficient processing services of services subject to hourly fees since this proposed rulemaking fails to promote opportunities for cost containment. The same commenter stated the the NRC should establish typical timeframes for activities and promote use of deadline and cost estimates even if preliminary to reduce hourly fees and provide for more timely actions by the NRC. Another

commenter is concerned about the high hourly rate along with a large number of hours charged which results in larger invoices. One commenter stated that the NRC should identify the hourly rate as it pertains to charges for its oversight staff (direct overhead), the burden rate placed on all onsite staff, and the burden overhead rate or additional contract staff which is charged to owners.

*Response.* Regarding the hourly rate increase and the large number of hours expended by the Commission staff on reviews, especially environmental reviews which result in larger invoices due to the lack of cost containment, the NRC disagrees with this comment. The number of hours spent on NRC reviews, including environmental reviews, is commensurate with the complexity of the subject matter and the quality of the applicant's submittal. The NRC has developed an efficient process for the review of uranium recovery applications. Time expended by the staff to review license applications is necessary to ensure that uranium recovery operations are in compliance with the NRC's regulations and are protective of public health, safety, and the environment. The staff has developed strategies to reduce review times, such as the pre-submission review that have substantially improved application quality and, consequently, shortens review times. If industry has further suggestions, the staff is amenable to meeting with industry in a public forum to discuss details regarding our review process.

Regarding the comment that the FY 2013 hourly rate is 16 percent higher than the rate charged in 2008, twice the rate of inflation since 2008, including impact of cumulative hour rate increases on all licensees, the NRC acknowledges this comment. However, the hourly rate is not based on the inflation rate but calculated using established fee methodology in compliance with OBRA-90, as amended, which requires the NRC recover 90 percent of its budget authority through the collection of fees assessed to licensees. The NRC is committed to ensuring the hourly rate, to the maximum extent practicable, reflects the cost of NRC services to licensees, in a manner which is fair and equitable to all licensees.

Regarding the comment expressing concern about the lack of cost containment, the NRC disagrees with this comment. Cost containment is not a viable option for the NRC because, as stated above, the NRC is required by law to collect 90 percent of its budget authority through user fees. The NRC

staff has implemented efficient review processes to ensure that these fees are fairly allocated. The staff charges the hours necessary to complete its actions and makes a considerable effort to only charge productive hours to a licensee or applicant. Resources expended by the staff are required to draw the necessary safety and environmental conclusions. Overall, additional efficiencies can be achieved by closer NRC and industry coordination prior to application submittal to ensure high quality applications. Additionally, high quality and complete responses to requests for additional information also ensure an efficient and timely review process.

Regarding the comment requesting that the NRC require more efficient processing services subject to hourly fees, the NRC disagrees with this comment. As previously mentioned, the staff constantly searches for methods to increase efficient processing of services, such as the pre-submission review, which has improved application quality and review efficiency. The staff also has increased its environmental review efficiency by using the Generic Environmental Impact Statement (GEIS), starting its Section 106 cultural and historic resource consultations earlier, and using alternate approaches to cultural and historic resource surveys.

In reference to the comment stating that the NRC should provide typical timeframes for activities, establish deadlines and prepare cost estimates to reduce hourly fees resulting in timely actions by the NRC, the staff already provides estimated costs and schedules. The staff has provided to industry its estimate for completing a new license or expansion review in January 2011 and May 2013. These estimates were presented during conferences, the latest being the 2013, National Mining Association, Uranium Recovery Workshop. The staff also presented tentative schedules on the NRC's Web site, [www.nrc.gov](http://www.nrc.gov), and updates the schedules, as needed. Licensees can also expedite the processing of their applications by ensuring applications submitted are of high quality and requests for additional information are submitted with complete information in a timely manner.

Regarding the comment that the NRC should identify the hourly rate as it pertains to charges for its oversight staff (direct overhead), the burden rate placed on all onsite staff, and the burden overhead rate or additional contract staff which is charged to owners, the NRC disagrees with this comment. The NRC charges one hourly rate to licensees which is computed by dividing the sum of the recoverable

budgeted resources for mission direct program salaries and benefits, mission indirect program support, agency corporate support and the Inspector General (IG), by mission direct full time equivalents (FTE) hours. The mission direct FTE hours are the product of the mission direct FTE multiplied by the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for contract activities related to mission direct and fee relief activities. See Section III.A, Amendments to Part 170 of Title 10 of the *Code of Federal Regulations*, Table II—Hourly Rate Calculation. Lastly, the calculation of differing burden rates would be administratively burdensome and not provide any further benefit to the licensees.

## 2. Flat Fees

*Comment.* One commenter stated that the NRC should establish more flat fees for activities at uranium recovery operations. The same commenter stated that although the NRC does not have the information such as number of hours and typical timeframes for routine activities, the NRC's goal should be to move to flat fees for routine activities. The commenter further stated that flat fees would allow the industry to better plan and budget.

*Response.* The NRC disagrees with these comments. In FY 2012, the staff considered creating more flat fees but determined it was not feasible due to the complexity of determining fair and equitable rates for sites that have significant variances in the work required for similar regulatory activities. The staff's assessment involved preparing a list of over 20 amendments and reviews typically undertaken for uranium recovery licensees and examining costs associated with these activities. The staff reviewed the data and determined it was insufficient and more resources would be required to identify specific tasks and develop corresponding flat fees. In FY 2013, the NRC continues to operate under a challenging budget environment; therefore, the NRC staff has delayed this activity in order to focus on other high-priority program activities. However, the staff will again assess this possibility in FY 2014.

## 3. Lack of Invoice Detail

*Comment.* One commenter stated that the NRC should continue efforts to provide invoices that contain more meaningful descriptions of the work done by staff and especially contractors.

*Response.* The NRC agrees with this comment. In FY 2011, the NRC requested feedback from industry on a

new invoice format to balance the need for a sufficient level of detail for industry without causing an undue burden on the NRC or the licensees. Based on the feedback, the NRC created an invoice for inspection reports which provided the number of hours charged by pay period (two weeks), a short description of the activity and an assigned billing code (TAC). Upon request by the licensee, the NRC can provide more detail which includes the full name of the NRC staff member including time charged for a specific activity. The NRC encourages licensees and applicants to contact their assigned Project Manager if additional detail is required on the work that is being performed on their behalf.

## B. Specific Part 171 Issues

### 1. Uranium Recovery Fees

*Comment.* Two commenters expressed concern on how proposed rulemaking activities contributed to increases in uranium recovery fees. One commenter stated that the uranium recovery industry has not seen much rulemaking activity in the past 12 months and requested estimates of future rulemaking cost-related to uranium recovery projects be provided to industry. The same commenter stated the proposed increased fee for 11e(2) disposal incidental to existing tailing sites is not proportionate to increases for conventional and heap leach mills, basic *In Situ* Recovery (ISR) facilities or expanded ISR facilities all of which slightly exceed 21 percent. Another commenter noted that the NRC explained increases in uranium recovery fees are due to rulemaking and licensing board activities, yet they are unaware of any ongoing rulemaking activities which would justify an increase in uranium recovery fees.

*Response.* Regarding the comments on how proposed rulemaking activities contributed towards increased uranium recovery fees, the NRC agrees with these comments. The staff planned on undertaking an ISR rulemaking at the time the budget was developed in FY 2011. However, due to the FY 2013 Appropriation and sequestration, funds for this rulemaking have been removed from the budget. The NRC staff has reflected this reduction in the final annual fees.

Regarding the comment requesting estimates of future rulemaking costs for the uranium recovery program to be submitted to industry, the NRC disagrees with this comment. Preliminary estimates for rulemaking costs submitted for budget formulation and annual fee calculations are for

internal use only. Furthermore, these estimates are subject to change throughout the budget formulation process. Therefore, agency estimates provided to industry could be inaccurate, until the budget is approved by Congress.

The FY 2013 budget also includes additional resources for licensing board activities anticipated for at least five new facility or expansion applications. Licensing board activities could include addressing standing and contentions, preparing and responding to appeals, and providing testimony in various phases of hearings. Since uranium recovery hearings are contested, these costs are not directly billed to specific licensees, except if the contested hearing involves an action related to the U.S. Government's national security-related initiative. Therefore, the agency must recover these funds through annual fees.

In reference to the comment stating the proposed increased fee for 11e(2) disposal incidental to existing tailing sites is not proportionate to increases for conventional and heap leach mills, basic *in situ* recovery facilities or expanded *in situ* recovery facilities all of which slightly exceed 21 percent, the NRC disagrees with this comment. The staff apportions the uranium recovery annual fee based on the number of licensees in each fee class and on the relative amount of time required to manage the licensees in each fee class. In addition to the budgetary resources increase for category 11e(2), the benefit factor between FY 2012 and FY 2013 had a slight increase due to operations. The resulting annual fee is the result of this calculation; however, the staff notes that the annual fee under this class is significantly lower than those of the other fee classes, except uranium water treatment facilities.

### C. Other Issues

#### 1. Streamlining Processes

*Comment.* Two commenters stated the NRC should investigate ways to reduce fees through efficient use of resources and streamlining regulatory processes, particularly to accomplish legal and policy imperatives. One commenter stated they can assist the NRC in achieving streamlining efficiencies, budgeting for future initiatives, providing timely results and processing existing license maintenance activities over new applications if resource constraints limits the NRC's ability to accomplish these tasks. The same commenter stated they can help the NRC obtain additional resources by continued communication with the

Commission or contacting Congress to support additional resources for uranium recovery. Another commenter requested the information regarding the subject of design certification requests, in the form of petitions for rulemaking with designs for certain common features such as central plants, satellite plants, wells, header houses and ponds, be provided to the uranium recovery industry. The same commenter stated that upon receipt of this information, time and costs related to these designs be described. The commenter also stated use of standardized and pre-approved designs can streamline the licensing process. One commenter stated that the NRC ensure that the GEIS and the Memorandum of Understanding (MOU) between the Commission and the Bureau of Land Management (BLM) regarding cooperation on environmental analyses be effectively implemented in order to provide the promised benefits. Another commenter stated they are hopeful that the MOU between the BLM and the NRC will result in greater efficiencies and cost savings to licensees and applicants. One commenter stated that the NRC has made little progress in the Section 106 Tribal Consultation Process and has not issued the high-level, agency-wide Section 106 guidance as promised in the response to comments in the **Federal Register** dated June 15, 2012.

*Response.* Regarding comments concerning ways to reduce fees through efficient use of resources, the staff's responses in Section II.A, "Specific 10 CFR Part 170 Issues," of this document address this issue. As discussed in Section II.A, the NRC staff has recently established efficient licensing processes. Additionally, efficiencies can be achieved through early and frequent interactions between staff and applicants and timely, high quality responses to requests for additional information during the safety and environmental review processes.

Regarding industry assistance to the NRC in petitioning Congress for additional resources for uranium recovery and budgeting for future initiatives, the NRC has sufficient resources necessary to perform its mission. The budgeted resources allow the NRC staff to prioritize its uranium recovery work by addressing currently licensed activities first since these facilities are active and align with our mission of ensuring health and safety of operating facilities. The NRC then budgets and reviews new license and expansion applications consistent with the anticipated number of applications and the uncertainty associated with scheduled license submissions. The

current resources are sufficient to allow the staff to review 8 to 10 major applications at any given time. However, the staff has deferred the reviews of certain expansion and new license applications, the longest of which was 6 months to focus on other high-priority items. Furthermore, planned guidance development has been delayed to free resources to address the top two priorities. As more sites are licensed, the number of license maintenance activities will increase; thereby, reducing the number of major applications that can be reviewed at any given time. The NRC is aware of this situation and will provide resources commensurate with the uranium recovery workload.

Regarding the comments that design certification requests be submitted as petitions for rulemaking and streamlining of licensing regulatory processes to use standardized and pre-approved designs and to process new applications along with existing applications, the NRC agrees with the comments. On multiple occasions, the staff has stated it would entertain a strategy of certifying standard designs as a means of streamlining the application and review processes for new facilities or expansions. This can be accomplished by multiple methods. One method is the design certification where a specific aspect of a uranium recovery facility is standardized and codified. Reactor designs, for example, have been certified by the staff and are included in 10 CFR part 52. However, these designs are incorporated into the regulations by a rulemaking, which could be requested under 10 CFR part 2. A second method would involve industry preparing standard designs for certain aspects of uranium recovery facilities, which are reviewed by the staff. Afterwards, the staff documents this review in a published NUREG. Similar to design certifications, this NUREG could be incorporated by reference into license applications. The staff would be willing to discuss such certifications in publicly noticed meetings at industry's request.

In reference to the comments that the NRC is not effectively implementing the GEIS and the MOU between the BLM to achieve greater efficiencies and cost savings, the NRC disagrees with this comment. The staff has effectively utilized the GEIS by referencing the conclusions in the GEIS, as appropriate, within its site-specific supplemental EISs. This has reduced the time required to prepare the supplemental EISs. Furthermore, the MOU between the NRC and the BLM was recently revised to enhance communication and cooperation between the NRC and BLM

staff during the preparation of environmental review documents. This MOU streamlines the agencies' NEPA and Section 106 review processes by allowing the agencies to jointly conduct these reviews, prepare one review document, and, thus, minimize duplication of efforts, whereby, resulting in greater efficiencies and cost savings to the agency.

Regarding the comment that the NRC first, has made little progress in the Section 106 Tribal Consultation Process and, second, that the Tribal consultation guidance has not been issued, the NRC staff disagrees with the first part of the comment, and agrees with the second part. Regarding the comment on the progress on the process, during the Commission Briefing on Uranium Recovery on February 20, 2013, the NRC staff discussed the challenges that the Section 106 process has presented in recent years. The NRC has experienced a substantial expansion of the Section 106 consultation activities for the ISR projects. There has been a significant increase in the number of Native American Tribes interested in each ISR project, from a few Tribes prior to 2010, to a current average of 20 Tribes per project. This has resulted in a significant increase in the number and complexity of consultations and the need for the NRC staff to enhance its efforts to ensure that historic properties of religious and cultural significance to the Tribes are identified.

However, the NRC staff recently has made progress and facilitated Tribal field surveys for four ISR project sites. Furthermore, Tribal field surveys for two ISR project sites are expected to be completed in Spring/Summer 2013. As stated in Section A of this document, the staff also has increased its Section 106 consultation efficiency by starting its Section 106 cultural and historic resource consultations earlier and using alternate approaches to cultural and historic resource surveys.

Regarding the comment on the guidance, the staff agrees that the high-level Section 106 guidance has not been issued. However, the NRC staff is currently in the process of developing this high-level Section 106 guidance specific for uranium recovery projects based on knowledge and experience gained through work efforts on the NRC's Tribal Protocol Manual and the NRC's Tribal Policy Statement. The NRC staff expects to issue a draft of the Section 106 guidance for public comment by spring 2014.

## 2. Education Programs

*Comment.* One commenter is pleased that the Continuing Resolution

Appropriations restores funding for the Integrated University Program which was previously cut under the President's FY 2013 budget. The same commenter stated that this funding ensures that a well trained and educated nuclear professional will meet the needs of government and industry.

*Response.* The NRC agrees that it is effectively managing the Integrated University Program. The NRC's resources for this program are recovered as part of its fee-relief activities.

## 3. Transparency

*Comment.* One commenter urged the NRC to revise and republish proposed fees reflecting the actual budget for FY 2013. The same commenter stated the NRC should follow a consistent and transparent process for determining and publishing its planned fees. The commenter further stated that if it requires additional time for the NRC to republish proposed fees after considering all budget perturbations forced on the agency by Congress, the NRC should take whatever time necessary to ensure the basis for its fees is openly and timely available to all stakeholders. The commenter is concerned that publishing a proposed fee rule based on one set of circumstances, and a final fee rule based on another set of circumstances undermines the whole purpose of the rulemaking process.

*Response.* The NRC disagrees with these comments. The NRC strives to ensure proposed fee rulemakings are as accurate as possible in compliance to the statutory requirements, OBRA-90 and the Administrative Procedure Act (APA). The OBRA-90 requires the NRC to collect 90 percent of the budget authority through fees assessed to licensees by the end of the fiscal year. Section 553 of the APA requires the NRC to give the public an opportunity to comment on a rule proposed by the agency before the rule can be put into effect. This section also requires the effective date of a regulation be not less than 30 days from the date of publication unless there is a good cause for implementation at an earlier date. Additionally, this final fee rule has been designated as a "major rule" under the Congressional Review Act and cannot become effective until 60 days after publication of the final rule in the **Federal Register**. Due to schedule requirements, the NRC will not republish the FY 2013 Proposed Fee Rule, but will ensure the FY 2013 Final Fee Rule is published in a timely manner.

## 4. Fee Structure

*Comment.* One commenter stated that the NRC should be totally government funded. Another commenter stated that the current NRC fee structure creates problems of impartiality where dependence for budget is based on having more operating nuclear plants to fund the NRC. The same commenter stated that the current NRC fee structure is too low and hourly work rates are below those many lawyers and similar professionals charge. The commenter further stated that a higher hourly rate is appropriate due to the wide scope of overhead and other work which stems from inspection work. The same commenter suggested that NRC should drastically increase the rate for any hourly charged work that is part of a failure or non-compliance by an operator. The commenter also stated the NRC is spending considerable amounts of manpower dealing with the results of poor operator conduct.

*Response.* The NRC disagrees with these comments. The NRC cannot be totally government funded without Congress overturning the existing law that governs the NRC's budget authority which is OBRA-90, as amended. The OBRA-90, as amended, requires the NRC to collect 90 percent of its recoverable budget through fees assessed to licensees.

Regarding the comment concerning the NRC fee structure, the NRC believes the current fee methodology used to compute the hourly rate fairly distributes the mission direct and indirect costs to all licensees. The methodology also ensures that the costs of specific services provided by the NRC staff that benefit specific licensees, which includes activities associated with noncompliance, are charged to those licensees who require and/or receive these services by NRC staff as opposed to imposing these costs on all licensees. The costs associated with these specific services are assessed in the form of hourly fees billed for the NRC staff time expended to ensure licensee compliance to the NRC's regulations.

## 5. Exemptions

*Comment.* One commenter stated the NRC should update § 170.11(a)(1)(iii)(B) to read "The NRC must be the primary beneficiary of the NRC's review and approval of these documents." The same commenter stated the last sentence should be deleted from this section because as written, no one could ever receive a fee exemption. Another commenter stated that the NRC should update § 170.11(a)(1)(iii)(D) to read,

“The report should be generically applicable to multiple licensees. The exemption applies even if the report does not apply to a complete class of licensees.” The commenter further stated that this change will ensure the widest possible use of any report reviewed and endorsed by the NRC, but still allow a sub-set of a class of licensees.

*Response.* The NRC disagrees with the comments and believes the current regulations provide fair treatment to all licensees regarding the conditions required for exemption approval on request/reports. The established threshold for consideration of fee exemptions were developed recognizing that the costs of exempted reviews are recovered through annual fees to all the licensees in the affected fee class.

The NRC encourages public input through the petition for rulemaking process which is a system by which any member of the public can request that the NRC develop, modify, or rescind a regulation. Information on the petition for rulemaking process is available on the NRC’s public Web site at <http://www.nrc.gov/about-nrc/regulatory/rulemaking/petition-rule.html>.

6. Fee Schedules

*Comment.* One commenter supports the new revision of the fee schedules for FY 2013 to address inflation and extra expenses. The same commenter further stated that the NRC, after the Fukushima Dai-ichi accident in Japan has had to perform more studies, analysis and inspections to determine the lessons learned and the applicability to aging U.S. reactors. Another commenter dislikes the new revision of the fee schedules and stated that the licensees are giving the NRC more bribe money to overlook incidents at nuclear power plants.

*Response.* The NRC agrees with the comment supporting the new revision of

the NRC fee schedules. The NRC disagrees with the comment stating that licensee fees are bribes to the NRC to overlook incidents at facilities. OBRA–90 and implementing regulations promulgated by the NRC require licensees to pay fees. The NRC ensures no incident at nuclear power plant is overlooked and believes the fee schedules accurately represent the NRC’s cost of providing regulatory services to all licensees. The NRC concludes that neither of these comments warrant policy changes in 10 CFR part 170 and 171. Therefore, no changes were made to the final rule in response to these comments.

III. Final Action

The NRC assesses two types of fees to meet the requirements of OBRA–90. First, user fees, presented in 10 CFR part 170 under the authority of the IOAA, recover the NRC’s costs of providing special benefits to identifiable applicants and licensees. For example, the NRC assesses these fees to cover the costs of inspections, applications for new licenses and license renewals, and requests for license amendments. Second, annual fees, presented in 10 CFR part 171 under the authority of OBRA–90, recover generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. Under this rulemaking, the NRC continues the fee cost recovery principles through the adjustment of fees without changing the underlying principles of the NRC fee policy in order to ensure that the NRC continues to comply with the statutory requirements of OBRA–90, the AEA, and the IOAA.

FY 2013 Appropriation

On March 26, 2013, President Obama signed the Consolidated and Further Continued Appropriations Act of 2013, giving the NRC a total appropriation of \$985.6 million. Accordingly, in

compliance with the Atomic Energy Act of 1954, as amended, and OBRA–90, the NRC is amending its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2013 budget authority, less the appropriations for non-fee items. The amount of the NRC’s required fee collections is set by law and is, therefore, outside the scope of this rulemaking.

FY 2013 Fee Collection

In compliance with the AEA and OBRA–90, the NRC amends its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2013 budget authority less the appropriations for non-fee items. The NRC’s total budget authority for FY 2013 is \$985.6 million. The non-fee items excluded outside of the fee base includes \$0.8 million for WIR activities and \$24.9 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC is required to recover \$864.0 million in FY 2013 through 10 CFR part 170 licensing and inspection fees and through 10 CFR part 171 annual fees. This amount is \$45.5 million less than the amount for recovery in FY 2012, a decrease of 5.0 percent. The FY 2013 fee recovery amount increases by \$200,000 as a result of billing adjustments (sum of unpaid current year invoices (estimated) minus payments for prior year invoices), and reduces by \$20.9 million for unbilled prior year invoices under 10 CFR part 170 and \$4.6 million for current year collections made the termination of two operating reactors.

Table I summarizes the budget and fee recovery amounts for FY 2013. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS  
[Dollars in millions]

	FY 2012 Final rule	FY 2013 Final rule
Total Budget Authority .....	\$1,038.1	\$985.6
Less Non-Fee Items .....	– 27.5	– 25.7
Balance .....	\$1,010.6	\$959.9
Fee Recovery Rate for FY 2013 .....	90%	90%
Total Amount to be Recovered for FY 2013 .....	\$909.5	864.0
10 CFR Part 171 Billing Adjustments:		
Unpaid Current Year Invoices (estimated) .....	2.3	2.2
Less Current Year from Collections (Terminated—Operating Reactors) .....	0.0	– 4.6
Less Payments Received in Current Year for Previous Year Invoices (estimated) .....	– 10.8	– 2.0
Subtotal .....	– 8.5	4.4
Amount to be Recovered through 10 CFR Parts 170 and 171 Fees .....	\$901.0	\$859.6

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS—Continued

[Dollars in millions]

	FY 2012 Final rule	FY 2013 Final rule
Less Estimated 10 CFR Part 170 Fees .....	- 345.2	- 327.1
Less Prior Year Unbilled 10 CFR Part 170 Fees .....		- 20.9
10 CFR Part 171 Fee Collections Required .....	\$555.8	\$511.6

In this final fee rule, the NRC amends fees for power reactors, spent fuel storage/reactor decommissioning, non-power reactors, uranium recovery facilities, most fuel facilities, some small materials users, and the U.S. Department of Energy's (DOE) transportation license. The 10 CFR part 170 fees decrease by \$15.3 million from the proposed fee rule estimate of \$363.3 million primarily due to a reduction in budgetary resources and licensing actions. As a result of this change, the total annual fees decrease by \$50.1 million from the proposed rule estimate of \$561.7 million. In general, the percentage changes in most annual fees compared to the previous year are relatively small due to a decrease in the NRC's appropriation as compared to FY 2012. The FY 2013 appropriation also resulted in a small decrease to the average FTE rate that is used to calculate the budget allocation to each of the fee classes and fee-relief activities in this final rule.

The NRC estimates that \$348 million will be recovered from 10 CFR part 170 fees under this final fee rule. This represents an increase of approximately 0.8 percent as compared to the actual 10 CFR part 170 collections of \$345.2 million in FY 2012. The NRC derived the FY 2013 estimate for the 10 CFR part 170 fee collections from the latest billing data that includes the collection of prior year 10 CFR part 170 unbilled invoices which occurred as result of the adoption of a new accounting system in October 2010. In October 2012, the NRC became aware that certain project managers' and resident inspectors' (including senior resident inspectors) hours were not being billed for services rendered by the NRC. This error resulted in the NRC under billing some of its licensees for a total of \$20.9 million for the past eight quarters under 10 CFR part 170. The NRC is statutorily obligated to collect the appropriate fees for services provided; therefore, the NRC applied the estimate of this collection of fees to FY 2013 10 CFR part 170 billings and the FY 2013 annual fees have annually been adjusted to account for this additional revenue

collection. The FY 2013 billing adjustments estimated that the unpaid current year invoices total \$2.2 million and the estimated receipt of payments total \$2 million for previous year invoices. Additionally, the billing adjustments include \$4.6 million in the current year collections for the termination of two operating reactors in FY 2013.

The remaining \$511.5 million is to be recovered through the 10 CFR part 171 annual fees in FY 2013, which is a decrease of approximately 8 percent compared to actual 10 CFR part 171 collections of \$555.8 million for FY 2012. The change for each class of licensees affected is discussed in Section III.B.3, "Administrative Amendments," of this document.

#### *FY 2013 Billing*

The FY 2013 final fee rule is a "major rule" as defined by the Congressional Review Act of 1996 (5 U.S.C. 801–808). Therefore, the NRC's fee schedules for FY 2013 will become effective 60 days after publication of the final rule in the **Federal Register**. Upon publication of the FY 2013 final fee rule, the NRC will send an invoice for the amount of the annual fee to reactor licensees, 10 CFR part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of \$100,000 or more. For these licensees, payment is due on the effective date of the FY 2013 final fee rule. Because these licensees are billed quarterly, the payment due is the amount of the total FY 2013 annual fee, less payments made in the first three quarters of the fiscal year.

Materials licensees with annual fees of less than \$100,000 are billed annually. Those materials licensees whose license anniversary date during FY 2013 falls before the effective date of the FY 2013 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2012 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2013 final rule will be billed for the annual fee at the FY 2013 annual fee rate during the anniversary month of

the license, and payment will be due on the date of the invoice.

#### *FY 2013 Amendment Changes*

The NRC is amending 10 CFR parts 170 and 171 as discussed in the following sections.

##### *A. Amendments to Part 170 of Title 10 of the Code of Federal Regulations (10 CFR): Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended.*

In FY 2013, the NRC is decreasing the hourly rate to recover the full cost of activities under 10 CFR part 170 and has used this rate to calculate "flat" application fees.

The NRC is making the following changes:

##### 1. Hourly Rate.

The NRC's hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The NRC is changing the current hourly rate of \$274 to \$272 in FY 2013. This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31.

The FY 2013 hourly rate is 0.7 percent lower than the FY 2012 hourly rate of \$274. The decrease in the hourly rate is due primarily to lower agency budgeted resources and by a small increase in the number of direct FTE. The following paragraphs describe the hourly rate calculation in further detail.

The NRC's hourly rate is derived by dividing the sum of recoverable budgeted resources for (1) mission direct program salaries and benefits; (2) mission indirect program support; and (3) agency corporate support and the Inspector General (IG), by mission direct FTE hours. The mission direct FTE hours are the product of the mission direct FTE multiplied by the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for contract activities related to mission direct and fee-relief activities.

In FY 2013, the NRC used 1,351 hours per direct FTE, a decrease of 1.5 percent from FY 2012, to calculate the hourly fees. The NRC has reviewed data from

its time and labor system to determine if the annual direct hours worked per direct FTE estimate requires updating for the FY 2013 fee rule. Based on this review of the most recent data available, the NRC determined that 1,351 hours is

the best estimate of direct hours worked annually per direct FTE. This estimate excludes all indirect activities such as training, general administration, and leave.

Table II shows the results of the hourly rate calculation methodology. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE II—HOURLY RATE CALCULATION

	FY 2012 Final rule	FY 2013 Final rule
Mission Direct Program Salaries & Benefits .....	\$349.9	\$345.1
Mission Indirect Program Support .....	25.9	19.7
Agency Corporate Support, and the IG .....	472.3	474.8
Subtotal .....	848.0	839.6
Less Offsetting Receipts .....	- 0.0	0.0
Total Budget Included in Hourly Rate (Millions of Dollars) .....	848.0	839.6
Mission Direct FTE (Whole numbers) .....	2,258	2,285
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE Hours) (Whole Numbers) .....	274	272

As shown in Table II, dividing the FY 2013 \$839.6 million budget amount included in the hourly rate by total mission direct FTE hours (2,285 FTE times 1,351 hours) results in an hourly rate of \$272. The hourly rate is rounded to the nearest whole dollar.

2. Flat Application Fee Changes

The NRC is adjusting current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of \$272. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the proposed professional hourly rate for FY 2013.

Biennially, the NRC evaluates historical professional staff hours used to process a new license application for materials users fee categories subject to flat application fees. This is in accordance with the requirements of the Chief Financial Officer’s Act. The NRC conducted this biennial review for the FY 2013 fee rule which also included license and amendment applications for import and export licenses.

Evaluation of the historical data in FY 2013 shows that the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some fee categories and decreased in others to more accurately reflect current data for completing these licensing actions. The average number of professional staff hours needed to complete new licensing actions was last updated for the FY 2011 final fee rule. Thus, the revised proposed average professional staff hours in this final fee rule reflect the changes in the NRC licensing review program that have occurred since that time.

This final rule also includes three new fee categories, 2.D. through 2.F, and a modified description of fee category 2.C., which were not included in the proposed fee rule. These changes were introduced in the proposed rule, “Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions,” dated July 26, 2010 (75 FR 43425), and the rule was published as a final rule on May 29, 2013 (78 FR 32310). The fees for these new fee categories 2.C through 2.F., absent a biennial review, were determined by performing a comparative analysis to related fee categories. As a result, this final fee rule lowers the fees for categories 2.D and 2.E, and increases the fee for category 2.C from those fees listed in the final source material rule to be consistent with the calculated fee changes in this final fee rule; the fee for category 2.F. remains unchanged from that listed in the final source material rule.

In general, the increase in application fees is due to the increased number of hours to perform specific activities based on the biennial review. Application fees for 10 fee categories (2.B., 3.H., 3.M., 3.N., 3.P., 3.R.2., 3.S., 5.A., 7.C., and 10.B. under § 170.31) increase as a result of the average time to process these types of license applications. The decrease in fees for 9 fee categories (2.F. (formerly 2.C.), 3.B., 3.C., 3.I., 3.Q., 4.B., 9.A., 9.C., and 16 under § 170.31) is due to a decrease in average time to process these types of applications. Also, the application fees increase for 3 import and export fee categories (K.4, 15.D, and 15.H under § 170.31).

The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be minimal. Fees under \$1,000 are rounded to the nearest \$10, fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100, and fees that are greater than \$100,000 are rounded to the nearest \$1,000.

The licensing flat fees are applicable for fee categories K.1. through K.5. of § 170.21, and fee categories 1.C., 1.D., 1.F., 2.B., 2.C., 2.D., 2.E., 2.F., 3.A. through 3.S., 4.B. through 9.D., 10.B., 15.A. through 15.L., 15.R., 16, and 17 of § 170.31. Applications filed on or after the effective date of the FY 2013 final fee rule would be subject to the revised fees in the final rule.

3. Administrative Amendments

This final rule is making the following administrative changes for clarity:

a. § 170.21: Footnote 2 is revised to reflect there are no more applications pending review prior to 1991. The following language is deleted, “For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision, or supplement to

a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.”

b. § 170.21: Footnote 4 is revised to include “in 10 CFR part 110.27,” for clarity.

c. § 170.31: The fee category name for 2.A.(1) is changed to include “deconversion,” to reflect the new description and the description for fee category 2.A.(1) is changed to include “or for deconverting uranium hexafluoride in the production of uranium oxides for disposal,” to capture the deconversion of uranium hexafluoride (UF<sub>6</sub>) into uranium oxides for disposal and commercial sale of the fluoride byproducts from uranium deconversion facilities.

d. § 170.31: The descriptions for fee categories 1.C., 1.D., and Footnote 4 are changed and a new fee category 1.F. is created to address licenses authorizing greater than critical mass as defined by § 70.4, “Critical Mass.” Under 10 CFR part 170, the fee category 1.C. description includes “of less than a critical mass as defined in § 70.4 of this chapter.”<sup>4</sup> The fee category 1.D. description is changed to, “All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass as defined in § 70.4 of this, for which the licensee shall pay the same fees as those under Category 1.A.”<sup>4</sup> A new fee category 1.F. reads, “For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter.”<sup>4</sup> The Footnote 4 includes fee category 1.F. along with fee categories 1.C. and 1.D. for sealed sources authorized in the same license.

e. § 170.31: The description for fee category 15.D. is revised to exclude

language regarding import and export of radioactive waste. The new description reads, “Application for export or import of nuclear material not requiring Commission or Executive Branch review, or obtaining foreign government assurances.”

f. § 170.31: Footnote 3 is revised for clarity because there are no more applications on file prior to 1991 and deletes the following language, “For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff- hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports for which costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.”

In summary, the NRC is making the following changes to 10 CFR part 170:

1. Establishes a revised professional hourly rate to use in assessing fees for specific services;
2. Revises the license application fees to reflect the FY 2013 hourly rate; and
3. Makes administrative changes to §§ 170.21 and 170.31.

*B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.*

The NRC will use its fee-relief surplus to decrease all licensees’ annual fees based on their percentage share of the fee recoverable budget authority. This rulemaking also makes changes to the number of NRC licensees and establishes rebaselined annual fees based on Public Law 112–10. The amendments are described as follows:

1. Application of Fee-Relief and Low-Level Waste (LLW) Surcharge

The NRC will use its fee-relief surplus to decrease all licensees’ annual fees, based on their percentage share of the budget. The NRC will apply the 10 percent of its budget that is excluded from fee recovery under OBRA–90, as amended (fee relief), to offset the total budget allocated for activities that do not directly benefit current NRC licensees. The budget for these fee-relief activities is totaled and then reduced by the amount of the NRC’s fee relief. Any difference between the fee-relief and the budgeted amount of these activities results in a fee-relief adjustment (increase or decrease) to all licensees’ annual fees, based on their percentage share of the budget, which is consistent with the existing fee methodology.

The FY 2013 budgetary resources for the NRC’s fee-relief activities are \$89.8 million. The NRC’s 10 percent fee-relief amount in FY 2013 is \$96.0 million, leaving a \$6.2 million fee-relief surplus that will reduce all licensees’ annual fees based on their percentage share of the budget. The FY 2013 budget for fee-relief activities decreased from FY 2012 mainly due to a decrease in the FY 2013 NRC appropriated budget even though there was an increase of \$1.2 million in the small entity subsidy.

Table III shows the budgeted costs for fee-relief activities and the fee-relief adjusted amount to be allocated to annual fees. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE III—FEE-RELIEF ACTIVITIES  
[Dollars in millions]

Fee-relief activities	FY 2012 budgeted costs	FY 2013 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:		
a. International activities .....	\$9.0	\$10.2
b. Agreement State oversight .....	11.0	10.3
c. Scholarships and Fellowships .....	16.8	16.4
d. Medical Isotope Production .....	3.4	3.5
2. Activities not assessed under 10 CFR part 170 licensing and inspection fees or 10 CFR part 171 annual fees based on existing law or Commission policy:		
a. Fee exemption for nonprofit educational institutions .....	11.2	10.2
b. Costs not recovered from small entities under 10 CFR 171.16(c) .....	6.5	7.7
c. Regulatory support to Agreement States .....	17.5	16.3

TABLE III—FEE-RELIEF ACTIVITIES—Continued  
[Dollars in millions]

Fee-relief activities	FY 2012 budgeted costs	FY 2013 budgeted costs
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes) .....	14.0	13.9
e. <i>In Situ</i> leach rulemaking and unregistered general licensees .....	1.7	1.3
Total fee-relief activities .....	91.1	89.8
Less 10 percent of NRC's FY 2012 total budget (less non-fee items) .....	- 101.1	- 96.0
Fee-Relief Adjustment to be Allocated to All Licensees' Annual Fees .....	- 10.0	- 6.2

Table IV shows how the NRC is allocating the \$6.2 million fee-relief surplus adjustment to each license fee class. As explained previously, the NRC is allocating this fee-relief adjustment to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee-relief surplus adjustment is subtracted from the required annual fee recovery for each fee class.

Separately, the NRC has continued to allocate the LLW surcharge based on the volume of LLW disposal of three classes of licenses: Operating reactors, fuel facilities, and materials users. Because LLW activities support NRC licensees, the costs of these activities are recovered through annual fees. In FY 2013, this allocation percentage was updated based on review of recent data which reflects the change in the support

to the various fee classes. The allocation percentage of LLW surcharge decreased for operating reactors and increased for fuel facilities and materials users compared to FY 2012.

Table IV also shows the allocation of the LLW surcharge activity. For FY 2013, the total budget allocated for LLW activity is \$3.4 million. (Individual values may not sum to totals due to rounding.)

TABLE IV—ALLOCATION OF FEE-RELIEF ADJUSTMENT AND LLW SURCHARGE, FY 2013  
[Dollars in millions]

	LLW surcharge		Fee-Relief adjustment		Total
	Percent	\$	Percent	\$	\$
Operating Power Reactors .....	53.0	1.8	85.4	- 5.3	- 3.5
Spent Fuel Storage/Reactor Decommissioning .....			3.9	- 0.2	- 0.2
Research and Test Reactors .....			0.2	0.0	0.0
Fuel Facilities .....	37.0	1.3	6.0	- 0.4	0.9
Materials Users .....	10.0	0.3	2.9	- 0.2	0.1
Transportation .....			0.4	- 0.0	- 0.0
Uranium Recovery .....			1.1	- 0.1	- 0.1
Total .....	100.0	3.4	100.0	- 6.2	- 2.8

2. Revised Annual Fees

The NRC is revising its annual fees in §§ 171.15 and 171.16 for FY 2013 to recover approximately 90 percent of the NRC's FY 2013 budget authority, after subtracting the non-fee amounts and the estimated amount to be recovered through 10 CFR part 170 fees. The 10 CFR part 170 collections estimates for this final fee rule is \$348 million, an increase of \$2.8 million from the FY 2012 final fee rule. The total amount to be recovered through annual fees for this final fee rule is \$511.6 million, a decrease of \$44.3 million from the FY 2012 final fee rule. The required annual fee collection in FY 2012 was \$555.8 million.

The Commission has determined (71 FR 30721; May 30, 2006) that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Under this method, the NRC's budget is analyzed in

detail, and budgeted resources are allocated to fee classes and categories of licensees. The Commission expects that for most years there will be budgetary and other changes that warrant the use of the rebaselining method.

As compared with the FY 2012 annual fees, the FY 2013 final rebaselined fees decrease for two classes of licensees: operating reactors and DOE Transportation Activities. The annual fees increase for five classes of licensees: spent fuel storage/reactor and decommissioning, research and test reactors, fuel facilities and most materials and uranium recovery licensees.

The NRC's total fee recoverable budget, as mandated by law, decreases by \$45.6 million for FY 2013 compared to FY 2012. The FY 2013 budget was allocated to the fee classes that the budgeted activities support. The annual fees increase for spent fuel storage/

reactor and decommissioning, research and test reactors, fuel facilities, and most materials and uranium recovery licensees while annual fees for operating reactors and DOE Transportation Activities decrease.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities the NRC will perform in FY 2013); the estimated 10 CFR part 170 collections for the various classes of licenses, and allocation of the fee-relief surplus adjustment to all fee classes. The percentage of the NRC's budget not subject to fee recovery remained at 10 percent from FY 2012 to FY 2013.

Table V shows the rebaselined fees for FY 2013 for a representative list of categories of licensees. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE V—REBASELINED ANNUAL FEES

Class/Category of licenses	FY 2012 annual fee	FY 2013 annual fee
Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee) .....	\$4,766,000	\$4,390,000
Spent Fuel Storage/Reactor Decommissioning .....	211,000	231,000
Research and Test Reactors (Nonpower Reactors) .....	34,700	81,600
High Enriched Uranium Fuel Facility .....	6,329,000	6,997,000
Low Enriched Uranium Fuel Facility .....	2,382,000	2,633,000
UF <sub>6</sub> Conversion and Deconversion Facility .....	1,293,000	1,429,000
Conventional Mills .....	23,600	27,900
Typical Materials Users:		
Radiographers (Category 3O) .....	25,900	27,200
Well Loggers (Category 5A) .....	10,200	12,600
Gauge Users (Category 3P) .....	4,900	6,400
Broad Scope Medical (Category 7B) .....	46,100	32,900

The work papers (ADAMS Accession No. ML13154A025) that support this final fee rule show in detail the allocation of the NRC's budgeted resources for each class of licenses and how the fees are calculated. The work papers are available as indicated in Section V, "Availability of Documents," of this document.

Paragraphs a. through h. of this section describes budgetary resources allocated to each class of licenses and the calculations of the rebaselined fees. Individual values in the tables

presented in this section may not sum to totals due to rounding.

#### a. Fuel Facilities

The FY 2013 budgeted costs to be recovered in the annual fees assessment to the fuel facility class of licenses (which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1) under § 171.16) are approximately \$32.9 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is

reduced by estimated 10 CFR part 170 collections and adjusted for allocated generic transportation resources and fee-relief. In FY 2013, the LLW surcharge for fuel facilities is added to the allocated fee-relief adjustment (see Table IV in Section III.B.1, "Application of Fee-Relief and Low-Level Waste Surcharge," of this document). The summary calculations used to derive this value are presented in Table VI for FY 2013, with FY 2012 values shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 final
Total budgeted resources .....	\$54.4	\$50.7
Less estimated 10 CFR part 170 receipts .....	-25.6	-19.5
Net 10 CFR part 171 resources .....	28.8	31.2
Allocated generic transportation .....	+0.9	+0.8
Fee-relief adjustment/LLW surcharge .....	+0.6	+0.9
Billing adjustments .....	-0.5	-0.0
Total required annual fee recovery .....	29.7	32.9

The decrease in total budgeted resources for the fuel facilities fee class from FY 2012 to FY 2013 is primarily due to reduced licensing actions. Although fuel facilities received an adjustment of approximately \$153,000 for prior year unbilled 10 CFR part 170 adjustments, the annual fee for fuel facilities increases from FY 2012 to FY 2013 primarily due to the estimated decreased 10 CFR part 170 billings due to reduced budgetary resources for licensing actions. The NRC allocates the total required annual fee recovery amount to the individual fuel facility licensees, based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the publicly available NRC work

papers, licensees are grouped into categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or

certificate is modified, it may result in a change of category for a particular fuel facility licensee, as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate (e.g., decommissioning or license termination) that results in it not being subject to 10 CFR part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders.

The methodology is applied as follows. First, a fee category is assigned,

based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Each year, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory activity. The matrix includes 10 types of regulatory activities, including enrichment and scrap/waste-related activities (see the work papers for the complete list). Effort factors are assigned as follows: One (low regulatory effort), five (moderate regulatory effort), and 10 (high regulatory effort). The NRC then

totals separate effort factors for safety and safeguard activities for each fee category.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). This results in spreading of costs to other fee categories. The Uranium Enrichment fee category factors have shifted with minimal increases and decreases between safety and safeguards factors compared to FY 2012.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES, FY 2013

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
High Enriched Uranium Fuel (1.A.(1)(a))	2	89 (38.5)	97 (47.0)
Low Enriched Uranium Fuel (1.A.(1)(b))	3	70 (30.3)	35 (17.0)
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1	3 (1.3)	15 (7.3)
Hot Cell (1.A.(2)(c))	1	6 (2.6)	3 (1.5)
Uranium Enrichment (1.E.)	2	51 (22.1)	49 (23.8)
UF <sub>6</sub> Conversion and Deconversion (2.A.(1))	1	12 (5.2)	7 (3.4)

For FY 2013, the total fee recovery budget for safety activities, before the fee-relief adjustment is made, are \$16.9 million. This amount is allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee

category is 10, that fee category will be allocated 10 percent of the total budgeted resources for safety activities. Similarly, the total fee recovery budget of \$15 million for safeguards activities is allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The fuel facility fee class' portion of the fee-relief adjustment of \$0.4 million is allocated

to each fee category based on its percent of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category. The fee (rounded) for each fuel facility is summarized in Table VIII.

TABLE VIII—ANNUAL FEES FOR FUEL FACILITIES

Facility type (fee category)	FY 2013 final annual fee
High Enriched Uranium Fuel (1.A.(1)(a))	\$6,997,000
Low Enriched Uranium Fuel (1.A.(1)(b))	2,633,000
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1,354,000
Hot Cell (and others) (1.A.(2)(c))	677,000
Uranium Enrichment (1.E.)	3,762,000
UF <sub>6</sub> Conversion and Deconversion (2.A.(1))	1,429,000

b. Uranium Recovery Facilities

The total FY 2013 budgeted costs to be recovered through annual fees assessed with the uranium recovery

class (which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5), and 18.B. under

§ 171.16) are approximately \$1 million. The derivation of this value is shown in Table IX, with FY 2012 values shown for comparison purposes.

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2012 Final	FY 2013 Final
Total budgeted resources	\$9.5	\$9.9
Less estimated 10 CFR part 170 receipts	- 8.3	- 8.9
Net 10 CFR part 171 resources	1.2	1.0
Allocated generic transportation	N/A	N/A
Fee-relief adjustment	- 0.1	- 0.0

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES—Continued  
[Dollars in millions]

Summary fee calculations	FY 2012 Final	FY 2013 Final
Billing adjustments .....	- 0.0	- 0.0
Total required annual fee recovery .....	1.0	1.0

The increase in total budgeted resources allocated to this fee class in FY 2013 is primarily due to an increase in licensing board activities. The annual fees increase for uranium recovery facilities primarily due to rulemaking and licensing board activities as well as a decrease in budgeted cost for the Uranium Mill Tailings Radiation Control Act (UMTRCA).

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating the total annual fee amount for this fee class between the DOE and the other licensees in this fee class. The NRC

regulates DOE's Title I and Title II activities under the UMTRCA. The Congress established the two programs, Title I and Title II under UMTRCA, to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program, which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2013, the annual fee assessed to DOE includes recovery of the costs specifically budgeted for the NRC's UMTRCA Title I and II activities, plus 10 percent of the remaining annual fee amount, including generic/other costs (minus 10 percent of the fee relief adjustment), for the uranium recovery class. The NRC assesses the remaining 90 percent generic/other costs minus 90 percent of the fee relief adjustment, to the other NRC licensees in this fee class that are subject to annual fees.

The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

DOE Annual Fee Amount (UMTRCA Title I and Title II) General Licenses:	
UMTRCA Title I and Title II budgeted costs less 10 CFR part 170 receipts .....	\$ 666,626
10 percent of generic/other uranium recovery budgeted costs .....	40,487
10 percent of uranium recovery fee-relief adjustment .....	- 7,084
Total Annual Fee Amount for DOE (rounded) .....	700,000
Annual Fee Amount for Other Uranium Recovery Licenses:	
90 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I and Title II activities .....	364,379
90 percent of uranium recovery fee-relief adjustment .....	- 63,757
Total Annual Fee Amount for Other Uranium Recovery Licenses .....	300,621

The DOE fee decreases by 10 percent in FY 2013 compared to FY 2012 due to reduced UMTRCA budgeted costs. The annual fee for most uranium recovery licensees increases due to licensing board activities.

The NRC will continue to use a matrix which is included in the work papers to determine the level of effort associated with conducting the generic regulatory actions for the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately \$300,621 annual fee amount to these licensees. The use of this uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2013 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). These categories are conventional uranium mills and heap leach facilities, uranium *In Situ*

Recovery (ISR) and resin ISR facilities mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities.

Second, the matrix identifies the types of operating activities that support and benefit these licensees. The activities related to generic decommissioning/reclamation are not included in the matrix because they are included in the fee-relief activities. Therefore, they are not a factor in determining annual fees. The activities included in the matrix are operations, waste operations, and groundwater protection. The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The operations, waste operations, and groundwater protection activities have weights of zero, five, and 10, respectively, in the matrix.

Each year, the NRC determines the level of benefit to each licensee for

generic uranium recovery program activities for each type of generic activity in the matrix. This is done by assigning, for each fee category, separate benefit factors for each type of regulatory activity in the matrix. Benefit factors are assigned on a scale of zero to 10 as follows: zero (no regulatory benefit), five (moderate regulatory benefit), and 10 (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously). The NRC then calculates total and per licensee benefit factors for each fee category. These benefit factors reflect the relative regulatory benefit associated with each licensee and fee category.

The benefit factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class are shown in Table XI.

TABLE XI—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills (2.A.(2)(a))	1	150	150	9
Basic <i>In Situ</i> Recovery facilities (2.A.(2)(b))	6	190	1,140	71
Expanded <i>In Situ</i> Recovery facilities (2.A.(2)(c))	1	215	215	13
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	1	85	85	5
Uranium water treatment (2.A.(5))	1	25	25	2
<b>Total</b>	<b>10</b>	<b>665</b>	<b>1,615</b>	<b>100</b>

Applying these factors to the approximately \$300,621 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in

the total annual fees for each fee category. The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee

category by the number of licensees in that fee category, as summarized in Table XII.

TABLE XII—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES  
[Other than DOE]

Facility type (fee category)	FY 2013 final annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	\$27,900
Basic <i>In Situ</i> Recovery facilities (2.A.(2)(b))	35,400
Expanded <i>In Situ</i> Recovery facilities (2.A.(2)(c))	40,000
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	15,800
Uranium water treatment (2.A.(5))	4,700

c. Operating Power Reactors

The total budgeted costs to be recovered from the power reactor fee

class in FY 2013 in the form of annual fees is \$424.2 million as shown in Table XIII. The FY 2012 values are shown for

comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS  
[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 final
Total budgeted resources	\$781.4	\$734.7
Less estimated 10 CFR part 170 receipts	- 295.5	- 303.8
Net 10 CFR part 171 resources	486.0	430.9
Allocated generic transportation	+1.3	1.3
Fee-relief adjustment/LLW surcharge	- 6.3	- 3.4
Billing adjustment	- 7.3	0.2
2nd Billing Adjustment (terminated license)	- 0.0	- 4.6
<b>Total required annual fee recovery</b>	<b>473.7</b>	<b>424.2</b>

The decrease in budgetary resources for FY 2013 is primarily due to reduced licensing actions and the completion of three major licensing reviews (Vogtle, Summer and Westinghouse Advanced Passive 1000 (AP 1000)). Consequently, more resources are being applied to the implementation of the task force recommendations regarding the Fukushima Dai-ichi accident in Japan (“Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident” (ADAMS Accession No. ML111861807), dated July 12, 2011.

The annual fees for power reactors decrease in FY 2013 due to increased 10 CFR part 170 estimates and an adjustment of \$20.7 million for prior year unbilled invoices under 10 CFR part 170. The budgeted costs to be recovered through annual fees to power reactors are divided equally among the 102 power reactors licensed to operate due to the withdrawal of two operating reactors, Crystal River and Kewaunee which results in annual fee of \$4,159,000 per reactor for FY 2013. The withdrawal also results in a credit of \$4.6 million for the 10 CFR part 171 collections for FY 2013. Additionally,

each power reactor licensed to operate would be assessed the FY 2013 spent fuel storage/reactor decommissioning annual fee of \$231,000. The total FY 2013 annual fee is \$4,390,000 for each power reactor licensed to operate. The annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactors in Decommissioning

For FY 2013, budgeted costs of \$33.4 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to 10 CFR part 50 power reactors, and to 10 CFR

part 72 licensees who do not hold a 10 CFR part 50 license. Those reactor licensees that have ceased operations

and have no fuel onsite are not subject to these annual fees. Table XIV shows the calculation of this annual fee

amount. The FY 2012 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIV—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR IN DECOMMISSIONING FEE CLASS

[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 final
Total budgeted resources .....	\$29.4	\$33.4
Less estimated 10 CFR part 170 receipts .....	- 3.6	- 5.4
Net 10 CFR part 171 resources .....	25.8	28.0
Allocated generic transportation .....	+0.7	0.6
Fee-relief adjustment .....	- 0.3	- 0.2
Billing adjustments .....	- 0.3	0.0
Total required annual fee recovery .....	22.9	28.4

The value of total budgeted resources for this fee class is higher in FY 2013 than in FY 2012 due to rulemaking activities regarding the update of the Waste Confidence rule. The required annual fee recovery amount is divided equally among 123 licensees, resulting

in an FY 2013 annual fee of \$231,000 per licensee.

e. Research and Test Reactors (Nonpower Reactors)

Approximately \$330,000 in budgeted costs is to be recovered through annual fees assessed to the test and research

reactor class of licenses for FY 2013. Table XV summarizes the annual fee calculation for the research and test reactors for FY 2013. The FY 2012 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR RESEARCH AND TEST REACTORS

[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 final
Total budgeted resources .....	\$1.68	\$1.50
Less estimated 10 CFR part 170 receipts .....	- 1.54	- 1.19
Net 10 CFR part 171 resources .....	0.14	0.30
Allocated generic transportation .....	+0.03	+0.03
Fee-relief adjustment .....	- 0.05	- 0.01
Billing adjustments .....	- 0.02	- 0.00
Total required annual fee recovery .....	0.13	0.33

Although research and test reactors received an adjustment of approximately \$112,000 for prior year 10 CFR part 170 unbilled adjustments, the increase in annual fees for research and test reactors from FY 2012 to FY 2013 is primarily due to reduced activity under 10 CFR part 170. The required annual fee recovery amount is divided equally among the four research and test reactors subject to annual fees and results in an FY 2013 annual fee of \$81,600 for each licensee.

f. Rare Earth Facilities

The agency does not anticipate receiving an application for a rare earth facility this fiscal year, so no budgeted resources are allocated to this fee class, and no annual fee will be published in FY 2013.

g. Materials Users

For FY 2013, budget costs of \$31.2 million for material users are to be recovered through annual fees assessed

to 10 CFR part 30 licensees. Table XVI shows the calculation of the FY 2013 annual fee amount for materials users licensees. The FY 2012 values are shown for comparison. Note the following fee categories under § 171.16 are included in this fee class: 1.C., 1.D., 1.F., 2.B. through 2.F., 3.A. through 3.S., 4.A. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., 16, and 17. (Individual values may not sum to totals due to rounding.)

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS LICENSEES

[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 Final
Total budgeted resources .....	\$30.6	\$30.7
Less estimated 10 CFR part 170 receipts .....	- 1.6	- 1.2
Net 10 CFR part 171 resources .....	29.0	29.5
Allocated generic transportation .....	+1.5	+1.5
Fee-relief adjustment/LLW surcharge .....	+0.1	+0.2

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS LICENSEES—Continued  
[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 Final
Billing adjustments .....	- 0.2	- 0.0
Total required annual fee recovery .....	30.4	31.2

The total required annual fees to be recovered for most materials users licensees increase in FY 2013 mainly for oversight activities and changes resulting from biennial review hours and inspection priorities.

To equitably and fairly allocate the \$31.2 million in FY 2013 budgeted costs to be recovered in annual fees assessed to the approximately 3,000 diverse materials users licensees, the NRC will continue to base the annual fees for each fee category within this class on the 10 CFR part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on the NRC's cost to regulate each category. This fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users' licenses is developed as follows:

$$\text{Annual fee} = \text{Constant} \times [\text{Application Fee} + (\text{Average Inspection Cost} \div \text{Inspection Priority})] + \text{Inspection Multiplier} \times (\text{Average Inspection Cost} \div \text{Inspection Priority}) + \text{Unique Category Costs.}$$

The constant is the multiple necessary to recover approximately \$22.6 million in general costs (including allocated generic transportation costs) and is 1.52 for FY 2013. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of \$272. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately \$8.2 million in inspection costs, and is 2.3 for FY 2013. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2013, approximately

\$153,000 in budgeted costs for the implementation of revised 10 CFR part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human-use licenses.

The annual fee to be assessed to each licensee also includes a share of the fee-relief surplus adjustment of approximately \$175,000 allocated to the materials users fee class (see Section III.B.1, "Application of Fee-Relief and Low-Level Waste Surcharge," of this document), and for certain categories of these licensees, a share of the approximately \$338,000 surcharge costs allocated to the fee class. The annual fee for each fee category is shown in § 171.16(d).

h. Transportation

Table XVII shows the calculation of the FY 2013 generic transportation budgeted resources to be recovered through annual fees. The FY 2012 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION  
[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 final
Total budgeted resources .....	\$9.2	\$8.2
Less estimated 10 CFR part 170 receipts .....	- 3.4	- 2.7
Net 10 CFR part 171 resources .....	5.9	5.5

The NRC must approve any package used for shipping nuclear material before shipment. If the package meets NRC requirements, the NRC issues a Radioactive Material Package Certificate of Compliance (CoC) to the organization requesting approval of a package. Organizations are authorized to ship radioactive material in a package approved for use under the general licensing provisions of 10 CFR part 71, "Packaging and Transportation of Radioactive Material." The resources associated with generic transportation activities are distributed to the license fee classes based on the number of CoCs benefitting (used by) that fee class, as a proxy for the generic transportation resources expended for each fee class.

The total FY 2013 budgetary resources for generic transportation activities including those to support DOE CoCs is \$5.5 million. The decrease in 10 CFR part 171 resources in FY 2013 is primarily due to decreased budgetary resources for regulatory programs. Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate fee-relief category (e.g., the fee-relief category for nonprofit educational institutions).

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC will recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. The

NRC will continue to assess a separate annual fee under § 171.16, fee category 18.A., for DOE Transportation Activities. The amount of the allocated generic resources is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered.

The distribution of these resources to the license fee classes and DOE is shown in Table XVIII. The distribution is adjusted to account for the licensees in each fee class that are fee-exempt. For example, if four CoCs benefit the entire research and test reactor class, but only four of 31 research and test reactors are subject to annual fees, the number of CoCs used to determine the proportion

of generic transportation resources allocated to research and test reactor annual fees equals (4/31)\*4, or 0.5 CoCs.

TABLE XVIII—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2013

[Dollars in millions]

License fee class/DOE	Number CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
Total .....	87.5	100.0	\$5.54
DOE .....	20.0	22.9	1.27
Operating Power Reactors .....	20.0	22.9	1.27
Spent Fuel Storage/Reactor Decommissioning .....	10.0	11.4	0.63
Research and Test Reactors .....	0.5	0.6	0.03
Fuel Facilities .....	13.0	14.8	0.82
Materials Users .....	24.0	27.4	1.52

The NRC assesses an annual fee to DOE based on the 10 CFR part 71 CoCs it holds and does not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's annual fee includes a reduction for the fee-relief surplus adjustment (see Section III.B.1, "Application of Fee-Relief and Low-Level Waste Surcharge," of this document), resulting in a total annual fee of \$1,238,000 for FY 2013. The annual fee decreases in FY 2013 are primarily due to reduced budgeted resources for the NRC's transportation activities.

### 3. Small Entity Fees

Regarding small entity fees, the NRC conducted its 2013 biennial review of the small entity fees to determine if the fees should be changed. The NRC applied the fee methodology developed in FY 2009 that applies a fixed percentage of 39 percent to the prior 2-year weighted average of materials users' fees. This resulted in an upper-tier small entity fee increase from \$2,300 to \$3,500 and a lower-tier fee increase from \$500 to \$800, which is a 52 percent and 60 percent increase, respectively. Implementing this increase would have a disproportionate impact upon the NRC's small licensees compared to other licensees. Therefore, the NRC staff revised the increase to 21 percent for upper-tier fee which is the same limit applied in the FY 2011 biennial review. The NRC staff is amending the upper-tier small entity fee to \$2,800 and amending the lower-tier small entity fee to \$600 for FY 2013. The NRC staff believes these fees are reasonable and provide relief to small entities while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them.

### 4. Administrative Amendments

This final rule makes certain administrative changes for clarity:

a. § 171.16: Footnote 1 is revised for clarity and deletes the following language, "Licensees paying annual fees under category 1.A.(1) are not subject to the annual fees for categories 1.C. and 1.D. for sealed sources authorized in the license."

b. § 171.16: New Footnote 15 is added for clarity and reads as follows, "Licensees paying annual fees under category 1.A., 1.B., and 1.E. are not subject to the annual fees for categories 1.C., 1.D., and 1.F. for sealed sources authorized in the license."

c. § 171.16: Reference to Footnote 4 is removed and replaced with reference to Footnote 15 in fee categories 1.C. and 1.D. Fee category 1.F. is revised to reference Footnote 15 for clarity.

d. § 171.16(c): The description for small entities is revised to include "10 CFR part 72 licensees," as eligible to apply for small entity status. The staff believes this inclusion remedies the unintended consequence of the consolidation of 10 CFR part 72 licenses under § 171.15 being excluded for treatment as a small business entity for fee purposes.

e. The NRC revises the lower-tier receipts-based threshold of \$450,000 to \$485,000 to reflect approximately the same percentage adjustment as the NRC's upper-tier receipts-based standard adjustment from \$6.5 to \$7 million which was published as a final rule in the **Federal Register** (77 FR 39385) and effective on August 22, 2012.

f. § 171.16: The name for fee category 2.A.(1) includes "deconversion," to reflect the new description and the description for fee category 2.A.(1) is changed to include "or for deconverting uranium hexafluoride in the production of uranium oxides for disposal," to capture the deconversion of uranium

hexafluoride (UF<sub>6</sub>) into uranium oxides for disposal and commercial sale of the fluoride byproducts from uranium deconversion facilities.

g. § 171.16: The descriptions for fee categories 1.C. and 1.D. are changed; and a new fee category 1.F. is created to address licenses authorizing greater than critical mass as defined by § 70.4, "Critical Mass." Under 10 CFR part 170, the fee category 1.C. description would include "of less than a critical mass as defined in § 70.4 of this chapter." The fee category 1.D. description is changed to, "All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass as defined in § 70.4 of this, for which the licensee shall pay the same fees as those under category 1.A." A new fee category 1.F. reads, "For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter."

h. § 171.19(d) is revised for clarity and changes "and 3.A. through 9.D." to "3.A. through 3.F., and 3.H. through 9.D."

i. § 171.16: Footnote 7 is revised for clarity and deletes the following language, "they are charged an annual fee in other categories while they are licensed to operate," and adds the following language, "their decommissioning fees are covered by other fees."

In summary, the NRC is making the following changes to 10 CFR part 171:

1. Uses the NRC's fee-relief surplus to reduce all licensees' annual fees, based on their percentage share of the NRC budget;
2. Establishes rebaselined annual fees for FY 2013;
3. Increases the maximum small entity fee from \$2,300 to \$2,800, and the lower-tier fee from \$500 to \$600; and

4. Makes administrative changes to §§ 171.16 and 171.19(d).

**IV. Plain Writing**

The Plain Writing Act of 2010, (Pub. L. 111–274), requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has

written this document to be consistent with the Plain Writing act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883).

**V. Availability of Documents**

The NRC is making the documents identified in the following table available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see the **ADDRESSES** section of this document.

Document	PDR	Web	ADAMS accession
FY 2013 Work Papers .....	X	.....	ML13154A025.
Regulatory Flexibility Analysis .....	X	.....	ML13067A088.
Small Entity Compliance Guide .....	X	.....	ML13046A282.
NUREG–1100, Volume 28, “Congressional Budget Justification: Fiscal Year 2013” (February 2012).	X	<a href="http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/">http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/.</a>	
NRC Form 526 .....	.....	<a href="http://www.nrc.gov/reading-rm/doc-collections/forms/nrc526.pdf">http://www.nrc.gov/reading-rm/doc-collections/forms/nrc526.pdf.</a>	

**VI. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using these standards is inconsistent with applicable law or is otherwise impractical. The NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants, as necessary, to recover approximately 90 percent of its budget authority in FY 2013, as required by the OBRA–90, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

**VII. Environmental Impact: Categorical Exclusion**

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for this final rule. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

**VIII. Paperwork Reduction Act Statement**

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement, unless the requesting document

displays a currently valid Office of Management and Budget control number.

**IX. Regulatory Analysis**

Under OBRA–90, as amended, and the AEA, the NRC is required to recover 90 percent of its budget authority, or \$985.6 million in FY 2013. The NRC established fee methodology guidelines for 10 CFR part 170 in 1978, and more fee methodology guidelines through the establishment of 10 CFR part 171 in 1986. In subsequent rulemakings, the NRC has adjusted its fees without changing the underlying principles of its fee policy in order to ensure that the NRC continues to comply with the statutory requirements for cost recovery in OBRA–90 and the AEA.

In this rulemaking, the NRC continues this long-standing approach. Therefore, the NRC did not identify any alternatives to the current fee structure guidelines and did not prepare a regulatory analysis for this rulemaking.

**X. Regulatory Flexibility Analysis**

Section 604 of the Regulatory Flexibility Act requires agencies to perform an analysis that considers the impact of a rulemaking on small entities. The NRC’s regulatory flexibility analysis for this final rule is available as indicated in Section V, Availability of Documents, of this document, and a summary is provided in the following paragraphs.

The NRC is required by the OBRA–90, as amended, to recover approximately 90 percent of its FY 2013 budget authority through the assessment of user fees. The OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

The FY 2013 final rule establishes the schedules of fees necessary for the NRC

to recover 90 percent of its budget authority for FY 2013. The final rule results in some increased annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreased annual fees charged to others. Licensees affected by these increased fees include those who qualify as small entities under the NRC’s size standards in § 2.810.

The NRC prepared a FY 2013 biennial regulatory analysis in accordance with the FY 2001 final rule (66 FR 32467; June 14, 2001). This rule also stated the small entity fees will be reexamined every 2 years and in the same years the NRC conducts the biennial review of fees as required by the Office of Chief Financial Officer Act.

For this final rule, the small entity fees increase to \$2,800 for the maximum upper-tier small entity fee and increase to \$600 for the lower-tier small entity as result of the biennial review which factored in the number of increased hours for application reviews and inspections in the fee calculations. The next small entity biennial review is scheduled for FY 2015.

Additionally, the Small Business Regulatory Enforcement Fairness Act requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. The NRC, in compliance with the law, has prepared the “Small Entity Compliance Guide,” which is available as indicated in Section V, Availability of Documents, of this document.

**XI. Backfitting and Issue Finality**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required. A backfit analysis is not required because these amendments do not require the

modification of, or addition to, systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

**XII. Congressional Review Act**

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

**List of Subjects**

*10 CFR Part 170*

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

*10 CFR Part 171*

Annual charges, Byproduct material, Holders of certificates, Registrations,

Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

**PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED**

■ 1. The authority citation for part 170 continues to read as follows:

**Authority:** Independent Offices Appropriations Act sec. 501 (31 U.S.C. 9701); Atomic Energy Act sec. 161(w) (42 U.S.C. 2201(w)); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Chief Financial Officers Act sec. 205 (31 U.S.C. 901, 902); Government

Paperwork Elimination Act sec. 1704, (44 U.S.C. 3504 note); Energy Policy Act secs. 623, Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat.783 (42 U.S.C. 2201(w), 2014, 2021, 2021b, 2111).

■ 2. Section 170.20 is revised to read as follows:

**§ 170.20 Average cost per professional staff-hour.**

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of \$272 per hour.

■ 3. In § 170.21, the table is revised to read as follows:

**§ 170.21 Schedule of fees for production or utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.**

\* \* \* \* \*

**SCHEDULE OF FACILITY FEES**  
[See footnotes at end of table]

Facility categories and type of fees	Fees <sup>1 2</sup>
A. Nuclear Power Reactors:	
Application for Construction Permit .....	Full Cost.
Early Site Permit, Construction Permit, Combined License, Operating License .....	Full Cost.
Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals .....	Full Cost.
Inspections <sup>3</sup> .....	Full Cost.
B. Standard Reference Design Review:	
Preliminary Design Approvals, Final Design Approvals, Certification .....	Full Cost.
Amendment, Renewal, Other Approvals .....	Full Cost.
C. Test Facility/Research Reactor/Critical Facility:	
Application for Construction Permit .....	Full Cost.
Construction Permit, Operating License .....	Full Cost.
Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals .....	Full Cost.
Inspections <sup>3</sup> .....	Full Cost.
D. Manufacturing License:	
Application for Construction .....	Full Cost.
Preliminary Design Approval, Final Design Approval .....	Full Cost.
Amendment Renewal, Other Approvals .....	Full Cost.
Inspections <sup>3</sup> .....	Full Cost.
E. [Reserved]	
F. [Reserved]	
G. Other Production or Utilization Facility:	
Application for Construction Permit .....	Full Cost.
Construction Permit, Operating License .....	Full Cost.
Amendment, Renewal, Other Approvals .....	Full Cost.
Inspections <sup>3</sup> .....	Full Cost.
H. Production or Utilization Facility Permanently Closed Down:	
Inspections <sup>3</sup> .....	Full Cost.
I. Part 55 Reviews:	
Requalification and Replacement Examinations for Reactors Operators .....	Full Cost.
J. Special Projects:	
Approvals and preapplication/licensing activities .....	Full Cost.
Inspections <sup>3</sup> .....	Full Cost.
Contested hearings on licensing actions directly related to U.S. Government national security initiatives .....	Full Cost.
K. Import and export licenses:	
Licenses for the import and export only of production or utilization facilities or the export only of components for production or utilization facilities issued under 10 CFR part 110.	

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees <sup>1 2</sup>
1. Application for import or export of production or utilization facilities <sup>4</sup> (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b). Application—new license, or amendment; or license exemption request .....	\$17,700.
2. Application for export of reactor and other components requiring Executive Branch review, for example, those actions under 10 CFR 110.41(a). Application—new license, or amendment; or license exemption request .....	\$9,500.
3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances Application—new license, or amendment; or license exemption request .....	\$4,400.
4. Application for export of facility components and equipment not requiring Commission or Executive Branch review, or obtaining foreign government assurances. Application—new license, or amendment; or license exemption request .....	\$3,300.
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities. Minor amendment to license .....	\$1,400.

<sup>1</sup> Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

<sup>2</sup> Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect when the service was provided.

<sup>3</sup> Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

<sup>4</sup> Imports only of major components for end-use at NRC-licensed reactors are authorized under NRC general import license in 10 CFR 110.27.

■ 4. In § 170.31, the table is revised to read as follows:

**§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.**

\* \* \* \* \*

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2 3</sup>
1. Special nuclear material:	
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130] .....	Full Cost
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210] ...	Full Cost
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320] .....	Full Cost.
(b) Gas centrifuge enrichment demonstration facilities .....	Full Cost.
(c) Others, including hot cell facilities .....	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200].	Full Cost.
C. Licenses for possession and use of special nuclear material of less than a critical mass, as defined in § 70.4, in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. <sup>4</sup> Application [Program Code(s): 22140] .....	\$1,300
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. <sup>4</sup> Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310].	2,500
E. Licenses or certificates for construction and operation of a uranium enrichment facility [Program Code(s): 21200] .....	Full Cost.
F. For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter. <sup>4</sup> [Program Code(s): 22155].	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code(s): 11400].	Full Cost.

## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>
(2) Licenses for possession and use of source material in recovery operations such as milling, <i>in-situ</i> recovery, heap-leaching, ore buying stations, ion-exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100] .....	Full Cost.
(b) Basic <i>In Situ</i> Recovery facilities [Program Code(s): 11500] .....	Full Cost.
(c) Expanded <i>In Situ</i> Recovery facilities [Program Code(s): 11510] .....	Full Cost.
(d) <i>In Situ</i> Recovery Resin facilities [Program Code(s): 11550] .....	Full Cost.
(e) Resin Toll Milling facilities [Program Code(s): 11555] .....	Full Cost.
(f) Other facilities [Program Code(s): 11700] .....	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000].	
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010].	Full Cost.
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820].	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding.	
Application [Program Code(s): 11210] .....	\$1,200
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter.	
Application [Program Code(s): 11240] .....	6,700
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter.	
Application [Program Code(s): 11230, 11231] .....	2,000
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution.	
Application [Program Code(s): 11710] .....	2,700
F. All other source material licenses.	
Application [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810] .....	2,700
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03211, 03212, 03213] .....	12,700
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03214, 03215, 22135, 22162] .....	3,800
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application [Program Code(s): 02500, 02511, 02513] .....	4,800
D. [Reserved] .....	N/A
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	
Application [Program Code(s): 03510, 03520] .....	3,100
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511] .....	6,400
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03521] .....	60,700
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03254, 03255] .....	5,000
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03250, 03251, 03252, 03253, 03256] .....	11,200
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03240, 03241, 03243] .....	2,000

## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03242, 03244] .....	\$1,100
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613] .....	5,400
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 03620] .....	3,600
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.	
Application [Program Code(s): 03219, 03225, 03226] .....	7,200
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations.	
Application [Program Code(s): 03310, 03320] .....	3,900
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03130, 03140, 03220, 03221, 03222, 03800, 03810, 22130].	2,000
Q. Registration of a device(s) generally licensed under part 31 of this chapter.	
Registration .....	300
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section. <sup>5</sup>	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4) or (5) but less than or equal to 10 times the number of items or limits specified.	
Application [Program Code(s): 02700] .....	2,500
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4) or (5).	
Application [Program Code(s): 02710] .....	2,000
S. Licenses for production of accelerator-produced radionuclides.	
Application [Program Code(s): 03210] .....	12,900
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101].	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03234] .....	5,800
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03232] .....	4,900
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	
Application [Program Code(s): 03110, 03111, 03112] .....	3,800
B. Licenses for possession and use of byproduct material for field flooding tracer studies.	
Licensing [Program Code(s): 03113] .....	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	
Application [Program Code(s): 03218] .....	21,700
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices.	
Application [Program Code(s): 02300, 02310] .....	8,700
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.	
Application [Program Code(s): 02110] .....	8,500

## SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160] .....	\$3,300
8. Civil defense: A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. Application [Program Code(s): 03710] .....	2,500
9. Device, product, or sealed source safety evaluation: A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution. Application—each device .....	5,300
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices. Application—each device .....	8,800
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution. Application—each source .....	5,200
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel. Application—each source .....	1,030
10. Transportation of radioactive material: A. Evaluation of casks, packages, and shipping containers. 1. Spent Fuel, High-Level Waste, and plutonium air packages .....	Full Cost.
2. Other Casks .....	Full Cost
B. Quality assurance program approvals issued under part 71 of this chapter. 1. Users and Fabricators. Application .....	4,100
Inspections .....	Full Cost
2. Users. Application .....	4,100
Inspections .....	Full Cost.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	Full Cost.
11. Review of standardized spent fuel facilities. ....	Full Cost.
12. Special projects: Including approvals, preapplication/licensing activities, and inspections. Application [Program Code: 25110] .....	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance. ....	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter. ....	Full Cost.
14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs)..	Full Cost.
Application [Program Code(s): 3900, 11900, 21135, 21215, 21240, 21325 and 22200] .....	Full Cost.
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, regardless of whether or not the sites have been previously licensed..	Full Cost.
15. Import and Export licenses: Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.).	17,700
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b). Application—new license, or amendment; or license exemption request .....	9,500
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires the NRC to consult with domestic host state authorities (i.e., Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.). Application—new license, or amendment; or license exemption request .....	4,400
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances. Application—new license, or amendment; or license exemption request .....	3,300
D. Application for export or import of nuclear material not requiring Commission or Executive Branch review, or obtaining foreign government assurances. Application—new license, or amendment; or license exemption request. ....	1,400
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities. Minor amendment .....	1,400
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.). Category 1 (Appendix P, 10 CFR Part 110) Exports:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees <sup>1</sup>	Fee <sup>2,3</sup>
F. Application for export of appendix P Category 1 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)) and to obtain government-to-government consent for this process. For additional consent see 15.I.	
Application—new license, or amendment; or license exemption request .....	\$15,000
G. Application for export of appendix P Category 1 materials requiring Executive Branch review and to obtain government-to-government consent for this process. For additional consents see 15.I.	
Application—new license, or amendment; or license exemption request .....	8,700
H. Application for export of appendix P Category 1 materials and to obtain one government-to-government consent for this process. For additional consents see 15. I.	
Application—new license, or amendment; or license exemption request .....	6,500
I. Requests for each additional government-to-government consent in support of an export license application or active export license.	
Application—new license, or amendment; or license exemption request .....	270
<i>Category 2 (Appendix P, 10 CFR Part 110) Exports:</i>	
J. Application for export of appendix P Category 2 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)).	
Application—new license, or amendment; or license exemption request .....	15,000
K. Applications for export of appendix P Category 2 materials requiring Executive Branch review.	
Application—new license, or amendment; or license exemption request .....	8,700
L. Application for the export of Category 2 materials.	
Application—new license, or amendment; or license exemption request .....	5,400
M. [Reserved] .....	N/A.
N. [Reserved] .....	N/A.
O. [Reserved] .....	N/A.
P. [Reserved] .....	N/A.
Q. [Reserved] .....	N/A.
<i>Minor Amendments (Category 1 and 2, Appendix P, 10 CFR Part 110, Export):</i>	
R. Minor amendment of any active export license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities.	
Minor amendment .....	1,400
16. Reciprocity: Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application .....	1,800
17. Master materials licenses of broad scope issued to Government agencies.	
Application [Program Code(s): 03614] .....	Full Cost.
18. U.S. Department of Energy.	
A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	Full Cost.
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities.	Full Cost.

<sup>1</sup> *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee category 1.C. only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, preapplication consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

<sup>2</sup> Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in fee categories 9.A. through 9.D.

<sup>3</sup> Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended.

<sup>4</sup> Licensees paying fees under categories 1.A., 1.B., and 1.E. are not subject to fees under categories 1.C., 1.D., and 1.F. for sealed sources authorized in the same license, except for an application that deals only with the sealed sources authorized by the license.

<sup>5</sup>Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

**PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC**

■ 5. The authority citation for part 171 continues to read as follows:

**Authority:** Consolidated Omnibus Budget Reconciliation Act sec. 7601 Pub. L. 99–272, as amended by sec. 5601, Pub. L. 100–203 as amended by sec. 3201, Pub. L. 101–239, as amended by sec. 6101, Pub. L. 101–508, as amended by sec. 2903a, Pub. L. 102–486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103 (42 U.S.C. 2214); Atomic Energy Act sec. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 6. In § 171.15, paragraph (b)(1), paragraph (b)(2) introductory text, paragraph (c)(1), paragraphs (c)(2) introductory text and (d)(1) introductory text, and paragraphs (d)(2), (d)(3), and (e) are revised to read as follows:

**§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.**

\* \* \* \* \*

(b)(1) The FY 2013 annual fee for each operating power reactor which must be collected by September 30, 2013, is \$4,390,000.

(2) The FY 2013 annual fees are comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (fee-relief adjustment). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2013 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2013 base annual fee for operating power reactors are as follows:

\* \* \* \* \*

(c)(1) The FY 2013 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession-only status and has spent fuel onsite, and for each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is \$231,000.

(2) The FY 2013 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section) and a fee-relief adjustment. The activities comprising the FY 2013 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2013 spent fuel storage/reactor decommissioning rebaselined annual fee are:

\* \* \* \* \*

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section are reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, annual fees will be reduced. The activities comprising the FY 2013 fee-relief adjustment are as follows:

\* \* \* \* \*

(2) The total FY 2013 fee-relief adjustment allocated to the operating power reactor class of licenses is a \$5.3 million fee-relief surplus, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2013 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately a \$33,920 fee relief surplus. This amount is calculated by dividing the total operating power reactor fee-relief surplus adjustment, \$5.3 million, by the number of operating power reactors (102).

(3) The FY 2013 fee-relief adjustment allocated to the spent fuel storage/

reactor decommissioning class of licenses is a \$243,000 fee-relief surplus. The FY 2013 spent fuel storage/reactor decommissioning fee-relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or possession-only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is a \$2,000 fee-relief surplus. This amount is calculated by dividing the total fee-relief adjustment costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2013 annual fees for licensees authorized to operate a research and test (nonpower) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor .....	\$81,600
Test reactor .....	81,600

■ 7. In § 171.16:

■ a. Revise paragraphs (c), (d), and (e) introductory text to read as follows:

**§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.**

\* \* \* \* \*

(c) A licensee who is required to pay an annual fee under this section, in addition to 10 CFR part 72 licenses, may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the receipt of a delinquent invoice requesting the outstanding balance due and/or denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
\$485,000 to \$7 million .....	\$2,800
Less than \$485,000 .....	600

	Maximum annual fee per licensed category
Small Not-For-Profit Organizations (Annual Gross Receipts):	
\$485,000 to \$7 million .....	2,800
Less than \$485,000 .....	600
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees .....	2,800
Fewer than 35 employees .....	600
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000 .....	2,800
Fewer than 20,000 .....	600
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer	
35 to 500 employees .....	2,800
Fewer than 35 employees .....	600

(d) The FY 2013 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2013 fee-

relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2013 annual fees for materials licensees and holders of

certificates, registrations, or approvals subject to fees under this section are shown in the following table:

**SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC**

[See footnotes at end of table]

Category of materials licenses	Annual fees <sup>1 2 3</sup>
1. Special nuclear material:	
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130] .....	\$6,997,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210].	2,633,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320] .....	<sup>5</sup> N/A.
(b) Gas centrifuge enrichment demonstration facilities .....	1,354,000
(c) Others, including hot cell facilities .....	677,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200].	<sup>11</sup> N/A.
C. Licenses for possession and use of special nuclear material of less than a critical mass, as defined in § 70.4 of this chapter, in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. <sup>15</sup> [Program Code(s): 22140].	3,600
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. <sup>15</sup> [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310].	6,800
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200] .....	3,762,000
F. For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter. <sup>15</sup> [Program Code: 22155].	6,900
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code: 11400].	1,429,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100] .....	27,900
(b) Basic <i>In Situ</i> Recovery facilities [Program Code(s): 11500] .....	35,400
(c) Expanded <i>In Situ</i> Recovery facilities [Program Code(s): 11510] .....	40,000
(d) <i>In Situ</i> Recovery Resin facilities [Program Code(s): 11550] .....	0
(e) Resin Toll Milling facilities [Program Code(s): 11555] .....	<sup>5</sup> N/A.
(f) Other facilities <sup>4</sup> [Program Code(s): 11700] .....	<sup>5</sup> N/A.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000].	<sup>5</sup> N/A.
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010].	15,800
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820].	4,700

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued  
[See footnotes at end of table]

Category of materials licenses	Annual fees <sup>1 2 3</sup>
B. Licenses that authorize only the possession, use, and/or installation of source material for shielding. [Program Code: 11210].	\$3,000
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter. [Program Code: 11240].	11,500
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter [Program Code(s): 11230 and 11231].	4,800
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution. [Program Code: 11710].	7,200
F. All other source material licenses. [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810] .....	8,000
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213].	50,900
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03214, 03215, 22135, 22162].	12,700
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). [Program Code(s): 02500, 02511, 02513].	18,800
D. [Reserved] .....	5 N/A.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) [Program Code(s): 03510, 03520].	8,700
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03511].	12,900
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03521].	118,000
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03254, 03255].	9,900
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03256].	19,200
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03240, 03241, 03243].	4,800
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03242, 03244].	3,800
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613].	16,300
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620].	9,300
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C. [Program Code(s): 03219, 03225, 03226].	16,700
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license [Program Code(s): 03310, 03320].	27,200
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03140, 03130, 03220, 03221, 03222, 03800, 03810, 22130].	6,400
Q. Registration of devices generally licensed under part 31 of this chapter .....	<sup>13</sup> N/A.
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section: <sup>14</sup>	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700].	8,800
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4) or (5) [Program Code(s): 02710].	8,600
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210] .....	30,500
4. Waste disposal and processing:	

## SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees <sup>1 2 3</sup>
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101].	5 N/A.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234].	\$19,600
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232].	15,600
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies [Program Code(s): 03110, 03111, 03112].	12,600
B. Licenses for possession and use of byproduct material for field flooding tracer studies. [Program Code(s): 03113] .....	5 N/A.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218].	41,000
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. [Program Code(s): 02300, 02310].	21,600
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. <sup>9</sup> [Program Code(s): 02110].	32,900
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. <sup>9</sup> [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160].	9,000
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710].	8,800
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.	8,000
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	13,300
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	7,900
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	1,600
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers..	
1. Spent Fuel, High-Level Waste, and plutonium air packages .....	6 N/A.
2. Other Casks .....	6 N/A.
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators .....	6 N/A.
2. Users .....	6 N/A.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	6 N/A.
11. Standardized spent fuel facilities .....	6 N/A.
12. Special Projects [Program Code(s): 25110] .....	6 N/A.
13. A. Spent fuel storage cask Certificate of Compliance .....	6 N/A.
B. General licenses for storage of spent fuel under 10 CFR 72.210 .....	12 N/A.
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs) [Program Code(s): 3900, 11900, 21135, 21215, 21240, 21325, 22200].	7 N/A.
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, whether or not the sites have been previously licensed.	7 N/A.
15. Import and Export licenses .....	8 N/A.
16. Reciprocity .....	8 N/A.
17. Master materials licenses of broad scope issued to Government agencies [Program Code(s): 03614] .....	351,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued  
 [See footnotes at end of table]

Category of materials licenses	Annual fees <sup>1 2 3</sup>
18. Department of Energy:	
A. Certificates of Compliance .....	10 1,238,000
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities .....	700,000

<sup>1</sup> Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2012, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

<sup>2</sup> Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

<sup>3</sup> Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

<sup>4</sup> Other facilities include licenses for extraction of metals, heavy metals, and rare earths.

<sup>5</sup> There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

<sup>6</sup> Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

<sup>7</sup> Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

<sup>8</sup> No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

<sup>9</sup> Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under fee categories 7.B. or 7.C.

<sup>10</sup> This includes Certificates of Compliance issued to the U.S. Department of Energy that are not funded from the Nuclear Waste Fund.

<sup>11</sup> See § 171.15(c).

<sup>12</sup> See § 171.15(c).

<sup>13</sup> No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

<sup>14</sup> Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

<sup>15</sup> Licensees paying annual fees under category 1.A., 1.B., and 1.E. are not subject to the annual fees for categories 1.C., 1.D., and 1.F. for sealed sources authorized in the license.

(e) The fee-relief adjustment allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (3) of this section, as reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (3) of this section for a given FY, a negative fee-relief adjustment (or annual fee reduction)

will be allocated to annual fees. The activities comprising the FY 2013 fee-relief adjustment are as follows:

\* \* \* \* \*

■ 8. In § 171.19, paragraph (d) is revised to read as follows:

**§ 171.19 Payment.**

\* \* \* \* \*

(d) Annual Fees of less than \$100,000 must be paid as billed by the NRC. Materials license annual fees that are less than \$100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the

anniversary date of the license are those covered by fee categories 1.C., 1.D., 1.F., 2.A.(2) through 2.A.(5), 2.B. through 2.F., 3.A. through 3.F., and 3.H. through 9.D.

\* \* \* \* \*

Dated at Rockville, Maryland the 21st day of June, 2013.

For the Nuclear Regulatory Commission.

**J.E. Dyer,**  
*Chief Financial Officer.*

[FR Doc. 2013-15529 Filed 6-28-13; 8:45 am]

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Part IV

## Department of Health and Human Services

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45 CFR Parts 155 and 156

Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Parts 155 and 156**

[CMS–9958–F]

RIN 0938–AR68

**Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements certain functions of the Affordable Insurance Exchanges (“Exchanges”). These specific statutory functions include determining eligibility for and granting certificates of exemption from the individual shared responsibility payment described in section 5000A of the Internal Revenue Code. Additionally, this final rule implements the responsibilities of the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury, to designate other health benefits coverage as minimum essential coverage by providing that certain coverage be designated as minimum essential coverage. It also outlines substantive and procedural requirements that other types of individual coverage must fulfill in order to be certified as minimum essential coverage.

**DATES:** *Effective Date:* These regulations are effective on August 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** Zachary L. Baron, (301) 492–4478, for provisions related to exemptions from the individual shared responsibility payment. Cam Moultrie Clemmons, (410) 786–1565, for provisions related to minimum essential coverage.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

To ensure effective and efficient implementation of the insurance market reforms, the Affordable Care Act requires a nonexempt individual to maintain minimum essential coverage or make a shared responsibility payment. The Affordable Care Act specifies the categories of individuals who are eligible to receive exemptions from the individual shared responsibility payment under section 5000A of the Internal Revenue Code (the Code), which provides nonexempt individuals with a choice: maintain minimum essential coverage for themselves and any nonexempt family members or include an additional

payment with their federal income tax return. Some individuals are exempt from the shared responsibility payment, including members of recognized religious sects whose tenets conflict with acceptance of the benefits of private or public insurance and those who do not have an affordable health insurance coverage option available. Section 1311(d)(4)(H) of the Affordable Care Act (42 U.S.C. 18031(d)(4)(H)) directs the new health insurance marketplaces, called Affordable Insurance Exchanges (Exchanges), to issue certifications of exemption from the individual shared responsibility payment to eligible individuals. Section 1411 of the Affordable Care Act (42 U.S.C. 18081) generally provides procedures for determining an individual’s eligibility for various benefits relating to health coverage, including exemptions from the application of section 5000A of the Code.

This final rule sets forth standards and processes under which the Exchange will conduct eligibility determinations for, and grant certificates of exemption from, the individual shared responsibility payment. Furthermore, it supports and complements rulemaking conducted by the Secretary of the Treasury with respect to section 5000A of the Code, as added by section 1501(b) of the Affordable Care Act. The intent of this rule is to implement the relevant provisions while continuing to afford states substantial discretion in the design and operation of an Exchange, with greater standardization provided where directed by the statute or where there are compelling practical, efficiency, or consumer protection reasons.

Under section 5000A(f)(1)(E) of the Code, the Secretary of the Department of Health and Human Services (the Secretary), in coordination with the Secretary of the Treasury, may designate other health benefits coverage as minimum essential coverage. This final rule provides standards for determining whether certain other types of health insurance coverage constitute minimum essential coverage and procedures for plan sponsors to follow for a plan to be identified as minimum essential coverage under section 5000A of the Code. This rule also designates certain types of existing health coverage as minimum essential coverage. Other types of coverage, not statutorily specified and not designated as minimum essential coverage in this regulation, may be recognized as minimum essential coverage if certain substantive and procedural

requirements are met as set forth in this rule. These additional categories of minimum essential coverage, both those designated per se and those that may apply for recognition are neither group health insurance coverage nor individual health insurance. Consumers with types of coverage that are recognized as minimum essential coverage in accordance with this rule would be determined to have minimum essential coverage if the coverage is certified to be substantially compliant with the requirements of title I of the Affordable Care Act that apply to non-grandfathered plans in the individual market.

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## Abbreviations

Affordable Care Act—the Affordable Care Act of 2010 (which is the collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act (Pub. L. 111–152))

BHP Basic Health Program

CHIP Children's Health Insurance Program

CMS Centers for Medicare & Medicaid Services

FPL Federal Poverty Level

HHS Department of Health and Human Services

IRS Internal Revenue Service

NAIC National Association of Insurance Commissioners

QHP Qualified Health Plan

SSA Social Security Administration

SSN Social Security Number

Code Internal Revenue Code of 1986, as Amended

## I. Background

### A. Legislative Overview

Section 1501(b) of the Affordable Care Act added section 5000A of the Internal Revenue Code (the Code) to a new chapter 48 of subtitle D (Miscellaneous Excise Taxes) of the Code effective for months beginning after December 31, 2013. Section 5000A of the Code, which was subsequently amended by the TRICARE Affirmation Act of 2010, Public Law 111–159 (124 Stat. 1123) and Public Law 111–173 (124 Stat. 1215), requires that nonexempt individuals either maintain minimum essential coverage or make a shared responsibility payment. It also describes categories of individuals who may qualify for an exemption from the individual shared responsibility payment, and provides the definition of minimum essential coverage.

Section 1311(d)(4)(H) of the Affordable Care Act specifies that the Exchange will, subject to section 1411 of the Affordable Care Act, grant certifications of exemption from the individual shared responsibility payment specified in section 5000A of the Code. Section 1311(d)(4)(I)(i) of the Affordable Care Act specifies that the Exchange will transfer to the Secretary of the Treasury a list of the individuals to whom the Exchange provided such a certification. Section 1411(a)(4) of the Affordable Care Act provides that the Secretary of Health and Human Services (the Secretary) will establish a program for determining whether a certification of exemption from the individual shared responsibility requirement and penalty will be issued by an Exchange under section 1311(d)(4)(H) of the Affordable Care Act. We interpret this provision as authorizing the Secretary to determine

“whether,” with respect to the nine exemptions provided for under section 5000A of the Code, Exchanges would perform the role of issuing certifications of exemption under section 1311(d)(4)(H) of the Affordable Care Act, whether eligibility for the exemption would be claimed solely through tax filing, or whether both processes would be available. Under this interpretation, the responsibility under section 1311(d)(4)(H) of the Affordable Care Act to issue certifications of exemption is “subject to” these determinations by the Secretary under section 1411(a)(4) of the Affordable Care Act, and Exchanges are thus only required to issue certifications of exemption with respect to exemptions not exclusively assigned to the Internal Revenue Service (IRS).

Section 1321 of the Affordable Care Act discusses state flexibility in the operation and enforcement of Exchanges and related requirements. Section 1321(a) of the Affordable Care Act provides broad authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges and other components of title I of the Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010. Section 1311(k) of the Affordable Care Act specifies that Exchanges may not establish rules that conflict with or prevent the application of regulations promulgated by the Secretary under Subtitle D of title I of the Affordable Care Act.

In accordance with our interpretation of these sections of the Affordable Care Act, and the authority provided by, *inter alia*, section 1321(a) of the Affordable Care Act, we specify that under the program established under section 1411(a)(4) of the Affordable Care Act, the Exchange will determine eligibility for and grant certificates of exemption as described below. We also note that consistent with prior guidance, in the State Exchange Implementation Questions and Answers released by HHS on November 29, 2011,<sup>1</sup> and the Frequently Asked Questions on Exchanges, Market Reforms, and Medicaid released by HHS on December 10, 2012,<sup>2</sup> a state-based Exchange can be approved to operate by the Department of Health and Human Services (HHS) if

<sup>1</sup> State Exchange Implementation Questions and Answers, published November 29, 2011: [http://cciio.cms.gov/resources/files/Files2/11282011/exchange\\_q\\_and\\_a.pdf.pdf](http://cciio.cms.gov/resources/files/Files2/11282011/exchange_q_and_a.pdf.pdf).

<sup>2</sup> Frequently Asked Questions on Exchanges, Market Reforms, and Medicaid, published December 10, 2012: <http://cciio.cms.gov/resources/files/exchanges-faqs-12-10-2012.pdf>.

it uses a federally-managed service to make eligibility determinations for exemptions.

On March 27, 2012, HHS published the final rule entitled “Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers” (77 FR 18309). The provisions of the final rule, herein referred to as the Exchange final rule, encompass the key functions of Exchanges related to eligibility, enrollment, and plan participation and management. In the Exchange final rule, 45 CFR 155.200(b) provided that a minimum function of an Exchange is to grant certificates of exemption consistent with sections 1311(d)(4)(H) and 1411 of the Affordable Care Act. This final rule cross-references several provisions in the Exchange final rule, notably the limited situations where eligibility and verification processes used in determining eligibility for enrollment in a qualified health plan (QHP) through the Exchange and for insurance affordability programs can also be used by Exchanges for the purpose of determining whether an individual is eligible for an exemption from the individual shared responsibility payment.

Section 5000A(f) of the Code designates certain types of coverage as minimum essential coverage. The term “minimum essential coverage” includes all of the following under the statute: Government sponsored programs (the Medicare program under part A of title XVIII of the Social Security Act (the Act); the Medicaid program under title XIX of the Act; the Children's Health Insurance Program (CHIP) program under title XXI of the Act; medical coverage under chapter 55 of title 10, United States Code, including the TRICARE program; a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretaries of the Department of Health and Human Services and Treasury; a health plan under section 2504(e) of title 22, United States Code (relating to Peace Corps volunteers); or the Nonappropriated Fund Health Benefits Program of the Department of Defense (established under section 349 of the National Defense Authorization Act for Fiscal Year 1995); coverage under an eligible employer-sponsored plan; coverage under a health plan offered in the individual market within a State; and coverage under a grandfathered health plan. In addition, section 5000A(f)(1)(E) of the Code directs the Secretary, in coordination with the Secretary of

Treasury, to designate other health benefits coverage, such as a state health benefits risk pool, as minimum essential coverage. This final rule designates certain additional types of coverage qualify as minimum essential coverage and also provides a process by which other types of coverage could be recognized as minimum essential coverage.

#### *B. Stakeholder Consultation and Input*

On August 3, 2010, HHS published a request for comment (the RFC) inviting the public to provide input regarding the rules that will govern the Exchanges. In particular, HHS asked states, tribal representatives, consumer advocates, employers, insurers, and other interested stakeholders to comment on the standards Exchanges should meet. The comment period closed on October 4, 2010.

The public response to the RFC yielded comment submissions from consumer advocacy organizations, medical and health care professional trade associations and societies, medical and health care professional entities, health insurers, insurance trade associations, members of the general public, and employer organizations. The majority of the comments were related to the general functions and standards for Exchanges, qualified health plans (QHPs), eligibility and enrollment, and coordination with Medicaid. While this final rule does not directly respond to comments from the RFC, the comments received are described, where applicable, in discussing specific regulatory proposals. These comments are not separately identified, but instead are incorporated into each substantive section of this final rule as appropriate.

In addition to the RFC, HHS received comments on the proposed rule titled “Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions” (78 FR 7348) that are, similarly not separately identified, but incorporated into each substantive section of this final rule. HHS has also consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners (NAIC), regular contact with states through the Exchange grant process, and meetings with tribal representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. HHS initiated and hosted a tribal consultation on February 21, 2013, where we allowed federally-recognized tribal leaders and representatives from tribal health organizations the opportunity to discuss

and provide feedback regarding the provisions within the proposed rule. Furthermore, we also received feedback from health care sharing ministries about the process for how individual members can obtain certificates of exemption based on their membership in a health care sharing ministry, and an expression of interest in a process for allowing health care sharing ministries to obtain recognition that they meet the standards under section 5000A(d)(2)(B) of the Code. We also received information from various stakeholder groups regarding types of “other coverage” as described in section 5000A(f)(1)(E) of the Code.

#### *C. Alignment With Related Rules and Published Information*

The proposed rule, titled “Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions” (78 FR 7348), was published in the **Federal Register** on February 1, 2013 in coordination with the Department of Treasury’s proposed rule, “Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage” (78 FR 7314) (hereinafter referred to as “the Treasury proposed rule”). The Department of the Treasury’s proposed rule will be finalized at a later date. Accordingly, in this final rule, we have removed cross-references to the Treasury proposed rule and replaced them with cross-references to the applicable language in the Affordable Care Act. Upon publication of the Treasury final rule, we intend to replace the statutory references with the appropriate regulatory references.

## **II. Provisions of the Regulation and Analysis of and Responses to Public Comments**

On February 1, 2013, we published a proposed rule, titled “Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions” (78 FR 7348), in which we proposed to add subpart G to 45 CFR part 155, which includes standards for Exchanges related to conducting eligibility determinations for and granting certificates of exemption from the individual shared responsibility payment. We also proposed to amend § 155.200(a) to add a reference to indicate that, consistent with existing language in § 155.200(b), granting certificates of exemption is a minimum function of the Exchange. Furthermore, we proposed to add subpart G to 45 CFR part 156, which set forth standards under which the

Secretary would designate certain types of existing coverage, not specified under section 5000A, as minimum essential coverage. Additionally, under the proposed regulation, other types of coverage that were neither statutorily nor regulatory designated as minimum essential coverage, may be recognized as minimum essential coverage if certain substantive and procedural requirements are met. These types of coverage, both those designated per se and those recognized by application, are neither group health insurance coverage nor individual health insurance. Consumers with coverage recognized as minimum essential coverage in accordance with this regulation would be determined to have minimum essential coverage for purposes of the individual shared responsibility provision.

We received approximately 220 public comments from state agencies, advocacy groups, health care providers, employers, health insurers, health care associations, and others. The comments ranged from general support or opposition to the proposed provisions to very specific questions or comments regarding the proposed rules.

Some comments were outside the scope of the proposed rule, and therefore are not addressed in this final rule. In some instances, commenters raised policy or operational issues, such as those related to certified application counselors, authorized representatives, and eligibility appeals, that will be addressed through forthcoming regulatory and subregulatory guidance to be provided subsequent to this final rule; therefore, some, but not all comments are addressed in the preamble to this final rule.

Brief summaries of each proposed provision, a summary of the public comments we received (with the exception of specific comments on the paperwork burden or the regulatory impact analysis), and our responses to the comments are below. Comments related to the paperwork burden are addressed in the “Collection of Information Requirements” and section in this final rule. We did not receive comments related to the impact analysis.

### *A. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act*

#### 1. Subpart A—General Provisions

##### a. Definitions (§ 155.20)

We proposed to make a technical correction to the definitions of “applicant” and “application filer” to note that they do not apply to an

applicant or application filer seeking an exemption pursuant to proposed subpart G. We proposed separate definitions specific to exemptions for these terms in § 155.600.

*Comment:* Several commenters expressed concerns about HHS' pre-existing definition of "application filer" in § 155.20 based on its cross-reference to the definition of "family" within the Code and the inclusion of this definition as proposed in § 155.600(a). Commenters believed the inclusion of the definition of "family" within the Code would limit the flexibility of an applicant to include people who would have relationships that may otherwise be included on an exemption application. Commenters believed that these cross-references were inconsistent with other provisions, as they noted that subject to state rules, QHP issuers can allow individuals in multiple tax households to enroll in a QHP together, and that HHS has proposed to define "dependent" in 78 FR 4718 for purposes of eligibility for special enrollment periods based on whether a QHP issuer will allow individuals to enroll in a QHP together. As such, they urged HHS to remove the references to the definition of family within the Code and its implementing regulation.

*Response:* The commenters correctly describe different situations in which recognition of relationships is determined by who can enroll in a QHP together. In proposing to amend the definition of "application filer" in § 155.20 to exclude those individuals seeking eligibility for an exemption pursuant to subpart G, we otherwise maintained the definition from the Exchange final rule regarding the coverage application process at 77 FR 18445 with a few minor technical corrections. Further, we note that comments regarding eligibility for enrollment in a QHP and insurance affordability programs are beyond the scope of this regulation. Since the relevant family unit for the individual shared responsibility provision is the tax filing unit, our proposed language defining "application filer" at § 155.600(a) specific to subpart G cross-references section 5000A(a) of the Code regarding the individual shared responsibility provision. Because the individual shared responsibility provision will be administered by the Internal Revenue Service on a tax-return-by-tax-return basis, we believe it is appropriate to provide that only members of the same tax filing unit may file an exemption application together.

#### Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.20 of the proposed rule with a few technical corrections. We clarify that the term "applicant" in this provision excludes those individuals seeking eligibility for an exemption from the individual shared responsibility payment pursuant to subpart G. We also clarify that our previous inclusion of an authorized representative in the definition refers to the authorized representative of an applicant. We also cite to the applicable Treasury regulation instead of section 36B of the Code.

#### 2. Subpart C—General Functions of an Exchange

##### a. Functions of an Exchange (§ 155.200)

In paragraph (a), we proposed to add that the Exchange would also perform the minimum functions described in subpart G of this part related to eligibility determinations for exemptions.

*Comment:* Commenters generally supported our proposal that the Exchange would also perform the minimum functions described in subpart G of this part related to eligibility determinations for exemptions. Some commenters raised concerns that the HHS proposed rule and the Treasury proposed rule discussed different issues, and wanted to ensure that both agencies were working in close coordination. Other commenters expressed opposition to Exchanges determining eligibility for exemptions based on overarching philosophical complaints regarding this proposed rule and this provision of the Affordable Care Act. One commenter wanted HHS to reduce the number of exemptions available to individuals. Lastly, another commenter believed that HHS was providing too much latitude to states in determining the basic framework for Exchanges, and rather should set more strict guidelines to prevent confusion for Exchanges and consumers.

*Response:* We continue to coordinate closely with the Department of Treasury and a range of stakeholders to ensure that we provide sufficient guidance to Exchanges, while also ensuring the appropriate level of operational flexibility to allow for effective implementation. We note that the categories of exemptions proposed were based on the definitions provided within the Affordable Care Act, which added section 5000A of the Code. As we discuss further below, the Secretary of HHS has exercised careful discretion in specifying criteria for the hardship

exemption in accordance with section 5000A(e)(5) of the Code, to ensure that a hardship exemption is only available in limited circumstances in which an individual has suffered a hardship with respect to the capability to obtain coverage under a QHP.

#### Summary of Regulatory Changes

We are finalizing the provision proposed in § 155.200 of the proposed rule without modification.

#### 3. Subpart G—Exchange Functions in the Individual Market: Eligibility Determinations for Exemptions

##### a. Definitions and General Requirements (§ 155.600)

In paragraph (a) of § 155.600, we proposed definitions and sought comments for terms that apply throughout subpart G. First, we proposed to define "applicant" as an individual who is seeking an exemption from the individual shared responsibility payment for him or herself through an application submitted to the Exchange. We proposed to define "application filer" as an applicant; an individual who is liable for the individual shared responsibility payment (in accordance with 26 CFR 1.5000A-1(c) of the Treasury proposed rule) for an applicant; an authorized representative; or if the applicant is a minor or incapacitated, someone acting responsibly for an applicant. We noted that we intended to modify the proposed language in § 155.227 (78 FR 4711) and § 155.225 (78 FR 4710) to clarify that authorized representatives and certified application counselors can assist individuals seeking exemptions, and sought comments about how authorized representatives and certified application counselors could best support individuals seeking certificates of exemption from the Exchange.

We proposed to define "exemption" as an exemption from the individual shared responsibility payment, noting that there is no meaningful distinction between individuals exempt from the shared responsibility payment and individuals who are not "applicable individuals" for purposes of the requirement to maintain minimum essential coverage in section 5000A of the Code.

We proposed to define "health care sharing ministry" in the same manner as provided in 26 CFR 1.5000A-3(b) of the Treasury proposed rule.

We proposed to define "required contribution" in the same manner as provided in 26 CFR 1.5000A-3(e) of the Treasury proposed rule.

We proposed to define "Indian tribe" in the same manner as in 26 CFR

1.5000A–3(g) of the Treasury proposed rule, which in turn references the definition in section 45A(c)(6) of the Code.

In paragraph (b), we proposed that for purposes of this subpart, any attestation that an applicant is to provide under this subpart may also be provided by an application filer on behalf of the applicant.

In paragraph (c) of § 155.600, we proposed that for the purposes of this subpart, the Exchange must consider information through electronic data sources, other information provided by the applicant, or other information as available in the records of the Exchange to be reasonably compatible with an applicant's attestation if the difference or discrepancy does not impact the eligibility for the relevant exemption or exemptions for which the applicant requested.

We also proposed to add paragraphs (d) and (e) in order to specify that the accessibility and notice requirements in § 155.205(c) and § 155.230, respectively, apply to exemptions as well, given that the definition of applicant in this subpart is otherwise specific to exemptions.

*Comment:* One commenter raised concerns about health care sharing ministries. The commenter noted that health care sharing ministries are not subject to state insurance laws, and as such, the statutory exemption for members of health care sharing ministries may create circumstances in which an individual who is a member of a health care sharing ministry does not benefit from the Affordable Care Act's broader consumer protections. The commenter believed that this might motivate organizations to seek to establish standing as a health care sharing ministry in order to evade consumer protections and market reforms enacted by the Affordable Care Act. The commenter advised HHS and IRS to carefully monitor applications from entities seeking recognition as a health care sharing ministry for the purpose of exemptions.

*Response:* The Affordable Care Act defines health care sharing ministry for purposes of an exemption in section 5000A(d)(2)(B) of the Code. We appreciate the concerns raised regarding organizations that may improperly seek standing as a health care sharing ministry. As we discuss further below, we believe that the process discussed in § 155.615(c) will ensure that HHS only provides exemptions based on membership in a health care sharing ministry for individuals who are members of health care sharing ministries that meet the standards in the

statute, which specify that a health care sharing ministry or its predecessor must have been in existence at all times since December 31, 1999.

*Comment:* Commenters generally supported allowing an application filer to attest for an applicant on the exemptions application. However, one commenter believed that "attestation" was not defined clearly enough in § 155.600(b), and as such recommended that HHS revise this provision to more clearly specify the acceptable form and manner of an attestation.

*Response:* The proposed language regarding attestations in § 155.600(b) mirrors the language in 45 CFR 155.300(c), which is used in the coverage process. As we believe this definition provides sufficient flexibility and clarity for Exchanges, we do not deviate from the language used in the coverage process to describe an attestation.

*Comment:* Several commenters requested that HHS ensure that the application process, including eligibility notices, be accessible to individuals with limited English proficiency (LEP) as well as those individuals with disabilities. Commenters also urged HHS to include clearer guidelines regarding the exemption eligibility process in order to ensure that the processes do not discriminate against individuals, particularly LEP individuals. Commenters requested translation of the requisite materials in non-English languages, and suggested that HHS refer to LEP guidance adopted by the HHS Office of Civil Rights.

*Response:* We appreciate commenters' concerns regarding ensuring that the application process and eligibility notices are accessible to individuals with LEP as well as those individuals with disabilities. In proposed § 155.600(d) and (e), we cross-referenced § 155.205(c) and § 155.230 respectively, which provide standards to ensure the suggested protections are in place. As such, we do not believe that additional standards are necessary in subpart G to ensure the application process and eligibility notices are accessible to individuals with LEP as well as those individuals with disabilities.

#### Summary of Regulatory Changes

We finalize the provisions proposed in § 155.600 of the proposed rule with one modification and a few non-substantive technical corrections for clarity. We finalize the definition of "Indian tribe" as proposed, but move the definition earlier in paragraph (a). We make a technical correction for the purpose of clarity in finalizing the

definition of "shared responsibility payment" to specify that it means the payment imposed with respect to a non-exempt individual. We also include the definition of "tax filer" in paragraph (a) to specify that it has the same meaning in subpart G as it does in § 155.300(a).

#### b. Eligibility Standards for Exemptions (§ 155.605)

Under the program established in accordance with section 1411(a)(4) of the Affordable Care Act for determining whether certificates of exemption are to be issued by Exchanges under section 1311(d)(4)(H) of the Affordable Care Act, we proposed that Exchanges would issue certificates of exemption in the categories of religious conscience and hardship. With respect to the other seven exemptions, for reasons set forth below, we proposed that under the program provided for in section 1411(a)(4) of the Affordable Care Act, Exchanges would also issue certificates of exemption with respect to three additional categories (with exemptions also available through the tax filing process) based on membership in a health care sharing ministry, membership in an Indian tribe, and incarceration. In the four remaining exemption categories, however, we proposed that under the program established under section 1411(a)(4) of the Affordable Care Act, certificates would not be issued by Exchanges under section 1311(d)(4)(H) of the Affordable Care Act, and instead individuals would claim an exemption in one of those categories exclusively through the tax return filing process with the IRS.

In paragraph (a) of § 155.605, we proposed that except as specified in paragraph (g), the Exchange would determine an applicant eligible for and grant a certificate of exemption for a month if the Exchange determines that he or she meets the requirements for one of the categories of exemptions described in this section for at least one day in the month, consistent with 26 CFR 1.5000A–3 of the Treasury proposed rule. We noted that depending on the circumstances for each specific proposed hardship exemption category, the certificate may be provided for an entire calendar year or instead for a specific month or period of months, including periods of time that stretch across more than one calendar year.

We noted that an applicant could apply for multiple exemptions simultaneously in case some are denied, and also receive any exemptions for which he or she is eligible. We solicited comments on this approach.

In paragraph (b), we proposed that except as specified, an applicant is required to submit a new application for each year for which an applicant wants to be considered for an exemption through the Exchange, and that an exemption will only be provided for a calendar year in which the applicant submitted an application for an exemption. We provided exceptions for exemptions provided based on membership in an Indian tribe and for religious conscience, in recognition that an individual's qualification for these exemptions is expected to remain the same from year to year. We also specified an exception for hardship, since some categories of hardship will be provided for one or more months and may be provided for periods of time that stretch across more than one calendar year, and some categories of hardship can only be provided after the close of a calendar year. We welcomed comments on this approach and how the Exchange could expedite and streamline the process.

We considered whether to specify that the Exchange send a notice to each individual who had an exemption certificate from the Exchange for a calendar year, in order to remind him or her about the opportunity to apply to for an exemption for the following calendar year, and whether this notice could be sent only at the individual's direction. We solicited comments regarding the use of such a reminder and on a renewal process more generally.

In paragraph (c), we proposed to codify the statutory eligibility standards for the exemption based on religious conscience. In paragraph (c)(1), we proposed that the Exchange would determine an applicant eligible for an exemption for a month if he or she is a member of a recognized religious sect or division described in section 1402(g)(1) of the Code, and an adherent of established tenets or teachings of such sect or division for such month, in accordance with 26 CFR 1.5000A-3(a) of the Treasury proposed rule.

In paragraph (c)(2), we proposed eligibility standards regarding the duration of the exemption for religious conscience. In paragraph (c)(2)(i), we proposed that the Exchange grant the exemption for religious conscience to an applicant that meets the standards of paragraph (c)(1) of this section for a month on a continuing basis, until such time that the applicant either reaches the age of 18, or reports that he or she no longer meets the standards provided in (c)(1) of this section.

We proposed to add paragraph (c)(2)(ii) to specify how the Exchange should handle a situation in which an

individual who has a certificate of exemption based on religious conscience that was granted prior to the individual reaching the age of 18. We proposed that the Exchange send such an individual a notice when he or she reaches the age of 18 that informs the individual that he or she needs to submit a new exemption application if he or she would like to maintain the certificate of exemption.

We proposed to add paragraph (c)(3) to specify that the Exchange will grant an exemption in this category prospectively or retrospectively.

In paragraph (d), we proposed that the Exchange determine an applicant eligible for an exemption for a month if the applicant is a member of a health care sharing ministry for such month in accordance with 26 CFR 1.5000A-3(b) of the Treasury proposed rule. We proposed that an applicant who wanted to retain this exemption for an additional calendar year would re-apply for this exemption each calendar year, and that the Exchange may only provide an exemption in this category retrospectively.

In paragraph (e), we proposed the eligibility standards for the exemption based on incarceration. We specified that the Exchange would determine an individual eligible for an exemption for a month that he or she meets the definition specified in 26 CFR 1.5000A-3(d) of the Treasury proposed rule. We proposed that the Exchange would only provide this exemption for months in which an individual was incarcerated, since there is no assurance that an incarcerated individual will be released on the expected date.

In paragraph (f), we proposed eligibility standards for the exemption based on membership in an Indian tribe. In paragraph (f)(1), we proposed to codify that the Exchange would determine an applicant eligible for an exemption for a month if he or she is a member of an Indian tribe for such month, in accordance with 26 CFR 1.5000A-3(g) of the Treasury proposed rule.

In paragraph (f)(2), we proposed eligibility standards regarding the duration of the exemption for membership in an Indian tribe, such that the Exchange would grant the exemption for membership in an Indian tribe to an applicant who meets the standards of paragraph (f)(1) of this section for a month on a continuing basis, until such time that the individual reports that he or she no longer meets the standards provided in (f)(1) of this section.

We proposed to add paragraph (f)(3) to specify that the Exchange will grant

an exemption in this category during the year prospectively or retrospectively.

In paragraph (g), we proposed eligibility standards for the exemption based on hardship, which is defined in section 5000A(e)(5) of the Code as applying to "any applicable individual who for any month is determined by the Secretary under section 1311(d)(4)(H) of the Affordable Care Act to have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan." In developing some of these standards, we considered the standards established by the Commonwealth of Massachusetts. We proposed some specific time standards for each category of hardship, but we solicited comments regarding whether these are appropriate, or if we should adopt a more uniform approach across the category.

In paragraph (g)(1) of § 155.605, we proposed that the Exchange provide an exemption for hardship for a month or months in which an applicant experienced financial or domestic circumstances, including an unexpected natural or human-caused event, such that he or she has a significant, unexpected increase in essential expenses; the expense of purchasing minimum essential coverage would have caused him or her to experience serious deprivation of food, shelter, clothing or other necessities; or he or she has experienced other factors similar to those described in paragraphs (g)(1)(i) and (ii) of this section that prevented him or her from obtaining minimum essential coverage. We proposed broad language to include a range of personal scenarios that could negatively impact an applicant such that he or she would be eligible for this exemption, and noted that we expected to clarify these criteria in future guidance. We listed expected standards and solicited comments on these criteria, including on whether additional criteria should be established in regulation or guidance. We also solicited comments regarding whether the proposed time standard could be effectively implemented, or whether we should take a different approach.

In paragraph (g)(2), we proposed that the Exchange provide an exemption for hardship for a calendar year if an applicant, or another individual for whom the applicant attests will be included in the applicant's family (as defined in 26 CFR 1.5000A-1(d)(6) of the Treasury proposed rule), is unable to afford coverage for such calendar year in accordance with 26 CFR 1.5000A-3(e) of the Treasury proposed rule, calculated using projected annual household income. We proposed

identical standards to those defined for the lack of affordable coverage exemption in 26 CFR 1.5000A-3(e) of the Treasury proposed rule, except that the Exchange would use projected household income to determine whether coverage is affordable under this exemption, instead of actual household income from the tax return for the year for which the exemption is requested. We solicited comments regarding whether the approach in paragraph (g)(5) of this section regarding the aggregate cost of employer-sponsored coverage for all the employed members of the family should also be applied in determining eligibility for this hardship category.

We proposed that this exemption is not available for an application that is submitted after the last date on which an applicant could enroll in a QHP through the Exchange for a calendar year for which the exemption is requested to ensure that an applicant can obtain the information needed to make a purchasing decision, including for a catastrophic plan, which is not applicable after the last date on which enrollment would be possible.

We proposed in paragraph (g)(3) of § 155.605 that the Exchange provide an exemption for hardship for a calendar year if an individual taxpayer who was not required to file an income tax return for such calendar year because his or her gross income was below the filing threshold, but who nevertheless filed to receive a tax benefit, claimed a dependent who was required to file a tax return, and as a result had household income exceeding the applicable return filing threshold outlined in 26 CFR 1.5000A-3(f)(2) of the Treasury proposed rule.

We proposed to add paragraph (g)(4) to specify that the Exchange provide an exemption for hardship for a calendar year for an individual who has been determined ineligible for Medicaid for one or more months during the benefit year solely as a result of a State not implementing section 2001(a) of the Affordable Care Act. We sought comments on whether this exemption should be limited to such individuals who are also not eligible for advance payments of the premium tax credit (that is, with projected household income below 100% of the poverty threshold).

We proposed to add paragraph (g)(5) of § 155.605 to specify that the Exchange provide an exemption for hardship for a calendar year if an applicant and one or more employed members of his or her family, as defined in 26 CFR 1.5000A-1(d)(6) of the Treasury proposed rule, are each determined eligible for self-

only coverage in separate eligible employer-sponsored plans that are affordable, pursuant to 26 CFR 1.5000A-3(e) of the Treasury proposed rule for one or more months during the calendar year, but for whom the aggregate cost of employer-sponsored coverage for all the employed members of the family exceeds 8 percent of the household income for that month or those months.

Lastly, as noted above, we proposed under our authority in section 1411(d)(4) of the Affordable Care Act that the Exchange would not issue certifications of exemption with respect to household income below the filing threshold (other than the limited hardship exemption proposed in § 155.605(g)(3) and described above); not being lawfully present; short coverage gaps; and inability to afford coverage (other than the limited hardship exemption proposed in § 155.605(g)(2) and described above). We specified that these exemptions would be available solely through the tax filing process. We solicited comments on this approach and if there were alternative approaches that HHS should consider.

*Comment:* Multiple commenters expressed support for HHS' proposal to allow an individual to apply for and enable the Exchange to grant multiple exemptions, as well as the provision specifying that an individual eligible for an exemption for at least one day of the month receive the exemption for a full month. Another commenter expressed broad support for the proposed exemptions process, but wanted HHS to maintain its focus on ensuring individuals receive coverage through the Exchange.

*Response:* In fulfilling the goals of the Affordable Care Act, we are committed to ensuring that all individuals have access to quality, affordable health coverage. Furthermore, as specified in the statute, we are also committed to providing access to exemptions from the shared responsibility payment to those individuals who meet specified standards.

*Comment:* Commenters expressed differing opinions regarding whether the Exchange should send notices to individuals in possession of certain certificates of exemption at the end of a calendar year to remind them of the need to submit an application for the same exemption for the next calendar year. Several commenters wanted HHS to specify that the Exchange send such a reminder notice that would arrive during open enrollment, to allow an individual to make the appropriate purchasing decision. Another

commenter opposed specifying that the Exchange send such a reminder notice, noting that most exemptions are meant to be temporary, and that the primary goal of the Exchange should be ensuring that individuals have access to coverage.

*Response:* We will maintain the language as proposed, which does not specify that Exchanges will send an additional reminder notice to an individual at the end of a calendar year. Pursuant to the eligibility standards for exemptions described throughout § 155.605, individuals have broad flexibility in terms of the time periods which Exchanges will grant exemptions, and thus we do not believe the corresponding administrative burden on Exchanges to send an additional notice is outweighed by the benefits of such a notice for individuals. We note that an Exchange also has the flexibility to send such a notice at its discretion.

*Comment:* Several commenters raised concerns regarding our proposed codification of the eligibility standards for the religious conscience exemption specified in the Affordable Care Act. Some commenters expressed philosophical opposition to the notion that the government would exempt individuals for religious purposes. Other commenters opposed our proposal to allow children of individuals in recognized religious sects or divisions to be exempt in addition to their parents. Commenters believed that as a result, parents would not have to maintain minimum essential coverage for their dependent children, which they feared would permit parents to avoid caring for their children's health.

*Response:* Section 5000A(d)(2) of the Code, as added by section 1501(b) of the Affordable Care Act, establishes the religious conscience exemption. We note that state laws governing domestic relations allow parents to attest on behalf of minor children, which was the basis of our proposal. We note that we do not intend this provision to modify or supersede any other laws regarding health responsibility for children.

*Comment:* One commenter suggested the IRS or the Social Security Administration (SSA) is better positioned to determine eligibility for the religious conscience exemption. Furthermore, the commenter expressed concerns about how the Exchange should handle an appeal when a religious sect is not recognized by the SSA. The commenter indicated that it would be more appropriate for an individual to instead appeal to IRS or SSA in this situation as opposed to the Exchange.

*Response:* As noted above, the statute specifies that the religious conscience

exemption may only be granted by the Exchange. We are working closely with the SSA to define an appropriate process to address religious sects that are not yet recognized, and we clarify in § 155.615(b)(4) that if an applicant attests to membership in a religious sect or division that is not recognized by the Social Security Administration as an approved religious sect or division under section 1402(g)(1) of the Code, the Exchange must provide the applicant with information regarding how his or her religious sect or division can pursue recognition under section 1402(g)(1) of the Code, and determine the applicant ineligible for this exemption until such time as the Exchange obtains information indicating that the religious sect or division has been approved. We agree with the commenter that the Exchange is not an ideal venue for an appeal of a denial that was based on a finding that a sect or division did not meet the statutory requirements. We intend to provide further guidance on this process in collaboration with the SSA.

*Comment:* One commenter requested that HHS expand the religious sects and divisions whose members qualify for the religious conscience exemption.

*Response:* HHS does not have the authority to expand the criteria set in the statute, which reference section 1402(g)(1) of the Code, and so we are finalizing the cross-reference to the statutory criteria as proposed.

*Comment:* Commenters expressed differing opinions regarding our proposal that when an individual who has a religious conscience exemption turns 18, he or she must re-apply for the exemption in order to maintain it. One commenter opposed specifying that the Exchange send a notice, instead arguing that the individual turning 18 should be responsible for reapplying without a prompt. Another commenter noted that based on the practices of the religious sects and divisions that this exemption covers, HHS should modify this provision such that the age standard is 21.

*Response:* In response to comments, to align with other Affordable Care Act definitions of children, and to reduce burden on individuals under the age of 21, we are modifying this provision in the final rule to specify that individuals receiving the religious conscience exemption will have to re-apply for the exemption upon turning 21. We will maintain the provision specifying that the Exchange send a notice prompting an individual to reapply upon turning 21, since this notice is needed to notify him or her that his or her exemption will end absent a new application.

Nothing precludes individuals affected by this change from obtaining coverage on their own.

*Comment:* One commenter suggested that the Exchange should have the flexibility not to grant exemptions based on membership in a health care sharing ministry or incarceration. The commenter noted the limited benefit for individuals in having an Exchange grant such exemptions since the proposed rule specifies that they are only available through the Exchange retrospectively within a calendar year, and are otherwise available through the tax filing process.

*Response:* We believe that individuals will benefit from the opportunity to receive the exemptions based on membership in a health care sharing ministry or incarceration through the Exchange in addition to through the tax filing process, and as such, are finalizing the provision as proposed.

*Comment:* One commenter suggested that HHS clarify the language used in § 155.605(c)(3) and (f)(3) such that the text of the regulation appropriately describe the flexibility for Exchanges to grant an exemption in these categories retrospectively or prospectively.

*Response:* In proposed § 155.605(c)(3) and (f)(3), we specified that the Exchange “must provide an exemption in this category prospectively or retrospectively.” The intent of this provision was not to allow flexibility to the Exchange whether or not to grant the exemption but, rather, to specify that the Exchange will provide an exemption in these categories retrospectively, prospectively, or both, depending on the period of time for which such an exemption is requested and the period of time for which an applicant meets the criteria for such an exemption. Accordingly, we have modified the language in paragraphs (c), (d), (e), (f), and (g) to specify as appropriate when the Exchange must make the various categories of exemptions available prospectively or retrospectively.

*Comment:* One commenter expressed support for HHS’ proposal that the Exchange grant the exemption based on membership in an Indian tribe as long as individuals still maintained the opportunity to file for this exemption through the tax filing process. Another commenter suggested that Exchanges should not grant exemptions based on membership in an Indian tribe, but that rather such exemption should only be available through the tax filing process. Alternatively, this commenter said that if the Exchange does grant this exemption, it should only do so prospectively.

*Response:* We believe that individuals will benefit from the opportunity to receive the exemption based on membership in an Indian tribe through the Exchange in addition to through the tax filing process. Furthermore, we do not believe that granting this retrospectively and prospectively will result in significant burden for the Exchange, since no work is necessary to determine eligibility for this exemption retrospectively beyond what would be necessary to determine eligibility for it prospectively. Accordingly, we are finalizing this provision as proposed.

*Comment:* Some commenters expressed concerns about the definition of Indian tribe proposed in § 155.600(a), which referred to section 45A(c)(6) of the Code. These commenters recommended a broader definition of Indian for purposes of an exemption. Several commenters recommended that HHS add a hardship exemption category for Indians as defined in 42 CFR 447.50, and another commenter suggested that Exchanges add a hardship exemption category for individuals who are eligible to receive services provided by the Indian Health Service (IHS) pursuant to 25 U.S.C. 1680c(a) or (b). A commenter asked HHS to specify that the duration for these hardship exemptions would parallel the duration of the exemption for a member of an Indian tribe.

*Response:* We have thoroughly reviewed the definitions of the term “Indian” in the Affordable Care Act. HHS does not have the legal authority to modify through regulation the statutory definitions of “Indian” as referenced in the Affordable Care Act. There is no administrative flexibility to align these definitions. Any changes to the definition must be legislative. In response to comments, we added a category of hardship exemption in § 155.605(g)(6) for an individual who is not a member of a federally-recognized tribe, and is an Indian eligible for services through an Indian health care provider, as defined in 42 CFR 447.50, or an individual eligible for services through IHS in accordance with 25 U.S.C. 1680c(a), (b), or (d)(3). We also redesignate proposed § 155.615(f)(3) as § 155.615(f)(4), and add new § 155.615 to specify that the Exchange will use the same verification procedures for this exemption as it will use for the exemption for members of a federally-recognized tribe. We also note that the duration of this exemption mirrors that as provided for members of federally-recognized tribes, such that whether it is granted prospectively or retrospectively, it is granted for a month on a continuing basis until the individuals specified above report a

change in their eligibility status for this exemption. This ensures that the individuals specified above who have access to health care through the IHS, Tribes and Tribal organizations, and urban Indian organizations (I/T/U) are treated in the same manner as members of federally-recognized tribes for purposes of the individual shared responsibility payment.

*Comment:* Multiple commenters expressed overall support for our proposal in § 155.605(g)(1), whereby the Exchange would determine an individual eligible for a hardship exemption based on circumstances that resulted in an unexpected increase in essential expenses that prevented an individual from obtaining coverage under a qualified health plan. One commenter suggested that HHS should provide further flexibility to allow Exchanges to define additional eligibility criteria for this exemption. Another commenter expressed support for HHS providing minimum standards for hardship. While we mentioned several examples of events that would qualify as hardships in preamble, based on standards used for similar purposes in the Commonwealth of Massachusetts, some commenters wanted HHS to clarify in the final text of the regulation that an applicant who met the circumstances discussed in the preamble as well as other circumstances used in Massachusetts but not specifically mentioned in preamble would qualify for a hardship exemption.

*Response:* In preamble to the proposed rule, we noted that we expected to clarify detailed hardship criteria in future guidance. Accordingly, to assist Exchanges in determining eligibility for a hardship exemption for an individual who experienced circumstances that prevented him or her from obtaining coverage under a QHP, we are publishing guidance simultaneously with this rule that provides detailed criteria for this exemption.

*Comment:* One commenter recommended that Exchanges have greater flexibility in determining the duration of a single exemption, particularly due to the many circumstances that could be covered by the hardship exemption. Several commenters recommended that HHS provide Exchanges with clearer guidance regarding the duration of hardship exemptions that could be granted according to § 155.605(g)(1), including events that may span multiple calendar years. Some commenters urged that in particular situations, such as those where victims suffer natural and human-caused disasters, Exchanges

should grant exemptions that last 2 years. Other commenters suggested that any hardship exemption be provided for a minimum of 6 months or a year. One commenter recommended that the Exchange grant a hardship exemption for more than a calendar year if an individual experiences an event that occurs across 2-calendar years. Another commenter requested clarification regarding the language in § 155.605(a) specifying that the Exchange would provide an exemption for a month if the Exchange determines that an individual meets the requirements for an exemption for at least one day of the month, with the exception of § 155.605(g).

*Response:* In response to comments, we clarify that a hardship exemption granted under § 155.605(g)(1) will at minimum be provided for the month before the hardship, the month or months of the hardship, and the month after the hardship, and that Exchanges have flexibility to provide it for additional months after the hardship, consistent with the circumstances of the hardship. This ensures that such a hardship exemption addresses the time period where an individual actually experienced the hardship, while also providing flexibility for Exchanges to evaluate the particular circumstances of an event that may necessitate an extended duration of an exemption. As such, the hardship exemptions provided under § 155.605(g)(1), which will be provided before and after the occurrence of when the individual actually experienced the hardship, necessitate an exception in regards to the general provision of § 155.605(a).

*Comment:* Numerous commenters urged HHS to specify additional categories of hardship exemptions outside of those proposed or to expand the scope of certain categories of hardship exemptions as proposed. These suggestions include providing hardship exemptions for: Employees who have an offer of self-only employer-sponsored coverage that costs less than 8 percent of household income, but for whom family coverage costs more than 8 percent of household income; individuals with income less than 150 percent of the FPL; individuals for whom the aggregate cost of employer-sponsored coverage (not only employed members) exceeds 8 percent of household income for that month(s); individuals and families with household income below 250 percent of the FPL that are offered affordable employer-sponsored coverage (less than 8 percent of household income), but the amount that the individual or family would have to pay for the lowest-cost

bronze plan on the Exchange exceeds 8 percent of household income; individuals and their dependents who have an offer of employer-sponsored coverage that is affordable but that does not provide minimum value; individuals participating in special non-minimum essential coverage programs that already require financial determinations by a state; individuals who already receive certain kinds of public assistance benefits; or individuals who in good faith attempted to purchase insurance but were unable to do so based on limited enrollment opportunities.

*Response:* As specified in guidance published simultaneously with this final rule, we have identified several events that Exchanges can refer to in order to help them in determining eligibility for hardship exemptions. These will also be the detailed criteria used by the Federally-facilitated Exchange. Due to the broad range of circumstances that will qualify an individual for a hardship exemption, we do not believe that further categories of exemptions need to be added to the text of the regulation. However, as discussed further below, we have modified the eligibility standards for the hardship exemption for situations in which coverage is unaffordable based on projected income such that if an individual and his or her dependents have an offer of employer-sponsored coverage that does not meet the minimum value standard, the Exchange will not consider this offer in determining affordability. Rather, in such a situation, the Exchange will consider affordability based on the lowest-cost offer of employer-sponsored coverage that does meet the minimum value standard, and if no such offer exists, on the cost of the applicable lowest cost bronze plan in the relevant rating area of the Exchange, reduced by any available advance payments of the premium tax credit. This is similar to the considerations for eligibility for advance payments of the premium tax credit based on eligibility for coverage in an eligible employer-sponsored plan, which take into account both cost and minimum value.

*Comment:* One commenter expressed concerns about the burden on Exchanges to handle eligibility determinations for exemptions, including the hardship exemption, as they viewed the eligibility determination process for exemptions as more appropriately handled through the tax filing process, particularly when exemptions are not available prospectively through the Exchange. Some commenters supported the

proposed hardship exemption at § 155.605(g)(3) (related to the tax filing threshold), while another commenter stated that the proposed hardship exemption at § 155.605(g)(3) should not be granted by the Exchange as it concerned tax filing. Other commenters generally supported the hardship exemption proposed at § 155.605(g)(5) (related to affordable self-only coverage), even if suggesting modifications as noted above, for employed members determined eligible for affordable self-only insurance, but for whom the aggregate cost of employer-sponsored coverage for all the employed members of the family exceeds 8 percent of household income.

*Response:* Based on comments received, and in order to minimize burden on Exchanges while ensuring efficient processing of exemptions applications, we will modify § 155.605(g) such that the hardship exemptions proposed at § 155.605(g)(3) and (5) will be provided exclusively through the tax filing process, and not by the Exchange. These exemptions necessitate information that will only be available at the time of tax filing, such that if they were exclusively available through the Exchange, an individual would need to file a tax return, request an exemption from the Exchange, receive a determination from the Exchange, and depending on the determination, potentially amend his or her return. Accordingly, to streamline the process for consumers, we grant limited authority to the IRS to administer these two hardship exemptions. We note that we will continue to consider the administrative feasibility of Exchanges granting the hardship exemption under § 155.605(g)(5) after the conclusion of the first year of operations.

*Comment:* Commenters expressed broad support for our proposal at § 155.605(g)(4) to provide a hardship exemption for individuals ineligible for Medicaid in states that chose not to expand Medicaid under the Affordable Care Act, but expressed differing opinions regarding whether such a hardship exemption should be limited to those individuals who are not determined eligible for advance payments of the premium tax credit. Some commenters supported the policy as proposed based on affordability concerns even for those individuals eligible for advance payments of the premium tax credit, while others suggested that the individuals who are eligible for advance payments of the premium tax credit should not be eligible to receive a hardship exemption.

*Response:* We appreciate the concerns raised by commenters arguing both for and against maintaining this hardship exemption as proposed. We continue to believe that it is appropriate that individuals, even those eligible for advance payments of the premium tax credit, to be eligible for this hardship exemption if ineligible for Medicaid solely as a result of a state that chose not to expand Medicaid eligibility under the Affordable Care Act. We expect that these exemptions will be provided through the eligibility process for coverage, and note that notwithstanding receiving a hardship exemption, such individuals may still decide to enroll in a QHP and receive advance payments of the premium tax credit in this situation. We also note that these exemptions will be available retrospectively following the close of a coverage year.

*Comment:* Several commenters expressed general support for § 155.605(g)(2), which provides a hardship exemption based on projected annual household income. However, some commenters believed that this still did not fully address the consequences of 26 CFR 1.36B-2(c)(3)(v)(A)(2) concerning the affordability of an eligible employer-sponsored plan for a related individual. One commenter requested clarification as to whether this hardship exemption applied to the individual or the entire tax filing unit. Another commenter did not support limiting the availability of this hardship exemption only within open enrollment periods.

*Response:* We note that while the lack of affordable coverage based on projected income hardship exemption and the lack of affordable coverage exemption described in section 5000A(e)(1) of the Code address certain situations where a related individual is ineligible for advance payments of the premium tax credit based on 26 CFR 1.36B-2(c)(3)(v)(A)(2), these provisions are not intended to provide an exemption in all cases in which an individual may be ineligible for advance payments of the premium tax credit.

We finalize this exemption to generally follow the standards in section 5000A(e)(1) of the Code. As in the proposed rule, we specify in paragraph (g)(2)(i) of the final rule that this exemption differs from the exemption described in section 5000A(e)(1) of the Code in that it relies on projected household income. In order to facilitate implementation of this exemption, we add paragraphs (g)(2)(ii), (iii), and (iv) to clarify the applicable standards. First, in paragraph (g)(2)(ii), we clarify that as described above, the Exchange will only consider the affordability of an eligible

employer-sponsored plan for this exemption if it meets the minimum value standard. Second, in paragraph (g)(2)(iii), we describe how the Exchange will determine the cost of coverage for an individual who is eligible to purchase coverage under an eligible employer-sponsored plan.

We note that, under the Treasury proposed rule, the standards for determining the required contribution for coverage through an eligible employer-sponsored plan vary depending on whether an individual is an employee eligible to purchase coverage under an eligible employer-sponsored plan through the employee's employer, or is eligible to purchase coverage under an eligible employer-sponsored plan because of a relationship to an employee, with respect to eligibility for an exemption. For an individual employee who is eligible through his or her own employer, the affordability calculation is based on the lowest cost option for self-only coverage. For all other individuals eligible to purchase coverage under an eligible employer-sponsored plan, the required contribution is the portion of the annual premium that the employee would pay for the lowest cost option for family coverage that would cover the employee and all individuals who are included in the employee's family and are not otherwise exempt. We note that the Exchange will only know whether an individual within the employee's family has been granted an exemption by that Exchange. Accordingly, we specify in paragraph (g)(2)(iii)(C) that the Exchange will consider the lowest cost family coverage that meets the minimum value standard and would cover the employee and all other individuals who are included in the employee's family who have not otherwise been granted an exemption through the Exchange.

We also note that proposed 26 CFR 1.36B-2(c)(3)(v)(A)(4) (78 FR 25914), provides that for purposes of determining eligibility for the premium tax credit, the affordability of coverage in an eligible employer-sponsored plan is determined by assuming that each employee satisfies the requirements of available nondiscriminatory wellness programs related to tobacco use, and does not satisfy the requirements of any available wellness programs that are not related to tobacco use. That is, if a plan includes a nondiscriminatory wellness program for tobacco users, such as smoking cessation classes, the affordability of coverage under that plan will be determined based on the premium that is charged to tobacco

users who complete this program. In the preamble to proposed 26 CFR 1.36B-2(c)(3)(v)(4) (78 FR 25911), Treasury also noted that it expects to specify that this treatment of nondiscriminatory wellness programs will also be used in determining the required contribution for purposes of the lack of affordable coverage exemption under section 5000A(e)(1) of the Code.

Accordingly, in order to ensure that an individual is not liable for the shared responsibility payment if he or she is ineligible for advance payments of the premium tax credit and cost-sharing reductions as a result of a finding by the Exchange that he or she is eligible for qualifying coverage in an eligible employer-sponsored plan based on incorporating the completion of a tobacco-related wellness program, we specify in paragraph (g)(2)(iii)(A) that the Exchange will determine eligibility for the exemption specified in paragraph (g)(2) for an individual who uses tobacco without incorporating any discount resulting from the completion of a wellness program designed to prevent or reduce tobacco use. We also specify in paragraph (g)(2)(iii)(B) that discounts from wellness incentives offered by an eligible employer-sponsored plan that do not relate to tobacco use are treated as not earned.

In paragraph (g)(2)(iv), we clarify that in the case of an individual who is ineligible to purchase coverage under an eligible employer-sponsored plan, or only eligible to purchase coverage under an eligible employer-sponsored plan that does not meet the minimum value standard, the Exchange will determine the required contribution for coverage in accordance with section 5000A(e)(1)(B)(ii) of the Code, inclusive of all members of the individual's family who have not otherwise been granted an exemption through the Exchange, and who are not treated as eligible to purchase coverage under an eligible employer-sponsored plan that meets the minimum value standard. This determination is based on the premium for the single lowest cost bronze plan available, less any credit allowable under section 36B of the Code, in the individual market through the Exchange serving the rating area in which the individual resides.

Furthermore, we clarify that in finalizing this provision, we specify in paragraphs (g)(2)(v) and (g)(2)(vi) that this exemption will be available throughout the calendar year prospectively for a month or months until the last date on which an individual could enroll in a QHP through the calendar year for which the exemption is requested. This refers not

only to the open enrollment period, but to any special enrollment period, notwithstanding special effective dates, for which an individual may potentially be determined eligible during the calendar year under 45 CFR 155.420(b). As such, an individual may be determined eligible for this exemption for the remaining month or months of a calendar year as late as November of that calendar year, as the effective dates for a special enrollment period under § 155.420(b) would still allow such an individual to enroll in a QHP by December of that calendar year. Lastly, in order to reduce administrative burden, we also specify in paragraph (g)(2)(vi) that an exemption in this category will be provided for all remaining months in a coverage year, notwithstanding any change in an individual's circumstances.

*Comment:* Some commenters wanted to ensure that Exchanges would provide clear and easily understandable information to explain different exemptions available to individuals, including the steps needed to apply for an exemption.

*Response:* We recognize the need for consumer information that explains the available exemptions as well as the necessary documentation and steps needed for individuals to apply. We expect to work with states and other stakeholders to ensure that individuals are properly educated about the exemption eligibility process.

*Comment:* One commenter wanted to ensure that the Exchange would issue a certificate of exemption to any individual who is qualified and not limit the availability of certificates to only those individuals who are seeking coverage through the Exchange.

*Response:* We agree with the commenter that the Exchange will not limit certificates of exemption to individuals who are seeking coverage through the Exchange. We note that a hardship exemption will allow an individual to enroll in a catastrophic plan, both inside and outside the Exchange, and the Exchange may not limit the availability of an exemption contingent on an individual seeking coverage through the Exchange or elsewhere. Further, while a portion of the eligibility process for the hardship exemption proposed in § 155.605(g)(4) for individuals who are determined ineligible for Medicaid based on a state's choice not to expand Medicaid eligibility under the Affordable Care Act relies on the eligibility process for Medicaid, proposed § 155.610(a) specifies that the Exchange will generally use a separate application for

exemptions. We finalize this provision as proposed.

*Comment:* One commenter was supportive of HHS' decision not to specify that the Exchange would grant the exemption specified in section 5000A(d)(3) of the Code for individuals who are not lawfully present, but also recommended clear guidance and instructions regarding individuals who nevertheless attempt to apply for this exemption through the Exchange to ensure that the Exchange will follow the appropriate privacy and confidentiality protections, and also to direct individuals to claim this exemption through the tax filing process.

*Response:* We note that the privacy and confidentiality protections in 45 CFR 155.260 apply to the exemption eligibility process, and are sufficient to address these concerns. Furthermore, we expect that the Exchange will provide clear guidance regarding the exemptions available through the Exchange as well as the exemptions that can be claimed solely through the tax filing process, in order to appropriately direct individuals.

#### Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.605 of the proposed rule with the following modifications: We make technical corrections in paragraphs (c) through (g) for the purpose of clarity to specify when the Exchange must make different exemptions available, whether prospectively or retrospectively. In paragraph (c)(2) concerning the duration of the exemption for religious conscience, we specify that an exemption in this category will be provided on a continuing basis until the month after the month of the individual's 21st birthday, and as such if an Exchange granted such an individual an exemption prior to the age of 21, would have to send the applicant a notice at that point to remind him or her to submit a new application to maintain the certificate of exemption. We make revisions throughout paragraph (g) to specify which hardship exemptions must be granted by the Exchange, and which can be claimed only through the tax filing process. We clarify that an Exchange will determine an applicant eligible for an exemption under paragraph (g)(1) of this section for the month before, a month or months during which they experience the circumstances that qualify as a hardship, and the month after. We make a technical correction in paragraph (g)(1)(i) to clarify that the financial or domestic circumstances caused a significant and unexpected increase in

essential expenses that prevented the individual from obtaining coverage under a QHP. We make a technical correction in paragraphs (g)(1)(ii) to replace “minimum essential coverage” with “qualified health plan” to align with the statutory language describing the hardship exemption, and modify paragraph (g)(1)(iii) to clarify that Exchange will determine an individual eligible for a hardship exemption if he or she experienced circumstances that prevented him or her from obtaining coverage under a QHP in accordance with the statute.

We add paragraph (g)(2)(ii) to clarify that the Exchange will only consider the affordability of an eligible employer-sponsored plan for the exemption described in paragraph (g)(2) if the eligible employer-sponsored plan meets the minimum value standard. We add paragraph (g)(2)(iii) to clarify the applicable standards if an individual is eligible for coverage through an eligible employer-sponsored plan that meets the minimum value standard, and note in paragraph (g)(2)(iii)(A) that an individual who uses tobacco is treated as not earning any premium incentive related to participation in a wellness program designed to prevent or reduce tobacco use that is offered by an eligible employer-sponsored plan, and in paragraph (g)(2)(iii)(B) that discounts from wellness incentives offered by an eligible employer-sponsored plan that do not relate to tobacco use are treated as not earned. That is, for purposes of this exemption, the cost of an eligible employer-sponsored plan that includes a premium differential for smokers and non-smokers is calculated using the non-smoker premium for non-smokers, and the smoker premium for smokers, without any discounts that may be available through smoking cessation programs. We outline the appropriate methods to determine the required contribution for coverage through an eligible employer-sponsored plan that meets the minimum value standard in paragraphs (g)(2)(iii)(C) and (D), depending on whether an individual is an employee eligible to purchase coverage under an eligible employer-sponsored plan through the employee's employer, or is eligible to purchase coverage under an eligible employer-sponsored plan by reason of a relationship to an employee. We specify in paragraph (g)(2)(iii)(D) that the Exchange will consider the lowest cost family coverage that meets the minimum value standard that would cover the employee and all other individuals who are included in the employee's family who have not

otherwise been granted an exemption through the Exchange. We specify in paragraph (g)(2)(iv) that the Exchange will determine the required contribution for coverage in the individual market in the case of an individual who is ineligible to purchase coverage under an eligible employer-sponsored plan in accordance with section 5000A(e)(1)(B)(i) of the Code, or eligible only to purchase coverage under an eligible employer-sponsored plan that does not meet the minimum value standard, inclusive of all members of the individual's family who have not otherwise been granted an exemption through the Exchange, or are treated as eligible to purchase coverage under an eligible employer-sponsored plan that meets the minimum value standard. We also clarify in paragraphs (g)(2)(v) and (g)(2)(vi) that this exemption will be available throughout the calendar year prospectively for a month or months until the last date on which an individual could enroll in a QHP through the calendar year for which the exemption is requested, and that the Exchange will provide an exemption in this category for all remaining months in a coverage year, notwithstanding any change in an individual's circumstances.

We clarify that the Exchange may not grant the hardship exemptions under paragraph (g)(3) and (5) of this section, but rather only the IRS will allow an applicant to claim these exemptions. We add paragraph (g)(6) to provide that an Exchange will determine an applicant eligible for a hardship exemption for any month for which he or she is an Indian eligible for services through an Indian health care provider, as defined in 42 CFR 447.50, or an individual eligible for services through the Indian Health Service in accordance with 25 U.S.C. 1680c(a), (b), or (d)(3). We clarify that the duration for the exemption provided under paragraph (g)(6) of this section is the same as specified in paragraph (f)(2) of this section.

#### c. Eligibility Process for Exemptions (§ 155.610)

In § 155.610, we proposed the process by which the Exchange would determine an applicant's eligibility for exemptions. In paragraph (a), we proposed to specify that the Exchange would use an application established by HHS in order to collect the information necessary to determine eligibility and grant a certificate of exemption for an applicant, unless the Exchange receives approval to use an alternative application. We also clarified that in cases in which relevant information has already been collected through the

eligibility process for enrollment in a QHP and for insurance affordability programs, the Exchange would use this information for the purpose of eligibility for an exemption to the maximum extent possible.

In paragraph (b), we proposed that the Exchange may seek approval from HHS for an alternative application. We further specified that such alternative application must only request the minimum information necessary for the purposes identified in paragraph (a) of this section.

In noting that there are exemptions that share common data and verifications with the eligibility process for enrollment in a QHP and for insurance affordability programs, in paragraph (c) we proposed that if an individual submits the application in 45 CFR 155.405 and then requests an exemption, the Exchange would use the information collected on the application for coverage and not duplicate any verification processes that share the standards specified in this subpart. We solicited comments on how best to coordinate these processes to ensure maximum administrative simplicity for all involved parties.

In paragraph (d), we proposed the Exchange would accept the application for an exemption from an application filer, and provide tools for the submission of an application. We did not specify particular channels for application acceptance, but we solicited comments regarding whether we should specify some or all of the channels included in 45 CFR 155.405.

In paragraph (e), we proposed that the Exchange would specify that an applicant who has a social security number (SSN) will provide such number to the Exchange in order to coordinate information in the tax filing process and provide the Exchange with additional information with which to ensure program integrity. However, we proposed to clarify in paragraphs (e)(2) and (e)(3) that the Exchange may not require an individual who is not seeking an exemption for him or herself to provide a SSN, except that the Exchange would require an application filer to provide the SSN for a non-applicant tax filer only if the applicant attests that the tax filer has a SSN and filed a tax return for the year for which tax data would be utilized to verify household income and family size for a hardship exemption. We solicited comments on the applicability of this provision in the context of the exemption eligibility process.

In paragraph (f), we proposed that the Exchange would grant a certificate of exemption to any applicant determined

eligible in accordance with the standards for exemptions provided in § 155.605.

In paragraph (g)(1), we proposed that the Exchange determine eligibility for exemptions promptly and without undue delay, which is the same timing threshold used throughout subpart D of this part, including in 45 CFR 155.310(e)(1), with respect to eligibility determinations for enrollment in a QHP and for insurance affordability programs. In paragraph (g)(2), we proposed that the assessment of timeliness of eligibility determinations by the Exchange is based on the period from the date of the application until the date on which the Exchange notifies the applicant of its decision. We solicited comments regarding specific performance standards for the eligibility process described in this subpart, and whether we should define an outer bound in which an eligibility determination will be made.

In paragraph (h), we proposed to clarify that except for the exemptions for religious conscience and membership in an Indian tribe proposed in § 155.605(c) and § 155.605(f), respectively, after December 31 of a given calendar year, the Exchange will not accept an application for an exemption for months for such calendar year. We intended to specify that this provision also apply to the hardship exemption under § 155.605(g), but inadvertently did not include such language in the text of the regulation. We solicited comments regarding this approach, and whether there should be additional categories of exemptions for which the Exchange would grant exemptions after the close of a calendar year.

In paragraph (i), we proposed that the Exchange provide timely written notice to an applicant of any eligibility determination for an exemption made in accordance with this subpart, which could be provided through electronic means, consistent with § 155.230(d).

In paragraph (j), we proposed that an individual who has been certified by an Exchange as qualifying for an exemption retain the records that demonstrate not only receipt of the certificate of exemption but also qualification for the underlying exemption. We noted that to the extent that the Exchange provides a certificate of exemption for which the underlying verification is based in part on the special circumstances exception proposed in § 155.615(h), an individual would retain records that demonstrate receipt of the certificate of exemption, as well as the circumstances that warranted the use of the special circumstances exception.

*Comment:* Commenters were generally supportive of our proposals throughout this section. One commenter suggested that HHS codify the preamble language specifying that individuals could apply for multiple exemptions simultaneously. Another commenter sought clearer standards regarding the eligibility process for exemptions in order to limit administrative burden.

*Response:* We believe that the language proposed in this section provides the appropriate amount of detail to guide the Exchange in establishing an efficient process for exemptions, while also allowing for the Exchange to have the necessary flexibility to administer these processes effectively. We clarify that while we believe individuals will benefit from the opportunity to seek multiple exemptions simultaneously, we feel that the existing regulation text is sufficient, and so are finalizing it as proposed.

*Comment:* One commenter recommended that HHS revise the language in § 155.610(a) to clarify that except as specified, the Exchange must use an application established by HHS to collect only the information that is “strictly” necessary for determining eligibility for an exemption. Another commenter wanted HHS to cross-reference to § 155.260 so that information collected on the exemption application was subject to the appropriate security and privacy protections.

*Response:* We share the commenter’s concern regarding Exchanges using an exemptions application that minimizes the information individuals must provide to receive an eligibility determination for an exemption, and is subject to robust privacy and security protections. We believe that the comment regarding limiting requests for information to only what is necessary is addressed in proposed § 155.615(j), which limits the ability of the Exchange to require the provision of information by an applicant to support the eligibility process for exemptions to the minimum necessary, and is finalized as proposed. We also note that § 155.260(a) already includes language specifying that the provisions of § 155.260 apply to the exemptions process. Accordingly, we are not including additional language in this final regulation.

*Comment:* Commenters made several suggestions with the goal of enhancing the efficiency of the coverage and exemptions application processes. Several commenters supported our proposals to re-use information from the coverage application for the purposes of exemptions eligibility determinations when possible in order to prevent

collecting duplicate information. One commenter recommended combining the coverage application and exemptions application in order to streamline the eligibility determination process for both enrollment in a QHP and exemptions, reduce burden on individuals and Exchanges, and inform an applicant of all potential coverage or exemptions options based on his or her particular circumstances.

*Response:* As noted in our proposed rule, we continue to believe that where possible, individuals who apply for coverage should not have to provide duplicate information to the Exchange if they subsequently decide to apply for an exemption. We also believe that it is important to have separate applications for coverage and exemptions to avoid creating burden on those individuals who are only seeking coverage or exemptions. Accordingly, we are finalizing these provisions as proposed.

*Comment:* One commenter viewed the language in § 155.610(c) regarding the reuse of information collected through the eligibility process for enrollment in a QHP through the Exchange and for insurance affordability programs as confusing, and recommended the phrase “that adhere to the standards specified in this subpart” be eliminated.

*Response:* We are modifying this language to clarify that when an Exchange has verified information through the eligibility process for enrollment in a QHP through the Exchange and for insurance affordability programs, and such verifications occur in accordance with the standards specified in this subpart, the Exchange may not repeat the verification for purposes of determining eligibility for an exemption. For example, we note that the verification procedures for the exemption for members of an Indian tribe cross-references the verification procedures in subpart D of this part; accordingly, if the Exchange verified that an individual meets the standards through the eligibility process for enrollment in a QHP and for insurance affordability programs, and such an individual subsequently requests an exemption based on membership in an Indian tribe, the Exchange will not repeat the verification.

*Comment:* Commenters urged that the Exchange allow individuals to apply for an exemption via the same channels as the coverage application, including online, by telephone, by mail, and in person. One commenter raised particular concerns in terms of allowing individuals to have the full range of options to apply for a religious conscience exemption.

*Response:* We are committed to providing an efficient and consumer-friendly application process for exemptions. In § 155.610(d)(3), we specify that for applications submitted before October 15, 2014, the Exchange must, at a minimum, accept such applications in paper, via mail. We believe that this will ensure the availability of an effective process within the time constraints that the Exchange is facing for implementation, while allowing for state flexibility to utilize other channels sooner than October 15, 2014. We intend to discuss the availability of applications through other channels beginning on or after October 15, 2014 in a future regulation.

*Comment:* Several commenters appreciated HHS' proposal in § 155.610(e)(2) that the Exchange may not require an individual who is seeking an exemption on behalf of someone else other than himself or herself to provide a SSN. However, another commenter expressed concerns that the broad language used here would prevent the collection of a SSN who are not seeking an exemption, but rather are applying for enrollment in a QHP.

*Response:* We appreciate the commenter's concerns, and note that § 155.610(e)(2) only applies to subpart G regarding eligibility determinations for exemptions, whereas 45 CFR 155.310(a)(3) provides the standards for collecting Social Security numbers as part of the eligibility process for enrollment in a QHP through the Exchange and for insurance affordability programs. Accordingly, we are finalizing the language as proposed.

*Comment:* Several commenters were generally supportive of HHS specifying that Exchanges determine individuals eligible for an exemption "promptly and without undue delay," but also raised concerns about the lack of clear timeliness standards proposed at § 155.605(g). One commenter noted that due to the lack of specificity, an applicant for an exemption should not be considered uninsured for the time it takes to evaluate whether he or she is qualified for an exemption. Other commenters urged HHS to set more clear timeliness standards. Another commenter suggested that HHS specify that Exchanges will grant an exemption in real time when all documentation is available electronically, and where an applicant must submit paper documentation, suggested specific timeliness standards. A commenter recommended that HHS more clearly specify the meaning of the "date of the application" in terms of the procedures that Exchanges will use to log or stamp an application date, and wanted to

ensure that the date of the application would be based on when an individual submitted the application regardless of when it is received by the Exchange. The commenter also wanted to make sure an individual receives the appropriate notice and appeals rights if the Exchange fails to promptly determine eligibility.

*Response:* We drafted this provision based on the timeliness standards for the coverage process and believe that the current language is appropriate. Accordingly, we are finalizing this provision as proposed. We are also finalizing proposed paragraph (g)(2), which specifies that the Exchange will assess the timeliness of eligibility determinations. As with the coverage process, we intend to work closely with Exchanges to monitor timeliness and identify opportunities to improve performance. We note that HHS does not have authority to determine whether an individual is liable for the shared responsibility payment, as such authority belongs to the Internal Revenue Service. Comments addressing the appeals process will be discussed in a future regulation.

*Comment:* One commenter noticed a discrepancy between the preamble associated with § 155.610(h) and the corresponding regulation text, whereby the preamble mentioned that after December 31 of a given calendar year, the Exchange will not accept an application for an exemption except for the exemptions described in § 155.605(c) (religious conscience) and (g) (hardship), but the regulation text referenced § 155.605(c) and (f) (membership in an Indian tribe). Another commenter noted that the preamble language associated with this provision only allows an individual to receive an exemption retrospectively through the Exchange until an individual could file an income tax return, and asked whether HHS intended to limit this to the regular tax filing due date or to a potentially later date if a taxpayer applies for an extension or amends a previously filed return. If HHS intended to limit this to the regular tax filing date, the commenter asked that HHS modify this provision to clarify that the Exchange will provide a retrospective exemption for a calendar year up to the extended filing date or amended filing date for such year, should a taxpayer request an extension or amend a return.

*Response:* We believe that it is appropriate to provide exemptions based on religious conscience and membership in a federally-recognized Indian tribe retrospectively, without a time limit for filing. We note that as a

result of a drafting oversight, we did not include a reference to the hardship exemption in the regulation text to specify that this should also be treated differently than under the general rule, and we correct this in the final regulation. We also provide for further special treatment for hardship exemptions; specifically, that the Exchange will only accept an application for the hardship exemption under paragraph § 155.605(g)(1) for a month or months during a calendar year when the application is filed during one of the 3 calendar years after the month or months during which the applicant attests that the hardship occurred. We believe that the circumstances of a hardship exemption will motivate an individual to seek such an exemption in a timely manner, and also recognize the need to balance the availability of this exemption for an individual who amends his or her tax return with the administrative burden associated with processing requests for prior years. We further note that section 6511 of the Code provides the period of limitations on filing a claim for refund or credit with the IRS. A taxpayer generally must file an amended tax return by the later of three years from the filing of the original tax return or two years from the time the tax was paid. Taxpayers need to file amended returns within these timeframes to ensure the receipt of a refund of the shared responsibility payment for a prior year through the IRS, even though the Exchange may appropriately grant a hardship exemption anytime during the period specified in § 155.605(g)(1). We maintain the general rule regarding exemptions for incarcerated individuals and individuals who are members of a health care sharing ministry, since these will also be available through the tax filing process, which should facilitate access to these exemptions in the case of amended returns.

*Comment:* Based on HHS' proposal to allow individuals to apply for multiple exemptions, one commenter worried about the potential that individuals would be confused if receiving multiple notices as a result. The commenter requested that once an exemption is granted for a period, HHS specify that the Exchange would not provide a notice regarding any further exemptions for which an individual applied for the same time period. The commenter suggested that an individual should only receive a denial notice for a month or months where he or she does not already have a certificate of exemption in effect.

*Response:* We share the commenter's concerns regarding limiting potential

confusion for a consumer who applies for multiple exemptions simultaneously. Accordingly, we clarify that in a situation in which an individual applies for multiple exemptions, we expect the Exchange will provide the appropriate notice regarding each exemption for which an individual applied, as we believe that not providing feedback for all requested exemptions could create additional confusion for consumers. We also expect that if an applicant is approved for an exemption, and then is later denied for a different exemption for the same period of time, the notice describing the denial will clearly state that the applicant's prior exemption remains in effect.

*Comment:* Regarding the proposed recordkeeping provision at § 155.610(j), commenters expressed concern that an individual might think he or she only needs to retain the exemption certificate, and not records that demonstrate his or her qualification for the underlying exemption, and recommended that HHS specify that the Exchange notify individuals of their obligation to retain the underlying records as well. Another commenter recommended deleting this paragraph from the regulation, as they felt the responsibility should rest on the IRS as opposed to the Exchange.

*Response:* We agree with the commenters' suggestion to clarify that the Exchange will notify individuals to retain both the certificate of exemption as well as records that demonstrate the underlying qualification for the exemption. We are maintaining this paragraph with that clarification in the final regulation, since the Exchange is providing the certificate of exemption and is thus ideally positioned to notify individuals of this issue.

#### Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.610 of the proposed rule with a few slight modifications: We clarify that the Exchange must use information collected for purposes of the eligibility determination for enrollment in a QHP and for insurance affordability programs in making the exemption eligibility determination to the extent that the Exchange finds that such information is still applicable. In § 155.610(d)(3), we specify that until October 15, 2014, the Exchange must, at a minimum, permit an individual to apply for an exemption via mail, using a paper application. We correct the oversight in paragraph § 155.610(h) by providing that an applicable exemption that is available retrospectively and described in § 155.605(g) can also be

provided for previous tax years based on an application that is submitted after December 31 of a given calendar year, except for § 155.605(g)(1), which may only be provided during one of the 3 calendar years after the month or months during which the applicant attests that the hardship occurred. Due to the range of hardship exemptions available, we redesignate paragraph (h) as paragraph (h)(1), make a technical correction for clarity in paragraph (h)(1), and add paragraph (h)(2) to specify that the Exchange will only accept an application for a hardship exemption specified in § 155.605(g)(1) for a month or months during a calendar year when the application is filed during one of the 3 calendar years after the month or months during which the applicant attests that the hardship occurred. We also modify paragraph (j)(1) to specify that an Exchange will also notify an individual who is determined eligible for an exemption to retain the certificate of exemption, and also records demonstrating his or her qualification for the underlying exemption.

#### d. Verification Process Related to Eligibility For Exemptions (§ 155.615)

In this section, we proposed language regarding the verification process related to eligibility for exemptions. These processes were designed not only to minimize the burden on applicants, but also to serve a valuable program integrity function in order to assure that applicants are only deemed eligible for exemptions if they meet the standards specified in § 155.605.

In paragraph (a), we proposed that unless HHS grants a request for modification under paragraph (i) of this section, the Exchange will verify or obtain information as provided in this section in order to determine that the applicant is eligible for an exemption.

In paragraph (b), we proposed the verification process concerning the exemption for religious conscience. We specified that for any applicant requesting this exemption, the Exchange will verify that he or she meets the standards as outlined in § 155.605(c). First, in paragraph (b)(1), we proposed that except as specified in paragraph (b)(2) of this section, the Exchange will accept a Form 4029 that reflects that an applicant has been approved for an exemption from Social Security and Medicare taxes under section 1402(g)(1) of the Code by the IRS. Second, in paragraph (b)(2), we proposed that except as specified in paragraphs (b)(3) and (4) of this section, the Exchange will accept an applicant's attestation that he or she is a member of a recognized religious sect or division

described in section 1402(g)(1) of the Code, and an adherent of established tenets or teachings of such sect or division. Next, the Exchange will verify that the religious sect or division to which the applicant attests membership is recognized by SSA as a religious sect or division under section 1402(g)(1) of the Code.

Third, in paragraph (b)(3), we proposed that if the information provided by an applicant regarding his or her membership in a recognized religious sect or division is not reasonably compatible with other information provided by the individual or the records of the Exchange, the Exchange will follow the procedures specified in paragraph (g) of this section concerning situations in which the Exchange is unable to verify information.

Fourth, in paragraph (b)(4), we proposed that if an applicant attests to membership in a religious sect or division that is not recognized by SSA as a religious sect or division under section 1402(g)(1) of the Code, the Exchange must provide the applicant with information regarding how his or her religious sect or division can pursue recognition under section 1402(g)(1) of the Code, and determine the applicant ineligible for this exemption until such time as the Exchange obtains information indicating that the religious sect or division has been approved.

In paragraph (c), we proposed the verification process concerning the exemption for membership in a health care sharing ministry. We specified that for any applicant requesting this exemption, the Exchange will verify whether he or she meets the standards in § 155.605(d). First, in paragraph (c)(1), we proposed that except as specified in paragraphs (c)(2) and (3) of this section, the Exchange will first accept an attestation from an applicant that he or she is a member of a health care sharing ministry. Next, we proposed that the Exchange will verify that the health care sharing ministry to which the applicant attests membership is known to the Exchange as a health care sharing ministry, based on a list that would be developed by HHS based on outreach to health care sharing ministries, which HHS would then make available to Exchanges.

In paragraph (c)(2), we proposed that if the information provided by an applicant regarding his or her membership in a health care sharing ministry is not reasonably compatible with other information provided by the individual or the records of the Exchange, the Exchange will follow the procedures specified in paragraph (g) of

this section concerning situations in which the Exchange is unable to verify information.

In paragraph (c)(3), we proposed that if an applicant attests to membership in a health care sharing ministry that is unknown to the Exchange as a health care sharing ministry according to the standards in § 155.605(d), the Exchange will then notify HHS and not determine an applicant eligible or ineligible for this exemption until HHS informs the Exchange regarding the attested health care sharing ministry's status with respect to the standards specified in 26 CFR 1.5000A-3(b) of the Treasury proposed rule.

In paragraph (d), we proposed the verification process concerning the exemption for incarceration. We specified that for any applicant requesting this exemption, the Exchange will verify, through the process described in 45 CFR 155.315(e), that he or she was incarcerated. In paragraph (d)(2), we proposed that if the Exchange is unable to verify an applicant's incarceration status through the verification process outlined, the Exchange will follow the procedures in paragraph (g) of this section concerning situations in which the Exchange is unable to verify information.

In paragraph (e), we proposed the verification process concerning the exemption for members of Indian tribes. We specified in paragraph (e)(1) that for any applicant requesting this exemption, the Exchange will verify his or her membership in an Indian tribe through the process outlined in 45 CFR 155.350(c). In paragraph (e)(2), we also proposed that the Exchange follow the procedures specified in paragraph (g) of this section if it is unable to verify an applicant's tribal membership.

In paragraph (f), we proposed the verification process concerning exemptions for hardship. In paragraph (f)(2), we proposed that for an applicant applying for a hardship exemption prospectively based on an inability to afford coverage, as described in § 155.605(g)(2), the Exchange use procedures established under subpart D of this part to verify the availability of affordable coverage through the Exchange based on projected income and eligibility for advance payments of the premium tax credit, as specified in subpart D of this part, which involves verifying several attestations by the applicant, including an attestation related to citizenship, as well as the procedures described in § 155.320(e) to verify eligibility for qualifying coverage in an eligible employer-sponsored plan. We solicited comments regarding appropriate verification procedures for

other categories of hardship that will ensure a high degree of program integrity while minimizing administrative burden.

In paragraph (g), we proposed procedures for the Exchange to follow in the event the Exchange is unable to verify information necessary to make an eligibility determination for an exemption, including situations in which an applicant's attestation is not reasonably compatible with information in electronic data sources or other information in the records of the Exchange, or when electronic data are required but unavailable. These procedures mirror those provided in § 155.315(f), with modifications to preclude eligibility pending the outcome of the verification process, made in accordance with the Secretary's authority under section 1411 of the Affordable Care Act.

First, under paragraph (g)(1), we proposed that the Exchange will make a reasonable effort to identify and address the causes of the issue, including through typographical or other clerical errors, by contacting the application filer to confirm the accuracy of the information submitted by the application filer. Second, in paragraph (g)(2)(i), we proposed that if the Exchange is unable to resolve the issue, the Exchange will notify the applicant of the issue. After providing this notice, in paragraph (g)(2)(ii), we proposed that the Exchange will provide 30 days from the date on which the notice is sent for the applicant to present satisfactory documentary evidence via the channels available for the submission of an application, except by telephone, or otherwise resolve the issues. In paragraph (g)(3), we proposed that the Exchange may extend the period for an applicant to resolve the issue if the applicant can provide evidence that a good faith effort has been made to obtain the necessary documentation. And in paragraph (g)(4), we proposed that the Exchange will not grant a certificate of exemption during this period based on the information that is the subject of the request under this paragraph.

In paragraph (g)(5), we proposed that, if after the conclusion of the period described in paragraph (g)(2)(ii) of this section, the Exchange is unable to verify the applicant's attestation, the Exchange will determine the applicant's eligibility based on the information available from the data sources specified in this subpart, as applicable, unless such applicant qualifies for the exception provided under paragraph (h) of this section, and notify the applicant in accordance with the procedures

described under § 155.610(i), including the inability to verify the applicant's attestation.

In paragraph (h), we proposed a provision under which the Exchange would provide a case-by-case exception for applicants for whom documentation does not exist or is not reasonably available to account for situations in which documentation cannot be obtained.

In paragraph (i), we proposed that HHS have the flexibility to approve an Exchange Blueprint or a significant change to an Exchange Blueprint to modify the methods for the collection and verification of information as described in this subpart, as well as the specific information to be collected, based on a finding by HHS that the requested modification would reduce the administrative costs and burdens on individuals while maintaining accuracy and minimizing delay, and that any applicable requirements under 45 CFR 155.260, 45 CFR 155.270, paragraph (j) of this section, and section 6103 of the Code with respect to the confidentiality, disclosure, maintenance, or use of information will be met.

In paragraph (j), we proposed that the Exchange will not require an applicant to provide information beyond what is necessary to support the process of the Exchange for eligibility determinations for exemptions, including the process for resolving inconsistencies described in paragraph (g) of this section.

*Comment:* One commenter raised broad concerns about potential challenges for consumers regarding verification, and requested that HHS specify a 1-year transition period during which the Exchange would rely primarily on self-attestation, using a form signed under penalty of perjury, or auditing a portion of applications submitted by individuals.

*Response:* We share the commenter's desire for a good consumer experience for those individuals who are seeking an exemption. However, we believe that statutory and program integrity concerns argue in favor of the Exchange applying a more comprehensive verification process than self-attestation. We expect to learn from the initial months and years of operations, and to work with states to achieve continuous improvement, with a particular focus on the consumer experience.

*Comment:* One commenter recommended that a taxpayer who already has an approved IRS Form 4029 should not have to request an exemption through the Exchange, and instead should be able to write "Exempt Form 4029" on his or her tax return.

*Response:* We strive to establish an Exchange exemption process that minimizes the burden on individuals to the extent possible. We note that section 5000A(d)(2) of the Code specifies that the religious conscience exemption is available only through the Exchange. However, we note that we are finalizing proposed § 155.615(b)(1), which specifies that the verification process for this exemption will include the Exchange accepting an approved IRS Form 4029 for any individual who has one.

*Comment:* One commenter recommended that in situations in which the health care sharing ministry to which an individual attests membership is not included on the list provided to the Exchange by HHS, HHS should issue the eligibility determination notice denying the exemption as opposed to the Exchange.

*Response:* If an Exchange accepts the original exemption application from an individual, we continue to believe that it is appropriate for the Exchange to issue the corresponding eligibility determination notice in order to prevent confusion that individuals may experience if receiving a separate notice from HHS. We note that nothing precludes an Exchange from notifying such an individual that the determination is based on a list provided by HHS.

*Comment:* One commenter requested further specificity about the process and standards HHS will use in developing the list of health care sharing ministries that meet the standards specified in the statute.

*Response:* We recognize the importance of providing a clear process for establishing the list of health care sharing ministries that meet the statutory standards. Accordingly, we are renumbering proposed § 155.615(c) as § 155.615(c)(1)(i) through (iii), and adding § 155.615(c)(2) to specify a process that is substantially similar to the approach discussed in § 155.604(c) regarding how HHS will determine that certain types of coverage meet the substantive and procedural requirements for consideration as minimum essential coverage. Specifically, we note that to be considered a health care sharing ministry for the purposes of this subpart, an organization will submit information to HHS that substantiates the organization's compliance with the standards specified in section 5000A(d)(2)(B)(ii) of the Code. We also note that if at any time HHS determines that an organization previously considered a health care sharing ministry for the purposes of this subpart

no longer meets the standards specified in section 5000A(d)(2)(B)(ii) of the Code, HHS may revoke its earlier decision. This revocation refers to the status of the health care sharing ministry, and not to the status of an individual's exemption related to membership in a health care sharing ministry. As such, while the Exchange would not grant an exemption to an individual attesting membership in such a health care sharing ministry after revoking its status, the Exchange would not revoke a prior exemption granted to an individual based on the status of a health care sharing ministry. We discuss this information collection in the Information Collection Requirements section of this final rule.

We also clarify in paragraph (c)(1)(iii) that if an applicant attests to membership in a health care sharing ministry that is not known to the Exchange as a health care sharing ministry based on information provided by HHS, the Exchange must provide the applicant with information regarding how an organization can pursue recognition under § 155.615(c)(2), and determine the applicant ineligible for this exemption until such time as HHS notifies the Exchange that the health care sharing ministry's meets the standards specified in section 5000A(d)(2)(B)(ii) of the Code. We note that individual members cannot seek recognition under § 155.615(c)(2) on behalf of their health care sharing ministry, as HHS will only review information submitted by the health care sharing ministry itself.

*Comment:* One commenter urged HHS to remove the reference to reasonable compatibility as part of verifying membership in a health care sharing ministry, or to clarify that an individual could still receive an exemption based on membership in a health care sharing ministry if he or she had been enrolled in health insurance in the past or was currently enrolled in health insurance.

*Response:* In response to the commenter, we will clarify that the Exchange will not consider an individual's current or previous health coverage as reasonably incompatible with membership in a health care sharing ministry, since nothing in the statute limits the availability of such an exemption to an individual who was or is uninsured.

*Comment:* One commenter suggested that for purposes of the Federally-Facilitated Exchange, HHS work with local tribes and the Bureau of Indian Affairs to contract for the verification of membership in an Indian tribe.

*Response:* We appreciate this comment, and are committed to creating

an efficient eligibility process for all applicants. In proposed § 155.615(e), we specified that the Exchange would use the same verification process that is used for the verification of Indian status for purposes of special cost-sharing provisions and special enrollment periods for enrollment in a QHP through the Exchange. The cross-referenced section allows an Exchange to rely on any electronic data sources that have been approved by HHS for this purpose, including electronic data acquired from tribes. Based on the short timeline for implementation, for October 1, 2013, the Federally-facilitated Exchange will be unable to collect data from individual tribes, and so will rely on a paper documentation process. State-based Exchanges may have additional opportunities for October 1, 2013.

*Comment:* One commenter recommended that HHS should specify that an individual renew an exemption based on membership in an Indian tribe on an annual basis. Other commenters urged HHS to use electronic data matching with the Indian Health Service (IHS) as one tool to verify membership in an Indian tribe as well as the suggested hardship exemptions discussed above. Commenters asked HHS to specify that the Exchange first consult all available electronic data sources; second, if electronic data sources do not support an applicant's attestation, seek paper documentation; and third, and if individuals lack the appropriate documentation, call the listed tribe's Contract Health Services Officer or tribal enrollment office.

*Response:* We modeled the verification process for the exemption based on an individual's membership in an Indian tribe on the verification process that will be used for individuals seeking coverage at 45 CFR 155.350(c). We appreciate the suggestions from commenters, as they generally follow our approach in 45 CFR 155.350(c). Specifically, in 45 CFR 155.350(c), we specify that the Exchange will first use any approved electronic data sources, and only request paper documentation when electronic data sources are unavailable or do not support an applicant's attestation. 45 CFR 155.350(c) does not specify that the Exchange will contact a tribe's Contract Health Services Officer or tribal enrollment office when documentation is unavailable. Rather, in § 155.615(h), we proposed that when documentation does not exist or is not reasonably available, the Exchange will provide an exception on a case-by-case basis and accept an applicant's attestation. We also note that Exchanges have flexibility to work with local tribes to gain

information that could be used on an electronic basis.

*Comment:* One commenter worried that the proposed verifications process placed too much burden on individuals as opposed to the Exchange, and urged HHS to shift this burden in the future.

*Response:* We have attempted to limit burden on individuals as much as possible in the proposed and final regulations. We intend to work with all relevant stakeholders in the future to identify opportunities to increase the efficiency and integrity of the verification process.

*Comment:* Commenters expressed concerns regarding proposed § 155.615(g) and situations where the Exchange is unable to verify the necessary information to determine eligibility for an exemption. Some commenters requested greater clarification to limit any possible confusion about when attestations should be accepted, when attestations must be verified, when documents must be provided, and what type of documents would be sufficient. Additionally commenters expressed concerns about the 30-day time period for individuals to present satisfactory documentary evidence to the Exchange in order to resolve an inconsistency, and urged extending this time period, or providing flexibility for the Exchange to ensure that individuals have a “reasonable opportunity” to submit documentation.

*Response:* In response to comments, we will modify proposed § 155.615(g)(2)(ii) to allow an individual 90 days to present satisfactory documentary evidence to the Exchange, which is the time period used in the eligibility process for enrollment in a QHP, advance payments of the premium tax credit, and cost-sharing reductions. We will maintain the proposed language specifying that an individual is not eligible for an exemption during this time period. As the language from paragraph (g) is modeled after the inconsistency process from § 155.315(f), we believe that this provision already describes the process concerning an Exchange’s inability to verify necessary information with sufficient clarity to limit confusion. The notices that the Exchange provides to an individual for whom the Exchange is unable to verify necessary information will specify the documentation that such an individual can submit to resolve an inconsistency.

*Comment:* Multiple commenters expressed support for our proposal at § 155.615(h) to provide an exception on a case-by-case basis for individuals who lack certain documentation, although some sought further clarification to

prevent confusion. One commenter suggested that paragraph (h) of this section should extend not only to circumstances when the Exchange has information that is inconsistent with an individual’s attestation but also to circumstances when the attestation itself cannot be verified through other data sources.

*Response:* As this exception for special circumstances mirrors similar language used in regards to the coverage process at § 155.315(g), we maintain the language as proposed. We clarify that this provision is designed to address any situation in which documentation is needed, but does not exist or is not reasonably available.

*Comment:* One commenter expressed support for § 155.615(j), which limits the collection of application information to the minimum amount necessary, while also recommending that HHS amend this provision to ensure alignment with section 1411(g) of the Affordable Care Act.

*Response:* We affirm that the Exchange should collect only the minimum information necessary to support the eligibility process for exemptions. The proposed language mirrors that used in 45 CFR 155.315(i), which is designed to implement section 1411(g)(1) of the Affordable Care Act. We also note that the overarching privacy and security protections specified in 45 CFR 155.260 apply to the exemptions process. Together, we believe that these sections already appropriately address the commenter’s concerns regarding information collection and privacy.

#### Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.615 of the proposed rule with several modifications, as follows. First, we make a technical correction in paragraph (b)(1) to specify that the Exchange must accept a form that reflects he or she is exempt from Social Security and Medicare taxes under section 1402(g)(1) of the Code. Second, we clarify that if an applicant attests to membership in a religious sect or division that is not recognized by the SSA as an approved religious sect or division under section 1402(g)(1) of the Code, the Exchange will provide the applicant with information regarding how his or her religious sect or division can pursue recognition under section 1402(g)(1) of the Code, and determine the applicant ineligible for this exemption until such time as the Exchange obtains information indicating that the religious sect or division has been approved. Third, we renumber proposed § 155.615(c), move the

language from previous paragraph (c)(1) into paragraph (c), redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(1)(i) and (ii), and add § 155.615(c)(2) to specify a process for establishing the list of health care sharing ministries that meet the statutory standards that is substantially similar to the approach discussed in § 155.604(c) regarding how HHS will determine that certain types of coverage meet the substantive and procedural requirements for consideration as minimum essential coverage. We also specify in paragraph (c)(1)(i) that the Exchange may not consider an applicant’s prior or current enrollment in health coverage as not reasonably compatible with an applicant’s attestation of membership in a health care sharing ministry, and we specify in paragraph (c)(1)(ii) that if an applicant attests to membership in a health care sharing ministry that is not known to the Exchange as a health care sharing ministry based on information provided by HHS, the Exchange will provide the applicant with information regarding how an organization can pursue recognition under § 155.615(c)(2), and determine the applicant ineligible for this exemption until such time as HHS notifies the Exchange that the health care sharing ministry’s meets the standards specified in section 5000A(d)(2)(B)(ii) of the Code.

We specify in paragraph (f)(1) that the Exchange will not verify whether an applicant experienced a hardship under § 155.605(g)(3) or (5); rather, these exemptions will be claimed directly with the IRS at tax filing. We redesignate paragraph (f)(2) as paragraph (f)(2)(i), make a technical correction in redesignated paragraph (f)(2)(i) to clarify that the procedures used to determine eligibility for advance payments of the premium tax credit in subpart D include § 155.315(c)(1). We note that at 78 FR 4638, we proposed to consolidate § 155.320(d) and (e) into § 155.320(d). To the extent that we finalize this redesignation, we intend to make a simultaneous technical correction to this cross-reference. We add new paragraph (f)(2)(ii) to clarify that in determining eligibility for the lack of affordable coverage based on projected income hardship exemption, the Exchange will accept an application filer’s attestation for an applicant regarding eligibility for minimum essential coverage other than through an eligible employer-sponsored plan. We redesignate paragraph (f)(3) as paragraph (f)(4), and add new paragraph (f)(3) to specify that the Exchange will use the same verification procedures for

the exemption for an individual who is eligible for services through an Indian health care provider as it will use for the exemption for members of a federally-recognized tribe.

In 78 FR 4636, we proposed to modify § 155.315(f) to specify that the Exchange would trigger an inconsistency when electronic data is required but not reasonably expected to be available within 2 days. To ensure alignment across the eligibility process for enrollment in a QHP through the Exchange and insurance affordability programs with the eligibility process for exemptions, we make a technical correction to specify that the Exchange will trigger the process under § 155.615(g) when electronic data is required but not reasonably expected to be available within the time period specified as § 155.315(f). We modify § 155.615(g)(2)(ii) to allow an applicant 90 days to present satisfactory documentary evidence to resolve an inconsistency. Lastly, we add paragraph (k) to mirror the Exchange's requirement regarding the validation of a Social Security number for an individual applying for an exemption from the shared responsibility payment with the same validation process for purposes of individual seeking coverage as described in § 155.315(b).

e. Eligibility Redeterminations for Exemptions During a Calendar Year (§ 155.620)

In § 155.620, we proposed in paragraph (a) to implement section 1411(f) of the Affordable Care Act by providing that the Exchange will redetermine an individual's eligibility for an exemption if the Exchange receives and verifies new information as reported by an individual. In paragraph (b)(1), we proposed that the Exchange will require an individual with a certificate of exemption to report any changes related to the eligibility standards described in § 155.605. We solicited comments as to whether we should provide flexibility such that the Exchange may establish a reasonable threshold for changes in income, such that an individual who experiences a change in income that is below the threshold is not required to report such change.

In paragraph (b)(2), we proposed that the Exchange would allow an individual to report changes through the channels acceptable for the submission of an exemption application.

In paragraph (c), we proposed that the Exchange use the verification processes used at the point of initial application, as described in § 155.615, in order to verify any changes reported by an

individual prior to using the self-reported information in an eligibility determination for an exemption. In paragraph (c)(2), we proposed that the Exchange notify an individual in accordance with § 155.610(i) after re-determining his or her eligibility based on a reported change. Lastly, in paragraph (c)(3), we proposed that the Exchange provide periodic electronic notifications regarding the requirements for reporting changes and an individual's opportunity to report any changes, to an individual who has a certificate of exemption and who has elected to receive electronic notifications, unless he or she has declined to receive such notifications. We noted that unlike § 155.330, we did not propose that the Exchange conduct periodic data matching regarding an individual's eligibility for an exemption. We solicited comments as to whether we should establish similar data matching provisions, and if so, whether we should specify that the Exchange should handle changes identified through the matching process in a similar manner as to that specified in § 155.330, or take a different approach.

Also unlike the eligibility process for enrollment in a QHP and for insurance affordability programs, we did not propose an annual Exchange redetermination process for exemptions. We solicited comments regarding how the Exchange could expedite and streamline the process for individuals with a certificate of exemption that is not approved indefinitely who wish to maintain the exemption for a subsequent year.

*Comment:* One commenter stated that individuals should not have to report changes in religious status or their status as a member of an Indian tribe, but rather the religious sect or tribe should report such a change in status to the Exchange or HHS in order to prevent fraud.

*Response:* We share the commenter's program integrity concerns, but continue to believe that the responsibility to report changes remains appropriately on the individual who has received an exemption. As Exchanges start to grant exemptions, we will work with states to monitor the process and determine whether changes would be appropriate.

*Comment:* One commenter sought clarification as to whether redeterminations only occur when an individual reports a change or whether the Exchange has the authority to cancel an exemption it previously granted on its own.

*Response:* We clarify that redeterminations under this section can

only occur when an individual reports a change that impacts his or her eligibility determination for an exemption.

*Comment:* Several commenters expressed concerns regarding the burden involved in requiring an individual to report changes that would impact his or her eligibility for an exemption. One commenter inquired about how HHS would enforce the regulatory reporting requirements.

*Response:* The proposed approach is identical to the approach taken in § 155.330(b), and we believe that it is generally appropriate for eligibility for enrollment in a QHP through the Exchange, advance payments of the premium tax credit, cost-sharing reductions, and exemptions. With that said, as noted above, we have modified the eligibility standards, in order to reduce administrative burden, for the hardship exemption specified in § 155.605(g)(2), which covers situations in which an individual lacks affordable coverage based on projected household income, such that the Exchange will provide this exemption for all remaining months in a coverage year, notwithstanding any change in an individual's circumstances.

Accordingly, we modify paragraphs (a), (b), and (c)(3) to conform to this change by clarifying that the Exchange will not conduct mid-year redeterminations for this exemption, will not require individuals receiving this exemption to report changes, and will not send periodic reminders to report changes to individuals who have this exemption. As Exchanges start to grant exemptions, we will work with states to monitor the process and determine whether other changes would be appropriate.

*Comment:* Commenters raised concerns about requiring individuals to report changes, and suggested that if HHS maintains these requirements, they should provide a special enrollment period for an individual who loses their exemption in the middle of a calendar year as a result of a redetermination and who has no opportunity to enroll in coverage, which would leave them potentially liable for the shared responsibility payment.

*Response:* We do not want to create an incentive for an individual who has an exemption to not report changes in their eligibility. We also do not want to create a situation in which an individual who has followed procedures and wants to enroll in health coverage is instead liable for the shared responsibility payment. We are adding paragraph (d) to clarify that the Exchange will implement a change resulting from a redetermination under

this section for the month or months after the month in which the redetermination occurs such that a certificate that was provided for the month in which the redetermination occurs, and for prior months, remains effective. We address the ability of an individual who loses eligibility for an exemption following a redetermination to enroll in a QHP in the guidance published simultaneously with this final regulation.

*Comment:* One commenter suggested that the Exchange provide periodic electronic notifications regarding reporting changes to individuals only if they decide to receive such notifications as opposed to providing individuals periodic electronic notifications regarding reporting changes unless they affirmatively decline to receive such notifications.

*Response:* As we proposed this provision to mirror a similar provision concerning the coverage process at § 155.330(c)(2), we maintain the provision as proposed, with the modification discussed above to eliminate this notification for individuals who have the exemption specified in § 155.605(g)(2).

#### Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.620 of the proposed rule with a few slight modifications. We clarify in paragraph (a) that the Exchange only must redetermine the eligibility of an individual with an exemption granted by the Exchange, and that it will not conduct redeterminations for the exemption described in § 155.605(g)(2). In paragraph (b), we specify that the Exchange will not require an individual who has an exemption under § 155.605(g)(2) to report changes with respect to his or her eligibility for this exemption; accordingly, in paragraph (c)(3), we clarify that the Exchange will not provide periodic reminders to report changes to this group of individuals. We also add paragraph (d) to specify that the Exchange will implement a change resulting from a redetermination under this section for the month or months after the month in which the redetermination occurs, such that a certificate that was provided for the month in which the redetermination occurs, and for prior months, remains effective.

#### f. Options for Conducting Eligibility Determinations for Exemptions (§ 155.625)

In § 155.625, we proposed that a state-based Exchange can satisfy the requirements of subpart G if it uses a

federally-managed service to make eligibility determinations for exemptions, and we solicited comments regarding the specific configuration of a service that would be useful for states and also feasible within the time remaining for implementation.

First, in paragraph (a), we proposed that the Exchange may satisfy the requirements of this subpart by either executing all eligibility functions, directly or through contracting arrangements described in 45 CFR 155.110(a), or through the use of a federally-managed service described in paragraph (b) of § 155.625.

Second, in paragraph (b), we proposed that the Exchange may implement an eligibility determination for an exemption made by HHS, provided that the Exchange accepts the application, as specified in § 155.610(d), and issues the eligibility notice, as specified in § 155.610(i), and that verifications and other activities required in connection with eligibility determinations for exemptions are performed by the Exchange in accordance with the standards identified in this subpart or by HHS in accordance with the agreement described in paragraph (b)(4) of this section. We also proposed that under this option, the Exchange will transmit all applicant information and other information obtained by the Exchange to HHS, and adhere to HHS' determination. Lastly, in paragraph (b)(4), we proposed that the Exchange and HHS enter into an agreement specifying their respective responsibilities in connection with eligibility determinations for exemptions.

In paragraph (c), we proposed the standards to which the Exchange will adhere when eligibility determinations are made in accordance with paragraph (b) of this section. Such standards included that the arrangement does not increase administrative costs and burdens on individuals, or increase delay, and that applicable requirements under § 155.260, § 155.270, and § 155.315(i), and section 6103 of the Code are met with respect to the confidentiality, disclosure, maintenance or use of information.

*Comment:* Commenters expressed general support for the proposals in § 155.625 in regards to the ability for a state-based Exchange to satisfy the requirements of this subpart by either executing all eligibility functions directly, through contracting arrangements, or through the use of a federally-managed service described in paragraph (b). Commenters urged HHS to further help reduce the burden on

Exchanges developing the operational capacity needed to conduct eligibility determinations for exemptions. Another commenter wanted to clarify that an Exchange relying on HHS to make an eligibility determination for an exemption could also rely on HHS to administer the exemptions appeals process.

*Response:* In response to comments seeking to limit the burden on Exchanges, and based on the operational capacity of the Exchange and HHS being able to comply with the statutory requirements to accept exemptions applications and issue eligibility determination notices for the first year of operations, we are modifying the proposed language regarding how the Exchange may rely on the use of an HHS service.

We specify that for an application submitted prior to October 15, 2014, the Exchange may rely on HHS to process exemptions applications, complete the necessary verifications, determine eligibility, and issue notices, including any certificates of exemption. Exchanges will still assist individuals seeking a lack of affordable coverage based on projected income hardship exemption by providing an individual with the resulting cost of his or her lowest-cost bronze plan that incorporates any advance payments of the premium tax credit allowable under section 36B of the Code. Additionally, the Exchange call center and Internet Web site as specified in 45 CFR 155.205(a) and (b) respectively, must be responsible for providing information to consumers regarding the exemption eligibility process.

For an application submitted on or after October 15, 2014, the Exchange may adopt an exemption eligibility determination made by HHS provided that the Exchange accepts the application and issues the eligibility notice in the same manner as discussed in the proposed rule. As a result of clarifying the flexibility for Exchanges prior to October 15, 2014, we accordingly remove paragraph (c).

We also note that comments regarding the appeals process for exemptions will be addressed in a future regulation. We expect that future rulemaking will clarify that if an Exchange relies on HHS to make an eligibility determination for an exemption, the Exchange may also rely on HHS to administer the exemptions appeals process as well, provided that any underlying decisions made by the Exchange are addressed through the appropriate Exchange appeals process.

### Summary of Regulatory Changes

We are modifying the provisions proposed in § 155.625 to eliminate proposed paragraph (c). We redesignate paragraphs (b)(1) through (b)(5) as (b)(2)(i) through (b)(2)(v) to clarify that the standards discussed therein apply to an Exchange seeking to rely on an exemption eligibility determination made by HHS on or after October 15, 2014. We add (b)(1) to reflect that HHS will administer the entire eligibility process for exemptions for Exchanges that decide to rely on HHS to conduct eligibility determinations for an application submitted before October 15, 2014, provided that the Exchange adheres to the eligibility determination made by HHS furnishes any information available through the Exchange that is necessary for an applicant to utilize the process administered by HHS, and the Exchange call center and Internet Web site provide information to assist consumers regarding the exemption eligibility process.

#### g. Reporting (§ 155.630)

In § 155.630, we proposed to codify the provisions specified in section 1311(d)(4)(I)(i) of the Affordable Care Act regarding reporting by the Exchange to IRS regarding eligibility determinations for exemptions. If the Exchange grants an individual a certificate of exemption in accordance with § 155.610(i), we proposed that the Exchange will transmit to IRS the individual's name and SSN, exemption certificate number, and any additional information specified in additional guidance published by IRS in accordance with 26 CFR 601.601(d)(2). We solicited comments as to how this interaction could work as smoothly as possible.

*Comment:* One commenter raised concerns about the lack of an IRS interface to report exemptions, and wanted HHS to ensure that Exchanges will be provided sufficient time to implement such an interface.

*Response:* We recognize the commenter's concerns regarding the reporting process for exemptions. HHS continues to work closely with the IRS to ensure an efficient interface to report exemptions, and anticipates releasing technical guidance on this shortly. We also anticipate that this reporting will be accomplished through a monthly file, which will be sent to IRS for the first time in February, 2014, and will also incorporate information regarding enrollment in a QHP through the Exchange and advance payments of the premium tax credit, based on other provisions.

*Comment:* One commenter recommended that HHS provide Exchanges flexibility to obtain and report taxpayer identification numbers, if relevant, rather than only SSNs as proposed. The commenter also wanted to ensure that this provision explicitly specifies that Exchanges will comply with existing confidentiality protections for individual tax information under the Affordable Care Act and section 6103 of the Code.

*Response:* We maintain the language of the proposed regulation. We also note that in response to this comment, in order to limit the administrative burden on Exchanges associated with reporting to IRS, we have clarified in § 155.615(k) that similar to the coverage process, the Exchange will validate application SSNs that are included on an exemptions application. Similar to eligibility for enrollment in a QHP, having a SSN is not a requirement to receiving an exemption, and as such the inability to validate a SSN will not preclude an eligibility determination for an exemption. However, the successful validation of a SSN will help in the efficient administration of the tax filing process. Furthermore, we note that 45 CFR 155.260 specifies that tax information will be protected in accordance with section 6103 of the Code.

### Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.630 of the proposed rule without modification.

#### h. Right To Appeal (§ 155.635)

In § 155.635, we proposed that the Exchange will include notice of the right to appeal and instructions for how to appeal in any notification issued in accordance with § 155.610(i) and § 155.625(b)(1). We proposed that an individual may appeal any eligibility determination or redetermination made by the Exchange in relation to an exemption. Additional detail about the appeal process is described in subpart F of the proposed rule titled, "Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing" (78 FR 4719).

*Comment:* One commenter expressed concerns about individuals with access to eligible employer-sponsored coverage that would prevent an individual from receiving advance payments of the

premium tax credit, while still leaving them subject to the shared responsibility payment. The commenter wanted the Exchange to have discretion through the appeals process to consider the totality of an applicant's circumstances. Another commenter urged HHS to specify that translation services are available for LEP individuals to ensure they have appropriate access to the appeals process, including the content of notices and requests for hearings.

*Response:* Comments concerning the appeals process for exemptions will be addressed in future rulemaking.

### Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.635 of the proposed rule with three modifications. First, we are deleting the reference to § 155.625(b)(1), as we are modifying proposed § 155.625 to specify that an Exchange that relies on HHS to make eligibility determinations for exemptions will not issue the eligibility notice. Second, we also make a technical correction in paragraph (b) to replace the reference to the Commissioner of the IRS with the Secretary of the Treasury. Third, we make a technical correction to remove the introductory text, which is not substantive.

#### B. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges

##### a. Definition of Minimum Essential Coverage (§ 156.600)

The proposed rule cross referenced the Treasury regulation under section 5000A of the Code for the definition of minimum essential coverage.

### Summary of Regulatory Changes

We made minor changes to the provisions of § 156.600 to clarify the meaning of the final rule.

##### b. Other Types of Coverage That Qualify as Minimum Essential Coverage (§ 156.602)

The proposed rule specifically designated the following types of coverage as minimum essential coverage for purposes of the Code: Self-funded student health insurance plans; foreign health coverage; Refugee Medical Assistance supported by the Administration for Children and Families (45 CFR Part 400 Subpart G); Medicare advantage plans; AmeriCorps coverage (45 CFR 2522.10 through 2522.950), and state high risk pools (as defined in § 2744 of the Public Health Service Act (PHS Act)). We solicited comments on these types of coverage

and whether there are other existing categories of coverage that should be recognized as minimum essential coverage. We also solicited comments regarding whether self-funded student health coverage should be limited to institutions of higher education, as defined by the Higher Education Act of 1965, or if coverage offered by other institutions, such as primary or secondary educational institution, or unaccredited educational institutions, should be included. Lastly, we solicited comments on the inclusion of AmeriCorps coverage in the designated list.

Under the proposed rule, state high risk pools were designated as minimum essential coverage for a period of time to be determined by the Secretary. We reserved the right to review and monitor the extent and quality of coverage, and in the future to reassess whether they should be designated minimum essential coverage or should be required to go through the process outlined in § 156.604 of this proposed rule. We solicited comments on whether state high risk pools should automatically be designated as minimum essential coverage or whether they should be required to follow the process outlined in § 156.604 of this proposed rule.

The comments and our responses are set forth below.

*Comment:* Many commenters were concerned that the unregulated status of self-funded student health coverage may leave students unable to benefit from the protections of the Affordable Care Act, and that students who are offered a self-funded plan through their college or university may find it difficult or impossible to obtain coverage through the Exchanges and to access the Affordable Care Act premium and cost-sharing subsidies. These commenters conceded that some self-funded student health coverage is good coverage, but other plans do not provide adequate coverage. These commenters specifically cited annual and lifetime limits, prescription drug limits, pre-existing condition exclusions and rescissions as reasons that some self-funded student health coverage is not satisfactory coverage for many students. In contrast, other commenters stated their support for designating self-funded student health coverage as minimum essential coverage, citing the ACHA guidelines document, *Standards for Student Health Insurance/Benefits Programs*, which will “encourage provision of benefits in self-funded plans that are consistent with Affordable Care Act requirements that have been established for student insured plans.”

*Response:* After reviewing the comments regarding designating self-funded student health plans as minimum essential coverage for purposes of the Code, we agree that because self-funded student health plans can be varied in the types of benefits being provided, these plans should not be permanently designated as minimum essential coverage. In this final rule we designate self-funded student health coverage as minimum essential coverage for plan or policy years beginning on or before December 31, 2014. For coverage beginning after December 31, 2014, sponsors of self-funded student health plans may apply to be recognized as minimum essential coverage through the process outlined in § 156.604 of the final rule. In addition, the Department of the Treasury intends to publish guidance under section 36B of the Code about whether individuals who are eligible to enroll in self-funded student health plans will be treated as eligible for qualified health plan coverage subsidized by the premium tax credit.

In the proposed rule we designated state high risk pools as minimum essential coverage for a transition period and solicited comments on whether state high risk pools should be recognized as minimum essential coverage. We did not receive any comments on state high risk pools and we are finalizing the proposed rule. To be consistent with the treatment of self-funded student health plans which under the final rule are designated as minimum essential coverage for plan or policy years beginning on or before December 31, 2014, we are applying the same one-year transitional period to state high risk pools. For coverage beginning after December 31, 2014, sponsors of state high risk pools may apply to be recognized as minimum essential coverage through the process outlined in § 156.604 of the final rule. In addition, the Department of the Treasury intends to publish guidance under section 36B of the Code about whether individuals who are eligible to enroll in state high risk pools will be treated as eligible for qualified health plan coverage subsidized by the premium tax credit.

*Comment:* Some commenters supported the designation of foreign health coverage as minimum essential coverage because foreign health coverage provides meaningful health care benefits to, legally admitted, non-citizens temporarily working in the United States. Other commenters expressed concern that foreign health coverage, which is generally provided to non-citizens by a foreign home country

or through foreign commercial health coverage, provides limited or no out-of-country benefits to such persons while legally in the United States.

*Response:* We agree that the health care benefits provided by foreign governments or through foreign insurance for legally admitted non-citizens of the United States vary from country to country and may create a barrier to care if health care providers in the United States do not accept payment from such coverage. Therefore, foreign health coverage is not designated as minimum essential coverage in this final rule. However, sponsors of foreign health coverage may apply for their coverage to be recognized as minimum essential coverage in the process outlined in § 156.604 of this final rule.

*Comment:* Some commenters supported the designation of coverage provided by AmeriCorps programs to their AmeriCorps members as minimum essential coverage. They stated that the lack of an employer/employee relationship creates difficulties for programs seeking insurance on their own through traditional group insurance markets. Further, coverage provided by AmeriCorps programs to their AmeriCorps members has produced economies of scale and a solution to the accessibility challenges particular to smaller programs. Commenters also stated that the demographics and full funding of premiums by the program has led to stable claims experience.

Other commenters opposed designating the coverage provided by AmeriCorps programs to AmeriCorps volunteers as minimum essential coverage because some of the provided benefits fall below the minimal coverage requirements required by the Affordable Care Act. In addition, commenters noted that stipends for most volunteers are between 100–200 percent FPL, meaning that they may either qualify for a premium assistance program or a hardship exemption.

*Response:* In response to these comments concerning consumer protections, the final rule does not automatically designate coverage provided by AmeriCorps programs to AmeriCorps volunteers as minimum essential coverage. However, AmeriCorps coverage provided to volunteers may be recognized as minimum essential coverage through the certification process outlined in § 156.604 of this final rule.

*Comment:* Several commenters urged HHS to recognize multi-share plans as minimum essential coverage. These commenters also requested that if multi-share plans were not designated as

minimum essential coverage, that they be eligible to apply for recognition as minimum essential coverage. These commenters described the unique structure of multi-share plans, stating that these programs already meet the community needs of affordable health insurance; multi-share programs often focus on specific geographic areas or populations; and that multi-share plans are community funded, receive no federal subsidies and are a demonstrated alternative to traditional health insurance. Multi-share plans are designed to be coverage of last resort for low-income small businesses, students and individuals when other programs are unavailable.

*Response:* While multi-share plans are not designated as minimum essential coverage in this final rule, HHS invites all multi-share organizations to apply for their coverage to be recognized as minimum essential coverage in the process outlined in § 156.604 of this final rule.

#### Summary of Regulatory Changes

As proposed in the proposed rule, in § 156.602 we designate Medicare Advantage, and Refugee Medical Assistance supported by the Administration for Children and Families (45 CFR Subpart G), as minimum essential coverage. We also designate self-funded student health plans and state high risk pools as minimum essential coverage for plan or policy years beginning on or before December 31, 2014. For coverage beginning after December 31, 2014, sponsors of self-funded student health plans and state high risk pools may apply to be recognized as minimum essential coverage through the process outlined in § 156.604 of the final rule. Section 156.602 no longer specifically designates foreign health coverage or coverage provided by AmeriCorps programs to AmeriCorps volunteers as minimum essential coverage. However, plans that provide coverage to AmeriCorps volunteers as well as coverage provided by foreign governments may receive designation as minimum essential coverage by following the process for recognition explained in § 156.604.

#### c. Requirements for Recognition as Minimum Essential Coverage for Types of Coverage Not Otherwise Designated Minimum Essential Coverage in the Statute or This Regulation (§ 156.604)

The proposed rule outlined a process by which other types of coverage could seek to be recognized as minimum essential coverage. Coverage recognized as minimum essential coverage through

this process would need to offer substantially the same consumer protections as those enumerated in the Title I of Affordable Care Act relating to non-grandfathered, individual coverage to ensure consumers are receiving the protections of the Affordable Care Act. We solicited comments on the proposed “substantially comply” standard as it applies to other types of individual coverage. We also solicited comments on the process for recognizing other coverage as minimum essential coverage.

In the proposed regulation, sponsors of minimum essential coverage must also meet other criteria specified by the Secretary. We solicited comments on the types of criteria the Secretary should consider in this process as well as whether they should be added to the final rule. We proposed that sponsors of a plan that seeks to have such coverage recognized as minimum essential coverage adhere to certain procedures. Sponsors would submit to HHS electronically the following information: (1) Name of the organization sponsoring the plan; (2) name and title of the individual who is authorized to make, and makes, this certification on behalf of the organization; (3) address of the individual named above; (4) phone number of the individual named above; (5) number of enrollees; (6) eligibility criteria; (7) cost sharing requirements, including deductible and out-of-pocket maximum; (8) essential health benefits covered (as defined in § 1302(b) of the Affordable Care Act and its implementing regulations); and (9) a certification that the plan substantially complies with the provisions of Title I of the Affordable Care Act as applicable to non-grandfathered individual health insurance coverage. If at any time HHS determines that a type of coverage previously recognized as minimum essential coverage no longer meets the coverage requirements, HHS may revoke the recognition of such coverage. We solicited comments on whether there should be an appeal process for sponsors of coverage that had the minimum essential coverage status revoked by the Secretary. We also solicited comment on whether this appeal process should be available to sponsors whose initial request for recognition of minimal essential coverage status for their coverage was denied by HHS.

The comment and our response are set forth below.

*Comment:* A commenter suggested that the process for designating coverage not otherwise designated as minimum essential coverage should include definitive timelines for the submission

and consideration of each plan applying to be designated as minimum essential coverage, opportunities for such plans to exchange ideas with HHS, and an appeals process for plans that are denied.

*Response:* We appreciate the commenter’s suggestions regarding this process and we will take them under further consideration while developing this administrative process.

As previously stated, we solicited comments on the types of criteria that the Secretary should require a sponsor to meet in order for HHS to recognize the coverage of the organization as minimum essential coverage and indicated that we might specify criteria for sponsoring organizations. We did not get any comments specifically addressing this issue, and we have decided that the focus of the CMS review of applications for health coverage to be recognized as minimum essential coverage will not be on the type of organization providing coverage but on the extent of the coverage itself and the protections provided in the coverage. We made minor changes to certification requirement to clarify that the organization must certify that the coverage substantially complies with the requirements of title I of the Affordable Care Act that apply to non-grandfathered plans in the individual market and the organization must submit any plan documentation or other information that demonstrate that the coverage substantially comply with these requirements.

#### Summary of Regulatory Changes

We made minor changes to the provisions of § 156.604 to clarify that, in addition to the organization certifying that the coverage substantially complies with the requirements of title I of the Affordable Care Act that apply to non-grandfathered plans in the individual market, the organization must submit any plan documentation or other information that demonstrates that the coverage substantially complies with these requirements.

#### d. HHS Audit Authority (§ 156.606)

Under this proposed rule, HHS would have the ability to audit plans to ensure the accuracy of the certification either randomly or when triggered by certain information. We solicited comments on the proposed procedures and if and when audits should be conducted. We also solicited comments on whether sponsors of the types of coverage that have been designated as minimum essential coverage in the proposed rule should also submit the above information required to HHS.

Under the proposed rule, once recognized as minimum essential coverage, a plan would have to provide notice to its enrollees, specifying that the plan has been recognized as minimum essential coverage for the purposes of the individual shared responsibility provision. The sponsor of any plan recognized as minimum essential coverage would also be required to provide the annual information reporting to the IRS specified in section 6055 of the Code and implementing regulations and furnish statements to individuals enrolled in such coverage to assist them in establishing that they are not liable for the shared responsibility payment under section 5000A of the Code. We requested comments on whether all plans and programs designated as minimum essential coverage under this regulation must provide notice to enrollees, or only plans recognized through the process in § 156.604 of this regulation.

*Comment:* A commenter suggested that the process for designating coverage not otherwise designated as minimum essential coverage should include definitive timelines for the submission and consideration of each plan applying to be designated at minimum essential coverage, opportunities for such plans to exchange ideas with HHS, and an appeals process for plans that are denied.

*Response:* We appreciate the commenter's suggestions regarding this process and we will take them under further consideration while developing this administrative process.

#### Summary of Regulatory Changes

We made minor changes to the provisions of section 156.606 to clarify the meaning of the final regulation.

### III. Provisions of the Final Regulation

For the most part, this final rule incorporates the provisions of the proposed rule. Those provisions of this final rule that differ substantively from the proposed rule are as follows:

#### Changes to § 155.605

- Modifies eligibility standards for the religious conscience exemption such that if an exemption is provided to an individual under the age of 21, an exemption will be provided on a continuing basis until the month after the individual's 21st birthday, which triggers a corresponding notice and opportunity for the individual turning 21 to file another application to maintain this exemption.
- Clarifies which hardship exemptions must be granted by the

Exchange and which are available solely through the tax filing process.

- Clarifies that hardship exemption under paragraph (g)(1) of this section must be granted for the month before, the month or months during which an individual experiences the circumstances that qualify as a hardship preventing him or her from purchasing a qualified health plan, and the month after.

- Clarifies that an eligible employer-sponsored plan is only considered for the lack of affordable coverage based on projected income hardship exemption if it meets the minimum value standard.

- Specifies how the Exchange will determine the required contribution to purchase coverage under an eligible employer-sponsored plan or in the individual market for the lack of affordable coverage based on projected income hardship exemption, including clarifying that in determining the required contribution for an eligible employer-sponsored plan, an individual who uses tobacco is treated as not earning any premium incentive related to participation in a wellness program designed to prevent or reduce tobacco use that is offered by an eligible employer-sponsored plan, and wellness incentives offered by an eligible employer-sponsored plan that do not relate to tobacco use are treated as not earned.

- Clarifies that the lack of affordable coverage based on projected income hardship exemption is only available prospectively for the month or months of a calendar year after which the exemption is requested, and that it will be provided for all remaining months in a coverage year, notwithstanding any change in an individual's circumstances.

- Adds a hardship exemption for any month in which an individual is an Indian eligible for services through an Indian health care provider, as defined in 42 CFR 447.50, or an individual eligible for services through the Indian Health Service in accordance with 25 USC 1680c(a), (b), or (d)(3), and specifies that the duration of this exemption is the same as that for a member of an Indian tribe.

#### Changes to § 155.610

- Clarifies that the Exchange must use information collected for purposes of the eligibility determination for enrollment in a QHP and for insurance affordability programs in making the exemption eligibility determination to the extent that the Exchange finds that such information is still applicable.

- Specifies that at a minimum, the Exchange must provide a paper

application process for applications submitted prior to October 15, 2014.

- Clarifies that hardship exemptions can also be provided for previous tax years after December 31 of a given calendar year, noting that the Exchange will only accept an application for an exemption described in § 155.605(g)(1) during one of the 3-calendar years after the month or months during which the applicant attests that the hardship occurred.

- Clarifies that the Exchange will notify an individual to retain records that demonstrate the receipt of a certificate of exemption, as well as records demonstrating his or her qualification for the underlying exemption.

#### Changes to § 155.615

- Clarifies how the Exchange will address a situation in which an applicant attests to membership in a religious sect or division that is not recognized under section 1402(g)(1) of the Code.

- Clarifies how the Exchange will address a situation in which an applicant attests to membership in an organization that is not known to the Exchange as a health care sharing ministry based on information provided by HHS.

- Provides a process for establishing the list of health care sharing ministries that meet the statutory standards.

- Clarifies that the Exchange will not find that an applicant's previous or current enrollment in health coverage is not reasonably compatible with his or her attestation of membership in a health care sharing ministry.

- Clarifies that the Secretary of the Treasury will administer the exemptions specified in § 155.605(g)(3) and (5).

- Clarifies the applicability of verification procedures specified in 45 CFR subpart D to the lack of affordable coverage based on projected income hardship exemption.

- Specifies that the Exchange will use the same verification procedures for the exemption for an individual who is eligible for services through an Indian health care provider as it will use for the exemption for members of a federally-recognized tribe.

- Clarifies when an inconsistency process should be triggered when certain data sources are not reasonably expected to be available.

- Allows an applicant 90 days to present satisfactory documentary evidence to resolve an inconsistency.

- Specifies how an Exchange must validate a Social Security number for an individual seeking an exemption.

*Changes to § 155.620*

- Specifies that the Exchange will not conduct mid-year redeterminations for the hardship exemption for an individual who has a lack of affordable coverage based on projected household income, will not require individuals receiving this exemption to report changes, and will not send periodic reminders to report changes to individuals who have this exemption.

- Specifies that the Exchange will implement a change resulting from a redetermination under this section for the month or months after the month in which the redetermination occurs, such that a certificate that was provided for the month in which the redetermination occurs, and for prior months remains effective.

*Changes to § 155.625*

- Specifies that for applications submitted before October 15, 2014, a state-based Exchange can be approved if relying on HHS to administer the entire eligibility process for exemptions, provided that the Exchange furnishes any information available through the Exchange that is necessary for an applicant to utilize the process administered by HHS, and the Exchange call center and Internet Web site assist consumers seeking exemptions.

*Changes to § 155.635*

- Clarifies that an Exchange relying on HHS to make eligibility determinations for exemptions will not issue the eligibility notice for applications submitted prior to October 15, 2014.

*Changes to § 156.600*

- Makes minor changes to the provisions of 45 CFR § 156.600 to clarify the meaning of the regulation.

*Changes to § 156.602*

- Designates self-funded student health plans and state high risk pools as minimum essential coverage for a one year transitional period, and allows self-funded student health plans and state high risk pools to apply to be recognized as minimum essential coverage through the process outlined in § 156.604 of the final rule after January 1, 2015.

- Removes the designation of foreign health coverage and AmeriCorps as minimum essential coverage. In order to be recognized as minimum essential coverage, foreign health coverage and coverage for AmeriCorps must follow the process for recognition explained in § 156.604.

*Changes to § 156.604*

- Makes minor changes to the provisions of § 156.604 to clarify the meaning of the regulation.

*Changes to § 156.606*

- Makes minor changes to the provisions of 45 CFR § 156.606 to clarify the meaning of the regulation.

**IV. Collection of Information Requirements**

The final rule entitled “Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions” finalizes standards with regard to the minimum function of an Exchange to perform eligibility determinations and issue certificates of exemption from the individual shared responsibility payment. The rule also finalizes standards related to eligibility for exemptions, including the verification and eligibility determination process, eligibility redeterminations, options for conducting eligibility determinations, and reporting related to exemptions. In addition, the rule finalizes rules designating certain types of coverage as minimum essential coverage and outlining substantive and procedural requirements that other types of coverage must fulfill in order to be recognized as minimum essential coverage under section 5000A(f)(5) of the Code.

This section outlines the information collection requirements in the proposed regulation on which we solicited public comment in the exemptions proposed rule. We used data from the Bureau of Labor Statistics to derive average costs for all estimates of salary in establishing the information collection requirements. Salary estimates included the cost of fringe benefits, calculated at 30.4 percent of salary, which is based on the June 2012 Employer Costs for Employee Compensation report by the U.S. Bureau of Labor Statistics. Additionally, we used estimates from the Congressional Budget Office to derive estimates of the number of exemption applications we anticipate Exchanges to receive, and the number of exemption eligibility determination notifications we anticipate Exchanges to generate.

Finally, this final rule describes an information collection requirement for which we did not solicit public comment in the exemptions proposed rule. The information collection requirement related to Health Care Sharing Ministries will be addressed through a separate notice and comment process under the Paperwork Reduction Act (PRA).

*1. Exemption Application (§ 155.610)*

Throughout this subpart, we specify that the Exchange will collect attestations from applicants for a certificate of exemption. These attestations will be collected using the application described in § 155.610(a). In § 155.610(a), we provide that the Exchange use an application created by HHS to collect the information necessary for determining eligibility for and granting certificates of exemption from the individual shared responsibility payment. The burden associated with this requirement is the time and effort estimated for an applicant to complete an application. The exemption application may be available in both paper and electronic formats. An electronic application process would vary depending on each applicant’s circumstances and which exemption an applicant is applying for, such that an applicant is only presented with questions relevant to the exemption for which he or she is applying. The goal is to solicit sufficient information so that in most cases no further inquiry will be needed. We estimate that on average, it will take .27 hours (16 minutes) for an application filer to complete an application, which is based on the estimates created for the single, streamlined application for enrollment in a QHP<sup>3</sup>, with a 90 percent electronic/10 percent paper mix (noting that no specific application channel is specified in this proposed rule). While the Congressional Budget Office<sup>4</sup> estimates that 24 million individuals would be exempt from the individual shared responsibility payment in 2016, it is unclear how many individuals will seek these exemptions from an Exchange. Some of these individuals will claim an exemption through the tax filing process, others will be exempt but not need to file for an exemption (for example those below the filing threshold), while others will apply for and receive an exemption through the Exchange. Therefore, of the 24 million individuals, we conservatively anticipate that up to half will apply for an exemption through the Exchange. We specifically sought comment on this assumption. Accordingly, we estimate that approximately 12 million

<sup>3</sup> The estimates may be found in the information collection request entitled, “Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Affordable Insurance Exchanges, Medicaid and Children’s Health Insurance Program Agencies.”

<sup>4</sup> Congressional Budget Office, “Payments of Penalties for Being Uninsured Under the Affordable Care Act,” September 2012 [http://cbo.gov/sites/default/files/cbofiles/attachments/09-19-12-Indiv\\_Mandate\\_Penalty.pdf](http://cbo.gov/sites/default/files/cbofiles/attachments/09-19-12-Indiv_Mandate_Penalty.pdf).

applications for exemptions will be submitted to the Exchange for calendar year 2016, for a total of 3.2 million burden hours. We note, however, that the Commonwealth of Massachusetts saw a very small number of individuals apply for exemptions from a similar individual shared responsibility payment<sup>5</sup>. We also note that some individuals will apply for an exemption but be determined ineligible for an exemption, but it is difficult for us to estimate this number, and that in an unknown number of cases, multiple individuals in a single household may submit a single application.

We do not estimate any cost to the Exchanges of evaluating the exemption applications. For the purposes of this estimate, we expect all applications to be submitted electronically and processed through the system, which would result in no additional labor costs to evaluate and review the exemption applications. We requested comment on this assumption.

We estimate that the cost to develop the exemption application will be significantly less than the estimated cost of developing the coverage application because the coverage application takes into account additional factors necessary in order to perform eligibility determinations for insurance affordability programs. We also note that as with the coverage application, HHS will be releasing a model application for use by Exchanges, which will significantly decrease the burden associated with the implementation of the application. On average, we estimate that the implementation of the exemption application will take approximately 1,059 hours of software development at a labor cost of \$98.50 per hour, for a total cost of \$104,312 per Exchange and a total cost of \$1,877,607 for 18 state-based Exchanges.

## 2. Notices (§§ 155.610, 155.615, 155.620)

Several provisions in subpart G outline specific notices that the Exchange will send to individuals during the exemption eligibility determination process, including the notice of eligibility determination described in § 155.610(i). The purpose of these notices is to alert an applicant of his or her eligibility determination for an exemption and related actions taken by the Exchange. To the extent that an applicant is determined eligible for an exemption, the notice of eligibility

determination described in § 155.610(i) will serve as the certificate of exemption. Accordingly, we do not provide a separate burden estimate for the certificates of exemption described throughout this subpart. When possible, we anticipate that the Exchange will consolidate notices when multiple members of a household are applying together and receive an eligibility determination at the same time.

Consistent with 45 CFR 155.230(d), the notice may be in paper or electronic format, based on the election of an individual, will be in writing, and will be sent after an eligibility determination has been made by the Exchange; these are the same standards that are used for eligibility notices for enrollment in a QHP through the Exchange and for insurance affordability programs, as described in 45 CFR 155.310(g). It is difficult to estimate the number of applicants that will opt for electronic versus paper notices, although we anticipate that a large volume of applicants will request electronic notification. We estimated the associated mailing costs for the time and effort needed to mail notices in bulk to applicants who request paper notices.

We expect that the exemption eligibility determination notice will be dynamic and include information tailored to all possible outcomes of an application throughout the eligibility determination process. A health policy analyst, senior manager, and an attorney would review the notice. HHS is currently developing model notices, which will decrease the burden on Exchanges associated with developing such notices. If a state opts to use the model notices provided by HHS, we estimate that the Exchange effort related to the development and implementation of the exemption eligibility determination notice will necessitate 44 hours from a health policy analyst at an hourly cost of \$49.35 to learn exemptions rules and draft notice text; 20 hours from an attorney at an hourly cost of \$90.14, and four hours from a senior manager at an hourly cost of \$79.08 to review the notice; and 32 hours from a computer programmer at an hourly cost of \$52.50 to conduct the necessary development. In total, we estimate that this will take a total of 100 hours for each Exchange, at a cost of approximately \$5,971 per Exchange and a total cost of \$107,469 for 18 state-based Exchanges. For most notices outlined in subpart G of this proposed rule, we estimate that the notice development as outlined in the paragraph above, including the systems programming, would take each

Exchange an estimated 100 hours to complete in the first year.

We expect that the burden on the Exchange to maintain this notice will be significantly lower than to develop it. We estimate that it will take each professional approximately a quarter of the time to maintain the notice as compared to developing the notice. Accordingly, we estimate the maintenance of the eligibility determination notice in subsequent years will necessitate 11 hours from a health policy analyst at an hourly cost of \$49.35; 5 hours from an attorney at an hourly cost of \$90.14; one hour from a senior manager at an hourly cost of \$79.08 and eight hours from a computer programmer at an hourly cost of \$52.50. In total, we estimate that this will take a total of 25 hours for each Exchange, at a cost of approximately \$1,492 per Exchange and a total cost of \$26,856 for 18 state-based Exchanges.

Pursuant to section 5000A of the Code, the IRS must collect the necessary data from QHP issuers to determine the national average bronze monthly premiums in order to assist in the computation of the shared responsibility payment. To assist the IRS, HHS must request the monthly premium for all bronze level QHP's through all 51 Exchanges from QHP issuers. The burden associated on states and QHP issuers is already included in the information collection request entitled, "Initial Plan Data Collection to Support QHP Certification and other Financial Management and Exchange Operations," and as such, we do not include a separate burden estimate here. As this information is already being collected for another purpose, there will be no additional burden on QHP issuers or states.

## 3. Electronic Transmissions (§§ 155.615, 155.630)

Section 155.615 specifies that the Exchange will utilize applicable procedures established under subpart D of the Exchange final rule in order to obtain data through electronic data sources for purposes of determining eligibility for and granting certificates of exemption. This involves the electronic transmission of data through procedures established under subpart D in order to verify an applicant's incarceration status, to verify eligibility for qualifying coverage in an eligible employer-sponsored plan, and to determine eligibility for advance payments of the premium tax credit. Section 155.615 also includes additional electronic transmissions that are specific to the eligibility process for exemptions, including those related to health care

<sup>5</sup>Massachusetts Health Connector and Department of Revenue, "Data on the Individual Mandate, Tax Year 2010", June, 2012. Retrieved from <http://www.mahealthconnector.org>.

sharing ministries and religious conscience. In section 155.630, we proposed that the Exchange will provide relevant information to IRS regarding certificates of exemption for the purposes of tax administration, such as the name and other identifying information for the individual who received the exemption. As we expect that these transmissions of information will all be electronic, and through the same channels used for reporting to IRS established in § 155.340, we do not anticipate for there to be any additional burden other than that which is required to design the overall eligibility and enrollment system. We do not provide a burden estimate for the electronic transmissions, as the cost is incorporated into the development of the IT system for the Exchange eligibility and enrollment system.

#### 4. Verification and Change Reporting (§§ 155.615, 155.620)

The Exchange will use the same verification processes for new applications and for changes that are reported during the year. This includes the process for situations in which the Exchange is unable to verify the information necessary to determine an applicant's eligibility, which is described in section 155.615(g). It is not possible at this time to provide estimates for the number of applicants for whom additional information will be required to complete an eligibility determination, but we anticipate that this number will decrease as applicants become more familiar with the eligibility process for exemptions and as more data become available electronically. As such, for now, we estimate the burden associated with the processing of documentation for one submission from an applicant. We note that the burden associated with this provision is one hour for an individual to collect and submit documentation, and 12 minutes for eligibility support staff at an hourly cost of \$28.66 to review the documentation, for a total cost of \$6 per document submission.

#### 5. ICRs Regarding Health Care Sharing Ministries (§ 155.615)

In order to facilitate the provision of an exemption for membership in a health care sharing ministry to the members of such ministry, we specify in § 155.615(c)(2) that an organization that believes that it meets the statutory standards to be considered a health care sharing ministry will submit certain information to HHS. We are aware of four organizations that have made public statements regarding their status as a health care sharing ministry. We

note that we will account for the additional burden associated with healthcare sharing ministries in a future information collection request that will go through the requisite notice and comment period and subsequent OMB review and approval process.

#### 6. ICRs Regarding Agreements (§ 155.625)

These provisions specify that an Exchange that decides to utilize the HHS service for making eligibility determinations for exemptions for application submitted on or after October 15, 2014, will enter into a written agreement with HHS. These agreements are necessary to ensure that the use of the service will minimize burden on individuals, ensure prompt determinations of eligibility without undue delay, and provide for secure, timely transfers of application information.

The burden associated with these provisions is the time and effort necessary for the Exchange to establish an agreement with HHS. We estimate that the creation of the necessary agreement will necessitate 35 hours from a health policy analyst at an hourly cost of \$49.35, and 35 hours from an operations analyst at an hourly cost of \$54.45 to develop the agreement; and 30 hours from an attorney at an hourly cost of \$90.14 and five hours from a senior manager at an hourly cost of \$79.14 to review the agreement. For the purpose of this estimate, we assume that the 18 state-based Exchanges will utilize the HHS service for exemptions. Accordingly, the total burden on the Exchange associated with the creation of the necessary agreement will be approximately 105 hours and \$6,733 per Exchange, for a total cost of \$121,194 for 18 Exchanges.

#### 7. ICRs Regarding Minimum Essential Coverage (§§ 156.604(a)(3), 156.604(d))

Organizations that currently provide health coverage that are not statutorily specified and not designated as minimum essential coverage in this regulation may submit a request to CMS that their coverage be recognized as minimum essential coverage. As described in § 156.604(a)(3), sponsoring organizations would have to electronically submit to CMS information regarding their plans and certify that their plans meet substantially all of the requirements in the Title I of Affordable Care Act, as applicable to non-grandfathered, individual coverage. Some commenters suggested that organizations submitting such requests provide more information regarding their plans rather than simply

certifying that their plans meet substantially all of the requirements in the Title I of Affordable Care Act. We have revised the certification to request plan documentation or other information that demonstrate that the coverage sponsored by the organization substantially complies with the provisions of Title I of the Affordable Care Act applicable to non-grandfathered individual health insurance coverage.

We sought comments on how many organizations are likely to submit such requests but did not receive any information that would allow us to estimate the number of requests. We assume that at least 10 organizations will submit such a request. The burden associated with this certification includes the time needed to collect and input the necessary plan information, and maintain a copy for recordkeeping by clerical staff and for a manager and legal counsel to review it and for a senior executive to review and sign it. The certification and attachments will be submitted to CMS electronically at minimal cost. We estimate that it will take a combined total of 5.25 hours (4 hours for clerical staff at an hourly cost of \$30.64, 0.5 hours for a manager at an hourly cost of \$55.22, 0.5 hours for legal counsel at an hourly cost of \$83.10 and 0.25 hours for a senior executive at an hourly cost of \$112.43) to prepare and submit the information and certification to CMS and to retain a copy for recordkeeping purposes. The total cost for one organization is estimated to be approximately \$220. Therefore, the total burden for 10 organizations will be 52.5 hours, with an equivalent cost of \$2,200.

Section 156.604(d) specifies that sponsoring organizations whose health coverage are recognized as minimum essential coverage will have to provide a notice to enrollees informing them that the plan has been recognized as minimum essential coverage for the purposes of the Code. The notice requirement may be satisfied by inserting a statement into existing plan documents. Plan documents are usually reviewed and updated annually before a new plan year begins. Sponsoring organizations may insert the statement in their plan documents at that time at minimal cost. Once the notice is included in the plan documents the first year, no additional cost will be incurred in future years. Therefore this notice is not subject to the Paperwork Reduction Act of 1995. Commenters suggested that a sponsoring organization should be required to provide a notice to enrollees if its request is denied and its plan is not recognized as minimum essential coverage. To minimize the burden on

sponsoring organizations, we are not requiring such a notice.

The sponsor of any type of coverage recognized as minimum essential coverage is also required to provide the annual information reporting to the IRS

specified in section 6055 of the Code and furnish statements to individuals enrolled in such coverage to assist them in establishing that they are not liable for the shared responsibility payment under section 5000A of the Code. The

Department of Treasury plans to publish for public comment, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the required ICRs in the near future.

TABLE 1—ANNUAL INFORMATION COLLECTION REQUIREMENTS

Regulation section(s)	Description	Number of respondents	Number of responses	Burden per response (hours)	Total annual burden (hours)
§ 155.610 .....	Application Development .....	18	18	1,059	19,062
§ 155.610 .....	Application Completion .....	12,000,000	12,000,000	0.27	3,200,000
§§ 155.610, 155.620 .....	Notice Development and Maintenance .....	18	18	125	2,250
§ 155.620 .....	Change Reporting .....	1	1	0.2	0.2
§ 155.625 .....	Agreements .....	18	18	105	1,890
§§ 156.604(a)(3) .....	Minimum Essential Coverage Certification.	10	10	5.25	52.5
Total .....	.....	.....	.....	.....	3,223,255

C. Submission of PRA-Related Comments

We have submitted a copy of this final rule to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the CMS Web site at <http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>, or call the Reports Clearance Office at 410-786-1326.

V. Summary of Regulatory Impact Statement

A. Summary

As stated earlier in this preamble, this final rule implements certain functions of the Exchanges. These specific statutory functions include determining eligibility for and granting certificates of exemption from the individual shared responsibility payment described in section 5000A of the Internal Revenue Code. Additionally, this final rule implements the responsibility of the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury, to designate other health benefits coverage as minimum essential coverage by designating certain coverage as minimum essential coverage. It also outlines substantive and procedural requirements that other types of individual coverage must fulfill in order to be recognized as minimum essential coverage under the Internal Revenue Code.

HHS has crafted this rule to implement the protections intended by Congress in an economically efficient manner. We have examined the effects of this rule as required by Executive Order 12866 (58 FR 51735, September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)). In accordance with OMB Circular A-4, CMS has quantified the benefits, costs and transfers where possible, and has also provided a qualitative discussion of some of the benefits, costs and transfers that may stem from this final rule.

B. Executive Orders 13563 and 12866

Executive Order 12866 (58 FR 51735) directs 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 (76 FR 3821, January 21, 2011) is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866.

Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a final rule—(1) having an annual effect on the economy of \$100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition,

jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year), and a "significant" regulatory action is subject to review by the OMB. This rule has been designated a "significant regulatory action" under Executive Order 12866. Accordingly, OMB has reviewed this final regulation pursuant to the Executive Order.

1. Need for Regulatory Action

This final rule sets forth standards and processes under which the Exchange will conduct eligibility determinations for and grant certificates of exemption from the individual shared responsibility payment. Furthermore, it supports and complements rulemaking conducted by the Secretary of the Treasury with respect to section 5000A of the Code, as added by section 1501(b) of the Affordable Care Act. The intent of this rule is to implement the relevant provisions while continuing to afford states substantial discretion in the design and operation of an Exchange, with greater standardization provided where directed by the statute or where

there are compelling practical, efficiency, or consumer protection reasons. In addition, this final rule provides standards for determining whether certain other types of health insurance coverage constitute minimum essential coverage and procedures for sponsors to follow for a plan to be identified as minimum essential coverage under section 5000A of the Code. This rule also designates certain types of existing health coverage as minimum essential coverage. Other types of coverage, not statutorily specified and not designated as minimum essential coverage in this regulation, may be recognized as minimum essential coverage if certain substantive and procedural requirements are met as set forth in this rule.

## 2. Summary of Impacts

In developing this final rule, HHS carefully considered its potential effects including costs and benefits. Because of data limitations, HHS did not attempt to quantify the benefits, costs and transfers resulting from this final rule. Nonetheless, HHS was able to identify several potential impacts which are discussed qualitatively below.

The exemption provisions of this final rule set forth how and what exemptions can be received through the Exchange. Given the statute, these rules would generate exemption request activity; the final rules could also potentially affect the amount of shared responsibility payments made in a given year and the number of individuals who would enroll in health insurance plans to avoid shared responsibility payments. The impact of the minimum essential coverage provisions would be similar; individuals whose coverage would be designated minimum essential coverage, under the authority of the Secretary of Health and Human Services to designate other health benefit coverage as minimum essential coverage, would, in the absence of the rule, pay shared responsibility payments or switch health insurance coverage so as not to incur those penalties.

As noted in our discussion, above, of information collection requirements, while CBO estimates that 24 million individuals would be exempt from the penalty in 2016, it is unclear how many individuals will seek these exemptions from an Exchange. These submissions would be associated with a variety of effects, including: costs to Exchanges to review the exemption requests; costs to applicants to request exemptions and retain documents; potential effects on enrollment in health coverage and its benefits; and a transfer from the federal

government to individuals receiving exemptions in cases in which there is a foregone shared responsibility payment.

We note that the cost to an applicant of submitting a request and retaining documents is bounded by the expected shared responsibility payment; otherwise, he or she would not necessarily apply for the exemption. Though we lack data to precisely characterize the effects of these provisions, we note that the potential number of individuals seeking exemptions through the Exchange could place the overall impact of the final rule over the \$100 million threshold for economic significance, even at a low economic cost per individual.

The minimum essential coverage provisions included in this final rule could lead to transfers from the federal government to affected individuals (in this case, individuals whose coverage is designated to be minimum essential coverage) and have effects on health coverage enrollment (for example, decreased switching between plans). Decreased switching between plans would entail time savings for affected individuals and uncertain effects on premium payments and use of medical services and products. We currently lack data to estimate the number of individuals whose coverage would be designated minimum essential coverage by this rule.

### C. Alternatives Considered

Under the Executive Order, HHS is required to consider alternatives to issuing rules and alternative regulatory approaches. HHS considered the regulatory alternatives below:

#### 1. Grant Certificates for All Categories of Exemptions

Section 155.605 provides the eligibility standards for exemptions that will be granted by the Exchange. The preamble to this section notes that Exchanges will not grant certificates of exemption in four categories: (1) Lack of affordable coverage; (2) household income below the filing threshold; (3) not lawfully present; and (4) short coverage gaps. Also, Exchanges will not grant certificates of exemptions for certain hardship exemptions, specifically § 155.605(g)(3) and (5). These exemptions instead are solely available during the tax filing process, as we believe that the IRS is in a better position to issue these exemptions.

The alternative model would specify that the Exchange would provide certificates of exemption in all nine categories described in section 5000A of the Code. This alternative model was not selected for practical and

administrative reasons; the specific reasons for taking this approach are discussed in the preamble associated with this section of the final regulation. For example, for certain categories of exemptions, the information needed will only be available on a retrospective basis, and is most efficiently available through the tax filing process. Thus, we believe that the least burdensome approach for individuals and Exchanges is to make these exemptions available only through the tax filing process.

#### 2. Designation of State High Risk Pools, Self-Funded Student Health Plans and AmeriCorps as Minimum Essential Coverage

We considered designating state high risk pools, self-funded student health plans, foreign health coverage and AmeriCorps as minimum essential coverage in section 156.602. After careful review of comments received, state high risk pools and self-funded student health plans will be designated as minimum essential coverage for plan or policy years beginning on or before December 31, 2014. For coverage beginning after December 31, self-funded student health plans and state high risk pools may apply to be recognized as minimum essential coverage. HHS hopes that during this transitional year, such plans will voluntarily adopt Affordable Care Act consumer protections to ensure their qualification as minimum essential coverage. We also considered automatically designating AmeriCorps and foreign health coverage as minimum essential coverage but did not adopt that policy in this final rule. These types of coverage may be recognized as minimum essential coverage through the certification process outlined in § 156.604 of this final rule. We believe that the options adopted in this final rule provide the best balance between allowing individuals to retain their current coverage and ensuring that they receive the consumer protections in the Affordable Care Act.

### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The Act generally defines a "small entity" as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-

profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of “small entity.” HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent. As the burden for this final regulation falls on either Exchanges or individuals, the finalized regulations will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis is not required.

### VII. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation, by state, local, or tribal governments, in the aggregate, or by the private sector. In 2013, that threshold is approximately \$141 million. This final rule does not mandate expenditures by state governments, local governments, tribal governments, in the aggregate, or the private sector, of \$141 million. The majority of state, local, and private sector costs related to implementation of the Affordable Care Act were described in the RIA accompanying the March 2012 Medicaid eligibility rule. Furthermore, this final rule does not set any mandate on states to set up an Exchange.

### VIII. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct effects on states, preempts state law, or otherwise has federalism implications. We note again that the impact of changes related to implementation of the Affordable Care Act was described in the RIA associated with the Exchange final rule. As discussed in the Exchange final rule RIA, we have consulted with states to receive input on how the various Affordable Care Act provisions codified in this proposed rule would affect states.

Because states have flexibility in designing their Exchange, state decisions will ultimately influence both administrative expenses and overall premiums. However, because states are not required to create an Exchange, these costs are not mandatory. For states electing to create an Exchange, the initial costs of the creation of the Exchange will be funded by Exchange

Planning and Establishment Grants. After this time, Exchanges will be financially self-sustaining with revenue sources left to the discretion of the state. In the Department’s view, while this proposed rule does not impose substantial direct costs on state and local governments, it has federalism implications due to direct effects on the distribution of power and responsibilities among the state and federal governments relating to determining standards relating to health insurance coverage (that is, for QHPs) that is offered in the individual and small group markets. Each state electing to establish a state-based Exchange must adopt the federal standards contained in the Affordable Care Act and in this proposed rule, or have in effect a state law or regulation that implements these federal standards. However, the Department anticipates that the federalism implications (if any) are substantially mitigated because states have choices regarding the structure and governance of their Exchanges. Additionally, the Affordable Care Act does not require states to establish an Exchange; but if a state elects not to establish an Exchange or the state’s Exchange is not approved, HHS, will establish and operate an Exchange in that state. Additionally, states will have the opportunity to participate in state Partnership Exchanges that would allow states to leverage work done by other states and the federal government, and will be able to leverage a federally-managed service for eligibility determination for exemptions.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the states, the Department has engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with state officials on an individual basis.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this regulation, the Department certifies that CMS has complied with the requirements of Executive Order 13132 for the attached final regulation in a meaningful and timely manner.

### IX. Congressional Review Act

This rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), which specifies that

before a rule can take effect, the federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to the Congress and the Comptroller General for review.

### List of Subjects

#### 45 CFR Part 155

Administrative practice and procedure, Advertising, Brokers, Conflict of interest, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs—health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Technical assistance, Women, and Youth.

#### 45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory committees, Brokers, Conflict of interest, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs—health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Sunshine Act, Technical Assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter B, as set forth below:

### PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

- 1. The authority citation for part 155 continues to read as follows:

**Authority:** Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1334, 1402, 1411, 1412, 1413, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083).

- 2. Amend § 155.20 by revising the introductory text to paragraph (1) for the definition of “Applicant” and revising the definition of “Application filer” to read as follows:

**§ 155.20 Definitions.**

\* \* \* \* \*

**Applicant** means:

(1) An individual who is seeking eligibility for him or herself through an application submitted to the Exchange, excluding those individuals seeking eligibility for an exemption from the individual shared responsibility payment pursuant to subpart G of this part, or transmitted to the Exchange by an agency administering an insurance affordability program for at least one of the following:

\* \* \* \* \*

**Application filer** means an applicant, an adult who is in the applicant's household, as defined in 42 CFR 435.603(f), or family, as defined in 26 CFR 1.36B-1(d), an authorized representative of an applicant, or if the applicant is a minor or incapacitated, someone acting responsibly for an applicant, excluding those individuals seeking eligibility for an exemption from the individual shared responsibility payment pursuant to subpart G of this part.

\* \* \* \* \*

■ 3. In § 155.200, revise paragraph (a) to read as follows:

**§ 155.200 Functions of an Exchange.**

(a) **General requirements.** The Exchange must perform the minimum functions described in this subpart and in subparts D, E, G, H, and K of this part.

\* \* \* \* \*

■ 4. Add subpart G to part 155 to read as follows:

**Subpart G—Exchange Functions in the Individual Market: Eligibility Determinations for Exemptions.**

Sec.

155.600 Definitions and general requirements.

155.605 Eligibility standards for exemptions.

155.610 Eligibility process for exemptions.

155.615 Verification process related to eligibility for exemptions.

155.620 Eligibility redeterminations for exemptions during a calendar year.

155.625 Options for conducting eligibility determinations for exemptions.

155.630 Reporting.

155.635 Right to appeal.

**Subpart G—Exchange Functions in the Individual Market: Eligibility Determinations for Exemptions****§ 155.600 Definitions and general requirements.**

(a) **Definitions.** For purposes of this subpart, the following terms have the following meaning:

**Applicant** means an individual who is seeking an exemption for him or herself

through an application submitted to the Exchange.

**Application filer** means an applicant, an individual who is liable for the shared responsibility payment in accordance with section 5000A of the Code for an applicant, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for an applicant.

**Exemption** means an exemption from the shared responsibility payment.

**Health care sharing ministry** has the same meaning as it does in section 5000A(d)(2)(B)(ii) of the Code.

**Indian tribe** has the same meaning as it does in section 45A(c)(6) of the Code.

**Required contribution** has the same meaning as it does in section 5000A(e)(1)(B) of the Code.

**Shared responsibility payment** means the payment imposed with respect to a non-exempt individual who does not maintain minimum essential coverage in accordance with section 5000A(b) of the Code.

**Tax filer** has the same meaning as it does in § 155.300(a).

(b) **Attestation.** For the purposes of this subpart, any attestation that an applicant is to provide under this subpart may be made by the application filer on behalf of the applicant.

(c) **Reasonably compatible.** For purposes of this subpart, the Exchange must consider information through electronic data sources, other information provided by the applicant, or other information in the records of the Exchange to be reasonably compatible with an applicant's attestation if the difference or discrepancy does not impact the eligibility of the applicant for the exemption or exemptions for which he or she applied.

(d) **Accessibility.** Information, including notices, forms, and applications, must be provided to applicants in accordance with the standards specified in § 155.205(c).

(e) **Notices.** Any notice required to be sent by the Exchange to an individual in accordance with this subpart must be provided in accordance with the standards specified in § 155.230.

**§ 155.605 Eligibility standards for exemptions.**

(a) **Eligibility for an exemption through the Exchange.** Except as specified in paragraph (g) of this section, the Exchange must determine an applicant eligible for and issue a certificate of exemption for any month if the Exchange determines that he or she meets the requirements for one or more of the categories of exemptions described in this section for at least one day of the month.

(b) **Duration of single exemption.** Except as specified in paragraphs (c)(2), (f)(2), and (g) of this section, the Exchange may provide a certificate of exemption only for the calendar year in which an applicant submitted an application for such exemption.

(c) **Religious conscience.** (1) The Exchange must determine an applicant eligible for an exemption for any month if the applicant is a member of a recognized religious sect or division described in section 1402(g)(1) of the Code, and an adherent of established tenets or teachings of such sect or division, for such month in accordance with section 5000A(d)(2)(A) of the Code.

(2) **Duration of exemption for religious conscience.** (i) The Exchange must grant the certificate of exemption specified in this paragraph to an applicant who meets the standards provided in paragraph (c)(1) of this section for a month on a continuing basis, until the month after the month of the individual's 21st birthday, or until such time that an individual reports that he or she no longer meets the standards provided in paragraph (c)(1) of this section.

(ii) If the Exchange granted a certificate of exemption in this category to an applicant prior to his or her reaching the age of 21, the Exchange must send the applicant a notice upon reaching the age of 21 informing the applicant that he or she must submit a new exemption application to maintain the certificate of exemption.

(3) The Exchange must make an exemption in this category available prospectively or retrospectively.

(d) **Membership in a health care sharing ministry.** (1) The Exchange must determine an applicant eligible for an exemption for a month if for such month the applicant is a member of a health care sharing ministry as defined in section 5000A(d)(2)(B)(ii) of the Code.

(2) The Exchange must make an exemption in this category available only retrospectively.

(e) **Incarceration.** (1) The Exchange must determine an applicant eligible for an exemption for a month if he or she meets the standards in section 5000A(d)(4) of the Code for such month.

(2) The Exchange must make an exemption in this category available only retrospectively.

(f) **Membership in an Indian tribe.** (1) The Exchange must determine an applicant eligible for an exemption for any month if he or she is a member of an Indian tribe, as defined in section 45A(c)(6) of the Code, for such month, as provided in section 5000A(e)(3) of the Code.

(2) *Duration of exemption for membership in an Indian tribe.* The Exchange must grant the exemption specified in this paragraph to an applicant who meets the standards specified in paragraph (f)(1) of this section for a month on a continuing basis, until such time that the applicant reports that he or she no longer meets the standards provided in paragraph (f)(1) of this section.

(3) The Exchange must make an exemption available in this category prospectively or retrospectively.

(g) *Hardship*—(1) *General.* The Exchange must grant a hardship exemption to an applicant eligible for an exemption for at least the month before, a month or months during which, and the month after, if the Exchange determines that—

(i) He or she experienced financial or domestic circumstances, including an unexpected natural or human-caused event, such that he or she had a significant, unexpected increase in essential expenses that prevented him or her from obtaining coverage under a qualified health plan;

(ii) The expense of purchasing a qualified health plan would have caused him or her to experience serious deprivation of food, shelter, clothing or other necessities; or

(iii) He or she has experienced other circumstances that prevented him or her from obtaining coverage under a qualified health plan.

(2) *Lack of affordable coverage based on projected income.* The Exchange must determine an applicant eligible for an exemption for a month or months during which he or she, or another individual the applicant attests will be included in the applicant's family, as defined in 26 CFR 1.36B-1(d), is unable to afford coverage in accordance with the standards specified in section 5000A(e)(1) of the Code, provided that—

(i) Eligibility for this exemption is based on projected annual household income;

(ii) An eligible employer-sponsored plan is only considered under paragraphs (g)(2)(iii) and (iv) of this section if it meets the minimum value standard described in § 156.145 of this subchapter.

(iii) For an individual who is eligible to purchase coverage under an eligible employer-sponsored plan, the Exchange determines the required contribution for coverage such that—

(A) An individual who uses tobacco is treated as not earning any premium incentive related to participation in a wellness program designed to prevent or reduce tobacco use that is offered by an eligible employer-sponsored plan;

(B) Wellness incentives offered by an eligible employer-sponsored plan that do not relate to tobacco use are treated as not earned;

(C) In the case of an employee who is eligible to purchase coverage under an eligible employer-sponsored plan sponsored by the employee's employer, the required contribution is the portion of the annual premium that the employee would pay (whether through salary reduction or otherwise) for the lowest cost self-only coverage.

(D) In the case of an individual who is eligible to purchase coverage under an eligible employer-sponsored plan as a member of the employee's family, as defined in 26 CFR 1.36B-1(d), the required contribution is the portion of the annual premium that the employee would pay (whether through salary reduction or otherwise) for the lowest cost family coverage that would cover the employee and all other individuals who are included in the employee's family who have not otherwise been granted an exemption through the Exchange.

(iv) For an individual who is ineligible to purchase coverage under an eligible employer-sponsored plan, the Exchange determines the required contribution for coverage in accordance with section 5000A(e)(1)(B)(ii) of the Code, inclusive of all members of the family, as defined in 26 CFR 1.36B-1(d), who have not otherwise been granted an exemption through the Exchange and who are not treated as eligible to purchase coverage under an eligible employer-sponsored plan, in accordance with paragraph (g)(2)(ii) of this section; and

(v) The applicant applies for this exemption prior to the last date on which he or she could enroll in a QHP through the Exchange for the month or months of a calendar year for which the exemption is requested.

(vi) The Exchange must make an exemption in this category available prospectively, and provide it for all remaining months in a coverage year, notwithstanding any change in an individual's circumstances.

(3) *Filing threshold.* The IRS may allow an applicant to claim an exemption for a calendar year if he or she was not required to file an income tax return for such calendar year because his or her gross income was below the filing threshold, but who nevertheless filed, claimed a dependent with a filing requirement, and as a result, had household income exceeding the applicable return filing threshold described in section 5000A(e)(2) of the Code;

(4) *Ineligible for Medicaid based on a state's decision not to expand.* The Exchange must determine an applicant eligible for an exemption for a calendar year if he or she has been determined ineligible for Medicaid for one or more months during the benefit year solely as a result of a State not implementing section 2001(a) of the Affordable Care Act;

(5) *Self-only coverage in an eligible employer-sponsored plan.* The IRS may allow an applicant to claim an exemption for a calendar year if he or she, as well as one or more employed members of his or her family, as defined in 26 CFR 1.36B-1(d), has been determined eligible for affordable self-only employer-sponsored coverage pursuant to section 5000A(e)(1) of the Code through their respective employers for one or more months during the calendar year, but the aggregate cost of employer-sponsored coverage for all the employed members of the family exceeds 8 percent of household income for that calendar year; or

(6) *Eligible for services through an Indian health care provider.* (i) The Exchange must determine an applicant eligible for an exemption for any month if he or she is an Indian eligible for services through an Indian health care provider, as defined in 42 CFR 447.50 and not otherwise eligible for an exemption under paragraph (f) of this section, or an individual eligible for services through the Indian Health Service in accordance with 25 USC 1680c(a), (b), or (d)(3).

(ii) The Exchange must grant the exemption specified in paragraph (g)(6) of this section to an applicant who meets the standards specified in paragraph (g)(6) of this section for a month on a continuing basis, until such time that the applicant reports that he or she no longer meets the standards provided in paragraph (g)(6) of this section.

#### **§ 155.610 Eligibility process for exemptions.**

(a) *Application.* Except as specified in paragraphs (b) and (c) of this section, the Exchange must use an application established by HHS to collect information necessary for determining eligibility for and granting certificates of exemption as described in § 155.605.

(b) *Alternative application.* If the Exchange seeks to use an alternative application, such application, as approved by HHS, must request the minimum information necessary for the purposes identified in paragraph (a) of this section.

(c) *Exemptions through the eligibility process for coverage.* If an individual

submits the application described in § 155.405 and then requests an exemption, the Exchange must use information collected for purposes of the eligibility determination for enrollment in a QHP and for insurance affordability programs in making the exemption eligibility determination, and must not request duplicate information or conduct repeat verifications to the extent that the Exchange finds that such information is still applicable, where the standards for such verifications adhere to the standards specified in this subpart.

(d) *Filing the exemption application.* The Exchange must—

(1) Accept the application from an application filer; and

(2) Provide the tools to file an application.

(3) For applications submitted before October 15, 2014, the Exchange must, at a minimum, accept the application by mail.

(e) *Collection of Social Security Numbers.* (1) The Exchange must require an applicant who has a Social Security number to provide such number to the Exchange.

(2) The Exchange may not require an individual who is not seeking an exemption for himself or herself to provide a Social Security number, except as specified in paragraph (e)(3) of this section.

(3) The Exchange must require an application filer to provide the Social Security number of a tax filer who is not an applicant only if an applicant attests that the tax filer has a Social Security number and filed a tax return for the year for which tax data would be utilized for verification of household income and family size for an exemption under § 155.605(g)(2) that requires such verification.

(f) *Determination of eligibility; granting of certificates.* The Exchange must determine an applicant's eligibility for an exemption in accordance with the standards specified in § 155.605, and grant a certificate of exemption to any applicant determined eligible.

(g) *Timeliness standards.* (1) The Exchange must determine eligibility for exemption promptly and without undue delay.

(2) The Exchange must assess the timeliness of eligibility determinations made under this subpart based on the period from the date of application to the date the Exchange notifies the applicant of its decision.

(h) *Exemptions for previous tax years.* (1) Except for the exemptions described in § 155.605(c), (f), and (g), after December 31 of a given calendar year, the Exchange will not accept an

application for an exemption that is available retrospectively for months for such calendar year, and must provide information to individuals regarding how to claim an exemption through the tax filing process.

(2) The Exchange will only accept an application for an exemption described in § 155.605(g)(1) during one of the 3 calendar years after the month or months during which the applicant attests that the hardship occurred.

(i) *Notification of eligibility determination for exemptions.* The Exchange must provide timely written notice to an applicant of any eligibility determination made in accordance with this subpart. In the case of a determination that an applicant is eligible for an exemption, this notification must include the exemption certificate number for the purposes of tax administration.

(j) *Retention of records for tax compliance.* (1) An Exchange must notify an individual to retain the records that demonstrate receipt of the certificate of exemption and qualification for the underlying exemption.

(2) In the case of any factor of eligibility that is verified through use of the special circumstances exception described in § 155.615(h), the records that demonstrate qualification for the underlying exemption are the information submitted to the Exchange regarding the circumstances that warranted the use of the exception, as well as records of the Exchange decision to allow such exception.

#### **§ 155.615 Verification process related to eligibility for exemptions.**

(a) *General rule.* Unless a request for modification is granted under paragraph (i) of this section, the Exchange must verify or obtain information as provided in this section in order to determine that an applicant is eligible for an exemption.

(b) *Verification related to exemption for religious conscience.* For any applicant who requests an exemption based on religious conscience, the Exchange must verify that he or she meets the standards specified in § 155.605(c) by—

(1) Except as specified in paragraph (b)(2) of this section, accepting a form that reflects that he or she is exempt from Social Security and Medicare taxes under section 1402(g)(1) of the Code;

(2) Except as specified in paragraphs (b)(3) and (4) of this section, accepting his or her attestation of membership in a religious sect or division, and verifying that the religious sect or division to which the applicant attests

membership is recognized by the Social Security Administration as an approved religious sect or division under section 1402(g)(1) of the Code.

(3) If information provided by an applicant regarding his or her membership in a religious sect or division is not reasonably compatible with other information provided by the individual or in the records of the Exchange, the Exchange must follow the procedures specified in paragraph (g) of this section.

(4) If an applicant attests to membership in a religious sect or division that is not recognized by the Social Security Administration as an approved religious sect or division under section 1402(g)(1) of the Code, the Exchange must provide the applicant with information regarding how his or her religious sect or division can pursue recognition under section 1402(g)(1) of the Code, and determine the applicant ineligible for this exemption until such time as the Exchange obtains information indicating that the religious sect or division has been approved.

(c) *Verification related to exemption for membership in a health care sharing ministry.* (1) For any applicant who requests an exemption based on membership in a health care sharing ministry, the Exchange must verify that the applicant meets the standards specified in § 155.605(d) by, except as provided in paragraphs (c)(1)(i) and (c)(1)(ii) of this section, accepting his or her attestation; and verifying that the health care sharing ministry to which the applicant attests membership is known to the Exchange as a valid health care sharing ministry based on data provided by HHS—

(i) If information provided by an applicant regarding his or her membership in a health care sharing ministry is not reasonably compatible with other information provided by the individual or in the records of the Exchange, the Exchange must follow the procedures specified in paragraph (g) of this section. The Exchange may not consider an applicant's prior or current enrollment in health coverage as not reasonably compatible with an applicant's attestation of membership in a health care sharing ministry.

(ii) If an applicant attests to membership in a health care sharing ministry that is not known to the Exchange as a health care sharing ministry based on information provided by HHS, the Exchange must provide the applicant with information regarding how an organization can pursue recognition under § 155.615(c)(2), and determine the applicant ineligible for this exemption until such time as HHS

notifies the Exchange that the health care sharing ministry's meets the standards specified in section 5000A(d)(2)(B)(ii) of the Code.

(2) To be considered a health care sharing ministry for the purposes of this subpart, an organization must submit information to HHS that substantiates the organization's compliance with the standards specified in section 5000A(d)(2)(B)(ii) of the Code. If at any time HHS determines that an organization previously considered a health care sharing ministry for the purposes of this subpart no longer meets the standards specified in section 5000A(d)(2)(B)(ii) of the Code, HHS may revoke its earlier decision regarding the status of the health care sharing ministry.

(d) *Verification related to exemption for incarceration.* (1) For any applicant who provides information attesting that he or she was incarcerated for a given month in accordance with the standards specified in § 155.605(e), the Exchange must verify his or her attestation through the same process as described in § 155.315(e).

(2) To the extent that the Exchange is unable to verify an applicant's attestation that he or she was incarcerated for a given month in accordance with the standards specified in § 155.605(e) through the process described in § 155.315(e), the Exchange must follow the procedures specified in paragraph (g) of this section.

(e) *Verification related to exemption for members of Indian tribes.* (1) For any applicant who provides information attesting that he or she is a member of an Indian tribe, the Exchange must use the process outlined in § 155.350(c) to verify that the applicant is a member of an Indian tribe.

(2) To the extent that the Exchange is unable to verify an applicant's status as a member of an Indian tribe through the process described in § 155.350(c), the Exchange must follow the procedures specified in paragraph (g) of this section.

(f) *Verification related to exemption for hardship*—(1) *In general.* For any applicant who requests an exemption based on hardship, except for the hardship exemptions described in § 155.605(g)(3) and (5), the Exchange must verify whether he or she has experienced the hardship to which he or she is attesting.

(2) *Lack of affordable coverage based on projected income.* (i) For any applicant who requests an exemption based on the hardship described in § 155.605(g)(2), the Exchange must verify the unavailability of affordable coverage through the procedures used to

determine eligibility for advance payments of the premium tax credit, as specified in subpart D of this part, including the procedures described in § 155.315(c)(1), and the procedures used to verify eligibility for qualifying coverage in an eligible employer-sponsored plan, as specified in § 155.320(e), except as specified in § 155.615(f)(2)(ii).

(ii) The Exchange must accept an application filer's attestation for an applicant regarding eligibility for minimum essential coverage other than through an eligible employer-sponsored plan, instead of following the procedures specified in § 155.320(b).

(3) *Eligible for services through an Indian health care provider.* For any applicant who requests an exemption based on the hardship described in § 155.605(g)(6), the Exchange must verify whether he or she meets the standards specified in § 155.605(g)(6) through the same process described in § 155.615(e).

(4) To the extent that the Exchange is unable to verify any of the information needed to determine an applicant's eligibility for an exemption based on hardship, the Exchange must follow the procedures specified in paragraph (g) of this section.

(g) *Inability to verify necessary information.* Except as otherwise specified in this subpart, for an applicant for whom the Exchange cannot verify information required to determine eligibility for an exemption, including but not limited to when electronic data is required in accordance with this subpart but data for individuals relevant to the eligibility determination for an exemption are not included in such data sources or when electronic data is required but it is not reasonably expected that data sources will be available within the time period as specified in § 155.315(f), the Exchange—

(1) Must make a reasonable effort to identify and address the causes of such inconsistency, including typographical or other clerical errors, by contacting the application filer to confirm the accuracy of the information submitted by the application filer;

(2) If unable to resolve the inconsistency through the process described in paragraph (g)(1) of this section, must—

(i) Provide notice to the applicant regarding the inconsistency; and

(ii) Provide the applicant with a period of 90 days from the date on which the notice described in paragraph (g)(2)(i) of this section is sent to the applicant to either present satisfactory documentary evidence via the channels

available for the submission of an application, as described in § 155.610(d), except for by telephone, or otherwise to resolve the inconsistency.

(3) May extend the period described in paragraph (g)(2)(ii) of this section for an applicant if the applicant demonstrates that a good faith effort has been made to obtain the required documentation during the period.

(4) During the period described in paragraph (g)(1) and (g)(2)(ii) of this section, must not grant a certificate of exemption based on the information subject to this paragraph.

(5) If, after the period described in paragraph (g)(2)(ii) of this section, the Exchange remains unable to verify the attestation, the Exchange must determine the applicant's eligibility for an exemption based on any information available from the data sources used in accordance with this subpart, if applicable, unless such applicant qualifies for the exception provided under paragraph (h) of this section, and notify the applicant of such determination in accordance with the notice requirements specified in § 155.610(i), including notice that the Exchange is unable to verify the attestation.

(h) *Exception for special circumstances.* For an applicant who does not have documentation with which to resolve the inconsistency through the process described in paragraph (g)(2) of this section because such documentation does not exist or is not reasonably available and for whom the Exchange is unable to otherwise resolve the inconsistency, the Exchange must provide an exception, on a case-by-case basis, to accept an applicant's attestation as to the information which cannot otherwise be verified along with an explanation of circumstances as to why the applicant does not have documentation.

(i) *Flexibility in information collection and verification.* HHS may approve an Exchange Blueprint in accordance with § 155.105(d) or a significant change to the Exchange Blueprint in accordance with § 155.105(e) to modify the methods to be used for collection of information and verification as set forth in this subpart, as well as the specific information required to be collected, provided that HHS finds that such modification would reduce the administrative costs and burdens on individuals while maintaining accuracy and minimizing delay, and that applicable requirements under §§ 155.260, 155.270, and paragraph (j) of this section, and section 6103 of the Code with respect to the confidentiality,

disclosure, maintenance, or use of such information will be met.

(j) *Applicant information.* The Exchange may not require an applicant to provide information beyond the minimum necessary to support the eligibility process for exemptions as described in this subpart.

(k) *Validation of Social Security number.* (1) For any individual who provides his or her Social Security number to the Exchange, the Exchange must transmit the Social Security number and other identifying information to HHS, which will submit it to the Social Security Administration.

(2) To the extent that the Exchange is unable to validate an individual's Social Security number through the Social Security Administration, or the Social Security Administration indicates that the individual is deceased, the Exchange must follow the procedures specified in paragraph (g) of this section, except that the Exchange must provide the individual with a period of 90 days from the date on which the notice described in paragraph (g)(2)(i) of this section is received for the applicant to provide satisfactory documentary evidence or resolve the inconsistency with the Social Security Administration. The date on which the notice is received means 5 days after the date on the notice, unless the individual demonstrates that he or she did not receive the notice within the 5 day period.

**§ 155.620 Eligibility redeterminations for exemptions during a calendar year.**

(a) *General requirement.* The Exchange must redetermine the eligibility of an individual with an exemption granted by the Exchange if it receives and verifies new information reported by such an individual, except for the exemption described in § 155.605(g)(2).

(b) *Requirement for individuals to report changes.* (1) Except as specified in paragraph (b)(2) of this section, the Exchange must require an individual who has a certificate of exemption from the Exchange to report any change with respect to the eligibility standards for the exemption as specified in § 155.605, except for the exemption described in § 155.605(g)(2), within 30 days of such change.

(2) The Exchange must allow an individual with a certificate of exemption to report changes via the channels available for the submission of an application, as described in § 155.610(d).

(c) *Verification of reported changes.* The Exchange must—

(1) Verify any information reported by an individual with a certificate of exemption in accordance with the processes specified in § 155.615 prior to using such information in an eligibility redetermination.

(2) Notify an individual in accordance with § 155.610(i) after redetermining his or her eligibility based on a reported change.

(3) Provide periodic electronic notifications regarding the requirements for reporting changes and an individual's opportunity to report any changes, to an individual who has a certificate of exemption for which changes must be reported in accordance with § 155.620(b) and who has elected to receive electronic notifications, unless he or she has declined to receive such notifications.

(d) *Effective date of changes.* The Exchange must implement a change resulting from a redetermination under this section for the month or months after the month in which the redetermination occurs, such that a certificate that was provided for the month in which the redetermination occurs, and for prior months remains effective.

**§ 155.625 Options for conducting eligibility determinations for exemptions.**

(a) *Options for conducting eligibility determinations.* The Exchange may satisfy the requirements of this subpart—

(1) Directly or through contracting arrangements in accordance with § 155.110(a); or (2) Through the approach described in paragraph (b) of this section.

(b) *Use of HHS service.* Notwithstanding the requirements of this subpart—

(1) For an application submitted before October 15, 2014, the Exchange may adopt an exemption eligibility determination made by HHS, provided that—

(i) The Exchange adheres to the eligibility determination made by HHS;

(ii) The Exchange furnishes to HHS any information available through the Exchange that is necessary for an applicant to utilize the process administered by HHS; and

(iii) The Exchange call center and Internet Web site specified in § 155.205(a) and (b), respectively, provide information to consumers regarding the exemption eligibility process.

(2) For an application submitted on or after October 15, 2014, the Exchange may adopt an exemption eligibility determination made by HHS, provided that—

(i) The Exchange accepts the application, as specified in § 155.610(c), and issues the eligibility notice, as specified in § 155.610(i);

(ii) Verifications and other activities required in connection with eligibility determinations for exemptions are performed by the Exchange in accordance with the standards identified in this subpart or by HHS in accordance with the agreement described in paragraph (b)(2)(v) of this section;

(iii) The Exchange transmits to HHS promptly and without undue delay and via secure electronic interface, all information provided as a part of the application or update that initiated the eligibility determination, and any information obtained or verified by the Exchange;

(iv) The Exchange adheres to the eligibility determination made by HHS; and

(v) The Exchange and HHS enter into an agreement specifying their respective responsibilities in connection with eligibility determinations for exemptions.

**§ 155.630 Reporting.**

*Requirement to provide information related to tax administration.* If the Exchange grants an individual a certificate of exemption in accordance with § 155.610(i), the Exchange must transmit to the IRS at such time and in such manner as the IRS may specify—

(a) The individual's name, Social Security number, and exemption certificate number;

(b) Any other information required in guidance published by the Secretary of the Treasury in accordance with 26 CFR 601.601(d)(2).

**§ 155.635 Right to appeal.**

(a) For an application submitted before October 15, 2014, the Exchange must include the notice of the right to appeal and instructions regarding how to file an appeal in any notification issued in accordance with § 155.610(i).

(b) For an application submitted on or after October 15, 2014, the Exchange must include the notice of the right to appeal and instructions regarding how to file an appeal in any notification issued in accordance with § 155.610(i) and § 155.625(b)(2)(i).

**PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES**

■ 5. The authority citation for part 156 is revised to read as follows:

**Authority:** Title I of the Affordable Care Act, Sections 1301–1304, 1311–1312, 1321, 1322, 1324, 1334, 1341–1343, and 1401–1402, 1501, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18042).

■ 6. Add subpart G to part 156 to read as follows:

**Subpart G—Minimum Essential Coverage**

Sec.

156.600 The definition of minimum essential coverage.

156.602 Other coverage that qualifies as minimum essential coverage.

156.604 Requirements for recognition as minimum essential coverage for types of coverage not otherwise designated minimum essential coverage in the statute or this subpart.

156.606 HHS audit authority.

**Subpart G—Minimum Essential Coverage**

**§ 156.600 The definition of minimum essential coverage.**

The term *minimum essential coverage* has the same meaning as provided in section 5000A(f) of the Code and its implementing regulations for purposes of this subpart.

**§ 156.602 Other coverage that qualifies as minimum essential coverage.**

The following types of coverage are designated by the Secretary as minimum essential coverage for purposes of section 5000A(f)(1)(E) of the Code:

(a) *Self-funded student health coverage.* Coverage offered to students by an institution of higher education (as defined in the Higher Education Act of 1965), where the institution assumes the risk for payment of claims, are designated as minimum essential coverage for plan or policy years beginning on or before December 31, 2014. For coverage beginning after December 31, 2014, sponsors of self-funded student health coverage may apply to be recognized as minimum essential coverage pursuant to the process provided under 45 CFR 156.604.

(b) *Refugee Medical Assistance supported by the Administration for Children and Families.* Coverage under Refugee Medical Assistance, authorized under section 412(e)(7)(A) of The Immigration and Nationality Act, provides up to eight months of coverage

to certain noncitizens who are considered Refugees, as defined in section 101(a)(42) of the Act.

(c) *Medicare advantage plans.* Coverage under the Medicare program pursuant to Part C of title XVIII of the Social Security Act, which provides Medicare Parts A and B benefits through a private insurer.

(d) *State high risk pool coverage.* State high risk pools are designated as minimum essential coverage for plan or policy years beginning on or before December 31, 2014. For coverage beginning after December 31, 2014, sponsors of high risk pool coverage may apply to be recognized as minimum essential coverage pursuant to the process provided under § 156.604.

(e) *Other coverage.* Other coverage that qualifies pursuant to § 156.604.

**§ 156.604 Requirements for recognition as minimum essential coverage for types of coverage not otherwise designated minimum essential coverage in the statute or this subpart.**

(a) The Secretary may recognize “other coverage” as minimum essential coverage provided HHS determines that the coverage meets the following substantive and procedural requirements:

(1) *Coverage requirements.* A plan must meet substantially all the requirements of title I of the Affordable Care Act pertaining to non-grandfathered, individual health insurance coverage.

(2) *Procedural requirements.* Procedural requirements for recognition as minimum essential coverage. To be considered for recognition as minimum essential coverage, the sponsor of the coverage, or government agency, must submit the following information to HHS:

(i) Identity of the plan sponsor and appropriate contact persons;

(ii) Basic information about the plan, including:

(A) Name of the organization sponsoring the plan;

(B) Name and title of the individual who is authorized to make, and makes, this certification on behalf of the organization;

(C) Address of the individual named above;

(D) Phone number of the individual named above;

(E) Number of enrollees;

(F) Eligibility criteria;

(G) Cost sharing requirements, including deductible and out-of-pocket maximum limit;

(H) Essential health benefits covered; and

(I) A certification by the appropriate individual, named pursuant to paragraph (a)(3)(ii)(b), that the organization substantially complies with the requirements of title I of the Affordable Care Act that apply to non-grandfathered plans in the individual market and any plan documentation or other information that demonstrate that the coverage substantially complies with these requirements.

(b) CMS will publish a list of types of coverage that the Secretary has recognized as minimum essential coverage pursuant to this provision.

(c) If at any time the Secretary determines that a type of coverage previously recognized as minimum essential coverage no longer meets the coverage requirements of paragraph (a)(1) of this section, the Secretary may revoke the recognition of such coverage.

(d) *Notice.* Once recognized as minimum essential coverage, a plan must provide notice to all enrollees of its minimum essential coverage status and must comply with the information reporting requirements of section 6055 of the Code and implementing regulations.

**§ 156.606 HHS audit authority.**

The Secretary may audit a plan or program recognized as minimum essential coverage under § 156.604 at any time to ensure compliance with the requirements of § 156.604(a).

Dated: June 7, 2013.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services*

Approved: June 11, 2013.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2013–15530 Filed 6–26–13; 11:15 am]

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Part V

Department of Labor

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Mine Safety and Health Administration

30 CFR Part 49

Mine Rescue Teams; CFR Correction

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Part 49**

**Mine Rescue Teams**

*CFR Correction*

In Title 30 of the Code of Federal Regulations, Parts 1 to 199, revised as of

July 1, 2012, on page 264, in § 49.11, in paragraph (b), in the table, the last two entries are corrected to read as follows:

**§ 49.11 Purpose and scope.**

\* \* \* \* \*

(b) \* \* \*

**TABLE 49.11—SUMMARY OF NEW MINER ACT REQUIREMENTS FOR UNDERGROUND COAL MINE OPERATORS AND MINE RESCUE TEAMS**

Requirement	Type of mine rescue team			
	Mine-site	Composite	Contract	State-sponsored
Team must include at least two active employees from each covered large mine and at least one active employee from each covered small mine.	*	YES	*	*
Team must be comprised of persons with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team.	*		YES	*

\* \* \* \* \*



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Part VI

The President

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Memorandum of June 25, 2013—Power Sector Carbon Pollution Standards  
Executive Order 13647—Establishing the White House Council on Native  
American Affairs



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# Presidential Documents

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Title 3—

Memorandum of June 25, 2013

The President

## Power Sector Carbon Pollution Standards

### Memorandum for the Administrator of the Environmental Protection Agency

With every passing day, the urgency of addressing climate change intensifies. I made clear in my State of the Union address that my Administration is committed to reducing carbon pollution that causes climate change, preparing our communities for the consequences of climate change, and speeding the transition to more sustainable sources of energy.

The Environmental Protection Agency (EPA) has already undertaken such action with regard to carbon pollution from the transportation sector, issuing Clean Air Act standards limiting the greenhouse gas emissions of new cars and light trucks through 2025 and heavy duty trucks through 2018. The EPA standards were promulgated in conjunction with the Department of Transportation, which, at the same time, established fuel efficiency standards for cars and trucks as part of a harmonized national program. Both agencies engaged constructively with auto manufacturers, labor unions, States, and other stakeholders, and the resulting standards have received broad support. These standards will reduce the Nation's carbon pollution and dependence on oil, and also lead to greater innovation, economic growth, and cost savings for American families.

The United States now has the opportunity to address carbon pollution from the power sector, which produces nearly 40 percent of such pollution. As a country, we can continue our progress in reducing power plant pollution, thereby improving public health and protecting the environment, while supplying the reliable, affordable power needed for economic growth and advancing cleaner energy technologies, such as efficient natural gas, nuclear power, renewables such as wind and solar energy, and clean coal technology.

Investments in these technologies will also strengthen our economy, as the clean and efficient production and use of electricity will ensure that it remains reliable and affordable for American businesses and families.

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to reduce power plant carbon pollution, building on actions already underway in States and the power sector, I hereby direct the following:

**Section 1. Flexible Carbon Pollution Standards for Power Plants.** (a) Carbon Pollution Standards for Future Power Plants. On April 13, 2012, the EPA published a Notice of Proposed Rulemaking entitled “Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units,” 77 Fed. Reg. 22392. In light of the information conveyed in more than two million comments on that proposal and ongoing developments in the industry, you have indicated EPA's intention to issue a new proposal. I therefore direct you to issue a new proposal by no later than September 20, 2013. I further direct you to issue a final rule in a timely fashion after considering all public comments, as appropriate.

(b) *Carbon Pollution Regulation for Modified, Reconstructed, and Existing Power Plants.* To ensure continued progress in reducing harmful carbon pollution, I direct you to use your authority under sections 111(b) and 111(d) of the Clean Air Act to issue standards, regulations, or guidelines, as appropriate, that address carbon pollution from modified, reconstructed,

and existing power plants and build on State efforts to move toward a cleaner power sector. In addition, I request that you:

(i) issue proposed carbon pollution standards, regulations, or guidelines, as appropriate, for modified, reconstructed, and existing power plants by no later than June 1, 2014;

(ii) issue final standards, regulations, or guidelines, as appropriate, for modified, reconstructed, and existing power plants by no later than June 1, 2015; and

(iii) include in the guidelines addressing existing power plants a requirement that States submit to EPA the implementation plans required under section 111(d) of the Clean Air Act and its implementing regulations by no later than June 30, 2016.

(c) *Development of Standards, Regulations, or Guidelines for Power Plants.* In developing standards, regulations, or guidelines pursuant to subsection (b) of this section, and consistent with Executive Orders 12866 of September 30, 1993, as amended, and 13563 of January 18, 2011, you shall ensure, to the greatest extent possible, that you:

(i) launch this effort through direct engagement with States, as they will play a central role in establishing and implementing standards for existing power plants, and, at the same time, with leaders in the power sector, labor leaders, non-governmental organizations, other experts, tribal officials, other stakeholders, and members of the public, on issues informing the design of the program;

(ii) consistent with achieving regulatory objectives and taking into account other relevant environmental regulations and policies that affect the power sector, tailor regulations and guidelines to reduce costs;

(iii) develop approaches that allow the use of market-based instruments, performance standards, and other regulatory flexibilities;

(iv) ensure that the standards enable continued reliance on a range of energy sources and technologies;

(v) ensure that the standards are developed and implemented in a manner consistent with the continued provision of reliable and affordable electric power for consumers and businesses; and

(vi) work with the Department of Energy and other Federal and State agencies to promote the reliable and affordable provision of electric power through the continued development and deployment of cleaner technologies and by increasing energy efficiency, including through stronger appliance efficiency standards and other measures.

**Sec. 2. General Provisions.** (a) This memorandum shall be implemented consistent with applicable law, including international trade obligations, and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are hereby authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,  
Washington, June 25, 2013.

## Presidential Documents

Executive Order 13647 of June 26, 2013

### Establishing the White House Council on Native American Affairs

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote and sustain prosperous and resilient Native American tribal governments, it is hereby ordered as follows:

**Section 1. Policy.** The United States recognizes a government-to-government relationship, as well as a unique legal and political relationship, with federally recognized tribes. This relationship is set forth in the Constitution of the United States, treaties, statutes, Executive Orders, administrative rules and regulations, and judicial decisions. Honoring these relationships and respecting the sovereignty of tribal nations is critical to advancing tribal self-determination and prosperity.

As we work together to forge a brighter future for all Americans, we cannot ignore a history of mistreatment and destructive policies that have hurt tribal communities. The United States seeks to continue restoring and healing relations with Native Americans and to strengthen its partnership with tribal governments, for our more recent history demonstrates that tribal self-determination—the ability of tribal governments to determine how to build and sustain their own communities—is necessary for successful and prospering communities. We further recognize that restoring tribal lands through appropriate means helps foster tribal self-determination.

This order establishes a national policy to ensure that the Federal Government engages in a true and lasting government-to-government relationship with federally recognized tribes in a more coordinated and effective manner, including by better carrying out its trust responsibilities. This policy is established as a means of promoting and sustaining prosperous and resilient tribal communities. Greater engagement and meaningful consultation with tribes is of paramount importance in developing any policies affecting tribal nations.

To honor treaties and recognize tribes' inherent sovereignty and right to self-government under U.S. law, it is the policy of the United States to promote the development of prosperous and resilient tribal communities, including by:

(a) promoting sustainable economic development, particularly energy, transportation, housing, other infrastructure, entrepreneurial, and workforce development to drive future economic growth and security;

(b) supporting greater access to, and control over, nutrition and healthcare, including special efforts to confront historic health disparities and chronic diseases;

(c) supporting efforts to improve the effectiveness and efficiency of tribal justice systems and protect tribal communities;

(d) expanding and improving lifelong educational opportunities for American Indians and Alaska Natives, while respecting demands for greater tribal control over tribal education, consistent with Executive Order 13592 of December 2, 2011 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities); and

(e) protecting tribal lands, environments, and natural resources, and promoting respect for tribal cultures.

**Sec. 2. *Establishment.*** There is established the White House Council on Native American Affairs (Council). The Council shall improve coordination of Federal programs and the use of resources available to tribal communities.

**Sec. 3. *Membership.*** (a) The Secretary of the Interior shall serve as the Chair of the Council, which shall also include the heads of the following executive departments, agencies, and offices:

- (i) the Department of State;
- (ii) the Department of the Treasury;
- (iii) the Department of Defense;
- (iv) the Department of Justice;
- (v) the Department of Agriculture;
- (vi) the Department of Commerce;
- (vii) the Department of Labor;
- (viii) the Department of Health and Human Services;
- (ix) the Department of Housing and Urban Development;
- (x) the Department of Transportation;
- (xi) the Department of Energy;
- (xii) the Department of Education;
- (xiii) the Department of Veterans Affairs;
- (xiv) the Department of Homeland Security;
- (xv) the Social Security Administration;
- (xvi) the Office of Personnel Management;
- (xvii) the Office of the United States Trade Representative;
- (xviii) the Office of Management and Budget;
- (xix) the Environmental Protection Agency;
- (xx) the Small Business Administration;
- (xxi) the Council of Economic Advisers;
- (xxii) the Office of National Drug Control Policy;
- (xxiii) the Domestic Policy Council;
- (xxiv) the National Economic Council;
- (xxv) the Office of Science and Technology Policy;
- (xxvi) the Council on Environmental Quality;
- (xxvii) the White House Office of Public Engagement and Intergovernmental Affairs;
- (xxviii) the Advisory Council on Historic Preservation;
- (xxix) the Denali Commission;
- (xxx) the White House Office of Cabinet Affairs; and
- (xxxi) such other executive departments, agencies, and offices as the Chair may, from time to time, designate.

(b) A member of the Council may designate a senior-level official, who is a full-time officer or employee of the Federal Government, to perform his or her functions.

(c) The Department of the Interior shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations.

(d) The Council shall coordinate its policy development through the Domestic Policy Council.

(e) The Council shall coordinate its outreach to federally recognized tribes through the White House Office of Public Engagement and Intergovernmental Affairs.

(f) The Council shall meet three times a year, with any additional meetings convened as deemed necessary by the Chair.

The Chair may invite other interested agencies and offices to attend meetings as appropriate.

**Sec. 4. *Mission and Function of the Council.*** The Council shall work across executive departments, agencies, and offices to coordinate development of policy recommendations to support tribal self-governance and improve the quality of life for Native Americans, and shall coordinate the United States Government's engagement with tribal governments and their communities. The Council shall:

(a) make recommendations to the President, through the Director of the Domestic Policy Council, concerning policy priorities, including improving the effectiveness of Federal investments in Native American communities, where appropriate, to increase the impact of Federal resources and create greater opportunities to help improve the quality of life for Native Americans;

(b) coordinate, through the Director of the Office of Public Engagement and Intergovernmental Affairs, Federal engagement with tribal governments and Native American stakeholders regarding issues important to Native Americans, including with tribal consortia, small businesses, education and training institutions including tribal colleges and universities, health-care providers, trade associations, research and grant institutions, law enforcement, State and local governments, and community and non-profit organizations;

(c) coordinate a more effective and efficient process for executive departments, agencies, and offices to honor the United States commitment to tribal consultation as set forth in Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), and my memorandum of November 5, 2009 (Tribal Consultation); and

(d) assist the White House Office of Public Engagement and Intergovernmental Affairs in organizing the White House Tribal Nations Conference each year by bringing together leaders invited from all federally recognized Indian tribes and senior officials from the Federal Government to provide for direct government-to-government discussion of the Federal Government's Indian country policy priorities.

**Sec. 5. *General Provisions.*** (a) The heads of executive departments, agencies, and offices shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out the functions of the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) For purposes of this order, "federally recognized tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(e) For purposes of this order, "American Indian and Alaska Native" means a member of an Indian tribe, as membership is defined by the tribe.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a vertical line through it, and a horizontal line extending to the right.

THE WHITE HOUSE,  
*June 26, 2013.*

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# Reader Aids

Federal Register

Vol. 78, No. 126

Monday, July 1, 2013

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## FEDERAL REGISTER PAGES AND DATE, JULY

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## CFR PARTS AFFECTED DURING JULY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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**LIST OF PUBLIC LAWS**

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at <http://www.gpo.gov/fdsys>. Some laws may not yet be available.

**H.R. 475/P.L. 113-15**

To amend the Internal Revenue Code of 1986 to include vaccines against seasonal influenza within the definition of taxable vaccines. (June 25, 2013; 127 Stat. 476)

**Last List June 17, 2013**

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## TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 2013

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 1	Jul 16	Jul 22	Jul 31	Aug 5	Aug 15	Aug 30	Sep 30
July 2	Jul 17	Jul 23	Aug 1	Aug 6	Aug 16	Sep 3	Sep 30
July 3	Jul 18	Jul 24	Aug 2	Aug 7	Aug 19	Sep 3	Oct 1
July 5	Jul 22	Jul 26	Aug 5	Aug 9	Aug 19	Sep 3	Oct 3
July 8	Jul 23	Jul 29	Aug 7	Aug 12	Aug 22	Sep 6	Oct 7
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July 30	Aug 14	Aug 20	Aug 29	Sep 3	Sep 13	Sep 30	Oct 28
July 31	Aug 15	Aug 21	Aug 30	Sep 4	Sep 16	Sep 30	Oct 29